WESTERN PENSION & BENEFITS COUNCIL
San Francisco

Pension & Benefits Quarterly

Winter 2019

Inside this edition

Qualified Retirement Updates

By Ami Givon | GCA Law Partners LLP

2019 Cost-of Living Adjustments: In Notice 2018-83, the Internal Revenue Service (IRS) announced the cost-of-living adjustments to the dollar limits that are effective in 2019 on a wide variety of tax-favored benefits.

Key 2019 adjustments for plans are:

- The elective deferral exclusion limitation under Internal Revenue Code (Code) section 402(g)(1) (for elective deferrals under Code section 401(k), 403(b) and 457(b) arrangements) is increased from $18,500 to $19,000.
- The contribution limitation for defined contribution plans under Code section 415(c)(1)(A) is increased from $55,000 to $56,000.

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"We are excited about the events planned for the remainder of the 2018 – 2019 program year and the new partnerships WP&BC is fostering with our industry groups."

Kevin Nolt
Trucker Huss

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President's Letter

Happy 2019!

A few years ago, the Chapter decided to discontinue giving speaker gifts and instead to use those funds for an annual charitable donation. For the 2018 – 2019 program year, the Chapter has made a donation on behalf of all program speakers to the United Way of Northern California Camp Fire Fund. Donations to this fund are used to provide cash and other forms of emergency assistance to survivors from Paradise, Magalia and other Butte County communities impacted by the Camp Fire. For more information, go to https://www.norcalunitedway.org/camp-fire.

One of the perks of sponsoring the Chapter is the ability to host a Chapter meeting if you have an appropriate space in San Francisco. Events have been held at Charles Schwab, Wells Fargo and Orrick to name a few. If you are a current sponsor and would like to host an event, or if you are interested in being a sponsor of the Chapter for the 2019 – 2020 program year, please reach out to me, any Board member or the Chapter administrator. The Sponsorship levels for the 2019 – 2020 program year are included in this newsletter.

We are excited about the events planned for the remainder of the 2018 – 2019 program year and the new partnerships WP&BC is fostering with our industry groups.

WP&BC is partnering for a second time with the National Institute of Pension Administrators (NIPA) for an annual three day benefits conference – the 2019 NIPA Annual Forum & Expo (NAFE). This conference will include a defined contribution track, a defined benefit track and a third track of specialized topics. The conference will provide the opportunity to connect with your peers from other WP&BC chapters and to make new connections with NIPA members. The conference will be held at The Loews Coronado Bay Resort in San Diego from April 28 to May 1. For more information on the conference, including the program topics and speakers, visit https://www.nipa.org/page/AnnualForumExpo. Conference sponsorship opportunities are available.

The Chapter is pleased to announce it is partnering with the Northern California Chapter of the International Society of Certified Employee Benefit Specialists (ISCEBS) for the May 14, 2019 Chapter meeting. The meeting will provide education on a timely benefits topic and the opportunity to network with benefits professionals outside of our membership. Please keep a look out for more information on this meeting. It is sure to be an informative and fun event.

The benefits landscape is constantly changing and evolving. The San Francisco Chapter of WP&BC is here is help you navigate that landscape by providing quality programs and a sense of community where knowledge can be shared and connections made. If you want to get more involved with the Chapter, we are looking for new members for the Program and Membership Committees. Please reach out to any Board member or Committee Chair for more information on how you can get involved.

Thank you for your continued support. I wish you all a happy and healthy 2019.

Kevin Nolt, Director
Trucker Huss, APC

MEMBER PROFILE

Member Profile: Michon Caton

Company: GAP Inc.

Title: Sr. Manager, Retirement and Leave of Absence/Disability Benefits and Paid Time Off

Education: B.S. Marketing/Management, San Francisco State University

Years in the industry: 28

Please tell us about your first "real" job: My first "real" job was a trainee at a small pension administration firm at the age of 17. Some of my responsibilities included calculating contributions and completing Form 5500's (when they were less complicated).

BUSINESS BACKGROUND

Nature of your work: I manage the retirement benefits, leave of absence and paid time off programs to all U.S. and Puerto Rico employees. In addition, I am responsible for the tuition reimbursement, financial benefits, child care and commuter benefits. The eligible population varies depending on the program and location, however all programs are designed to provide for outcomes that optimize the employee's experience.

How you got into the field: In my senior year of high school, the TPA (mentioned above) called my Accounting teacher asking if there were one or two students who were interested in working a part time job. It was during the final half of my senior year, so I thought "why not" and I had thoughts of staying there through the summer. Because I attended a local university, the job paid well and offered flexible hours, I stayed there throughout my entire four years of college.

What you like about the field: There is always so much to learn and apply to our population. Just when you think you understand the effects of the employee and/or locality, there is a legislative change or an employee provides a creative twist that makes you pause and consider other ways to access. I also get a chance to meet employees across the company and business partners in fields that support our programs.

PERSONAL

Ways you spend free time: I love to travel (near and far), exercise, attend jazz events and spend time with my teenage daughter at her various sporting and social events.

Guiding philosophy: Life is short…make the best of what you have to do…enjoy what you want to do.

Favorite charities: SPCA and Omega Boys Club

Last books read: "Becoming" by Michelle Obama and "The Power of Not Knowing" by Jamie Holmes

Restaurant recommendations: International Smoke House, Sweet Maple, Espetus

What will you do when you retire: I would love to travel, spend time with family and friends, volunteer and enhance my piano skills (that I fought against when I was younger) and just enjoy life!

MEMBER PROFILE

Member Profile: Bob Blum

Company: The Permanente Medical Group, Inc.

Title: Deputy General Counsel, Benefits

Education: University of California, U.C. Berkeley, BA, Economics; MA, Economics; JD

Years in the industry: Over 40

Please tell us about your first "real" job: Private, United States Army, Fort Ord, California. I was trained to wash pots, type reports, slither through mud under barbed wire and shoot at targets (not people).

BUSINESS BACKGROUND

Nature of your work: In-house counsel to one of the largest integrated medical groups in the country. The Permanente Medical Group (or TPMG) provides medical care to over four million people in Northern California as part of Kaiser-Permanente. TPMG has about 9,000 physicians, about 30,000 represented employees and about 8,000 salaried employees. TPMG pays special attention to providing excellent employee benefits because they are critical to attracting and retaining the best physicians and staff who provide, by independent measure, the highest quality medical care. I, along with my colleague Matt Gouaux, help TPMG leadership and staff keep these programs running smoothly, and we always look for ways to make them better.

How you got into the field: In 1972, I joined the Congressional Joint Tax Committee staff as Legislation Attorney and worked on retirement plan tax legislation that was before the Senate Finance Committee. In 1973-1974, our staff worked with both House and Senate tax committees, both House and Senate labor committees and the conference committee to help draft what ultimately became ERISA. (By the way, we also audited President Nixon's tax returns and assisted the Judiciary Committee in its impeachment proceedings).

What you like about the field: It's always changing, challenging, helps people and is fun. Employee benefits are at the front of people's lives – medical care, retirement savings, etc. – and at the front of the country's needs. An example - health care drove much of the 2018 election. The rules that govern often change and are complex – great for lawyers, right! The programs often improve (or just change) and involve enormous amounts of money which draws lots of interest. Parts work very well (I'm biased, so I point to KP Medical Care). Parts are in distress (e.g., some Taft Hartley pension plans). There are many opportunities – and needs – for professionals in this field. I have worked in-house, in law firms, in Congress, as a consultant, in the public and private sectors and have always learned much that is new, helped individuals and organizations, and been instrumental in policy improvements. It's hard to find that combination anywhere else.

PERSONAL

Ways you spend free time: When we had a ranch, I was a world class horse stall cleaner. Now I try to rid our area of materials that can catch fire (we live in the Sierra foothills) and "help" my wife with suggestions on how she can do things better around the house.

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Member Profile, continued

Guiding philosophy: Play a heads-up game – listen and watch carefully, see what is ahead, learn how to use it to help others.

Favorite charities: Nevada County Food Bank; Animal Save of Nevada County

Last books read: “Bad Blood” by John Carreyrou. “Don’t Know Jack” by Diane Capri. “Nothing to Envy” by Barbara Demick.

Restaurant recommendations: Sushi Q (Nevada City); Carpe Vino (Auburn); Lefty’s (Nevada City).

What will you do when you retire: BobBlumMediation.com. I mediate litigated cases, having trained at Pepperdine’s Straus Institute, and have mediated cases involving disability, employment, business contracts and other issues. Mediation involves a different skill set than lawyering – in many ways it is more challenging – and often benefits all parties.

Call for Article Submissions

The WP&BC San Francisco Chapter Newsletter Committee, invite Chapter members and sponsors to submit articles for publication in our Pension & Benefits Quarterly Newsletter (the Newsletter).

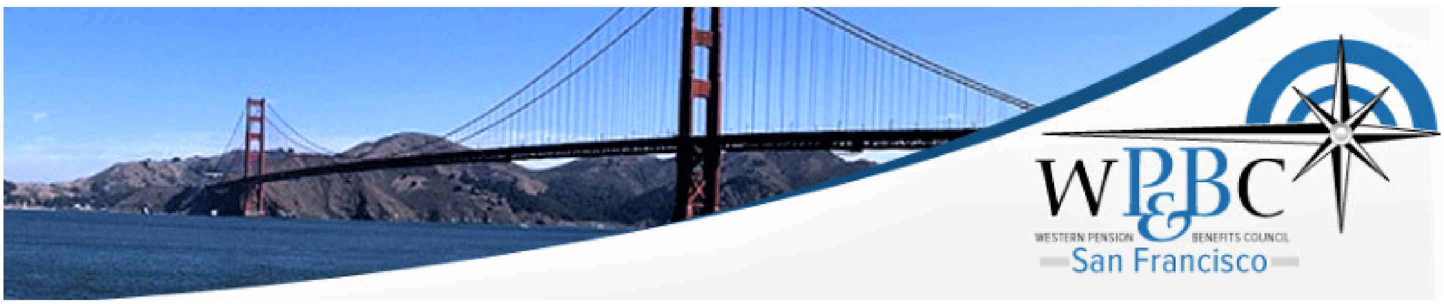
The following guidelines apply to article submissions:

- All submissions must be submitted in Microsoft Word format.
- Articles may range in length from one to three pages (from about 400 to 1,500 words).
- Topics connected to employee benefits, such as industry news or updates, are preferred; however, we are open to unrelated topics of personal interest.
- Articles may be in-depth discussions or brief overviews.
- Section headings, tables, illustrations, photographs and sidebars are encouraged to clarify and illustrate the author’s message.
- By submitting an article, an author agrees that his or her article may be made publicly available through the Newsletter.
- Original, unpublished articles are preferred; however, we may re-publish an article that has appeared elsewhere, provided that the original publisher provides permission for republication in the Newsletter. The author is responsible for securing permission from the original publication. If we accept a previously published article, the re-published article will include an attribution, such as “This piece was originally published by ….”
- We reserve the right to accept or reject article submissions. If applicable, we also reserve the right to decide in which Newsletter edition the article will be published. We will do our best to inform authors of these decisions within 6 to 8 weeks of receiving the submissions.
- Articles that are selected for publication will be proofread for content, spelling, and grammatical errors. We may make minor edits to the submission, but the author will have the opportunity to approve all changes before publication.
- Once an article has been published in the Newsletter, we reserve all rights with respect to unpublishing the article.

Examples of past submissions that were chosen for publication in our Newsletter include the following titles:

- Can You Still Pay Bills and Save for Retirement? (by Tim G. Shortt)
- The 2014 Nobel Peace Prize Ceremony (by George Pinto)
- Wells Fargo Retirement Study: A Few Years Makes a Big Difference
- Topics, Trends & Traps for Retirement Plan Sponsors (by Ward Harris)

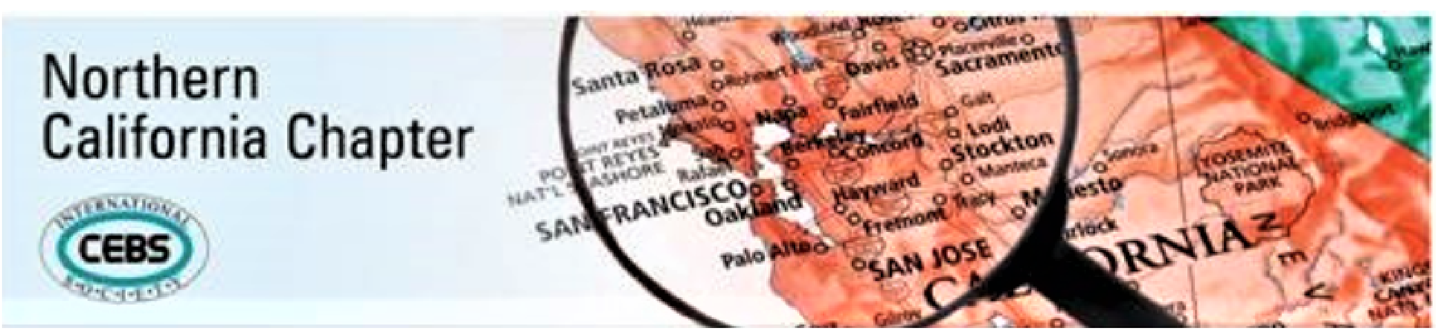
Please send submissions or any questions about submitting articles to info@wpbcsf.org.



SAVE THE DATE!
May Chapter Meeting
Tuesday, May 14, 2019
Orrick - 405 Howard Street

Join us along with the International Society of Certified Employee Benefit Specialists
Speaker: Hugh O'Toole, CEO, Innovu
How Applying Human Capital Risk Management Will Revolutionize Benefits

Want better insight on how to spend your company's next benefit dollar? Hear Hugh's story to understand human capital risk management as the key to the interconnectivity of retirement, health/welfare, and property-casualty benefits. Hugh will detail how they utilize big data to increase integration and identify opportunities for tangible cost savings, operational efficiencies and better employee benefit coverage.



Qualified Retirement Updates, continued

- The defined benefit plan annual benefit limitation under Code section 415(b)(1)(A) is increased from $220,000 to $225,000. For a participant who separated from service before January 1, 2019, the limitation under Code section 415(b)(1)(B) is computed by multiplying the participant's compensation limitation, as adjusted through 2018, by 1.0264.
- The annual compensation limit under Code sections 401(a)(17), 404(l), 408(k)(3)(C), and 408(k)(6)(D)(ii) is increased from $275,000 to $280,000.
- The dollar threshold under Code section 416(i)(1)(A)(i) in determining whether an officer is a key employee under the top-heavy rules is increased from $175,000 to $180,000.
- The limitation used in the definition of highly compensated employee under Code section 414(q)(1)(B) is increased from $120,000 to $125,000.
- The dollar amount under Code section 409(o)(1)(C)(ii) for determining the maximum account balance in an employee stock ownership plan subject to a 5-year distribution period is increased from $1,105,000 to $1,130,000, while the dollar amount used to determine the lengthening of the 5-year distribution period is increased from $220,000 to $225,000.
- The threshold used to determine whether a multiemployer plan is a systemically important plan under Code section 432(e)(9)(H)(v)(III)(aa) is increased from $1,087,000,000 to $1,097,000,000.
- The elective deferral limitation under Code section 408(p)(2)(E) for SIMPLE retirement accounts is increased from $12,500 to $13,000.
- The individual retirement account contribution limit is increased from $5,500 to $6,000.

The following limitations will remain at their 2018 levels for 2019:

- The dollar limitation under Code section 414(v)(2)(B)(i) for "catch-up contributions" for individuals age 50 and over remains at $6,000.
- The dollar limitation under Code section 414(v)(2)(B)(ii) for "catch-up contributions" to SIMPLE retirement plans for individuals age 50 and over remains at $3,000.
- The compensation amount under Code section 408(k)(2)(C) applicable to simplified employee pensions remains at $600.
- The limit on annual contributions to an IRA remains at $5,500. (The additional "catch-up contribution" limit for individuals age 50 and over is not subject to an annual cost-of-living adjustment and remains at $1,000.)

Notice 2018-83 also lists the adjusted gross income limitations applicable in 2019 under Code section 25B(b) for determining the retirement savings contribution credit, the applicable dollar amount under Code section 219(g)(3) for determining the deductible amount of an IRA contribution, and under Code section 408A(c)(3)(B)(ii)(I) for determining the maximum Roth IRA contribution amount.

Proposed Hardship Distribution Regulations: On November 9, 2018, the IRS issued proposed regulations modifying the hardship distribution provisions applicable to Code section 401(k) plans. The proposed regulations include, among other modifications, changes directed by the Bipartisan Budget Act of 2018.

Among the proposed changes are:

- Modification of the safe harbor list of expenses for which distributions are deemed to be made on account of an immediate and heavy financial need by:
  - o Adding "primary beneficiary under the plan" as an individual for whom qualifying medical, educational and funeral expenses may be incurred;

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QUALIFIED RETIREMENT UPDATES

QUALIFIED RETIREMENT UPDATES

Qualified Retirement Updates, continued

- o Clarifying that for purposes of the principal residence casualty hardship, the casualty does not have to have occurred in a federally declared disaster area (as had been implied by the Tax Cuts and Jobs Act of 2017); and
- o Adding a new type of expense to the list relating to expenses incurred as a result of certain disasters. This new safe harbor expense is similar to the relief given by the IRS after certain major federally declared disasters, such as the relief relating to Hurricane Maria and California wildfires.

These modifications may be applied to distributions made on or after January 1, 2018.

- Elimination of the requirements that the participant be prohibited from making elective contributions and employee contributions after receipt of a hardship distribution, and be required to take plan loans prior to obtaining a hardship distribution.
- Replacement of the current rule under which the determination of whether a distribution is necessary to satisfy a financial need is based on all the relevant facts and circumstances with a general standard for determining whether a distribution is necessary. Under this general standard, a hardship distribution may not exceed the amount of the participant's need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution), the participant must have obtained other available distributions under the employer's plans, and the participant must represent that he or she has insufficient cash or other liquid assets to satisfy the financial need.

  A plan administrator may rely on such a representation absent actual knowledge to the contrary. In light of the timing of the issuance of the proposed regulations, the requirement to obtain this representation would only apply for a distribution that is made on or after January 1, 2020.
- Expansion of the sources or hardship distributions to include elective contributions, QNECs, QMACs, safe-harbor contributions, and earnings on these amounts, regardless of when contributed or earned. However, plans may limit the type of contributions available for hardship distributions and whether earnings on those contributions are included. Safe harbor contributions made to a plan described in Code section 401(k)(13) may also be distributed on account of a participant's hardship.

Realizing that participants adversely affected by Hurricanes Florence and Michael may need expedited access to plan funds, the proposed regulations extend the relief provided under IRS Announcement 2017-15 (for victims of Hurricane Maria and the 2017 California wildfires) through March 15, 2019 for similarly situated victims of Hurricanes Florence and Michael.

Except as otherwise noted above, the proposed changes are to be effective for plan years beginning after 2018. However, the prohibition on suspending a participant's elective contributions and employee contributions as a condition of obtaining a hardship distribution may be applied as of the first day of the first plan year beginning after December 31, 2018, even if the distribution was made in the prior plan year.

The proposals also apply to hardship distributions under Code section 403(b) plans.

Individually designed plans that choose to apply the new rules as finalized must be amended accordingly by the end of the second calendar year that begins after the issuance of the applicable Required Amendments List. Consequently, the amendment deadline will be no earlier than December 31, 2021.

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Qualified Retirement Updates, continued

Required Amendments List for 2018: In Notice 2018-81, the IRS issued its Required Amendments List for 2018 (2018 RA List), but no entries listing changes in qualification requirements are on that list.

Increase in User Fee for Requests for Determination on Plan Termination: On December 28, 2018, in Revenue Procedure 2019-4, the IRS announced that the user fee to submit an Application for Determination for Terminating Plan (IRS Form 5310) will increase from $2,300 to $3,000, effective for submissions made on or after July 1, 2019.

Increases in Maximum PBGC Penalties: In accordance with the Federal Civil Penalties Inflation Adjustment Act of 2015, the Pension Benefit Guaranty Corporation (PBGC) has increased to $2,194 per day (up from $2,140 per day) the maximum amount it may assess as ERISA section 4071 penalties for failure to provide certain notices or other material information, and to $292 per day (up from $285 per day) the maximum amount it may assess as ERISA section 4302 penalties for failure to provide certain multiemployer plan notices. The increases took effect December 28, 2018.

Relief from "Once-In-Always-In" Condition Under 403(b) Plans: In Notice 2018-95, the IRS provided transition relief from the "once-in-always-in" (OIAI) condition for excluding part-time employees from making elective deferrals under a Code section 403(b) plan.

Under that condition, for a section 403(b) plan that so excludes employees based on their part-time status, once an employee is eligible to make elective deferrals, because the 1,000 hours of service eligibility requirement had been satisfied for an applicable measuring period, he or she may not be excluded in a later year based upon his or her later part-time status. Comments provided to the IRS noted that many employers were not aware of the rule and thus were applying the 1,000 hours or service eligibility requirement separately for each year, so as to render some "once-in" employees ineligible for years subsequent to their initial year of eligibility.

In response to these comments, the IRS will not treat a section 403(b) plan as failing to satisfy the conditions of the part-time exclusion for periods ending in 2019. Individually designed plans have until March 31, 2020 to correct any defects in plan documents as detailed in the Notice. Pre-approved plans that include the language that correctly applies the OIAI condition need not be amended, and a failure to comply operationally with that language will not be treated as an operational failure if the conditions for relief are otherwise met.

Disaster Relief Provided By the IRS and PBGC: The IRS has provided plan-related relief to victims of wildfires that began November 8, 2018 in parts of Northern California (CA-2018-13) and to victims of Hurricane Michael in parts of Alabama (AL-2018-06) (in addition to the relief previously provided to victims of Hurricane Michael in other states).

Pursuant to its Disaster Relief Announcement released July 2, 2018, the PBGC provides specified relief for disasters for which the IRS has issued disaster relief.

Health and Welfare Updates

By Elizabeth M. Harris
Orrick, Herrington & Sutcliffe LLP

New HRA Proposed Regulation

In late October 2018, the Department of Labor (DOL), Treasury, and Health and Human Services (HHS) published much-anticipated proposed regulations regarding health reimbursement arrangements (HRAs). The HRA proposed regulation is a product of an Executive Order issued by President Trump to the agencies to issue guidance to make HRAs more flexible.

The proposed regulation, which will be effective for plan years beginning on or after January 1, 2020, (and cannot be relied on before the effective date), makes significant changes to the rules currently applicable to HRAs. Under the proposed regulations, employers can establish HRAs for active employees that reimburse the employee's premiums for medical insurance purchased in the individual market, subject to certain conditions. In addition, employers will be able to set up non-integrated excepted benefit HRAs that reimburse an employee's medical expenses subject to certain conditions. These new excepted benefit HRAs cannot be used to purchase health insurance in either the individual or group market, other than excepted benefit coverage (e.g., dental or vision).

Premium Reimbursement HRA

If the proposed regulations are finalized, an employer, regardless of the size of the company, may establish an HRA that reimburses the employee's premiums for non-excepted major medical insurance purchased in the individual market provided that certain requirements are satisfied.

The following are the requirements applicable to premium reimbursement HRAs:

- The employer does not offer traditional coverage (i.e., major medical coverage) to the employee or others in the same class of employees. However, the employer can offer coverage consisting only of excepted benefits.
- The employee and all HRA-covered dependents are enrolled in major medical coverage purchased in the individual market and the plan requires substantiation of that fact both initially and when expenses are submitted for reimbursement.
- The HRA must be offered to all employees within a designated class and the HRA must be offered on the same terms. Benefits may vary among a class only by age and family size. The classes identified in the regulations are:
    - o Full-time (as defined in accordance with Code Section 105 or 4980H).
    - o Part-time (as defined in accordance with Code Section 105 or 4980H).
    - o Seasonal (as defined in accordance with Code Section 105 or 4980H).
    - o Employees subject to a collective bargaining agreement.
    - o Employees subject to a waiting period.
    - o Nonresident aliens with no U.S. source income.
    - o Employees under age 25 before the beginning of the plan year.
    - o Employees whose principal place of employment is in the same rating area.

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Health and Welfare Updates, continued

- A notice similar to that required for qualified small employer health reimbursement arrangements (QSEHRAs) must be provided 90 days before the start of the plan year or before the effective date of coverage if the employee becomes eligible after the start of the plan year.
- Employees must be allowed to opt out and waive benefits at least annually.

Employers may offer traditional health coverage to one class of employees and a premium reimbursement HRA to another class without violating the new guidance. Also, premium reimbursement HRAs offered to different classes may vary if the requirements are satisfied within each class.

In addition, the HRA itself will be subject to the other group health plan mandates, including ERISA and COBRA. As such, qualified small employer health reimbursement arrangements may have a simpler compliance path since COBRA does not apply. However, some of the other qualified small employer health reimbursement arrangement requirements are more restrictive.

Excepted Benefit HRA

An employer may also offer a non-integrated HRA that reimburses general medical expenses, including COBRA, short-term limited duration insurance (STLDI), and excepted benefit premiums, but not other group or any individual market health premiums. Such an HRA is permissible, and will qualify as an excepted benefit, subject to the following conditions:

- The maximum annual contribution is $1,800, adjusted for inflation (this does not include carryover amounts, which may be unlimited).
- The employee must also be offered traditional health coverage from the same employer, but the employee does not have to enroll in that coverage.
- The employee cannot also be offered a premium reimbursement HRA.
- The terms and conditions must be the same for all “similarly situated” classes of employees.

Therefore, if this guidance is finalized, there will be four different types of HRAs:

1. HRAs that are integrated with other group health plan coverage.
2. Premium reimbursement HRAs.
3. Excepted benefit (vision or dental) HRAs.
4. Qualified small employer health reimbursement arrangements.

IRS Releases 2018 Form 8889 and Instructions for HSA Reporting

The IRS has released the 2018 version of Form 8889 for health savings accounts (HSAs) and its instructions. HSA holders (and beneficiaries of deceased HSA holders) must attach Form 8889 to Form 1040 to report tax-related events affecting their HSAs. Reportable items include contributions and distributions.

Form 8889 is also used to calculate HSA deductions and any reportable income and additional tax triggered by failing to remain HSA-eligible throughout the applicable testing period for qualified HSA funding distributions or the full-contribution rule.

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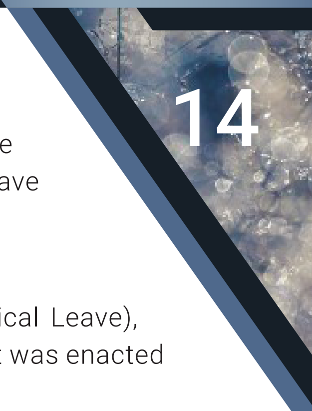

Health and Welfare Updates, continued

The 2018 versions of the form and instructions are very similar to the 2017 versions; however, they have been updated to reflect the 2018 HSA contribution limits and the filing deadline (April 15, 2019), which is also the deadline for making HSA contributions for 2018. Further, the instructions include a comment regarding the $6,900 family high-deductible health plan (HDHP) contribution maximum for 2018, which was lowered to $6,850 and then restored to $6,900, directing taxpayers who received distributions of excess contributions based on the lower amount to review Rev Proc 2018-27 regarding the tax treatment of the distribution.

Although Form 8889 is filed by HSA holders as an attachment to Form 1040, employers and advisors working with HSAs should have a basic understanding of its scope. The likeness of this year's and last year's versions was expected, as the rules for HSAs have remained relatively constant since last year.

IRS Issues Form for New Credit for Paid Family/Medical Leave

The IRS has released the 2018 Form 8994 (Employer Credit for Paid Family and Medical Leave), which is to be used by employers to claim the credit for paid family and medical leave that was enacted by the Tax Cuts and Jobs Act.

Generally, for wages paid in tax years beginning in 2018 and 2019, eligible employers can claim a general business credit equal to the applicable percentage of the amount of wages paid to qualifying employees during any period in which such employees are on family and medical leave if certain requirements are met. The credit does not apply to wages paid in tax years beginning after December 31, 2019.

To be eligible to claim the credit, an employer must have a written policy that satisfies certain requirements. First, the policy must cover all qualifying employees – which are essentially all employees who have been employed for a year or more and were paid not more than a specified amount during the preceding year. Second, the policy must provide at least two weeks of annual paid family and medical leave for each full-time qualifying employee, and at least a proportionate amount of leave for each part-time qualifying employee. Third, the policy must provide for payment of at least 50% of the qualifying employee's wages while the employee is on leave. Lastly, if an employer employs qualifying employees who are not covered by Title I of the Family Medical Leave Act (FMLA), the employer's written policy must include language providing certain non-interference protections.

The applicable percentage ranges from 12.5% to 25%. The increase above 12.5% is based on how much more than 50% of the employee's typical wages the employer pays during the period during which the employee is on family and medical leave.

Documentation requirements.

Employers should retain the worksheets for their records. The information needed to support the amount of credit includes: name and social security number of each qualifying employee, wages paid to each qualifying employee, name and employer identification number of each eligible employer, applicable percentage, and family and medical leave policy.

Tribute to Andrew Ferguson

Andrew Ferguson has served Western Pension & Benefits Council for many years – he has been a longstanding member, served on various committees, and as a Chapter board member in the following roles: Treasurer (2007-2009 term), Vice President (2009-2011 term), President (2011-2013 term), and immediate Past-President (2013-2014). He also served as Treasurer of the Governing Board from (2015-2017). We wish Andrew well as he moves into his next exciting phase of life, retirement! Following is a tribute from a Chapter member who has had the pleasure of working with Andrew over the years to provide her own thoughts.

TRIBUTE FROM KAREN MACK

It is with mixed emotions that I write this tribute for Andrew Ferguson to celebrate his retirement. I am truly excited for Andrew and wish him luck in his next chapter. At the same time, I am saddened that I will no longer get to work with him on a daily basis as I had the opportunity to do for the past 8 years at Altman & Cronin.

I know I can safely speak for my Altman & Cronin colleagues, our clients, our industry colleagues and everyone at WP&BC – that Andrew's intellect, actuarial acumen, leadership and his quick wit will be missed. The good news, we know where he lives!

Andrew has shown a level of commitment and passion for the actuarial profession.

- Andrew developed a specialty practice and became a nationally recognized expert in cash balance plans for partnerships. He has spoken at many national conferences and has served some of the premier law firms in the country.
- Andrew was part of the early leadership team of Altman & Cronin, working alongside Ian Altman and Linda Cronin (until her retirement), to help build and run a very successful consulting business. I was proud to join this leadership team, along with Connie Hiatt, when I joined in 2010.
- Andrew contributed a lot to WP&BC, starting on the membership committee and then moving on to serve in nearly all board positions over the years, culminating in being president during the 2011-2013 term. Once he completed his role as immediate past president, Andrew went on to serve on the membership committee again, making calls to lapsed members. That's dedication!

Those of you who know Andrew will likely share my observations noted above. And now, here are a few things you may not know about Andrew:

- Andrew has an impressive command of the IRS tax code and regulations. He is one of the few people who reads the preambles to regulations and can cite multiple historical versions in every day consulting conversation.
- Andrew has a quick and sharp wit that will come out in completely unexpected situations, such as a presentations on 415 limits, cash balance plan design, or top-heavy testing.
- Andrew's retirement is not likely to be a traditional one. He has expressed a desire to be a high school math teacher, paying it forward to help inspire the next generation of mathematicians, like his high school teacher did for him.

Please join me in wishing Andrew well in his retirement. You may see him around town shadowing math classes at City College (strictly to study teaching techniques!) in yoga or spin classes at Equinox or on a yoga retreat in Costa Rica. Good luck, Andrew!

Executive Compensation Updates

By Anjuli Cargain
Duane Morris LLP

Code Section 83(i) Guidance

On December 7, 2018, the Internal Revenue Service (IRS) issued Notice 2018-97 offering guidance on the application of Internal Revenue Code (Code) Section 83(i) which allows qualified employees of privately-held corporations to defer paying income tax, for up to five years, on the value of qualified stock options and restricted stock units (RSUs) granted to them by their employers. Section 83(i) was added to the Code through the enactment of the Tax Cuts and Jobs Act. Section 83 generally provides for the federal income tax treatment of property transferred in connection with the performance of services.

Pursuant to a related release, IR-2018-246, in general, executives, highly-compensated officers and those owning 1% or more of the corporation's stock cannot make the deferral election. Federal Insurance Contributions Act tax and Federal Unemployment Tax Act tax payable on the value of qualified stock may not be deferred. Notice 2018-97 provides guidance on: (1) the application of the requirement in Section 83(i)(2)(C)(i)(II) that grants be made to not less than 80% of all employees who provide services to the corporation in the United States, (2) the application of federal income tax withholding to the deferred income related to the qualified stock, and (3) the ability of an employer to opt out of permitting employees to elect the deferred tax treatment even if the requirements under Section 83(i) are otherwise met.

The Treasury Department and the IRS anticipate that further guidance on Section 83(i) will be issued in the form of proposed regulations, which are expected to incorporate the guidance provided in Notice 2018-97. Source: *www.irs.gov*

Final Hedging Disclosure Rule

On December 18, 2018, the Securities and Exchange Commission (SEC) adopted final rules to implement a provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Final Rule requires companies to disclose practices or policies regarding the ability of its employees (including officers) or directors to purchase financial instruments, or otherwise engage in transactions, that hedge or offset, or are designed to hedge or offset, any decrease in the market value of equity securities granted as compensation, or held directly or indirectly by the employee or director. If a company does not have any such practices or policies, the company must disclose that fact, or state that hedging transactions are generally permitted. In general, companies must comply with these disclosure requirements in their proxy or information statements relating to an election of directors during fiscal years beginning on or after July 1, 2019. Source: *www.sec.gov*

DECEMBER MEETING

December 2018 Chapter Meeting & Holiday Celebration

At our December meeting, we had an exceptional panel of benefit experts discuss their experiences applying unique and effective communication strategies and creative benefit approaches to engage with participants.

Jennifer Benz, Founder & CEO, of Benz Communications started off the session with an introduction to her firm and how they help companies inspire their employees to improve their health, their finances, and their futures. She reviewed their recommended "10 keys to successful communication" including setting the foundation; determining strategy, brand, and website; marketing, how to approach feedback, being simple, acting year-round, using targeted messaging, and taking into account the overall employee experience; and considering resources, budget, and partners.

Jennifer provided some amazing visual examples of a campaign with one of their clients. This illustrated how they engaged employees in their health and welfare programs using mobile, email, and intranet site access to promote and bring together benefits, including legal coverage, family leave, consumer benefits, 401(k), home/auto/pet/life insurance and disability. One of the goals of the program was to increase the retirement plan contributions and get more employees saving enough to receive the full employer matching contribution in the retirement plan. Their firm worked with the plan sponsor, internal communications, and the recordkeeper to provide compelling visuals encouraging the employees to take action.

Benz Communications helped this client was with their "lifehacks" campaign with a realistic and refreshing shortcuts approach to dealing with obstacles that life throws at all of us: from flu shots to dealing with cancer diagnosis to understanding insurance bills to telehealth doctors to understanding the 401(k) match to getting your Zen back. They used captivating photos, easy to understand language, along with strong, large font headlines that popped. Their mantra was to make it easy to read, easy to understand, easy to click to the right place. Another case study she presented was about a quiz they developed for a tech client in order to engage and educate their employees. Surprisingly they offered only one small gift card for completing the quiz, yet due to the competitive nature of their workforce, they had over 25% of the employees participate. This project resulted in receiving the Pensions & Investments and DCIIA 2018 Excellence & Innovation Award.

Donna Malliett, CEBS, ISCEBS Fellow, Benefits Manager with Farella Braun + Martel, provided an overview of their law firm, areas of legal expertise (including maintaining an office in the Napa Valley that is focused on the wine industry), and their employee demographics including a wide array from partners to administrative staff, with ages ranging from 21-86 years old. Donna briefly outlined their overall retirement plans and medical plan options as well as some other benefit offerings.

Donna shared with us an amazing example of using "nudges" to make a big impact. She worked with their retirement plan recordkeeper to develop a one-page flyer to encourage employees to check and update their beneficiaries. She also disclosed her surprise learning that systematic nudges did not work for their employee group. Instead, they provided a personalized email, projecting income and contributions to calculate the additional amount needed to maximize each employee's annual contribution. This resulted in over 23% increase in those maxing out. Another creative example she shared was their "Let's do the math" worksheet to help employees calculate their best-case and worst-case scenarios to fully understand the advantages or potential shortfalls of co-premiums and annual expenses in the traditional health benefits compared to the HDDP/HSA option.

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December 2018 Chapter Meeting & Holiday Celebration, continued

Donna recommended leveraging partners as much as possible. Since the firm has a paternalistic yet flexible approach, employees are offered both self-service and high touch options such as a "save more slide," and checking in mid-year. In 5 years, she hopes to have greater alignment with the HSA and retirement saving. Donna has learned to harness behavioral economics to get employees to make optimal decisions at critical time periods, and that if the employees can identify with one individual's story, they are more likely to take action. Overall, for their group, she thinks that having personal conversations to discuss each person's benefit needs is most impactful.

Lisa Montalvo, Strategic Human Resources Management Benefits Division Leader/Plan Administrator for Lawrence Livermore National Laboratory, shared their organization's mission along with a general overview of their retirement plan and employee demographic base. Lisa understands how difficult it is for participants to appropriately address the challenges of planning for retirement while managing day-to-day expenses. To address these needs, Lisa shared how they had conducted a very successful boot camp and liked it so much that they did it again.

Lisa provided an overview of their most recent Financial Fitness Boot Camp. This was a fascinating day covering a wide range of interesting topics including sessions on Medicare, Social Security, Estate Planning, Retirement Planning, Basics of Personal Finance, Repaying Student Loans, Understanding Roth, Creating a Budget, Ditching Debt, and Prioritizing Savings Goals. With a limited budget and internal resources, Lisa corralled business partners – from respective record keepers, investment managers and benefits providers – who featured their speakers to cover these topics with sessions held throughout their campus. Specifically, this campaign was designed to help participants improve their long-term savings and reduce finance-related stress. The idea was to offer compelling subjects of broad interest, tailored to their employees at different stages in their employment – early career, midcareer and late career.

The Lawrence Livermore National Laboratory spans offices across one square mile, so the boot camp sessions were held at five different sites with golf carts zipping between the locations. Lisa also provided an impressive outline of what it took to pull off this aspirational event, explaining it took six months of planning, coordinating challenging logistics,

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December 2018 Chapter Meeting & Holiday Celebration, continued

and operating with a small budget to arrange the two-day experience. They offered 24 education sessions in 2017 educating over 1,350 employees. Lisa received a Pensions & Investments Excellence Award for this imaginative and impactful program.

Milt Ezzard, VP Global Benefits, at Activision Blizzard (video game developer and publisher), provided an enlightening and incredibly entertaining synopsis presenting their approach to employee benefits engagement. With an incredibly unique and diverse workforce of over 10,000 US employees, with distinctive branding across their studios and a large annual healthcare spend, they focus on simplifying the complex, meeting their employees "where they are" by utilizing mobile phones, adding value-added benefits, and influencing to optimize program outcomes. He shared how he has structured his benefit team with vastly different perspectives and how exceptionally collaboratively they interact.

Ultimately data is the foundation for their benefit team decisions. They rely on their business partners to understand their current situation and provide solutions to move them down the path of where they want their benefit journey to head next. Milt presented an interesting evolution of their benefits strategy since he joined the company. Starting in 2013, this has taken them from conventional benefits to five forward-thinking-years later launching their "Benefits for Every World" to level the benefits playing field. They are evaluating partners for effectiveness and sustained participation and ultimately want to continue to improve upon their position as a Fortune 100 Great Places to Work employer. Milt discussed how they are addressing common health issues, including a tech tool to assist with diabetes management and extending their paid time off for new parents and bereavement leave to eight weeks.

Milt walked us through their use of Jiff (now Castlight Health), an engagement model where employees, their spouses, and dependents can earn points and redeem for rewards, and a tool where they can send push notifications. Points are earned for activities such as eating well, having a "Joyful Mind," tracking steps, Sleep Health, Financial Wellbeing, Gympass, and Health Coach. The rewards can be received as credits where employees can then shop in the Jiff Store. He calls this Benefits@Play. Milt explained that he feels a responsibility to explore options and services in order to adopt new, efficient, and value-added employee solutions. That is one reason by Milt was awarded Employee Benefit News Magazine EBN's 2018 Judges' Choice Award which is given annually to a benefits professional who makes great use of a wide range of benefits programs.

Our deep appreciation to our gracious and generous hosts from **Charles Schwab & Co.** as well as our annual Chapter sponsors – what a great way to spend time with fellow benefit professionals and end the 2018 year! We enjoyed the complimentary wine and appreciated the festive holiday chocolates provided by the Chapter.

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December 2018 Chapter Meeting & Holiday Celebration, continued

Legislative & Regulatory Update Meeting

At the February 7, 2018, Chapter meeting, we were privileged to have two distinguished presenters provide a legislative and regulatory update on issues affecting employee benefit plans. The event was interactive and included many questions and comments from the attendees. **Marc Fosse of Trucker Huss** served as the moderator for the discussion.

Liz Masson, Partner, Hanson Bridgett LLP, delivered an informative presentation on recent legal developments regarding health and welfare plans. Some of the highlights were:

- An update on the Affordable Care Act (ACA), specifically with respect to the status of the individual mandate and the entire ACA following the ruling in Texas v. Azar.
- California's ongoing efforts in the spirit of the ACA to increase access to health coverage, such as the expansion of Medi-Cal benefits to undocumented young adults, the implementation of an individual mandate at the state level similar to the ACAs individual mandate, and the improvement of subsidies for enrollees in Covered California plans.
- An explanation of the new guidance released by the IRS pertaining to health reimbursement arrangements, including proposed regulations issued by the IRS in October of 2018, and Notice 2018-88, also issued by the IRS in October 2018.
- Clarification of the guidance released in June of 2018 regarding the final rules for association health plans (AHPs) and the legal challenges arising from such rules.
- A discussion of hot issues relating to health care costs such as the proposed CREATES Act (designed to promote competition in the market for drugs and biological products), rebates for pharmacy benefits managers, and "surprise" billing for out-of-network care.

Robert Holcomb, Vice President, Legislative and Regulatory Affairs, Empower Retirement, gave a fascinating presentation, which included insightful commentary on retirement plans and recent developments in Washington, D.C. Some of the highlights were:

- Background on the unsuccessful attempt and struggle to pass the Retirement Enhancement Savings Act despite it garnering bipartisan support.
- A discussion on the environment that Congress is facing, such as the debate over border security and the pending investigations, and how this environment complicates lawmaking at the federal level but could potentially lead to more activity at the state level.

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Legislative & Regulatory Update Meeting, continued

- An update on the proposed Automatic Retirement Plan Act (ARPA); Mr. Holcomb delivered an informative description on the technical nuances of ARPA.
- An explanation of the proposed and highly innovative Retirement Savings and Security Act of 2018, which would provide a new automatic enrollment safe harbor and would allow employers to make matching contributions with respect to student loan repayments.

The event was held in one of **Hanson Bridgett's** large presentation rooms, with lively conversation spilling over past the program into the social hour, which included delicious food and beverages. A special thanks to **T. Rowe Price** as the sponsor of the event.

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For more information, please contact Terri Fulton, Chapter Account Manager, WP&BC San Francisco Chapter
1900 Point West Way, Suite 222, Sacramento, CA 95815-4706
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PLATINUM $6,000 (Only 2 slots available) 4 Chapter Memberships (Total value: $600) Full page Advertisement in Newsletter (e-publication)	Exclusive sponsor of Premium Event or Named Sponsor of all Brown Bag Lunches Includes: • Company logo on promotional materials • Brief remarks by Sponsor's representative (Premium Event) • Featured display table (Premium Event) or small signage at Brown Bag Lunches	4 free Chapter Meeting Member Registrations (Total value: $110) 6 free Guest Passes (Total value: $570) Premier listing of company on the SF Chapter website Listing in every newsletter Company name on sponsor list	6 Registrations (Total value: $600) for Premium Event (Transferable to Chapter Meetings if there is no Premium Event) plus: • Company name on invitation and program (differentiated by sponsorship level) • Company name on sign (differentiated) • Featured display table to offer promotional material
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BRONZE $1,500 1 Chapter Membership (Total value: $150)	1 free Chapter Meeting Member Registration (Total value: $55) 2 free Guest Passes (Total value: $190)	Listing of company on the SF Chapter website by sponsorship level	1 Registration (Total value: $150) for Premium Event plus: • Company name on invitation and program (differentiated by sponsorship level) • Company name on sign (differentiated) • Shared display table to offer promotional material

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Want to get involved in the San Francisco Chapter?

Contact Kevin Nolt to volunteer!

Winter 2019

EMPLOYMENT OPPORTUNITIES

If you wish to post an employment opportunity on our website, please read the following note: Listings must comply with applicable regulations for employment advertising. Online job postings are free to WP&BC San Francisco Chapter members. Call Terri Fulton at the Chapter office for more information, (415) 730-5479. Email all listings to info@wpbcsf.com

The Newsletter welcomes contributions from its members. If you would like to submit a topical benefits-related article for an upcoming issue, please contact the chapter at info@wpbcsf.org.

Special thanks to Bryan Card, Karen Casillas, and Sarah Kanter for help in drafting and editing newsletter articles.

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