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**DKY, LLC IS NOW THE LARGEST TPA IN THE
HILL COUNTRY AND SOUTH TEXAS**

After the acquisition of Padgett Stratemann & Co. Retirement Plans Services Group in March 2009, DKY has grown to be the largest retirement plan and benefits TPA in the Hill Country and South Texas. Let us show you what we can do for your business or organization.

Do you have an administration need or questions about your:

- Pension or Retirement Plan
- COBRA Compliance and Administration
- Section 125/Cafeteria Plan
- Workers' Compensation/ERISA Plan
- FMLA Compliance
- ADA Compliance
- FLSA Compliance
- Job Descriptions
- Employee Handbook
- Policy & Procedures...?

2010 RETIREMENT PLAN LIMITS

Code Section	2010	2009	2008	2007
401(a)(17)/404(l) Annual Compensation	245,000	245,000	230,000	225,000
402(g)(1) Elective Deferrals	16,500	16,500	15,500	15,500
408(k)(2)(C) SEP Minimum Compensation	550	550	500	500
408(k)(3)(C) SEP Maximum Compensation	245,000	245,000	230,000	225,000
408(p)(2)(E) SIMPLE Maximum Contributions	11,500	11,500	10,500	10,500
409(o)(1)(C)	985,000	985,000	935,000	915,000
ESOP Limits	195,000	195,000	185,000	180,000
414(q)(1)(B) HCE Threshold	110,000	110,000	105,000	100,000
414(v)(2)(B)(i) Catch-up Contributions	5,500	5,500	5,000	5,000
414(v)(2)(B)(ii) Catch-up Contributions	2,500	2,500	2,500	2,500
415(b)(1)(A) DB Limits	195,000	195,000	185,000	180,000
415(c)(1)(A) DC Limits	49,000	49,000	46,000	45,000
416(i)(1)(A)(i) Key EE	160,000	160,000	150,000	145,000
457(e)(15) Deferral Limits	16,500	16,500	15,500	15,500
1.61-21(f)(5)(i) Control EE	95,000	95,000	90,000	90,000
1.61-21(f)(5)(iii) Control EE	195,000	195,000	185,000	180,000
219(b)(5)(A) IRA Contribution Limit	5,000	5,000	5,000	4,000
219(b)(5)(B) IRA Catch-Up Contributions	1,000	1,000	1,000	1,000
TWB	106,800	106,800	102,000	97,500

DAVID K. YOUNG CONSULTING
TRENDS

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HUMAN RESOURCES

NEWS & TRENDS

**FOR THE CLIENTS
& FRIENDS OF
DAVID K. YOUNG,
MPA, CEBS**

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**LEGISLATION AND RULE CHANGES AFFECTING
EMPLOYEE BENEFIT PLANS**

The federal agencies and the legislature have been busy enacting new rule changes and legislation, some that have been effective most of 2009, with others effective at the end of 2009 or early 2010. Below is a summary of those regulations and various benefit plans affected.

Final Rules for Cafeteria Plans

These rules were previously anticipated for January 1, 2009 and are now delayed pending review by the Obama Administration.

While it was expected that the proposed regulations would be finalized in 2008, the last word from the Department of Labor officials indicated that the regulations will be finalized this year with a January 1, 2010, effective date. That is now very doubtful. Once finalized, the regulations are expected to consolidate previously proposed regulations and guidance, and while the Department of Labor has indicated that the proposed regulations may be relied upon now, there are a number of provisions (most notably Section 1.125-7, Non-

Discrimination Testing) which require clarification before implementation by plan sponsors. Our recommendation is to hold making any plan changes until further word from the DOL.

Michelle's Law

The effective date is for plan years beginning on or after November 8, 2009 (January 1, 2010 for calendar year plans)

Michelle's Law extends eligibility for group health benefit plan coverage to certain dependent children over the age of 18 who are enrolled in an institution of higher education. Specifically, the Law extends eligibility to those who would otherwise lose coverage when a medically necessary leave of absence causes the child to fall below full-time student status. The extension of eligibility is intended to protect group health benefit coverage of a sick or injured dependent child for up to one year. Michelle's Law will require a careful review of plan design provisions within written plan documents including insurance contracts in order to en-

sure compliance with the law. DKY will be amending certain FSA plans with ER contributions and HRA plans.

Health Flexible Spending Account Distributions for Reservists

Applicable now to plans that have been amended for the HEART Act.

Under the Heroes Earning Assistance and Relief Tax Act ("HEART Act"), a health flexible spending account (FSA) may permit unused FSA contributions for qualified reservists to be distributed thereby enabling reservists to avoid the "use it or lose it" rule under Internal Revenue Code section 125. A qualified reservist distribution in the FSA context is one that is made: (1) to a participant/reservist who is called to active duty for a period of at least 180 days (or for an indefinite period); and (2) during the period beginning with the call to active duty and ending on the last day of the

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coverage period for the FSA that includes the date of the call to active duty. Distributions must meet several requirements in order to be considered "qualified". Plan sponsors will need to amend plan documents, summary plan descriptions and other related employee benefit communications to reflect the changes necessary for qualified reservist distributions.

Genetic Information Nondiscrimination Act

The effective date is for plan years beginning on or after May 21, 2009 for the health insurance provisions under Title I and November 21, 2009 for the employment nondiscrimination provisions under Title II (or January 1, 2010 for calendar year plans)

The Genetic Information Nondiscrimination Act of 2008 (GINA) amends ERISA to restrict the collection and use of genetic information in connection with group health benefits. Group health plans and insurers are now, generally, prohibited from imposing a preexisting condition limitation on the basis of genetic information where a genetically pre-disposed disease or disorder has not yet manifested itself. Further, discrimination in eligibility, premiums or coverage under a plan based on genetic information is also prohibited. GINA also generally prohibits plans from requesting or requiring individuals or their family members to undergo a genetic test and from requesting, requiring or purchasing genetic information for underwriting purposes or prior to an individual's enrollment. Genetic information now expressly falls within HIPAA's definition of "protected health information" and must be treated as such when in the plan's or issuer's

possession. Further guidance is expected in advance of the effective date, so employers should be prepared to act quickly in order to comply with GINA.

Medicare Mandatory Reporting

The effective date was January 1, 2009.

A new reporting requirement for group health benefit plans was established through the Medicare, Medicaid and SCHIP Expansion Act of 2007 (MMSEA). The Act requires third party administrators (TPA) or insurers to gather information necessary to determine the coordination of Medicare benefits with a Medicare eligible individual's group health plan coverage. The purpose is to determine whether the benefits paid for medical services under a group health plan are primary to Medicare and to recover overpayments where benefits under Medicare are erroneously paid primary to group health coverage. In cases where there is no TPA or insurer, the reporting requirement will fall to the plan sponsor or fiduciary of the group health plan. Reports are to be submitted to the Secretary of Health and Human Services on approved forms and is enforced with steep fines for noncompliance (\$1,000 per day for each plan participant whose information should have been submitted, in addition to other applicable penalties under Federal law). The Centers for Medicare Services has devised a user guide on its website that explains the reporting requirement and what compliance steps are necessary. The user guide is updated periodically and can provide useful information with regard to compliance with these reporting requirements. Plan sponsors are urged to consult with counsel for a clear understanding of the reporting requirements and with their TPA or insurer to ensure that

the responsible party is prepared to fully comply with the requirements in a timely manner.

The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA)

The effective date is for plan years beginning on or after October 3, 2009 (January 1, 2010 for calendar year plans)

This Act requires private group health benefit plans that provide mental health and/or substance use disorder benefits through a group health benefit plan that also offers medical and surgical benefits do so on an equivalent basis. The Act imposes several plan design requirements on group health benefit plans that offer mental health and/or substance use disorder benefits including equity in cost sharing, treatment limitations, and coverage decision requirements. The Act builds on the current mental health parity law that requires parity for annual and lifetime limits on coverage. The Act also contains an exception for small group health benefits plans and for increased costs, however, these exceptions are specific and narrow. Because the MHPAEA does not *require* employers to provide either mental health or substance use disorder benefits, plan sponsors will be faced with the decision of whether to continue to offer one or both of these types of benefits beyond the MHPAEA's effective date.

Final Family and Medical Leave Act (FMLA) Regulations

The effective date was on January 16, 2009.

The final FMLA regulations have been issued and became effective on January 16, 2009. Key changes to FMLA that may affect health and welfare benefit plan docu-

ments include eligibility determinations, termination of benefits for non-payment while on leave, benefit reinstatement upon return to work, notice requirements on the part of both the employer and employee and newly expanded leave rights for employees with family members who are called to active duty or who are being treated for wounds received in combat. To the extent that plan documents and employee communications contain provisions related to a plan participant's health and welfare benefits provided while on FMLA leave, documents should be reviewed as soon as possible to ensure compliance with the final regulations.

Americans with Disability Act Amendments Act

This act was effective January 1, 2009.

President Bush signed the ADA Amendments Act of 2008 (ADAAA) on September 25, 2008. The Act makes several changes of interest to plan sponsors of group health and welfare plans, including changes to key terms used within the definition of disability under the law and an expansion of the scope of protection of the ADA in reaction to several United States Supreme Court decisions. There are now two newly defined terms within the definition of "disability" under the ADAAA: (1) *major bodily functions* includes, but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions; and (2) *major life activities* includes, but is not limited to, such activities as sitting, standing, breathing, speaking, learning, reading, concentrating, thinking, etc. The Act provides that the definition be interpreted as broadly as possible in favor of individuals under the ADA and

that mitigating measures (e.g. eyeglasses or contact lenses) may not be taken into account when assessing whether an individual has a disability that limits major life activities. While the analysis of whether or not a health benefit plan discriminates against individuals with disabilities has not changed, the changes to the key terms argue in favor of a review of group health benefit plan coverage and exclusion provisions to ensure compliance with the new requirements. Further guidance for compliance with the ADAAA is anticipated in 2009 from the EEOC.

COBRA Subsidy Provisions of the American Recovery and Reinvestment Act

Effective February 17, 2009

The American Recovery and Reinvestment Act of 2009 (ARRA), the stimulus legislation signed on February 17, 2009, by President Obama, contains sweeping revisions to the group health plan continuation coverage provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). The ARRA has created a 65% COBRA premium subsidy for eligible former employees (and their covered dependents) who were involuntarily terminated and lost group health benefit coverage between September 1, 2008 and December 31, 2009.

DKY covered the ARRA extensively in the Spring *Trends* Newsletter. At the writing of this newsletter it appears Congress is preparing to extend the provisions of the ARRA before it expires on December 31st. Be prepared for upcoming updates and compliance issues that will be raised with this pending extension.

Health Insurance Portability and Accountability Act

This Act is generally effective February 17, 2010.

The ARRA imposes new HIPAA privacy and security requirements on entities associated with group health plans. Previously, many privacy and security rules established under HIPAA were limited to covered entities, including group health benefit plans. Now, the ARRA has extended HIPAA's privacy and security rules to business associates and other vendors directly and has enhanced HIPAA's civil and criminal penalties, including a provision permitting protected individuals to share in monetary penalties collected by the government, and authorizing state attorney generals to file HIPAA privacy and security enforcement actions in federal courts for breaches occurring in their states. The new law also includes new notice requirements upon discovery of a breach of Protected Health Information (PHI), accountability standards for PHI and enhanced enforcement mechanisms. Before the ARRA's provisions concerning HIPAA become effective in February 2010, employers should revisit their own HIPAA compliance efforts, discuss with their business associates the security measures that have been implemented to reduce the risk of a security breach involving unsecured PHI, and amend their business associate agreements to address the new compliance obligations and risks created by ARRA.

Never hesitate to call DKY for any questions you may have about these changes or employee benefits in general. The majority of the legislative and regulatory developments summarized above will require changes in both the administration and documentation of a group health benefit plan.