

Aon Publications on Federal Developments in 2018

Insights and Summaries

January 2019

Aon provided insights into numerous developments last year that had an impact on employer-provided health plans, retirement plans, sick leave, family and medical leave, disability benefits, wellness plans, overtime, and other areas of employee benefits and human resources affecting employers. Many of these developments consisted of regulations, notices, court decisions, questions and answers, and reporting and disclosure guidance issued by federal agencies. This report gathers together the Aon bulletins that summarized and analyzed significant developments in 2018, with direct links to the publications.

January 2018

Federal Judge Vacates EEOC's ADA and GINA Rules for Employer Wellness Plans Starting in 2019

A federal district court has vacated the U.S. Equal Employment Opportunity Commission's (EEOC's) final regulations on permissible financial incentives for employee wellness programs under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). The court's ruling is effective January 1, 2019.

The district court's ruling does not affect the wellness regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which are similar to the ADA and GINA regulations in some (but not all) respects. While the ADA and GINA rules on wellness program incentives remain in effect for 2018, employers will not be able to rely on these regulations when designing wellness programs for 2019. Once the ADA and GINA regulations are no longer effective, employers will face the challenge of designing ADA- and GINA-compliant wellness programs, which often include financial incentives for taking a health risk assessment or biometric screening, without definitive regulatory guidance on permissible financial incentives under these laws.

This bulletin:

- Provides background on the issue;
- Summarizes the court's decision; and
- Describes the impact on employers.

This Aon bulletin is available [here](#).

IRS Gives a Last-Minute Holiday Gift; Extends Some Form 1095 Deadlines

On December 22, 2017, the Internal Revenue Service (IRS) published Notice 2018-06, which provides an automatic 30-day extension for furnishing Forms 1095-B and 1095-C to individuals, extending the deadline

to March 2, 2018. The IRS will also continue to provide penalty relief for those filers who make errors but demonstrate good faith efforts to comply with the requirements.

This Aon bulletin is available [here](#).

Open for Business: Congress Votes to Fund Government, Delay ACA Taxes

On January 22, 2018, Congress passed a short-term spending bill that funded the government through February 8, 2018. In addition to ending a three-day shutdown of the federal government, the bill delayed three Affordable Care Act (ACA) taxes—the Cadillac tax, the Health Insurance tax, and the Medical Device tax. The President signed the bill into law the same day.

The Aon bulletin is available [here](#).

Aon Publications on Federal Developments in 2017

Every year, we take a look back at some of the prior year's Aon bulletins, white papers, newsletters, and reports that provided insights into significant developments affecting employee benefit plans and human resources. Notably, there were a number of legislative efforts in 2017 in both chambers of Congress to repeal and replace the ACA, and the year closed with the enactment of significant federal tax reform. A link to the full text of each 2017 publication is provided.

The Aon bulletin is available [here](#).

DOL Proposes Regulations for Expanded Association Health Plans

The Department of Labor (DOL) proposed regulations expanding the use of association health plans (AHPs) by small employers and self-employed individuals. The proposed regulations implement a portion of the Executive Order President Trump signed in October 2017 that called for expansion of short-term limited-duration health insurance policies and for permitting health reimbursement arrangements (HRAs) to be used to purchase individual health insurance policies. The proposed regulations are subject to a comment period and further possible changes before being finalized.

The Aon bulletin, which discusses the background to AHPs and the text of the proposed regulations, is available [here](#).

2018 Aon Compliance Calendar—Significant Compensation and Benefit Due Dates

Our 2018 *Compliance Calendar* identified significant compensation and benefit due dates for retirement and health and welfare plans. This *Compliance Calendar* includes relevant dates involving plan disclosures, contribution and distribution requirements, and various plan-related regulatory filings.

The annual *Compliance Calendar* assumes a plan administered on a calendar year basis by an employer with a calendar fiscal year. In general, the information for pension plans applies to single employer plans; other plans, such as multiemployer plans (e.g., Taft-Hartley plans) or government plans, may be subject to different requirements, and are not included. Additionally, certain compliance dates related to group health plan coverage or retiree prescription drug coverage were included where applicable.

The 2018 *Aon Compliance Calendar* is available [here](#).

February 2018

Retirement Legal Consulting & Compliance Quarterly Update

Our Retirement Legal Consulting & Compliance practice group's *Quarterly Update* highlighted legal developments for the first quarter of 2018 and included the following articles:

- New Opportunity Regarding DC Plan Loans
- Tax Reform May Require Review of Plan Compensation
- Fiduciary Breach—Court Orders Comparison of Fund Returns to Calculate Damages
- Qualified Plans—2017 Required Amendments List
- PBGC Expands Missing Participant Program
- New Disability Claims Procedure Rule Is Back
- Regulatory Compliance Is Key for Plan Sponsors
- Quarterly Roundup of Other Developments

The first quarter 2018 issue of the *Retirement Legal Consulting & Compliance Quarterly Update* is available [here](#).

Medicare Dollars and Donuts: Budget Act Repeals IPAB and Starts Closing Medicare Part D “Donut Hole” in 2019

The Bipartisan Budget Act of 2018 (BBA) signed into law by President Donald Trump repealed a major cost control provision of the ACA, revised the contribution structure in Medicare Part D, and increased premiums for high-income Medicare beneficiaries.

A brief summary of the BBA's changes is provided [here](#).

March 2018

IRS Lowers HSA Family Contribution Limit and Adoption Expense Exclusion, Reaffirms IRS Defines Preventive Care for HDHPs

In March the IRS began issuing guidance implementing the new tax law—and that meant lower contribution limits for certain employees in health savings accounts (HSAs) and high deductible health plans (HDHPs), and a reduced income exclusion for employees in an employer-sponsored adoption plan, both effective retroactively to January 1, 2018.

The Aon bulletin is available [here](#).

Updated: IRS Issues HSA Contribution Limits for 2018

On March 5, 2018, the IRS issued new 2018 inflation adjustment and tax rate tables (Revenue Procedure 2018-18). Included in the changes was a decrease to the 2018 HSA contribution limit for family coverage. This Aon bulletin updated the original May 2017 publication.

The updated Aon bulletin is available [here](#).

UHC's Drug Rebate Program—Impact on Employers

On March 7, 2018, UnitedHealthcare (UHC) announced that beginning January 1, 2019, UHC would pay the “overwhelming majority” of rebates for prescription drugs directly to individuals in UHC’s fully insured plans, not to employers or plan sponsors. Self-insured employers had the option of passing the rebates on to employees in their self-insured plans.

The Aon bulletin that discussed the potential impact of this program on employers with prescription drug plans can be found [here](#).

Regulatory Update: U.S. Department of Labor Disability Claims Procedure Rules

In December 2016, the DOL issued new claims procedure rules for disability benefits under pension or welfare benefit plans that are subject to Title I (provisions governing the protection of employee benefit rights) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Those rules originally were scheduled to apply to any disability claim filed after December 31, 2017. However, after reconsideration, the DOL delayed the applicability date; the new rules now generally apply to any disability benefit claim filed after April 1, 2018 (regardless of when the disability was incurred).

The Aon bulletin that contains more information on this issue can found [here](#).

April 2018

New Circuit Court Decisions Change the Landscape Regarding Enforceability of DOL's Fiduciary Investment Advice Rules

Key Take-Aways

- Ultimate fate of Obama Administration investment advice fiduciary standards remains uncertain.
- Recent appellate court opinions create dilemma for Trump's DOL.
- Standards in flux for financial advisors in retirement savings marketplace.
- Underscores importance of plan sponsor's role as fiduciary for ERISA retirement savings plans.

Controversy continued around the DOL's new rules regarding fiduciary investment advice. The regulatory guidance finalized in April 2016 included a revised definition of fiduciary investment advice that encompassed a far broader scope of activity than the five-part regulatory test that was in effect for over 40 years. The new guidance also revised standards for some prohibited transaction class exemptions and added a new “best interest contract” requirement as a condition for investment advisors to conduct certain transactions without violating ERISA's prohibited transaction rules.

The Aon bulletin, which provides a summary of the litigation, can be found [here](#).

EEOC Tells Court New Wellness Regulations Not Coming Any Time Soon

On March 30, 2018, the EEOC provided a federal district court with an update on how it will address the court's earlier decision regarding the wellness rules under the ADA and GINA.

The EEOC told the court that it had no plans to issue new wellness plan regulations in the near future and did not provide any new information to guide employers on how to proceed with these programs starting in 2019.

This Aon bulletin that provides a brief overview of the latest developments is available [here](#).

Aon's 2018 U.S. Annuity Settlement Market Update

Aon's 2018 U.S. Annuity Settlement Market Update provided a detailed overview of how innovation is driving market growth and shares insights for pension plan sponsors, as they continue to address cost and risk in an ever evolving market.

Key highlights included:

- Review of 2017 market activity;
- Analysis of insurer pricing competitiveness; and
- Thoughts on market-driving themes for 2018.

The Aon 2018 U.S. Annuity Settlement Market Update is available [here](#).

IRS Issues FAQs for Employers on Paid FMLA Tax Credit

The IRS issued a set of Frequently Asked Questions (FAQs) on implementing new Section 45S of the Internal Revenue Code, entitled the "Employer Credit for Paid Family and Medical Leave." While the IRS's FAQs do not provide much new information for employers, they do indicate that the IRS is turning its attention to this two-year pilot program.

The Employer Credit for Paid Family and Medical Leave is a general business credit an employer may claim under certain conditions for wages paid to qualifying employees while they are on family and medical leave (FMLA). In order to take advantage of the credit, the FAQs state that the employer must have a written policy for paid FMLA. The FAQs also institute a rule against "double-dipping": the employer must reduce its deduction for wages or salaries paid or incurred by the amount of the FMLA credit, and any wages taken into account in determining any other general business credit may not be used in determining the FMLA credit.

The Aon bulletin, which provides a brief overview of the FAQs, is available [here](#).

Passing of the Baton? DOL Fiduciary Investment Advice Rule May Be Supplanted by SEC's New Regulatory Initiative

On April 18, 2018, the Securities and Exchange Commission (SEC) published a set of proposals "To Enhance Protections and Preserve Choice for Retail Investors in Their Relationships With Investment Professionals" (the Proposals). According to the SEC, the Proposals were aimed at strengthening the standard of conduct that broker-dealers owe to their customers, reaffirming and clarifying the standard of conduct that investment advisers owe their clients, and providing additional transparency and clarity for investors through enhanced disclosure regarding these respective roles.

One of the Proposals included proposed text and extensive explanations for a new "Regulation Best Interest," which was applicable to brokers that provide retail customers with "investment recommendations" (specifically, "a recommendation of any securities transaction or investment strategy involving securities"). The Regulation Best Interest addressed standards of conduct with regard to investment advice. This SEC proposal paralleled and in some ways contrasted with the regulations (and related guidance) published by the DOL in 2016 (the DOL

Fiduciary Investment Advice Rule). Other changes to the SEC's regulation of broker-dealers and investment advisers are addressed in the Proposals.

The bulletin, which focuses on the Regulation Best Interest and its relationship to the DOL Fiduciary Investment Advice Rule, is available [here](#).

For HSA Limits, What Goes Up Must Come Down—and Up Again

The third time proved to be the charm for employer sponsors of HSA/HDHPs that have been dealing with the cutback in the HSA family contribution limits.

On April 26, 2018, the IRS released Revenue Procedure 2018-27, which revised the 2018 HSA contribution limits for individuals with family coverage under an HDHP. These contribution limits have been increased from \$6,850 to the previously announced limit of \$6,900. Taxpayers may treat the original \$6,900 limit as the 2018 contribution limit for eligible individuals and may return any distributions of \$50 incurred because of the prior, reduced contribution limit announced earlier this year.

The Aon bulletin, which covers what this means for individuals and employers, can be found [here](#).

May 2018

Retirement Legal Consulting & Compliance Quarterly Update

Our Retirement Legal Consulting & Compliance practice group's *Quarterly Update* highlighted legal developments for the second quarter of 2018 and included the following articles:

- Financial Wellbeing Programs Provide Short- and Long-term Benefits
- Litigation Update—Fiduciary Investment Advice Rules
- Qualified Plan Compliance: Do You Have a Strategy?
- IRS to Formally Address Missing Participants Issue
- Cybersecurity—Next Steps for Plan Fiduciaries
- Recent Case Highlights Importance of Benefits Claims Process
- Proprietary Fund Litigation Helpful to Plan Sponsors
- Quarterly Roundup of Other Developments
- Recent Publications

The second quarter 2018 issue of the Retirement Legal Consulting & Compliance Quarterly Update is available [here](#).

IRS Issues 2019 HSA Limits

On May 10, 2018, the IRS issued inflation-adjusted limits for contributions to an HSA for calendar year 2019 (Revenue Procedure 2018-30). In addition, the IRS provided revised minimum deductible amounts and maximum out-of-pocket limits.

The Aon bulletin, which contains a chart providing the limits for calendar years 2017 through 2019, is available [here](#).

Aon Releases White Paper: An Overview of the Multiemployer Pension Plan System: Risks Facing Participating Employers and Ways to Manage Them

Aon released a white paper addressing the multiemployer plan system, entitled *An Overview of the Multiemployer Pension Plan System: Risks Facing Participating Employers and Ways to Manage Them*.

The paper discusses:

- Multiemployer Plan Background;
- Risks Facing Employers;
- Ways for Employers to Monitor and Manage Risks; and
- How Aon Can Help.

The Aon white paper *An Overview of the Multiemployer Pension Plan System: Risks Facing Participating Employers and Ways to Manage Them* is available [here](#).

June 2018

DOL Issues Final Rule for Expanded Association Health Plans

On June 19, 2018, the DOL finalized regulations expanding the use of AHPs by small employers and self-employed individuals. The final rule implemented a portion of the Executive Order President Trump signed in October 2017 that also called for expansion of short-term limited-duration health insurance policies and for permitting HRAs to be used to purchase individual health insurance policies. The final rule tracked the proposed rule that was issued in January 2018, but included certain clarifications and modifications as discussed in this Aon bulletin.

The bulletin is available [here](#).

July 2018

House-Passed Health Care Bills Face Tough Road to Senate Passage

On July 25, 2018, the U.S. House of Representatives passed a package of health care bills that reformed the rules regarding HSAs and repealed and delayed some health care taxes under the ACA. In addition to passing a bill repealing the 2.3% excise tax on medical devices, the House passed two additional pieces of health care legislation, H.R. 6199 and H.R. 6311.

The Aon bulletin, which provides a brief overview of these two bills, can be found [here](#).

August 2018

DOL Releases ERISA Guidance on Association Health Plans

The DOL released guidance on the application of ERISA to an AHP, a specific type of ERISA-covered group health plan that is sponsored by a group or association of employers, instead of a single employer, to provide health coverage to the employees of the AHP's employer members. Under ERISA, an AHP is both a group health plan and a multiple employer welfare arrangement.

The Aon bulletin, which covers both the ERISA provisions and additional DOL guidance applicable to AHPs, can be found [here](#).

September 2018

Retirement Legal Consulting & Compliance Quarterly Update

Our Retirement Legal Consulting & Compliance practice group's *Quarterly Update* highlighted legal developments for the third quarter of 2018 and included the following articles:

- Economically Targeted Investments: Fiduciary Duties Paramount
- New Program to Reduce Student Loan Debt While Saving for Retirement
- Should Plan Fiduciaries Monitor Rollover Marketing Practices?
- Recent Employee Benefit Issues in Business Transactions
- Quarterly Roundup of Other New Developments
- Recent Publications

The third quarter 2018 issue of the *Retirement Legal Consulting & Compliance Quarterly Update* is available [here](#).

October 2018

IRS Issues Employer Guidance on Paid Family and Medical Leave Tax Credit

The IRS issued IRS Notice 2018-71 providing employers with guidance on the paid family and medical leave tax credit pilot program that was enacted in 2017. Under the pilot program, employers that provide paid FMLA benefits to certain employees in 2018 and 2019 are eligible for a general business tax credit under Code Section 45S. The Notice contains 34 questions and answers, and the IRS plans to issue proposed regulations on the program.

The Aon bulletin, which provides a brief overview of IRS Notice 2018-71, can be found [here](#).

BOO! This Halloween, Make Sure Compliance Doesn't Haunt Employers

As we headed toward the end of 2018, employers were urged to have the following compliance items on their year-end "Fright Night" List to avoid Halloween scares:

- States Are Replacing the Individual Mandate...With an Individual Mandate
- Testing for Mental Health Parity
- Do You Have Mail? The IRS Is Enforcing the ACA Employer Mandate
- Wellness Programs and the Vanishing EEOC Rules
- Review Plan Designs for Compliance With Updated Limits
- Facing a Paid Leave Juggernaut, Employers Should Take FML Credit Where Credit Is Due
- Are You Going to San Francisco? Make Sure You're Paying Enough in Health Care Expenditures (HCEs)

The full text of this Aon bulletin can be found [here](#).

Employees Could Use HRAs to Buy Individual Health Insurance Policies Under Proposed Rules

The Trump Administration proposed regulations that, if finalized in their current form, would expand the use of employer-sponsored HRAs to permit employees to use HRAs to purchase individual health insurance policies, including policies sold on the ACA health insurance Exchanges. In addition, stand-alone HRAs would be permissible in limited circumstances. The proposed regulations, if finalized, would be effective in plan years beginning after 2019.

The proposed regulations are the third set of regulations issued under an Executive Order signed by President Trump last year. Two previous sets of regulations, on short-term limited-duration health insurance policies and AHPs, were finalized earlier this year.

The Aon bulletin, which provides an overview of the proposed regulations, can be found [here](#).

November 2018

IRS 2019 Official Indexed Figures for Retirement Plans and Other Employee Benefit Plans

The IRS issued Information Release 2018-211 on November 1, 2018, providing the 2019 official indexed figures for retirement plans and other employee benefit plans. The IRS issued technical guidance detailing these items in Notice 2018-83.

The bulletin, which provides the official limits of most interest to large and medium employers, as well as the official 2019 key employee pay thresholds for top-heavy plans, is available [here](#).

Year-End Update—Recent Developments and Other Guidance Potentially Affecting Qualified Plans for 2018 and 2019

This document summarizes plan amendments that may be required for 2018 and 2019. This Year-End Update also identifies amendments that may be required for an individually designed tax-qualified retirement plan. Additionally, this Update suggests several additional amendments that plan sponsors may want to consider that reflect recent statutory, regulatory, or other administrative updates that may prove helpful to plan sponsors. This Update also includes possible amendments to consider when terminating a defined benefit plan and information regarding filing deadlines for pre-approved plans.

This bulletin is available [here](#).

IRS Offers Employers a Peek at Future Guidance on I-HRAs

Less than a month after the Trump Administration issued proposed regulations expanding the use of HRAs to include purchasing individual health insurance policies sold in the individual insurance market and on the public Exchanges, the IRS issued Notice 2018-88 addressing how the expanded use of HRAs might satisfy the ACA employer mandate and how the IRS anticipated modifying the Internal Revenue Code's nondiscrimination rules to apply to the new HRAs, known as individual coverage HRAs (I-HRAs).

This bulletin is available [here](#).

December 2018

Retirement Legal Consulting & Compliance Quarterly Update

Our Retirement Legal Consulting & Compliance practice group's *Quarterly Update* highlighted legal developments for the third quarter of 2018 and included the following articles:

- Will Your Employees Be Retirement Ready?
- IRS Reopens and Expands PLRs on Stranded VEBA Assets
- 2019 Limits for Benefit Plans
- IRS Provides Tips to Avoid Incomplete VCP Submissions
- EPCRS Guidance Requires Paperless VCP Submissions
- Missing Participants and the State Escheat Problem
- 401(k) Hardship Distributions—New Developments
- Managing Covered Service Provider Disclosures
- Quarterly Roundup of Other New Developments

The fourth quarter 2018 issue of the *Retirement Legal Consulting & Compliance Quarterly Update* is available [here](#).

IRS Extends Due Date for Furnishing Form 1095-C and Form 1095-B

On November 29, 2018, the IRS published Notice 2018-94, which provides employers and insurers an extension of time to furnish 2018 Forms 1095-B and 1095-C to individuals from January 31, 2019, to March 4, 2019. The IRS will also once again provide penalty relief for filers who make information reporting errors but demonstrate good faith efforts to comply with the ACA reporting requirements.

The Aon bulletin, which discusses the details of Notice 2018-94, is available [here](#).

2019 Limits for Benefit Plans

Each year, the U.S. government adjusts the limits for retirement plans, Social Security, Medicare, and other benefit programs to reflect price and wage inflation, and changes in the law. As a result, employee benefit plans must be adapted annually to accommodate the new limits. All of the numbers in this report are official unless otherwise indicated.

The 2019 Limits for Benefit Plans document is available [here](#).

District Court Judge Strikes Down ACA as Unconstitutional

On December 14, 2018, a U.S. district court judge issued a ruling striking down the ACA as unconstitutional, putting health care reform back on the front burner as the House and Senate, which will be controlled by different political parties, prepare to convene in January 2019.

The Aon bulletin, which provides a brief overview of the decision, is available [here](#).

About Aon

Aon plc (NYSE:AON) is a leading global professional services firm providing a broad range of risk, retirement and health solutions. Our 50,000 colleagues in 120 countries empower results for clients by using proprietary data and analytics to deliver insights that reduce volatility and improve performance.

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