



Navigating you through the various legal employment and business issues that your Company encounters as you journey to business success!

Navigational Beacon

A Simon | Paschal PLLC Publication.

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Are you a Fiduciary of Your 401(k) Plan and Don't Even Know it?

The recent court case of *Tibble v. Edison International* affirmed that plan sponsors have ongoing fiduciary responsibilities to put the financial interests of plan participants (exclusive benefit rule) above their own. Many employers seem to have ignored the warning possibly thinking the “big company” lawsuits don't apply to them. They do.

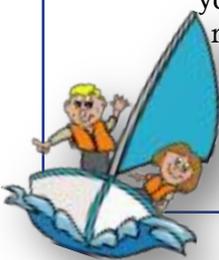
If you're a plan sponsor or a fiduciary, your obligation doesn't change regardless of the size of your company or plan. All plans **MUST** have at least one fiduciary named in the plan. Most business owners and executives are so busy with regular business duties that you may find it difficult to devote sufficient time to the 401(k) plan. If you are unsure or feel under-qualified to properly govern and operate the plan then you have an obligation to seek the advice of a qualified financial professional under Section 3(21) or Section 3(38) of ERISA. When you select a consultant and delegate fiduciary responsibility, your monitoring of that provider is also important. Fiduciary liability can cross over the corporate barrier into personal liability for those who are fiduciaries.

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New Firm Website:

We recently launched our new firm website at www.simonpaschal.com. Check it out and give us your feedback!



Alternative Health Care Options

Under the current Presidential administration, Health Care has taken an entirely new direction. Gone are the days when there were significant differences between the various policies offered through the major medical companies like Blue Cross Blue Shield, Aetna, Cigna, Humana, United Health Care, etc. Now, health coverage from the different carriers looks pretty much the same with the major differences being a small variation in monthly premium and co-insurance (80/20, 70/30, 60/40 or 50/50 split after deductible is met). Instead of picking a company based on the provisions of their policy, you now select between metal categories; Bronze, Silver, Gold and Platinum. Bronze plans offer the least coverage and the lowest possible cost (\$450 - \$550 for one, \$800 to \$1200 for a family) but the highest deductible (\$6,600 per person). Only two of the major medical companies offer the PPO option...all others are utilizing HMO or hybrids of the HMO where you are allowed to see only certain doctors then are forced to deal with a "gatekeeper" in order to see a specialist.

Under the Affordable Care Act (Obama Care), all major medical policies must cover certain basic items regardless of gender, age or moral conviction . . . everyone, male or female, is now paying for childbirth, abortion and drug rehabilitation just to name a few. You have very little choice concerning the details of your policy. Since there are no pre-existing condition exclusions, policies no longer offer a discounted price for those who are in good health; therefore, everyone pays the premium as if they are in poor health. Also, under the ACA, each of the major medical companies are allowed to raise rates and deductibles every 6 months. As of this writing, the rate increases have exceeded 22% with the next one ranging between 25% and (*cont'd on Page 3*)



Workplace Investigation Tips:

Workplace investigations are a critical component to avoiding lawsuits and prevailing in court. A recent report found that \$218,000 is the median compensatory (non-punitive) award in employment law lawsuits. Clearly taking the time to conduct a proper investigation of a complaint is worth a significant amount of money. Conducting a proper, unbiased investigation is a company's first step to avoid paying these types of judgments. In order to accomplish a proper, unbiased investigation you need to have a strategy in place and not start the investigation with a preconceived notion. A quick tip to ensure you are conducting proper investigations is to remember the 5 Ws. These may seem obvious, but are often overlooked.

THE 5 WS TO AN INVESTIGATION

WHO? Who needs to be interviewed

WHAT? What are the facts of the complaint

WHERE? Where did the incident occur

WHEN? When did the incident(s) occur

WHY? Why did the incident occur



Another great Simon | Paschal client

Client Spotlight

Austin Primary Care Physicians is a primary care practice with two offices in the Austin area. Dr. Nandini Kohli and her team provide medical care ranging from internal medicine, to podiatry to gynecological services. If you or a friend needs a primary care physician in the Austin area, give Dr. Kohli a call. Check out more about her practice at www.austinprimarycare.com.



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(cont'd from Page 1) Plan fiduciaries are responsible for a variety of decisions all of which are viewed with a critical eye from the DOL. Hot topics such as plan “fees, funds, and service” are the old standbys but the DOL is paying substantial attention to the PROCESS of plan governance, hiring and monitoring service providers such as auditors, investment advisors, or outside fiduciaries, monitoring of investments, proper plan documentation, prohibited transactions, and regular education and guidance for the participants. Helping your employees to become retirement ready is critical to the success of your plan.

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(cont'd from Page 2) and 30%. When you understand that 97.6% of the time, the average annual cost for medical treatment is less than \$5,000.00, it makes little sense to take a high deductible because, statistically, you have very little chance of having a claim paid by your current major medical carrier. If you offer health coverage for your employees, the current system requires that you help pay the premium for each (50% at least) and that you have minimum participation by your employees (75% of the eligible pool). Under the ACA law, unless there are special circumstances, an open enrollment time dictates when you or your employees are able to begin coverage. Lastly, your current major medical plan will not cover work related injuries.

While the major medical companies are not offering any differentiation, there are still providers in the market place that provide alternatives that meet the ACA’s definition of Minimal Essential Coverage (MEC). As such, companies that use these alternative providers avoid the tax penalty imposed on companies that provide health insurance that does not meet the MEC. While these alternative providers do not meet the definition of “qualified” provider under the ACA they do avoid the tax penalties imposed with failing to meet the Minimum Essential Coverage. In addition, these alternative providers can provide employers with more flexibility on employee participation requirements, opt-in periods, rate locks, as well as cost savings. The insurance coverage is also owned by the employee so it stays with the employee both on and off the job and even if the employee’s employment is terminated.

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If you are struggling with these issues and your fiduciary responsibilities, there is help available to you. Having a 21 point Self-Assessment or a Consultant’s Review for Fiduciary Practices (CRFP) completed on your 401(k) plan can help you uncover deficiencies (if any), provide appropriate solutions, and implement proper procedure going forward to stay ahead of these fiduciary requirements. It can also help to protect you and other plan fiduciaries while fulfilling your obligations to the exclusive benefit rule for your employee/participants.

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CONGRATULATIONS!

Paul Simon again selected as Super Lawyer 2015



Simon | Paschal PLLC Happenings

HR Southwest Conference: October 25-28, 2015

Dustin and Paul will be presenting an all-day seminar on work place investigations at this year's HR Southwest Conference in Fort Worth. Each year, Texas SHRM hosts the HR Southwest Conference, which is considered the premier regional human resources conference in the United States. In addition to the all day seminar, Dustin and Paul will both be involved with the Legal Exchange, where attendees rotate from speaker to speaker to learn about specific focus areas within employment law. To wrap up the busy week of presenting, Dustin will present a condensed one hour presentation on work place investigations. Stop by one of our presentations if you are attending.

The small print: The contents of this newsletter are not intended to provide specific legal advice and you should not take any action based on the content of this newsletter without seeking legal counsel. If you have specific questions, please contact a lawyer, preferably us!

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