Winter 2016

B&K UPDATE BENEFITS

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IRS EXTENDS DUE DATES FOR 2015 INFORMATION REPORTING UNDER INTERNAL REVENUE CODE ("CODE") SECTIONS 6055 AND 6056

On December 28, 2015, the IRS issued Notice 2016-4, which extends the due dates for the 2015 information reporting requirements for providers of minimum essential health coverage under Code section 6055 and the information reporting requirements for applicable large employers ("ALEs") under Code section 6056. This Notice extends the due date: (1) for furnishing 2015 Forms 1095-B, Health Coverage, and 1095-C, Employer-Provided Health Insurance Offer of Coverage to plan participants and employees, from February 1, 2016, to March 31, 2016; and (2) for filing with the IRS Forms 1094-B, Transmittal of Health Coverage Returns, and 1094-C, Transmittal of Employer-Provided Health Insurance Offer of Coverage Information Returns from March 31, 2016, to May 31, 2016, if not filing electronically. For electronic filers of Forms 1094-B and C, the due date is extended from March 31, 2016, to June 30, 2016. Plans and ALEs that transmit more than 250 Forms 1095-B or C are required to file electronically.

IRS NOTICE PROVIDES ADDITIONAL GUIDANCE REGARDING VARIOUS HEALTH REIMBURSEMENT ACCOUNT ("HRA") ISSUES

On December 16, 2015, the IRS issued Notice 2015-87, which provides guidance on the application of the Affordable Care Act market reforms to HRAs and other types of employer-provided health coverage. The Notice primarily addresses questions regarding the

reimbursement of premiums for individually purchased health insurance policies. Specifically of note to many multiemployer plans, the Notice prohibits HRAs that cover active employees from allowing individuals who are no longer covered by the associated primary group health plan to purchase individual market coverage with their remaining HRA balances. This new restriction, which is effective for the first plan-year on or after January 1, 2016, does not apply to retiree-only or other former employee HRAs, nor does it apply to HRA contributions credited prior to January 1, 2014, which are used according to the terms of the plan.

The Notice also provides that HRAs, which allow participants to seek reimbursement for the medical expenses of their spouses and children, may not be integrated with self-only coverage under the associated group health plan. This new restriction, which is effective the first plan year on or after January 1, 2017, for plans that are currently complying with previous IRS HRA guidance, also does not apply to retiree-only or other former employee HRAs, or to HRA contributions credited prior to January 1, 2015, that are distributed in accordance with the terms of the plan. For plans that are not in compliance with previous HRA guidance, this new restriction is effective January 1, 2016.

The Notice also makes clear that for purposes of the new Code section 6055 IRS reporting requirements, any dependents or spouses that were eligible for reimbursements from the HRA during the calendar year must be reported as having coverage, regardless of whether they were enrolled in the underlying group health plan.

TWO YEAR DELAY OF THE "CADILLAC TAX"

On December 18, 2015, a $1.1 trillion omnibus tax and spending bill for fiscal year 2016 was passed by the Senate and signed into law by President Obama. Among other things, the new law includes a two year delay in the Affordable Care Act's 40% excise tax on high cost health plans. The so-called "Cadillac Tax," which was originally scheduled to take effect January 1, 2018, will now be effective beginning January 1, 2020.

PENSION BENEFIT GUARANTY COPRORATION ("PBGC") PREMIUM RATES INCREASE IN 2016

The PBGC recently announced an increase in flat and variable rate premiums for plan years beginning in 2016. The flat-rate premium paid by multiemployer plans has been increased from $26 to $27 per participant while the flat-rate premium for single employer plans has increased from $57 to $64 per participant. For 2016, the variable rate premium ("VRP"), which is paid only by single-employer plans, is $30 per $1,000 of unfunded vested benefits, up from a 2015 rate of $24. For 2016, the VRP is capped at $500 times the number of participants, up from a 2015 cap of $418.

DOL PROPOSES AMENDMENTS TO ERISA DISABILITY BENEFIT CLAIMS PROCEDURES

The Department of Labor recently published proposed amendments to the ERISA claims and appeals regulations relating to claims for disability benefits. The purpose of the proposed amendments is to align disability benefit claims and appeals procedures with the protections that were added by the Affordable Care Act for health benefit claims under non-grandfathered group health plans. Specifically, the proposed amendments would seek to ensure that: (1) claims and appeals are adjudicated in a manner that ensures independence and impartiality by decision-makers; (2) benefits denial notices contain a full discussion of the reasons for the denial; (3) claimants have access to their entire claim file and are able to present evidence and testimony during the review process; (4) claimants

are notified of and have an opportunity to respond to any new evidence reasonably in advance of an appeal decision; (5) if plans do not adhere to all claims processing rules, the claimant is deemed to have exhausted the administrative remedies under the plan; (6) certain recessions of coverage are treated as adverse benefit determinations, thereby triggering the plan's appeals procedures; and (7) notices are written in a culturally and linguistically appropriate manner. If adopted, the proposed amendments will be effective 60 days after publication of the final rule.

SIXTH CIRCUIT COURT OF APPEALS RULES NO REQUIRMENT THAT COLLECTIVE BARGAINING AGREEMENT ("CBA") BE SIGNED BY CONTRIBUTING EMPLOYER

In *Board of Trustees of the Plumbers, Pipe Fitters & Mechanical Equipment Services, Local Union 392 Pension Fund v. B&B Mech. Services, Inc.,* (December 29, 2015), the U.S. Court of Appeals for the Sixth Circuit recently reversed an Ohio District Court's grant of summary judgment to a contributing employer that argued it was not liable for more than $130,000 in delinquent contributions because the multiemployer funds could not prove that the employer had independently signed the CBA. In reversing the lower court's decision, the Sixth Circuit determined that the employer's membership with the Mechanical Contractors Association ("MCA") evidenced its assent to the terms of the CBA because of the MCA's authority to negotiate on behalf of its members. The Court further noted that the Labor Management Relations Act (the law under which multiemployer plans are established) "does not specify any signature requirement" for CBAs.

BENEFITS UPDATE

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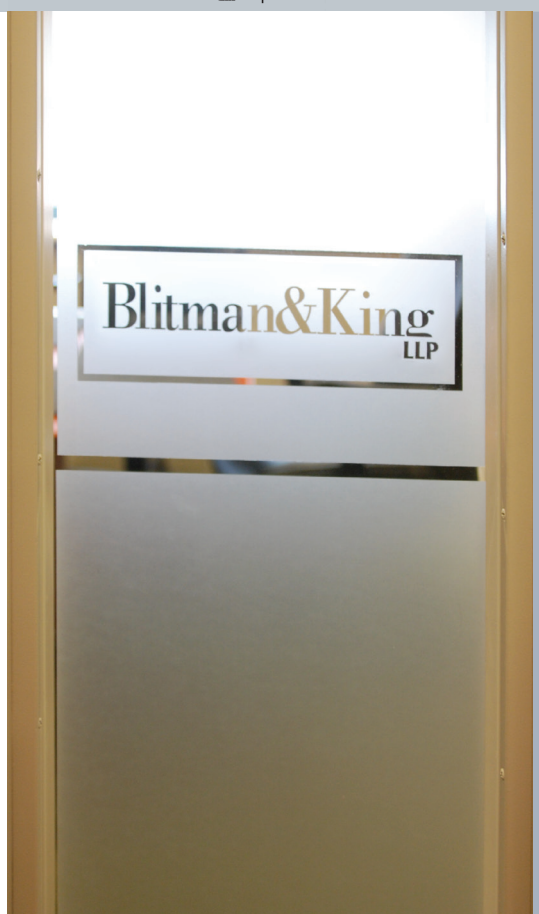

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