

# Employee Benefit Options and Issues for Non-Profits, Churches, and Religious Ministries

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# Agenda

- ▶ **What Employee Benefit Plans are Available?**
- ▶ **Determining the Application of ERISA to Church Plans**
- ▶ **Summary of ERISA's Fiduciary Rules**
- ▶ **Common 403(b) and 457 Plan Mistakes (and How to Fix Them)**
- ▶ **Common Compliance Issues for Group Health Plans**

# What Employee Benefit Plans are Available for my Organization?

# Three Primary Groups of Benefits

- ▶ Retirement Plans
- ▶ Executive Compensation Benefits
- ▶ Health and Welfare Benefits

# Retirement Plans

- ▶ IRA-Based Plans
  - ▶ Payroll Deduction IRA- Individual or State Program
  - ▶ SIMPLE IRA
  - ▶ Simplified Employee Pension (SEP) Plan
- ▶ 403(b) Plans
- ▶ 401(k) Plans

# Payroll Deduction IRAs

## ▶ Traditional/Roth IRA

- ▶ Employee contributions limited to \$6,000 (\$7,000 if age 50 or older) for 2022
- ▶ Roth contributions may be limited based upon income and filing status

## ▶ State-Mandated Payroll Deductions

- ▶ Various states (CA, CO, CT, IL, MD, MA, OR, WA) have mandated programs
  - ▶ Other states expect to follow soon (ME, NJ, NM, NY, VA, and VT)
- ▶ Employers without a qualified retirement plan must enroll
- ▶ Check the specific state program for additional rules

# SIMPLE IRAs

- ▶ Adopt by completing IRS Form 5304-SIMPLE or Form 5305-SIMPLE; must adopt prior to effective date; no filing required
- ▶ New SIMPLE IRA plans may be effective any date from January 1 through October 1 of a plan year
  - ▶ Effective only on January 1 of a plan year if previously maintained SIMPLE IRA plan
  - ▶ Exception for new employers
- ▶ No more than 100 employees and no other retirement plans
- ▶ Employees may contribute up to \$14,000 annually in 2022 (\$3,000 catch-up)
- ▶ Employer contributions required:
  - ▶ either match employee contributions 100% of first 3% of compensation (can be reduced to as low as 1% in any 2 of 5 years), or
  - ▶ contribute 2% of each eligible employee's compensation

# Simplified Employee Pension (SEP)

- ▶ Establish by completing Form 5305-SEP (if eligible) or adopting prototype or individualized plan; no filing required
- ▶ Must establish SEP by the due date (including extensions) of the company's income tax return for the year the plan is established
- ▶ Only Employer contributions permitted and limited to the lesser of:
  - ▶ 25% of the employee's compensation, or
  - ▶ \$61,000 (for 2022)
- ▶ Contributions are 100% vested
- ▶ Must be offered to all employees who are at least 21 years of age, employed by the employer for 3 of the last 5 years, and had compensation of at least \$650 in 2021



# 403(b) Plans

- ▶ Employer must be a public education employer or 501(c)(3) organization
- ▶ No model forms to establish the plan, but a written plan required
- ▶ If subject to ERISA, must file Form 5500 (limited exception for employee deferral-only plans)
- ▶ Employee contributions limited to \$20,500 (additional \$6,000 catch up) for 2022 (combined limit with other tax-qualified plans)
- ▶ Employer contributions allowed but not required
- ▶ Employer plus employee contributions may not exceed \$61,000 (not including catch-up contributions)
- ▶ Subject to nondiscrimination testing
- ▶ Hardship and Loans are permitted
- ▶ Subject to certain exceptions, all employees must participate

# 401(k) Plans

- ▶ Any non-government employer may sponsor (govt plans established prior to May 1986 allowed)
- ▶ No model forms to establish the plan, but a written plan required
- ▶ If subject to ERISA, must file Form 5500 (limited exception for employee deferral-only plans)
- ▶ Employee contributions limited to \$20,500 (additional \$6,000 catch up) for 2022 (combined limit with other tax-qualified plans)
- ▶ Employer contributions allowed but not required
- ▶ Employer plus employee contributions may not exceed \$61,000 (not including catch-up contributions)
- ▶ Subject to nondiscrimination testing but safe harbor plan designs may avoid testing
- ▶ Hardship and Loans are permitted

# Executive Compensation

- ▶ 457(b)
- ▶ 457(f)

# Executive Compensation

- ▶ Excessive compensation could lead to penalties if total compensation exceeds \$1 million
- ▶ Adopt a prudent process to set reasonable and not excessive compensation
- ▶ Conduct annual review by Board; individuals with conflict of interest must not participate
- ▶ Conduct a comparability review and analyze data available for similar nonprofits
- ▶ Document the review, reviewers, process deliberations and decision (e.g., in board minutes); Board should take comparable data into account when approving compensation

# 457(b) Plans

- ▶ Select group of management or highly compensated employees and/or independent contractors
  - ▶ Governmental entities may adopt 457(b) plans too but subject to different requirements
- ▶ Employer contributions permitted but not required
- ▶ Employee contributions limited to \$20,500 for 2022 (special catch-up contributions in three years prior to normal retirement age)
  - ▶ Contributions to other plans not aggregated so allows for a greater deferral opportunity
- ▶ No model forms
- ▶ No rollovers or plan loans
- ▶ Amounts must be unfunded/subject to claims of creditors
- ▶ May not correct mistakes through IRS' correction program

# 457(f) Plans

- ▶ Complex requirements
- ▶ Only available to select group of management or highly compensated employees
- ▶ Permits employee to defer taxation of unlimited amounts of income until amounts become vested
- ▶ Must be unfunded - amounts not segregated
- ▶ Must involve a substantial risk of forfeiture (e.g., minimum service)
- ▶ Must also consider 409A
  - ▶ Code section which imposes penalties on deferred compensation that is not timely and properly distributed to employees
- ▶ May not correct mistakes through IRS' correction program

# Health and Welfare Benefits

- ▶ Health benefits will generally be subject to HIPAA and COBRA
- ▶ Most benefits will be subject to ERISA

Health Benefits	Welfare Benefits
<ul style="list-style-type: none"><li>• Medical/Rx</li><li>• Dental</li><li>• Vision</li><li>• Employee Assistance Program (EAP)</li><li>• Wellness</li><li>• Health Flex Account</li><li>• Flu Shots</li><li>• Critical Illness/Fixed Indemnity</li></ul>	<ul style="list-style-type: none"><li>• Disability benefits</li><li>• Life Insurance</li><li>• AD&amp;D</li><li>• Tuition Reimbursement</li><li>• Supplemental Life</li></ul>

# Does ERISA Apply to your Church Plan?



# Why does it matter if ERISA applies?

- ▶ ERISA preempts many types of state laws, including state law remedies
- ▶ Claims may only be brought in federal court, no jury trials, and remedies are generally limited to benefits under the plan (with some caveats)
- ▶ Strict fiduciary, trust, reporting, and disclosure requirements apply
  - ▶ Summary plan descriptions, Form 5500s, Summary Annual Reports, etc.
- ▶ Specific internal claim and appeal procedures apply
- ▶ For pension plans, ERISA also imposes stringent vesting and funding requirements
- ▶ COBRA applies

# Church Plans: ERISA Exemption

- ▶ Exemption under ERISA Section 4(b)(2), if the Plan is a “church plan” and has not made an election under Code Section 410(d).
- ▶ ERISA Section 3(33) defines “church plan” as:
  - ▶ “[A] plan established and maintained for its employees...by a church or by a convention or association of churches includes a plan maintained by an organization ... the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is **controlled by or associated** with a church or a convention or association of churches.
  - ▶ The words “controlled by” or “associated with” can be difficult to interpret

# Church Plans: Miscellaneous

- ▶ What does it mean to be “controlled by” or “associated with”?
  - ▶ “Controlled by” often refers to corporate control, which would include factors such as the ability to select board members and other powers and responsibilities typically given through governance documents (e.g., charter or bylaws).
  - ▶ The “Associated with” requirement is met if it “shares common religious bonds and convictions” with that church.
  - ▶ Three factors to determine “common bonds and convictions”:
    - ▶ whether the religious institution plays any official role in the governance of the organization;
    - ▶ whether the organization receives assistance from the religious institution; and
    - ▶ whether a denominational requirement exists for any employee or patient/customer of the organization.

# Church Plans: Court Interpretation

- ▶ *Advocate Health Care Network v. Stapleton* (137 S.Ct. 1652, 2017)
  - ▶ Addressed the question of whether plans of an affiliated organizations had to be established by a church to be a church plan
  - ▶ The answer- No, a plan of a church-affiliated organization can still be considered a “church plan” even if it is not established by a church
- ▶ **Outstanding questions for the courts**
  - ▶ Statutory language requires that the principal purpose of the affiliated organization maintaining the plan must be plan administration or funding
  - ▶ Plan established and maintained by benefits committee with principal purpose of plan administration—but what about a plan established and maintained directly by a church-affiliated employer?

# Church Plans: Court Interpretation

- ▶ *Medina v. Cath. Health Initiatives*, 877 F.3d 1213 (10th Cir. 2017)
  - ▶ The definition of principal-purpose organization requires that the entity whose plan it is administering be **associated** with a church.
  - ▶ A principal-purpose organization is one whose "principal purpose or function . . . is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church."
  - ▶ A Subcommittee of Catholic Health Initiatives (CHI), a Denver-based nonprofit organization, was deemed to be a PPO even though it was controlled by the CHI but it was specifically created with the purpose to "maintain" the company's plan.

# Church Plans: Court Interpretation

- ▶ *Sanzone v. Mercy Health*, 2020 U.S. App. LEXIS 9537 (8<sup>th</sup> Cir. 3/27/2020).
  - ▶ Plan established and maintained by benefits committee with principal purpose of plan administration is a church plan.
  - ▶ Eighth Circuit ruled that an internal benefits committee of a hospital is sufficient to qualify as a “principal-purpose organization” that maintained the applicable benefit plan.
  - ▶ Committee “maintained” the plan by engaging in a number of administrative activities related to the plan and had been delegated authority to interpret the Plan
  - ▶ Committee met definition of “organization” as “an administrative and functional structure,” or “a group of people who work together in an organized way for a shared purpose.”
  - ▶ The result is that a church-affiliated non-profit should consider revising their charter documents to account for this “principal-purpose” best practice in order maintain the church plan exemption.

# Church Plans: Court Interpretation

- ▶ *Del Sesto v. Prospect CharterCare LLC*, 2022 BL 321453, (9/13/2022).
  - ▶ The St. Joseph Health Services of Rhode Island Retirement Plan didn't meet the statutory requirements for church plan status because the St. Joseph Board of Directors' principal purpose was not maintaining the benefit plan.
  - ▶ Since there was no “principal purpose organization” (“PPO”) affiliated with a church, the plan was not a church plan.
  - ▶ When evaluating whether an organization qualifies as a PPO, courts focus primarily (but not only) on documents which create and govern the organization and plan.
  - ▶ Courts look to the documents governing the pension plans for guidance and focus on the responsibilities designated to the organization rather than the day-to-day functions of the organization.

# ERISA Status: Administrative Tips

## ▶ Plan documents and administration

- ▶ Consider creation of a principle-purpose organization
- ▶ Try to avoid inapplicable ERISA and Code language
- ▶ Should include some structure to the plan (e.g., terms of eligibility, limits of benefits, etc.) but try and avoid invoking ERISA where inapplicable
- ▶ There is not a “one-size-fits-all” document for church plans. Be careful of service providers that shoehorn church plans into an ERISA prototype plan
- ▶ Review your “payroll practice” and “voluntary” benefits to ensure that such benefits are either exempt from ERISA or complying with ERISA
- ▶ Communicate with your service providers and HR professionals!!
  - ▶ Case Study- Non-Profit Church Affiliated Organization run in with the DOL!



# Summary of ERISA's Fiduciary Rules

# ERISA Compliance: Fiduciary Rules

- ▶ Who is a Fiduciary?
  - ▶ A person who is:
    - ▶ The “named fiduciary” in the plan document.
    - ▶ A person who becomes a fiduciary by way of a plan procedure.
    - ▶ A “functional fiduciary” which is anyone who:
      - ▶ Exercises ANY discretionary control over administration
      - ▶ Exercises ANY control over plan assets (whether or not discretionary)
      - ▶ Renders investment advice to a plan for a fee

# ERISA Compliance: Fiduciary Rules

- ▶ Who is not a Fiduciary?
  - ▶ Individuals who perform administrative functions and cannot make decisions about plan assets, policies or interpretations.
  - ▶ For example:
    - ▶ Record-keeper
    - ▶ Benefits counsel
    - ▶ Actuary
    - ▶ Accountant
    - ▶ Custodian
    - ▶ Investment professional who only advises

# ERISA Compliance: Fiduciary Rules

- ▶ **What are a Fiduciary's duties under ERISA?**
  - ▶ Duty of Loyalty / Exclusive Benefit Rule
    - ▶ Avoiding conflicts and prohibited transactions
  - ▶ Duty of Prudence
    - ▶ Fiduciary must act “with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.”
    - ▶ Described by the courts as the “**highest [duty] known to the law.**”
  - ▶ Duty of Investment Diversification to Reduce Risk of Loss
  - ▶ Duty to Act in Accordance with Plan Documents

# ERISA Compliance: Fiduciary Rules

## ▶ Fiduciary Liability

- ▶ *Personal liability* for fiduciary breaches and losses stemming from breaches
- ▶ Fiduciaries may face liability from actions of co-fiduciaries.
- ▶ Obligation to restore profits
- ▶ Other equitable and remedial relief (e.g., removal from fiduciary position)
- ▶ Additional penalties
  - ▶ Monetary penalties of 20% of recovery amount
  - ▶ Criminal penalties for willful violations of reporting requirements or fraud, force, or violence
- ▶ Important to maintain fiduciary liability insurance and obtain the legally required ERISA bond

# ERISA Compliance: Fiduciary Rules

## ▶ General Fiduciary Best Practices

### ▶ Determine the process of plan governance

- ▶ Consider organizing a committee to oversee the plans
- ▶ Document the processes used to carry-out the fiduciary functions (i.e., committee charters, meeting minutes, investment policies, audits, etc.)
- ▶ Delegate authority pursuant to the terms of the plan document

### ▶ Hire competent service providers

- ▶ Develop a process for selecting and monitoring service providers
  - ▶ Note: DOL expects specific inquiries be made of a service provider's cyber security protections
- ▶ Specify fiduciary responsibilities in service provider agreements.
- ▶ Avoid long-term contracts, early termination penalties and limitation of liability clauses in service provider contracts.

# ERISA Compliance: Fiduciary Rules

- ▶ **General Fiduciary Best Practices, cont.**
  - ▶ Regularly monitor plan investments and costs
    - ▶ Establish an investment policy
    - ▶ Develop a process for selecting and monitoring plan investments
    - ▶ Consider hiring and delegating investment authority to an ERISA 3(38) investment manager
    - ▶ Monitor and benchmark plan fees and expenses
  - ▶ **Maintain compliant plan documents and timely report/disclose plan information**
    - ▶ Regularly compare the terms of the plan with its operations
    - ▶ Correct any plan document or operational mistakes
    - ▶ Update the plan to comply with legal changes
    - ▶ Maintain a calendar of when required disclosures must be issued

# Expectations of ERISA Fiduciaries

- ▶ The Good News: Deference to the Prudent Fiduciary
  - ▶ *Conkright v. Frommert*, 130 S.Ct. 1640 (2010).
  - ▶ In *Conkright*, a majority of the Court held that a district court may not substitute its own judgment in interpreting language of an ERISA plan for that of a plan administrator simply because of a prior related interpretation by the administrator was invalid.
  - ▶ Why is this good news? Lower courts may be wary of replacing their own interpretations for those of administrators absent any finding that the administrator was acting in bad faith, imprudently or unable to fairly exercise its discretion in interpreting the plan.



# Common Mistakes of 403(b) and 457 Plans (and how to fix them)

# Correcting Retirement Plan Mistakes

- ▶ **IRS- Employee Plans Compliance Resolution System (“EPCRS”)**
  - ▶ Pertains to plan document and operational failures
  - ▶ Self-Correction Program- “insignificant” failures and certain failures within a two-year correction window
  - ▶ Voluntary Correction Program- file written application, filing fee, IRS issues compliance letter, anonymous filings are optional
  - ▶ Audit Closing Agreement Program- during an audit or investigation, plan sponsor enters into a correction agreement with the IRS and pays any applicable penalty
- ▶ Overarching goals are to make the plan and participant whole!
- ▶ Not applicable to 457 plans

# Common Mistake #1

## Failure to Operate the Plan according to its Terms

- ▶ What was done operationally would be legal if the plan permitted it...but it doesn't. Oops!
- ▶ **Find the Mistake:** Compare your written plan to its operation
- ▶ **Fix the Mistake:** Retroactively adopt plan amendments to match operation of correct plan operations to match plan terms
- ▶ **Avoid the Mistake:** Convey any changes to applicable service providers and employees

# Common Mistake #2a

## Improper Exclusion (Universal Availability Failure)

- ▶ Employee classification exclusions are not permitted, only statutory exclusions
- ▶ **Find the Mistake:** Perform a review of the plan and its operation. Review employees who received a W-2 but didn't participate. Determine if improperly excluded any class of employees.
- ▶ **Fix the Mistake:** Provide improperly excluded employees the opportunity to participate in the plan in current and future years. Make a corrective contribution to the plan for the employees that compensates for their missed deferral opportunity.
- ▶ **Avoid the Mistake:** Understand who may be excluded and properly notify eligible employees of opportunity to defer.

# Common Mistake #2b

## Improper Exclusion (Other)

- ▶ Failing to observe a deferral election, failing to auto enroll, fail to use correct definition of compensation
- ▶ **Find the Mistake:** Review employee enrollment (and focus on those not enrolled or participating), elections and type of compensation being utilized.
- ▶ **Fix the Mistake:** Make a corrective contribution to the plan for the employees that compensates for their missed deferral opportunity. Usually, the greater of:
  - ▶ 3% of eligible compensation, or
  - ▶ the maximum deferral percentage for which the employer provides a 100% match contribution (or greater)
- ▶ **Avoid the Mistake:** Establishing procedures to ensure notification of plan eligibility to employees, as well as keeping a record of both, the notification and the employee's election is important.

# Common Mistake #3

## Failing to Follow Applicable Plan Limits

- ▶ **Find the Mistake:** Compare plan deferrals/contributions with applicable IRS limits.
- ▶ **Avoid the Mistake:** Conduct yearend reviews to make sure limits were not exceeded.

Applicable Limit	2022	2021
Elective Deferral - IRC Sec. 402(g)	\$20,500	\$19,500
15-Year 403(b) Catch-up Limit	\$3,000	\$3,000
Age 50 Catch-up Limit	\$6,500	\$6,000
Maximum Annual Addition - Section 415 (c)	\$61,000	\$58,000
Maximum Compensation - IRC Sec. 401(a)(17)	\$305,000	\$290,000

# Common Mistake #4

## Failing to Meet the Hardship Distribution Requirements

- ▶ Must be due because of an immediate and heavy financial need of the employee,
- ▶ It isn't more than an amount necessary to satisfy that financial need.
- ▶ **IRS deems employee's immediate and heavy financial need if the distribution is for:**
  - Medical care
  - Purchase a principal residence
  - Payment of tuition and related fees
  - Payments to avoid eviction from principal residence
  - Funeral expenses for the employee's deceased parent, spouse, etc.; or
  - Repair of damage to the employee's principal residence.

# Common Mistake #5

## Plan is not maintained by the appropriate entity

	403(b)	457(b)	457(f)
Plan Sponsor	<ul style="list-style-type: none"><li>• Public Schools</li><li>• 501(c)(3) entities</li></ul>	<ul style="list-style-type: none"><li>• Governmental entities</li><li>• Tax-exempt entity under 501(c)</li></ul>	<ul style="list-style-type: none"><li>• Governmental entities</li></ul>
Type of Plan	<ul style="list-style-type: none"><li>• 401(k)-like with special rules</li></ul>	<ul style="list-style-type: none"><li>• Employee deferral benefit with separate limits</li></ul>	<ul style="list-style-type: none"><li>• Nonqualified, not limited but subject to a substantial risk of forfeiture</li></ul>



# Common Compliance Issues for Group Health Plans

# COBRA Compliance

- ▶ Which plans are subject to COBRA?
  - ▶ Employers with 20+ employees on more than 50% of business days in prior year.
  - ▶ Medical, dental, vision, health FSA, possibly EAP and wellness benefits NOT life insurance or disability benefits
- ▶ When does COBRA apply and for how long?
  - ▶ Qualifying event (QE)- An event that causes the loss of group health coverage
    - ▶ Reduction of hours or termination of employment (except for gross misconduct): EE/Spouse/Dependent children for 18 months
    - ▶ Employee enrolls in Medicare, divorce/separation, or death of employee: Spouse/Dependent children for 36 months
    - ▶ Loss of dependent child status: Dependent child for 36 months
- ▶ Who is eligible for COBRA?
  - ▶ Qualified beneficiaries- anyone covered by the group health plan the day of the QE

# COBRA Compliance

- ▶ What notice requirements apply?
  - ▶ General/initial notice- within 90 days of enrollment to ALL covered individuals
  - ▶ Election notice- employer has 30 days to provide notice of qualifying event to plan administrator who has 14 days to provide the election notice to the qualified beneficiaries (44 days if employer/administrator are the same entity)
  - ▶ Unavailability of coverage notice- within 14 days following a denied request for coverage
  - ▶ Early termination of coverage notice- notice provided as soon as practicable once determined that COBRA will end before the maximum COBRA period expires
- ▶ What are the costs of COBRA coverage and when are payments due?
  - ▶ 102% of the actual cost of coverage
  - ▶ Initial premium payment- 45 days from the date COBRA is elected
  - ▶ Continuing premium payments- within 30 days of date premiums due each month

# COBRA Compliance

## Common Mistakes

- ▶ Not offering COBRA in a timely manner
  - ▶ Workers compensation and your disability benefits do not impact COBRA
  - ▶ FMLA does impact COBRA
  - ▶ Impact of other leave of absence policies
- ▶ Failing to provide an applicable COBRA notice
- ▶ Failing to provide a compliant COBRA notice
- ▶ Penalties for noncompliance:
  - ▶ Excise taxes: \$100 per day, per affected person
  - ▶ ERISA \$110 daily penalty from the date of the compliance failure
  - ▶ Civil lawsuit exposure- Increase in class action litigation re: COBRA failures

# HIPAA Compliance

- ▶ Protects “protected health information” or “PHI” which is individually identifiable information related to the provision of health care or health coverage
- ▶ Applies to “covered entities” and “business associates”
  - ▶ Covered entities (CE) = health care providers, health plans, and health care clearinghouses
  - ▶ Business associates (BA) = entities that receive, share and disclose PHI on behalf of covered entities
- ▶ Written agreements must exist between each CE and BA
- ▶ Requires implementation of policies and procedures to ensure protection of PHI
- ▶ Privacy Notice to be distributed to new health plan enrollees and periodically thereafter
- ▶ Health plan documents need to be amended to ensure adequate protections
- ▶ Greater obligations for self-insured health plans vs. fully-insured health plans

# HIPAA Compliance

## Portability and Nondiscrimination Rules

- ▶ HIPAA Special Enrollment Rights
  - ▶ Allows mid-year enrollment for certain events (e.g., marriage, new dependent, adoption, loss of other coverage, and Medicaid/CHIP program eligibility)
  - ▶ Requires a notice to be provided on or before plan enrollment
  - ▶ Generally, election must occur within 30 days of the event (60 days for Medicaid/CHIP eligibility)
- ▶ Wellness Plan Discrimination Rules
  - ▶ Employers that charge different premiums or offer incentives to participate in a wellness program must meet certain rules
  - ▶ Two types of wellness programs:
    - ▶ Participation-only program - not outcome-based
    - ▶ Health contingent program - reward contingent on achieving a goal

# Affordable Care Act (ACA) Compliance

## Employer Shared Responsibility Mandate

- ▶ Applicable large employers (e.g., at 50 full-time employees) may be penalized if:
  - ▶ Do not offer health coverage to at least 95% of their full-time employees (working 30 hours per week or 130 hours per month)
  - ▶ Offer “unaffordable” coverage and/or coverage that does not meet “minimum value” standards
- ▶ Determination of applicable large employer status depends on the full-time employees (and full-time equivalent employees) employed during the prior calendar year
- ▶ Determination of which employees are considered “full-time” and the coverage they are offered will impact whether ACA penalties apply
- ▶ **Annual Reporting for the Employer Shared Responsibility Mandate**
  - ▶ Applicable large employers must distribute Form 1095-Cs to all full-time employees and file a Form 1094-C, along with all Form 1095-Cs to the IRS
- ▶ IRS is actively enforcing these rules and becoming increasingly stricter

# Compliance: Group Health Plans

## ▶ Section 125 Cafeteria Plans

- ▶ Pre-tax payment of group health benefits
- ▶ Other optional benefits available: Health and/or dependent care flexible spending accounts, Pre-tax Health Savings Account, etc.
- ▶ Requires a separate plan document
- ▶ Allows for various unique mid-year change events
- ▶ Discrimination rules apply

## ▶ Mental Health Parity

- ▶ Requires parity among the restrictions and limitations placed on mental health and substance abuse benefits compared to the restrictions placed on medical/surgical benefits
- ▶ Ongoing regulatory audits of compliance regarding “nonquantitative treatment limitations”



# Any Questions??

## Thank You!

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