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New Retirement Plan Guidance – A Mid-Year Update

As we head into the second half of 2025, the Spencer Fane Employee Benefits team wants to provide employers with an overview and status update on some of this year's hottest retirement plan issues.

Missing Participant Guidance. In January, the U.S. Department of Labor (DOL) issued Field Assistance Bulletin 2025-01, announcing a temporary enforcement policy applicable to small benefit payments owed to missing participants and beneficiaries. Historically, the DOL has preferred that plan fiduciaries roll such benefits to an individual retirement account. Under the policy, the DOL will not pursue plan fiduciaries for violation of ERISA's exclusive benefit rule if they decide to transfer benefit payments due to missing participants and uncashed checks of $1,000 or less to a state unclaimed property fund that qualifies as an "eligible state fund," subject to additional compliance requirements.

Catch-Up Contributions. The Internal Revenue Service and U.S. Department of the Treasury issued proposed regulations in January regarding the optional increase in catch-up contributions for participants attaining age 60 through 63, and the required Roth catch-up contributions applicable to participants who receive more than $145,000 in 2025 Federal Insurance Contributions Act (FICA) wages under the SECURE 2.0 Act of 2022. The increased limit on catch-up contributions for older participants was effective as of January 1, 2025, and the mandatory Roth treatment of catch-up contributions for high earners is set to begin January 1, 2026. Comments on the proposed regulations were due by March 14, 2025. The proposed regulations provide useful guidance to assist employers and service providers in implementing these changes, as we wait for the final regulations to be issued.

More Fiduciary Litigation on the Horizon? In a unanimous decision on April 17, 2025, *Cunningham v. Cornell University*, the U.S. Supreme Court ruled that participants alleging that plan fiduciaries engaged in a prohibited transaction only need to allege the existence of the transaction in their initial complaint. Plan fiduciaries have the burden of proving that an exemption to the alleged transaction applies, as an affirmative defense. The ruling makes it easier for plaintiffs to survive a motion to dismiss, resulting in speculation that fiduciary liability insurance premiums may increase. Because insurance carriers likely already factor into their premiums the probability of potential prohibited transaction violations, we think an increase in premiums based on the ruling is unlikely.

New Restrictions for 401(k) Investments by Insiders. Rule 10b5-1 under the Securities Exchange Act of 1934 prohibits defrauding or deceiving someone with respect to the sale or purchase of securities. and the Rule specifically applies to insider trading. On April 25, 2025, the SEC's Division of Corporation Finance published a Compliance and Disclosure Interpretation pertaining to the Rule. Under the Interpretation, if an employer sponsors a 401(k) plan with company stock that permits contributions to be invested through a self-directed brokerage window, any purchase or sale of company stock under the window by a participant who is subject to the insider trading rules must satisfy all conditions of Rule 10b5-1(c)(1).

This blog post was drafted by Greg Ash and Beth Miller, attorneys in the Overland Park, Kansas, office of Spencer Fane. For more information, visit spencerfane.com.

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