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Latest Posts

10.24.2019 **Department of Labor Proposes New Safe Harbor for Electronic Disclosures**
By Robert A. Browning

The U.S. Department of Labor (DOL) has proposed a new "safe harbor" rule to allow retirement plan disclosures to be posted online (assuming certain notice requirements are satisfied) to reduce printing and mailing expenses for plan sponsors and to make the disclosures more readily accessible and useful for plan participants.

09.27.2019 **IRS Finalizes Hardship Distribution Rules**
By Robert A. Browning

The IRS has issued final regulations modifying and clarifying the rules for in-service hardship distributions from 401(k) and 403(b) plans. The final regulations are substantially similar to the proposed regulations issued in November of 2018, but they contain a few changes of which plan sponsors should be aware.

06.26.2018 **Cyber Liability Insurance for Employee Benefit Plans: Hackers and Malware and Phishing – Oh My!**
By Laura L. Fischer

Cyberattacks have managed to invade all walks of life, and employee benefit plans are no exception. When a plan is attacked, the fallout can be overwhelmingly expensive and burdensome to correct. Many plan sponsors are purchasing cyber liability insurance coverage to supplement their data security measures. Understanding those policies – and their exclusions – is important for sponsors who are exploring such coverage.

03.21.2018 **Here We Go Again… Fifth Circuit Strikes Down DOL's Fiduciary Rule**
By Gregory L. Ash

In a significant blow to the Department of Labor's controversial regulation re-defining what constitutes an investment-advice fiduciary, a split three-judge panel of the Fifth Circuit Court of Appeals ruled on March 15 that the DOL exceeded its authority when creating the rule. The 2-1 decision of the appellate court strikes down the regulation and its associated prohibited transaction exemptions in their entirety. (*Chamber of Commerce v. U.S. Dept. of Labor* (5th Cir. March 15, 2018)). In its wake, the court's decision leaves even more of the confusion that has plagued the DOL's 2016 rulemaking.

01.29.2018 **Tax Cuts and Jobs Act – New Rules for Retirement Plans and IRAs**
By Robert A. Browning

Although the main feature of the Tax Cuts and Jobs Act is a significant reduction in the corporate federal income tax rate, the Act also makes a number of significant changes to the rules governing employer-sponsored retirement plans and individual retirement accounts. From plan loans to hardship withdrawals and Roth recharacterizations, employers should make sure that they understand how these new rules might affect them.

05.22.2017 **Treatment of "Collateral" Employees Under Retirement Plans**
By Stephen Rickles

It is common for employers to contract with one or more third parties (sometimes referred to as "leasing companies") to provide individuals to perform services for the employer. Various issues may arise regarding the treatment of such individuals under a retirement plan maintained by the employer.

03.16.2017 **IRS Clarifies Permissible Substantiation Procedures for Hardship Withdrawals**

By Kenneth A. (Ken) Mason

In recent years, sponsors and administrators of 401(k) and 403(b) plans have received conflicting advice on the steps they should take to substantiate an employee's entitlement to an in-service withdrawal on account of financial hardship. For instance, an April 2015 IRS newsletter seemed to require that plan sponsors obtain and retain *documentary proof* of an employee's entitlement to a hardship withdrawal. However, two recent internal IRS memos outline a permissible approach to this substantiation requirement that need *not* involve conditioning a hardship withdrawal on an employee's provision of supporting documents. Plan sponsors should thus consider this new alternative.

04.06.2016 **DOL Releases Final Regulation Defining Investment Fiduciaries**

By Gregory L. Ash

After years of effort, the Department of Labor released final rules on April 6, 2016, that will substantially alter the way investment advice is provided to ERISA plans, their participants, and even non-ERISA IRAs.

06.29.2015 **Same-Sex Marriage Ruling Impacts Benefit Plans (Again)**

By Robert A. Browning

On Friday, June 26, 2015, the Supreme Court published its ruling in Obergefell v. Hodges, holding (by a 5 to 4 margin) that the Fourteenth Amendment requires a state to license marriages between two people of the same sex, and to recognize any such marriage that is lawfully licensed and performed out-of-state. As a result, all (remaining) state laws or constitutional amendments banning same-sex marriage are now invalid.

05.18.2015 **It's Unanimous: The Fiduciary Duty to Monitor Has Teeth**

By Gregory L. Ash

The United States Supreme Court gave considerable comfort to defined contribution plan participants – and their lawyers – who sue plan fiduciaries for failing to keep track of plan investment options. In a unanimous decision handed down on May 18, 2015, the Court held in Tibble v. Edison International that ERISA fiduciaries have a "continuing duty" to monitor investment options, and that plan participants have six years from the date of an alleged violation of that duty to file a lawsuit against the plan's fiduciaries. This ruling significantly undercuts the utility of a statute of limitations defense that had been successfully deployed by plan fiduciaries in previous cases, and creates fertile ground for more litigation.

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