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A stylized white line-art illustration of the New York City skyline on a red background. It includes the Statue of Liberty, the Empire State Building, the Freedom Tower, the Chrysler Building, the Manhattan Bridge, and the United Nations Secretariat Building.

ROUNDTABLE

New York City

Epstein Becker Green
The ERISA Industry Committee
December 5, 2017

Presenters

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Agenda

1. Federal Health Care Policy & Group Health Plans
2. Federal retirement policy and retirement programs
3. State challenges to ERISA preemption
4. ERISA litigation update

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Federal Health Care Policy & Group Health Plans

Tax Reform/Affordable Care Act Modifications and Regulatory Relief Opportunities

- Impact of Tax Reform on Affordable Care Act
 - Individual mandate
 - Premium subsidies
 - CBO scoring
- Thoughts on timing and joint committee

Health Savings Accounts

- Liberalization of Health Savings Account rules
 - Proposals from “Repeal and Replace” effort
 - Double HSA contribution limit to MOOP
 - Joint catch-up contributions for seniors
 - Grace period for establishing account
 - Direct primary care arrangements
 - Bipartisan “low-hanging fruit” proposals
 - More flexibility for HDHPs to maintain HSA contribution eligibility
 - Broadening qualified expenses and beneficiaries
 - Streamlining, clarifying, and defining

Employer Mandate & Reporting Requirements

- Employer mandate still enforceable
- 2017 – 1094-C/1095-C forms are published
- IRS issued form letter 226J imposing employer shared responsibility assessments
- Employer trades are considering filing suit due to a number of process deficiencies:
 - Most “exchange notices” to employers were never sent
 - Tax credits were not actually reconciled before being issued
 - IRS never did statutorily required report
 - IRS unable/unwilling to provide month-by-month enrollee affordability data

Plan Consideration Hot Topics

- Mental health parity coverage and litigation trends
- Moral exemptions for preventive services
- Wellness programs
- Fertility benefits
- On-site medical clinics
- Telehealth

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Federal Retirement Policy & Retirement Programs

Tax Reform's Potential Impact on Savings and Retirement

Potential Takeaways

- Repeal of exceptions to \$1 million deduction limit for performance-based compensation (transition relief in Senate bill)
- Exclusion of deductions for dependent care, tuition assistance, moving expenses, adoption assistance, commuter benefits (mostly in House bill)
- IRA Conversions

Potential Favorable Changes

- Rollover of plan loan offsets
- Hardship distributions
- In-service distributions
- Non-discrimination rules

Other Legislation

Retirement Enhancement and Savings Act

- Multiple Employer Plan Expansion
- Mandate Annuitized Amount on Retirement Plan Statements
- Remove Cap on Auto Enrollment
- Lifetime Income Fiduciary Protections

Pension Budget Integrity Act

- Remove Budget Gimmick that Encourages Congress to Increase PBGC Premiums

Retirement Plan Updates; Changes

- ESG Funds/ETIs
 - Same fiduciary standards as applied to plan investments generally
 - Economically equivalent to other investments
 - Consider updating the investment policy statement to include ESG factors
- Calculation of bifurcated benefits
 - Final regulations effective as of the 2017 plan year
 - Review plans for bifurcated benefits; consider amendments for Section 436
 - Consult with plan actuary to determine if amendments needed and if so, when
- New applicable mortality table under Section 417(e) of the Code
 - Effective January 1, 2018
 - Affects minimum funding, PBGC premiums, lump sum calculations
 - Review plan documents to identify if amendments required

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State Challenges to ERISA Preemption

Current Issues in Preemption Under ERISA

- ERISA's broad preemptive scope – Section 514
- The challenge to multijurisdictional employers from the proliferation of state & local laws concerning employee benefits
 - A win for the plans – *Gobeille v. Liberty Mutual Ins. Co.* (2016)
 - *ERIC v. Read* (Oregon Retirement Savings Board)
- Other current issues worthy of note

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ERISA Litigation Update

Current Trends in ERISA Litigation

- Multiemployer Plans
 - Audits / Suits over delinquencies / Withdrawal liability
- Defined Contribution Retirement Plans
 - 403(b) plan litigation & the Goldilocks paradox
- Benefit Claim Litigation
 - Sources of increased litigation
 - Claims procedures & standard of review
 - 29 CFR §2560.503-1
 - Halo v. Yale Health Plan (2d Cir. 2016)
 - Salisbury v. Prudential Ins. Co. (S.D.N.Y. 2017)
- Document Disclosure Requests & Statutory Penalties

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Questions?