Employee Benefits Answer Book

Eighteenth Edition

by Dorinda D. DeScherer

Employee Benefits Answer Book provides comprehensive guidance for employers and professionals involved in the design and administration of employee benefit plans. It starts with an overview of the regulatory framework governing employee benefits, and then devotes 20 individual chapters to detailed discussion of the myriad issues concerning different types of benefit arrangements. The question-and-answer format is ideal for probing key topics such as COBRA continuation coverage, retiree health care coverage, mandated health benefit requirements, group long-term care insurance, dependent care assistance, adoption assistance, vacation and severance pay plans, death benefits, financing employee benefits, and financial accounting for employee benefits.

Annual updates offer readers up-to-date information on federal laws impacting employee benefits, including the Family and Medical Leave Act (FMLA), Age Discrimination in Employment Act (ADEA), Americans with Disabilities Act (ADA), Mental Health Parity and Addiction Equity Act (MHPAEA), Genetic Information Nondiscrimination Act (GINA), and the Affordable Care Act of 2010—to name just a few. Summaries of case law developments, practice pointers, and examples are included throughout the volume.

Highlights of the Eighteenth Edition

The Eighteenth Edition of *Employee Benefits Answer Book* brings employers and benefits professionals information on the latest legal and regulatory developments affecting employee benefit plans.

Over the past decade, new rules, regulations, and court decisions implementing and interpreting the Affordable Care Act (ACA) have dominated the employee benefits landscape. And, while the spate of ACA guidance has abated somewhat in recent months, controversy over the ACA remains front and center.

ACA Alert. As we go to press, the fate of the Affordable Care Act is uncertain. In a 2012 decision, the U.S. Supreme Court held that the individual responsibility provision (individual mandate) requiring individuals to maintain health coverage constituted a constitutional exercise of Congress's power to levy and collect taxes. [National Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 (2012)] However, the 2017 Tax Cuts and Jobs Act effectively eliminated the individual mandate by reducing the penalty for failure to maintain health coverage to zero beginning in 2019. [I.R.C. § 5000(c) as amended by the 2017 Tax Cuts and Jobs Act, Pub. L. No. 115-97] Based on that law change, a U.S. district court concluded that the individual mandate "unmoored from a tax" no longer represents an exercise of Congress' taxing power and is, therefore, unconstitutional. Moreover, the court held that the individual

10044854-0005

mandate is "essential to" and "inseverable from" the other provisions of the ACA, rendering those provisions unconstitutional as well. [Texas v. United States, No. 18-167 (N.D. Tex. Dec. 14, 2018)]

On appeal, a three-judge panel of the Fifth Circuit Court of Appeals agreed that the law's individual mandate violates the U.S. Constitution because "it can no longer be read as a tax, and there is no other constitutional provision that justifies this exercise of congressional power." However, unlike the lower court, the Fifth Circuit did not automatically strike down the remainder of the law. Instead, the appeals court sent the case back to district court to "explain with precision" how the remaining provisions of the ACA "rise or fall on the constitutionality of the individual mandate." "It may still be," said the court, "that none of the ACA is severable from the individual mandate, even after this inquiry is concluded. It may be that all of the ACA is severable from the individual mandate. It may also be that some of the ACA is severable from the individual mandate, and some is not. But it is no small thing for unelected, life-tenured judges to declare duly enacted legislation passed by the elected representatives of the American people unconstitutional. The rule of law demands a careful, precise explanation of whether the provisions of the ACA are affected by the unconstitutionality of the individual mandate as it exists today." Moreover, the Fifth Circuit directed the district court to determine whether the final decision should apply across-the-board nationwide—or only to the 18 Republican-led states that started the lawsuit. [State of Texas, et al. v. U.S., No. 19-10011 (5th Cir. 12/18/2019)] Subsequently, the Supreme Court agreed to review the Fifth Circuit decision. In granting the petition for review, the Supreme Court agreed to decide (1) whether reducing the penalty tax to zero rendered the individual mandate unconstitutional and (2) if so, whether the individual mandate is severable from the rest of the ACA. [California v. Texas, No. 19-840, and Texas v. California, No. 19-1019, cert. granted, March 2, 2020].

Nonetheless, the ACA remains in effect. Significantly, the district court *did not* issue an injunction barring enforcement of the ACA pending appeal of its decision. Consequently, federal agencies have indicated that the law will continue to be enforced. Following court's decision, the Department of Health and Human Services stated: "The recent U.S. District Court decision regarding the Affordable Care Act is not an injunction that halts the enforcement of the law and not a final judgment. Therefore, HHS will continue administering and enforcing all aspects of the ACA as it had before the court issued its decision." [Statement from the Department of Health and Human Services on Texas v. Azar, Dec. 17, 2018]

In this edition, you will find up-to-date coverage of:

- The lastest developments for Association Health Plans (chapter 2)
- New rules for new types of Health Reimbursement Arrangements (chapters 3, 4)
- Repeal of the "Cadillac tax" on high-cost group health plans (chapter 3)
- The latest developments regarding contraceptive coverage (chapters 4, 19)
- New rules for HIPAA penalties (chapter 4)

- Updated rules for valuing company cars (chapter 13)
- Tough new rules for employee parking costs (chapter 13)

In addition, throughout the Eighteenth Edition, you will find updated tax figures for 2020 as well as an updated table of cases and topical index.

SPECIAL COVID-19 ALERT! In the Special Alert on the following pages you will find an overview of the COVID-19 pandemic provisions that affect employee benefits.

6/20

For questions concerning this product, billing, or other customer service matters, contact our Customer Service Department at customer.service@wolterskluwer.com or 1-800-234-1660.

To order additional products, visit www.WoltersKluwerLR.com or call 1-800-638-8437.

Special Alert: COVID-19 Pandemic Provisions Affecting Employee Benefits

In the wake of the COVID-19 outbreak, the U.S. Congress enacted two major pieces of legislation to address the impact of the virus: The Families First Coronavirus Response Act (P.L. 116-127), which was signed into law on March 18, 2020, and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), which was signed into law on March 27, 2020. The following is an overview of the major provisions affecting employee benefits.

Paid Leave for Employees

The Family and Medical Leave Act (FMLA) requires covered employers to provide up to 12 weeks of *unpaid* job-protected leave in a designated 12-month leave year to eligible employees for specified qualifying events, including an employee's own serious health condition or the need to care for a covered family member with a serious health condition. (See chapter 16 for a complete discussion of the Family and Medical Leave Act requirements.)

By contrast, the Families First Act (as amended by the CARES Act) requires employers to provide *paid* sick leave and *paid* family and medical leave for specified reasons related to COVID-19. [Families First Act §§ 3101-3106; 5101-5111]

Effective dates. The paid leave requirements apply to leave taken between April 1, 2020, and December 31, 2020. The leave requirements are not retroactive. So, for example, leave provided to an employee for a qualifying reason prior to the April 1 effective date is not required to be paid. Conversely, paid leave provided for a qualifying reason prior to April 1 does not count against the maximum leave required under the law. [IRS Notice 2020-21, 2020-16 I.R.B.; DOL Families First Coronavirus Response Act: Questions and Answers; DOL Temp Reg. §§ 826.10 et seq.]

Leave requirements. The Act requires covered employers to provide:

- All employees with up to 80 hours (or a proportionate amount for part-timers) of emergency paid sick leave at 100% of their regular rate of pay to obtain a medical diagnosis, to care for the virus, or to quarantine or self-quarantine on account of the virus;
- All employees with up to 80 hours (or a proportionate amount for part-timers) of emergency paid sick leave at 2/3 of their regulate rate of pay to care for an individual with the virus or an individual who is under quarantine or self-quarantine, to care for a child whose school or daycare is closed or whose childcare provider is unavailable, or for other reasons specified by the Secretary of Health and Human Services; and
- All employees who have been on the payroll for at least 30 days with up to an additional 10 weeks of leave under the FMLA at 2/3 of their regular rate of pay to care for a child whose school or daycare is closed or whose childcare provider is unavailable on account of the virus.

Covered employers. The COVID-19 paid leave requirements apply only to employers with *fewer than 500 employees*. DOL guidance provides that an employer is covered by the law if, at the time that an employee's leave is to be taken, the employer employs fewer than 500 full-time or part-time employees within the United States (including employees in any state, the District of Columbia, or a U.S. territory or possession). When counting employees, employers should include employees on leave, temporary employees jointly employed with another employer (regardless of which employer maintains the payroll for the employees), and day laborers supplied by a temporary agency. Workers who qualify as independent contractors under the Fair Labor Standards Act are not counted as employees.

Small business exemption: By contrast with the FMLA, which generally applies only to employers with 50 or more employees (see Q 16:3 et seq.), the COVID-19 leave requirements apply to all employers with fewer than 500 employees. However, the law provides that small businesses with fewer than 50 employees may qualify for exemption from the requirements to provide paid sick leave or paid FMLA leave for school closings or childcare unavailability if meeting the leave requirements would jeopardize the viability of the business as a going concern. A small business may claim this exemption if:

- The provision of paid leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
- The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
- There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave

or expanded family and medical leave, and that the labor or services are needed for the small business to operate at a minimal capacity.

An employer claiming the exemption can deny leave only to those employees whose absence would cause one of the above circumstances.

Eligible employees. As noted above, *all employees* of a covered employer are eligible for paid sick leave. By contrast, paid FMLA leave on account of school closing or unavailability of childcare is limited to employees who have been employed for at least 30 calendar days. For this purpose, an employee is considered to have been employed for 30 days if the employee has been on the employer's payroll for the 30 calendar days immediately prior to the day that the employee's leave would begin. For example, for a leave beginning April 1, 2020, the employee must have been on the payroll as of March 2, 2020.

The CARES Act clarifies that an employee who was laid off on or after March 1, 2020, and subsequently rehired qualifies for paid FMLA leave if the employee worked for the employer for at least 30 of the 60 days prior to the layoff. [CARES Act § 3605]

Health care workers and first responders may be excluded from leave eligibility.

Qualifying leave. Paid sick leave is capped at 80 hours, even if an employee experiences more than one reason for the leave. For example, an employee who needs leave because of self-quarantine and subsequently needs leave because he or she has contracted the virus is limited to a total of 80 hours of paid leave. On the other hand, an employee who requires leave because of a child's school closing or childcare unavailability may be eligible for up to two weeks (80 hours) of paid sick leave plus an additional 10 weeks of paid FMLA leave. [DOL Families First Coronavirus Response Act: Questions and Answers, Q&As 9-10]

DOL guidance makes it clear that paid sick or paid FMLA leave is available only if the employer's business is up and running and the employee is scheduled to work. If an employer has closed up shop—whether because of lack of business or a government directive—the paid leave requirements do not apply. The same holds true if an employer is open for business, but the employee has been furloughed. Under those circumstances, employees will generally qualify for unemployment insurance benefits.

If an employee's hours are reduced, paid leave is not available for the hours that the employee is no longer scheduled to work but will apply if the employee is unable to work the remaining scheduled hours for a qualifying reason.

Calculating paid leave. A full-time employee is required to be paid for a maximum of 80 hours of sick leave over a two-week period. So, for example, if an employee is normally scheduled to work a 40-hour week, the employee must be paid for two full weeks. However, if an employee is normally scheduled to work 50 hours a week, the total number of paid sick leave hours is still capped at 80—the employee can take 50 hours of paid leave in one week and 30 hours the next week. By contrast, when it comes to paid FMLA leave, an employer is

required to pay for all hours that the employee would normally have been scheduled to work, even if that is more than 40 hours in a week.

For part-timers, required paid leave is based on the average number of hours that the employee is normally scheduled to work. A part-time employee can take paid sick leave for the average number of scheduled hours a day for up to a two-week period and can take expanded FMLA leave for that number of hours per day for up to 10 weeks. If normal hours are unknown or an employee's schedule varies, leave hours can be based on a six-month average. If the employee has not worked for six months, leave hours can be based on the number of work hours agreed upon when the employee was hired or the average number hours that the employee has worked over the term of employment.

Bear in mind, however, that overtime hours may factor into the number of paid leave hours. However, payments for qualifying leave are not required to include an overtime premium.

Employees on qualifying leave must be paid based on the greater of their regular rate of pay or the applicable federal or state minimum wage. However, payments can be capped at $511 per day for paid sick leave on account of the employee's own treatment or quarantine and $200 per day for other paid leave. For this purpose, the regular rate used to calculate paid leave is the average of an employee's regular rate over a period of up to six months prior to the date of leave. If the employee has not worked for six months, the rate used is the average of the regular rate for each week that the employee has worked for the employer. Alternatively, an employer can calculate the regular rate by totaling the employee's compensation over the applicable period and dividing by the number of hours worked in the period.

Notice and documentation. When feasible, employees should give notice to their employers of the need for virus-related leave. Moreover, the law requires *all covered employers* to post a notice of the Families First Act requirements. The employer is required to post the notice in a conspicuous location in the workplace. However, for employees who are teleworking, the employer can satisfy the requirement by emailing or direct mailing the notice to employees or posting the notice on an employee information website. A model notice (WH 1422, Rev. 3/20) can be obtained by calling 1-866-4-USWAGE or downloaded from the DOL's Wage and Hour Division website at *www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf*.

DOL guidance makes it clear that employers can require documentation from employees to substantiate the need for paid leave, including medical certifications. Moreover, special documentation may be required for some types of leave, such as a notice of a school closing or an official quarantine order or recommendation from a health care provider. In addition, IRS guidance indicates that employers will need such documentation to support claims for payroll tax credits for paid sick and FMLA leave (see below).

Payroll tax credits. To offset the cost paid sick and paid FMLA leave, eligible employers can claim payroll tax credits for the costs of providing leave. [Families First Act §§ 7001, 7003] The credits are generally equal to 100% of

qualified wages paid under the new law. However, the amount of wages taken into account for any employee in calculating the credit is limited to $511 per day ($5,110 total) for 10 days of paid sick leave on account of the employee's own treatment, quarantine, or self-quarantine for the virus. In the case of other paid sick leave, the amount of wages take into account is limited to $200 per day ($2,000 total) for 10 days. In the case of paid FMLA leave on account of a school or daycare closing or unavailability of a childcare provider, the amount of wages taken into account is limited to $200 per day ($10,000 total) for up to 10 weeks. Amounts eligible for the credits include Medicare taxes and "qualified health plan expenses" that are allocable to the wages for which the payroll tax credit is allowed. Qualified health plan expenses are the amounts paid or incurred by the employer to provide group health plan coverage that are excluded from employee's gross income.

The amount of emergency paid sick or FMLA leave paid to an employee is subject to the employee share of both FICA and Medicare taxes. Moreover, qualified wages are taxable to employees and subject to income tax withholding. Qualified leave wages are also considered wages for purposes of employer-provided benefits, such as contributions to 401(k) plans, and employee salary reductions.

Employee retention credit. The CARES Act create an employee retention credit for employers that have been forced to shut down operations or that have experienced a significant decline in gross receipts on account of COVID-19. [CARES Act § 2301] Employers are eligible for the credit if the operation of the employer's trade or business is fully or partially suspended during a calendar quarter of 2020 due to orders from a governing authority limiting commerce, travel, or group meetings on account of COVID-19. Employers are also generally eligible if gross receipts for a calendar quarter in 2020 are less than 50% of the gross receipts for the same calendar quarter in 2019.

The amount of the credit is equal to 50% of qualified wages, including health plan expenses, paid by the employer for the quarter. The amount of wages taken into account is limited to $10,000 per employees. Therefore, the maximum credit for the year is $5,000 per employee. In the case of employers with more than 100 full-time employees, only wages paid to employees when they were not performing services qualify for the credit. However, in the case of employers with 100 or fewer full-time employees, the credit can be claimed with respect to all wages paid to employees.

Credit claims. The credits can be claimed against the employer share of Social Security tax for a calendar quarter in which the employer is eligible. If the amount of the credits exceeds the employer's share of Social Security tax for the quarter, the excess credit is refundable. Employers can reduce or forgo regular payroll tax deposits in anticipation of the credits. If there are not sufficient payroll taxes due to cover the credits, employers can file a request for an accelerated payment from the IRS. The credits are reported and reconciled on the employer's employment tax return (e.g., Form 941, *Employer's QUARTERLY Federal Tax Return*).

Group Health Plan Coverage Requirements

The Families First Act and the CARES Act require group health plans to cover the costs of diagnostic testing for COVID-19 and related services. Plans and insurers must provide this coverage without imposing any cost-sharing requirements (including deductibles, copayments, and coinsurance) or prior authorization or other medical management requirements. [Families First Act § 6001; CARES Act § 3201] (See chapters 3 and 4 for a complete discussion of group health plan requirements.)

Effective date. The coverage requirements are generally effective for items or service furnished on or after March 18, 2020. The coverage requirements will continue to apply throughout the public health emergency related to COVID-19.

Covered plans. The COVID-19 coverage requirements apply to group health plans and health insurance issuers offering group or individual health insurance coverage. The requirements apply to grandfathered health plans under the Affordable Care Act. (See Q. 3:4 et seq.)

Covered items and services. Plans must provide coverage for in vitro diagnostic COVID-19 tests and the costs of administration. Coverage must also be provided for items and services furnished during a healthcare provider visits (including both in-person and telehealth visits), urgent care visits, and emergency room visits that result in an order for administration of a COVID-19 diagnostic test.

Required COVID-19 coverage must be provided regardless of whether the provider participates in the plan's network.

Plan documents. As a general rule , a mid-year change in plan coverage as spelled out in the plan's Summary Plan Description (SPD) must be communicated to plan participants at least 60 days before the change takes place (see Q 3:78). However, guidance from the Departments of Labor, Treasury, and Health and Human Services indicates that no enforcement action will be taken against a plan or insurer that makes a modification to provide greater coverage for diagnosis of treatment of COVID-19 without the required 60 days' notice The plan or insurer must, however, provide notice of the change as soon as reasonably practicable.

Health Reimbursement Arrangements

The COVID-19 pandemic has also resulted in some key changes affecting health savings accounts (HSAs) and other health reimbursement arrangements.

Health savings accounts. In order to make contributions to a tax-qualified HSA, an employee must be covered by a high deductible health plan (HDHP) that does not provide benefits until the plan deductible has been met. (See Q 3:185 et seq.)

Effective for plan years beginning before December 31, 2021, the CARES Act carves out an exception for telehealth and other remote care services. Under a safe harbor rule, a plan will not be disqualified as an HDHP because it fails to have as deductible for such services. [I.R.C. § 223(c)(2)(E) as amended by CARES Act § 3701]

In addition, the IRS has announced that high-deductible health plans (HDHPs) will not jeopardize their status because they cover the cost of testing or treatment for COVID-19 before plan deductibles have been met. Therefore, employees with HDHPs that fully cover COVID-19 costs can continue to contribute to associated health savings accounts (HSAs). [Notice 2020-15; IR-2020-54, 3/11/2020]

Eligible medical expenses. HSAs and other health reimbursement arrangements can provide tax-free reimbursements only for those expenses that qualify as medical care. A provision added by the Affordable Care Act, effective for expenses incurred after December 31, 2010, effectively removed over-the-counter (OTC) medicine and drugs from the category of reimbursable medical care, unless the medicine or drug was prescribed by a physician. (See Q 3:15 et seq.)

In a more long-lasting provision, the CARES Act *permanently* eliminates the rule prohibiting health reimbursement accounts from reimbursing expenses for OTC medicine and drugs without a medical prescription. Effective for expenses incurred after 2019, tax-free funds from HSAs, Archer Medical Savings Account (MSAs), health flexible spending accounts (FSAs), and Health Reimbursement Arrangements (HRAs) can be used to cover OTC medicine and drug costs without a prescription. The law change also adds menstrual care products to the medical care expenses that can be covered by such accounts. [I.R.C. §§ 223(d), 220(d), 106 as amended by CARES Act § 3702]

Student Loan Payments

In another temporary provision, the CARES Act provides an interest-free extension for all federal student loan payments through September 30, 2020. [CARES Act § 3513] However, the law also creates a temporary tax break for employer-provided student loan payments. Effective for payments made before January 1, 2021, an employer's payments on a qualified education loan, whether paid to the employee or directly to the lender, will qualify as educational assistance that can be excluded from an employee's income. [I.R.C. § 127(c) as amended by CARES Act § 2206] The exclusion for employer-provided educational assistance is limited to $5,250 per employee. (See Q: 14:1 et. seq.)

Employee Benefits Answer Book

Eighteenth Edition

Dorinda D. DeScherer

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher and the author(s) are not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional assistance is required, the services of a competent professional should be sought.

—From a *Declaration of Principles* jointly adopted by
a Committee of the American Bar Association and
a Committee of Publishers and Associations

Copyright © 2021 CCH Incorporated. All Rights Reserved.

No part of this publication may be reproduced or transmitted in any form or by any means, including electronic, mechanical, photocopying, recording, or utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at *www.WoltersKluwerLR.com/policies/permissions-reprints-and-licensing, or email us at LRUSpermissions@ wolterskluwer.com.*

Published by Wolters Kluwer in New York.

Wolters Kluwer Legal & Regulatory U.S. serves customers worldwide with CCH, Aspen Publishers and Kluwer Law International products.

Printed in the United States of America

ISBN 978-1-5438-1252-7

1 2 3 4 5 6 7 8 9 0

About Wolters Kluwer Legal & Regulatory U.S.

Wolters Kluwer Legal & Regulatory U.S. delivers expert content and solutions in the areas of law, corporate compliance, health compliance, reimbursement, and legal education. Its practical solutions help customers successfully navigate the demands of a changing environment to drive their daily activities, enhance decision quality and inspire confident outcomes.

Serving customers worldwide, its legal and regulatory portfolio includes products under the Aspen Publishers, CCH Incorporated, Kluwer Law International, ftwilliam.com and MediRegs names. They are regarded as exceptional and trusted resources for general legal and practice-specific knowledge, compliance and risk management, dynamic workflow solutions, and expert commentary.

WOLTERS KLUWER SUPPLEMENT NOTICE

This product is updated on a periodic basis with supplements and/or new editions to reflect important changes in the subject matter.

If you would like information about enrolling this product in the update service, or wish to receive updates billed separately with a 30-day examination review, please contact our Customer Service Department at 1-800-234-1660 or email us at: *customer.service@wolterskluwer.com*. You can also contact us at:

Wolters Kluwer
Distribution Center
7201 McKinney Circle
Frederick, MD 21704

Important Contact Information

- To order any title, go to *www.WoltersKluwerLR.com* or call 1-800-638-8437.
- To reinstate your manual update service, call 1-800-638-8437.
- To contact Customer Service, e-mail *customer.service@wolters kluwer.com*, call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to: Order Department—Wolters Kluwer, PO Box 990, Frederick, MD 21705.
- To review your account history or pay an invoice online, visit *www.WoltersKluwerLR.com/payinvoices*.

To the memory of

Terence M. Myers
1948–2013

April 16, 2020 15:9

About the Author

Dorinda D. DeScherer, J.D. is an honors graduate of Barnard College of Columbia University and the University of Maryland School of Law. She was a former associate managing editor for Prentice Hall Information Services, where she had primary responsibility for special projects, including explanatory materials on new tax laws. Ms. DeScherer has extensive experience in writing and editing a wide range of tax and business publications for certified public accountants, tax lawyers, corporate officers, human resource professionals, tax return preparers, and small business owners. In addition to *Employee Benefits Answer Book*, Ms. DeScherer's publications include *Wage Hour Compliance Handbook* and *Business Tax Answer Book*, published by Wolters Kluwer in New York. She has also contributed to a variety of tax and professional newsletters and authored continuing professional education courses.

Preface

Employee Benefits Answer Book is designed for professionals who need quick and authoritative answers to their clients' questions on whether to institute or continue medical plans, group term life insurance, cafeteria plans, or other employee welfare benefit plans; how to choose and implement the plans most suited to their needs; and how to comply with complex federal reporting and disclosure requirements.

Because employee benefits are one of the most rapidly changing areas of the law, professionals involved in the design and administration of employee benefits must stay on top of the new rules and regulations issued by various federal agencies and significant cases affecting employee benefit plans.

Each chapter starts with an overview of the basic concepts and then delves into the details. The question-and-answer format enables readers to zero in on the key information they are seeking, and cross-references point them to other pertinent considerations within the text.

Numbering System. Questions are numbered consecutively within each chapter (e.g., 2:1, 2:2, 2:3, etc.).

List of Questions. The List of Questions in the front matter serves as a detailed table of contents. Within each chapter, the section headings group and organize questions by topic.

Examples. Examples are provided throughout the chapters to illustrate important concepts.

Notes and Practice Pointers. Interspersed throughout the text are practical considerations and "tips" that are intended to help the employer and practitioner design, implement, and administer effective employee benefit plans.

Citations. Citations to cases and references to statutes and authorities are included for readers who wish to research specific topics.

Glossary. A glossary of terms and acronyms commonly used in the welfare benefits area is provided.

Tables of Statutes, Authorities, and Cases. Tables of statutes, authorities, and cases are finders' aids appreciated by readers who wish to research specific topics. Entries in these tables are referenced to question numbers.

Index. A topical index is provided as a further aid to locating specific information. References in the index are to question numbers.

Contents

List of Questions xxvii

CHAPTER 1

Introduction 1-1

A Road Map to the Eighteenth Edition 1-2

A Thumbnail Guide to Important Regulatory Goals 1-5

Practical Plan Administration 1-8

CHAPTER 2

The Regulatory Scheme: ERISA 2-1

Basic Concepts and Definitions 2-2

Covered Employers 2-5

Covered Employees 2-6

Covered Plans 2-9

Multiple Employer Welfare Arrangements 2-20

Requirements for Plan Document 2-25

Fiduciaries 2-29

Fiduciary Responsibility 2-34

Mandated Benefit Provisions 2-38

Plan Development: Adoption, Amendment, and Termination 2-39

Plan Assets 2-44

Trust Requirement 2-52

Trustees and Investment Managers 2-54

Prohibited Transactions 2-55

Fiduciary Liability 2-57

Nonfiduciary Liability 2-62

Bonding Requirement 2-63

Claims Procedure Requirement 2-64

Reporting and Disclosure Requirements 2-73

Preemption of State Law 2-97

Penalties and Enforcement 2-110

Remedies for Breach of Fiduciary Duties 2-118

Remedies of Plan Participants and Beneficiaries 2-121

CHAPTER 3

Group Health Plans: Structure and Administration 3-1

Impact of the Affordable Care Act 3-3

Grandfathered Health Plans Under the Affordable Care Act 3-5

Basic Concepts 3-16

Employer Responsibility for Health Coverage 3-29

Health Insurance Exchanges and Group Health Insurance 3-60

Types of Plans 3-71

Funding Types and Cost Sharing 3-80

Plan Administration 3-89

Health Benefit Claim Processing and Review 3-109

Coordination of Benefits 3-122

Subrogation 3-130

Legal Requirements Affecting Health Plans 3-134

Tax Treatment of Employers 3-138

Tax Treatment of Participants 3-145

Health Reimbursement Arrangements 3-175

Medical Savings Accounts 3-186

Health Savings Accounts 3-190

Employee Assistance Programs 3-228

Workers' Compensation 3-232

CHAPTER 4

Group Health Plans: Mandated Benefits and Standards 4-1

Basic Rules 4-3

Nondiscrimination Based on Health Status 4-38

Prohibition of Discrimination in Favor of Highly Compensated Employees 4-62

Waiting Periods and Preexisting-Condition Exclusions 4-66

Coverage Limits and Cost-Sharing Requirements 4-75

Dependent Coverage Requirements 4-82

Special Enrollment Rights 4-92

Mandated Benefits and Patient Protections 4-96

Mental Health and Substance Use Disorder Benefits 4-103

Benefits for Maternity, Newborns, and Mothers 4-113

Benefits Under the Women's Health and Cancer Rights Act 4-119

Qualified Medical Child Support Orders 4-121

Medicare Secondary-Payer Rules 4-130

Children's Health Insurance Program 4-146

Privacy and Security Requirements 4-150

CHAPTER 5

Retiree Medical Benefits 5-1

The Affordable Care Act 5-1

Obligation to Provide Retiree Medical Benefits 5-5

Tax Treatment of Retiree Health Benefits 5-7

Cost Containment Design 5-12

Plan Cutbacks—Legal Issues 5-13

Coordination with Medicare 5-25

Retiree Prescription Drug Benefits 5-27

Trust Requirement 5-32

Financial Accounting Rules 5-32

Funding Options 5-34

CHAPTER 6

COBRA Requirements for Continuation of Coverage
Under Group Health Plans 6-1

Overview 6-2

Covered Plans 6-3

Definition of "Plan" for COBRA Purposes 6-12

Covered Employers 6-13

Qualified Beneficiaries 6-21

Qualifying Events 6-25

Notice to Participants 6-43

COBRA Election and Enrollment 6-65

Type and Extent of Required Coverage 6-71

Duration of Coverage 6-80

Premiums 6-90

Mergers and Acquisitions 6-100

Preemption of State Continuation Laws 6-103

COBRA Enforcement and Sanctions 6-108

Plan Year 6-115

CHAPTER 7

Cafeteria Plans 7-1

The Affordable Care Act 7-2

Basic Concepts 7-3

Written Plan Requirement 7-9

Eligible Employees 7-11

Permitted Benefit Choices 7-13

Use-It-or-Lose-It Rule 7-24

Salary Reduction 7-29

Period of Coverage 7-31

Elections 7-32

Premium Conversion Plans 7-52

Flexible Spending Arrangements 7-54

Trust Requirement 7-76

Section 125 Nondiscrimination Rules 7-78

SIMPLE Cafeteria Plan 7-84

Tax Treatment of Cafeteria Plan Benefits 7-87

Reporting and Disclosure Requirements 7-90

Effect of Other Laws 7-90

CHAPTER 8

Dependent Care Assistance and Adoption Assistance 8-1

Dependent Care Assistance Programs 8-1

Adoption Assistance Programs 8-15

CHAPTER 9

Group Long-Term Care Insurance 9-1

Basic Concepts 9-1

Taxation Issues 9-7

Characterization Under Other Laws 9-9

Inclusion in Cafeteria Plans 9-11

CHAPTER 10

Disability Income Plans 10-1

Basic Concepts 10-1

Plan Administration 10-12

Trust Requirement 10-40

Benefit Calculations 10-40

Tax Treatment of Employers 10-41

Tax Treatment of Employees 10-41

Tax Treatment of Self-Employed Persons and Subchapter S Corporation Shareholder-Employees 10-53

CHAPTER 11

Group Term Life Insurance Plans 11-1

Basic Concepts 11-2

General Death Benefit Requirement 11-6

"Group of Employees" Requirement 11-6

Policy Carried Directly or Indirectly by the Employer 11-10

Benefit Formula Precluding Individual Selection 11-17

Nondiscrimination Rules 11-18

Other Plan Design Limitations 11-23

Preemption of State Insurance Laws 11-25

Plan Administration Issues 11-27

Trust Requirement 11-43

Taxation Issues 11-44

CHAPTER 12

Death Benefits Other Than Employee Group Term Life Insurance 12-1

Dependent Group Term Life Insurance 12-1

Accidental Death Benefits 12-6

Business Travel Accident Insurance 12-9

Group Universal Life Insurance 12-11

Uninsured Death Benefits 12-17

Split-Dollar Life Insurance 12-19

Bonus Life Insurance 12-33

Death Benefits Under Qualified Retirement Plans 12-34

Accelerated Death Benefits 12-38

Living Benefits 12-41

CHAPTER 13

Fringe Benefits 13-1

Overview 13-2

No-Additional-Cost Services 13-2

Employee Discounts 13-7

Working Condition Fringe Benefits 13-11

De Minimis Fringe Benefits 13-37

Qualified Transportation Fringe Benefits 13-49

Moving Expense Reimbursements 13-68

Qualified Retirement Planning Services 13-69

Meals and Lodging Furnished for the Employer's
Convenience 13-70

Employee Gifts and Achievement Awards 13-78

Disaster Relief Assistance 13-83

Group Legal Services Plans 13-84

Identity Theft Protection Services 13-85

CHAPTER 14

Educational Assistance 14-1

Educational Assistance Programs 14-1

Qualified Scholarships and Tuition Reductions 14-7

Job-Related Educational Benefits 14-12

Education Savings Plans 14-15

CHAPTER 15

Paid Time Off and Severance Pay Plans 15-1

Paid Time Off Plans 15-1

Employer Credit for Paid Family and
Medical Leave 15-12

Severance Pay Plans 15-18

Golden Parachute Payments 15-52

CHAPTER 16

Family and Medical Leave 16-1

Basic Concepts 16-2

Covered Employers 16-3

Eligible Employees 16-9

Qualifying Family and Medical Leave 16-18

Certification of FMLA Leave Eligibility 16-57

Substitution of Paid Leave 16-66

Employee Benefits During Leave 16-72

Rights upon Return from FMLA Leave 16-76

Failure to Return from FMLA Leave 16-81

Relationship to Group Health Plan Rules 16-82

Relationship to Cafeteria Plan Rules 16-84

Notice, Disclosure, and Recordkeeping Requirements 16-89

Relationship to State Laws 16-94

Penalties and Enforcement 16-94

CHAPTER 17

Age Discrimination in Employment Act of 1967 17-1

Basic Concepts 17-1

Covered Employers 17-7

Covered Employees 17-8

Providing Lesser Benefits to Older Workers 17-12

Bona Fide Plan Requirements 17-14

Cost-Equivalency Rule 17-14

Using Retirement Benefits to Reduce Other Benefits 17-20

Providing Greater Benefits to Older Workers 17-24

Waiver of ADEA Rights and Claims 17-26

Arbitration of ADEA Claims 17-35

Penalties 17-36

Relationship to State Laws 17-37

CHAPTER 18

Americans with Disabilities Act of 1990 18-1

Basic Concepts 18-2

Covered Employers 18-2

Covered Employees 18-3

Covered Disabilities 18-4

Effect on Welfare Benefit Plan Design 18-23

Disability Inquiries and Confidentiality 18-36

Procedures for ADA Claims 18-47

Penalties 18-49

Relationship to State Laws 18-49

CHAPTER 19

Other Federal Laws 19-1

Labor Laws and Collective Bargaining 19-1

Title VI of the Civil Rights Act of 1964 19-7

Title VII of the Civil Rights Act of 1964 19-7

Equal Pay Act of 1963 19-23

Rehabilitation Act of 1973 19-25

Worker Adjustment and Retraining Notification Act of 1988 19-27

Employee Benefits of Bankrupt Companies 19-33

Veterans' Health Care Amendments of 1986 19-36

Uniformed Services Employment and Reemployment Rights Act of 1994 19-38

Genetic Information Nondiscrimination Act of 2008 19-57

Miscellaneous 19-63

CHAPTER 20

Funding and Financing Welfare Benefits 20-1

Overview of Funding Alternatives 20-1

Welfare Benefit Fund Rules 20-12

Voluntary Employees' Beneficiary Associations 20-32

Funding Postretirement Medical Benefits Under a Pension Plan 20-41

Funding Retiree Group Term Life Insurance Through a Pension Plan 20-57

Financing Welfare Benefits with Life Insurance 20-59

CHAPTER 21

Financial Accounting Rules for Nonpension Retiree and Postemployment Benefits 21-1

Postretirement Welfare Benefits 21-1

Disclosure Requirements 21-7

Reducing or Eliminating the Accounting Liability 21-12

Postemployment Benefits 21-13

GLOSSARY GL-1

TABLES

Cases T-1

Department of Labor Regulations and Pronouncements T-21

ERISA Sections T-27

Internal Revenue Code Sections T-31

INDEX IN-1

List of Questions

Chapter 1 Introduction

A Road Map to the Eighteenth Edition

Q 1:1 How do the individual chapters explain pieces of the employee welfare benefit law puzzle? **1-2**

A Thumbnail Guide to Important Regulatory Goals

Q 1:2 Why are employee welfare benefit plans so heavily regulated? . **1-5**

Q 1:3 Why are there so many different laws regulating employee welfare benefit plans? **1-5**

Q 1:4 Are employers required to offer employee welfare benefits to employees? **1-5**

Q 1:5 How is regulation of employee welfare benefits structured to accomplish the desired social policy goals? **1-6**

Q 1:6 Which federal agencies have jurisdiction over employee benefits? **1-7**

Q 1:7 When employers design their welfare benefit plans, must they duplicate various governmental benefits? **1-7**

Q 1:8 Do states impose another layer of regulation on employee welfare benefit plans? **1-7**

Practical Plan Administration

Q 1:9 How, ideally, should an employer approach designing and administering employee welfare benefit plans? **1-8**

Chapter 2 The Regulatory Scheme: ERISA

Basic Concepts and Definitions

Q 2:1 What does the Employee Retirement Income Security Act of 1974 cover? **2-2**

Q 2:2 How does ERISA regulate the structure or design of a welfare benefit plan? 2-4
Q 2:3 Who is the plan sponsor? 2-4
Q 2:4 Who is the plan administrator? 2-4

Covered Employers

Q 2:5 Which employers and other entities are subject to ERISA? 2-5
Q 2:6 Is there a minimum number of employees required for ERISA coverage? 2-6

Covered Employees

Q 2:7 Who is considered to be an employee for ERISA purposes? . . . 2-6
Q 2:8 When does an individual become a plan participant in a welfare benefit plan for ERISA purposes? 2-7
Q 2:9 When does an individual stop being a participant in a welfare benefit plan for ERISA purposes? 2-7
Q 2:10 Is the employee's spouse covered by ERISA? 2-8

Covered Plans

Q 2:11 What constitutes an employee welfare benefit plan for purposes of ERISA? 2-9
Q 2:12 Does ERISA cover employee benefit plans even if they are employee-pay-all plans? 2-10
Q 2:13 Is an employee assistance program an ERISA plan? 2-12
Q 2:14 Is a health savings account subject to ERISA? 2-12
Q 2:15 Is a health reimbursement arrangement (HRA) subject to ERISA? 2-13
Q 2:16 Is a plan covering only one employee subject to ERISA? 2-14
Q 2:17 Can an individual's employment agreement constitute an ERISA plan? 2-14
Q 2:18 What is a top-hat welfare benefit plan, and to what extent does ERISA regulate it? 2-15
Q 2:19 Can a top-hat welfare benefit plan cover some employees who are not part of a select group of management or highly compensated employees? 2-15
Q 2:20 Which welfare benefit plans are not covered by ERISA? 2-16
Q 2:21 Are there employee benefit practices and programs that are not considered employee welfare benefit plans under ERISA? 2-17
Q 2:22 When does a "practice" constitute a "plan" for the purposes of ERISA? 2-18

Multiple Employer Welfare Arrangements

Q 2:23 What is a multiple employer welfare arrangement? 2-20

Q 2:24	What is an Association Health Plan?	2-20
Q 2:25	How do ERISA and other laws apply to Association Health Plans?	2-23
Q 2:26	What are the reporting requirements for Association Health Plans?	2-24

Requirements for Plan Document

Q 2:27	Does an ERISA plan exist even if there is no written plan document?	2-25
Q 2:28	What provisions must the written plan document contain?	2-27
Q 2:29	How specific must an amendment procedure be?	2-27
Q 2:30	May the plan document contain other provisions?	2-28
Q 2:31	Must benefits under an ERISA welfare benefit plan be definitely determinable?	2-28
Q 2:32	If benefits are paid out of the employer's general assets, must the plan document contain a funding policy and procedure?	2-29

Fiduciaries

Q 2:33	Who is a plan fiduciary?	2-29
Q 2:34	What is a named fiduciary?	2-30
Q 2:35	Is the employer a fiduciary?	2-31
Q 2:36	Are members of the employer's board of directors fiduciaries?	2-31
Q 2:37	Is a person who performs purely ministerial functions a fiduciary?	2-32
Q 2:38	Is an attorney, accountant, actuary, or consultant a fiduciary?	2-33
Q 2:39	Is a health maintenance organization an ERISA fiduciary?	2-33
Q 2:40	Is a plan required to have a specific number of fiduciaries?	2-34
Q 2:41	May fiduciary duties be allocated among fiduciaries and delegated by fiduciaries to others?	2-34

Fiduciary Responsibility

Q 2:42	What are the standards an ERISA fiduciary must satisfy in discharging duties under the plan?	2-34
Q 2:43	What is the exclusive-benefit rule?	2-35
Q 2:44	What is the prudent man rule?	2-35
Q 2:45	What is the diversification rule?	2-35
Q 2:46	How must fiduciaries adhere to the plan documents?	2-36
Q 2:47	What consequences may ensue if no written plan document exists?	2-37
Q 2:48	Does ERISA's fiduciary duty apply to selecting service providers for an employee benefit plan?	2-37

Mandated Benefit Provisions

Q 2:49 Does ERISA impose minimum benefit requirements on welfare benefit plans? 2-38

Q 2:50 Are employers free to design welfare benefit plans covered by ERISA in any manner they choose? 2-38

Plan Development: Adoption, Amendment, and Termination

Q 2:51 When an employer adopts a new employee welfare benefit plan, is the adoption of the plan a fiduciary function? 2-39

Q 2:52 Is an employer's decision to amend an existing employee welfare benefit plan a fiduciary function?. . . . 2-39

Q 2:53 Is an employer's decision to cut back or terminate an employee welfare benefit plan a fiduciary function? 2-40

Q 2:54 Can a written plan document be amended orally? 2-41

Q 2:55 Can a plan amendment be given retroactive effect? 2-42

Q 2:56 Can an employer implement plan cutbacks before "official" plan amendments have been adopted? 2-42

Q 2:57 May an employer amend an ERISA welfare benefit plan to reduce benefits prospectively?. . . . 2-43

Q 2:58 Is the employer responsible if the written description of the plan's benefits contains an error?. . . . 2-43

Plan Assets

Q 2:59 What are plan assets? 2-44

Q 2:60 Why is it important to know if there are plan assets? 2-44

Q 2:61 Are employee contributions for welfare benefit plan coverage considered to be plan assets? 2-45

Q 2:62 Are pretax contributions for welfare benefit plan coverage under a cafeteria plan considered to be plan assets? 2-45

Q 2:63 Does an unfunded welfare benefit plan have plan assets? 2-45

Q 2:64 Are funds held in trust for the payment of benefits (and expenses) under a welfare benefit plan considered to be plan assets? 2-45

Q 2:65 Is an insurance policy purchased by an employer or plan trustee for the purpose of providing plan benefits a plan asset? 2-45

Q 2:66 If an ERISA plan invests in another entity, such as a corporation or partnership, do the underlying assets of the other entity constitute plan assets? 2-47

Q 2:67 If an employer or plan trustee purchases an insurance contract to provide welfare plan benefits, are the underlying assets of the insurance company considered plan assets? 2-48

Q 2:68 What is the insurance company's "separate account"?. . . . 2-48

Q 2:69 Are the assets held in an insurance company's separate account in which an ERISA welfare benefit plan participates considered plan assets under ERISA? 2-49

Q 2:70 Are employee contributions to a welfare benefit plan considered to be plan assets? 2-49

Q 2:71 Are group insurance policy dividends under a welfare benefit plan's group insurance policy plan assets? 2-49

Q 2:72 Can all expenses related to a plan be paid from plan assets? . . 2-51

Trust Requirement

Q 2:73 Must plan assets always be in trust? 2-52

Q 2:74 Are employee contributions always plan assets that must be held in trust? 2-52

Q 2:75 Are there any exemptions from the trust requirement for employee contributions? 2-52

Q 2:76 When must employee contributions be placed in trust? 2-53

Q 2:77 Are elective contributions to cafeteria plans treated as employee contributions for purposes of the trust requirement? 2-53

Trustees and Investment Managers

Q 2:78 Must a trustee consent to being named or appointed? 2-54

Q 2:79 What responsibility does ERISA impose on a plan trustee? 2-54

Q 2:80 How is responsibility shared when there are multiple trustees? 2-54

Q 2:81 What if the plan assets are held in more than one trust? 2-54

Q 2:82 Can a plan delegate investment authority over plan assets? . . . 2-54

Q 2:83 May trustees follow instructions from named plan fiduciaries? 2-55

Prohibited Transactions

Q 2:84 What is a prohibited transaction under ERISA? 2-55

Q 2:85 What is a party in interest? 2-55

Q 2:86 What transactions between plans and parties in interest does ERISA prohibit? 2-56

Q 2:87 What acts by fiduciaries constitute prohibited self-dealing? 2-56

Q 2:88 Can a prohibited transaction be a continuing violation? 2-56

Q 2:89 Are exemptions from ERISA's prohibited transaction provisions available? 2-56

Fiduciary Liability

Q 2:90 What liabilities does ERISA impose on fiduciaries? 2-57

Q 2:91 May a fiduciary rely on information supplied by persons performing purely ministerial functions? 2-57

Q 2:92 If a fiduciary appoints trustees or other fiduciaries, does the appointing fiduciary retain any responsibility for the appointees' actions? 2-57
Q 2:93 How can a fiduciary be liable for the acts or omissions of another fiduciary? 2-58
Q 2:94 May the plan exculpate a fiduciary from violations of fiduciary duty? 2-58
Q 2:95 May a plan insure its fiduciaries, or itself, against liability or losses resulting from fiduciary breaches? 2-58
Q 2:96 If fiduciary liability insurance is purchased by a fiduciary or plan sponsor rather than by the plan, must the policy allow recourse against the fiduciary? 2-59
Q 2:97 May plan fiduciaries be indemnified out of plan assets? 2-59
Q 2:98 May the plan sponsor indemnify plan fiduciaries? 2-59
Q 2:99 Will correction of an ERISA violation avoid penalties? 2-59

Nonfiduciary Liability

Q 2:100 Can a person who is not an ERISA fiduciary be liable for a breach of fiduciary duty? 2-62
Q 2:101 Can a person who is not an ERISA fiduciary be liable for civil penalties under ERISA? 2-62

Bonding Requirement

Q 2:102 Who must be bonded? 2-63
Q 2:103 Why is bonding required? 2-63
Q 2:104 Is bonding required for all plans? 2-63
Q 2:105 When are funds and property "handled"? 2-63
Q 2:106 What dollar amount is required for a bond? 2-63
Q 2:107 What form or type of bond is acceptable? 2-64
Q 2:108 Which sureties can issue acceptable ERISA bonds? 2-64

Claims Procedure Requirement

Q 2:109 What is a claim? 2-64
Q 2:110 What are the requirements regarding reasonable claims procedures? 2-64
Q 2:111 If a claim is denied, how soon must the participant be informed? 2-65
Q 2:112 What information must be given to a claimant if a claim for benefits is denied? 2-65
Q 2:113 How long does a claimant have to appeal a denied claim? 2-66
Q 2:114 What procedural rights does a claimant have on appeal? 2-66
Q 2:115 Must a claimant be allowed to appear in person to appeal a claims denial? 2-66

Q 2:116 How soon after the appeal is the claimant entitled to a decision? 2-67
Q 2:117 What information must the decision on the appeal contain? . . . 2-67
Q 2:118 Do special claims procedure provisions apply to collectively bargained plans? 2-68
Q 2:119 Are any covered plans exempt from ERISA's claims procedure requirements? 2-68
Q 2:120 Can a claimant bring a lawsuit for benefits without first following the plan's claims and appeals procedures? 2-68
Q 2:121 Is there a time limit for filing a lawsuit for benefits? 2-69
Q 2:122 What standards of review do the courts use in deciding whether to uphold the fiduciary's decision denying an appeal of a denied claim? 2-70
Q 2:123 Must an ERISA welfare benefit plan establish procedures for complying with state domestic relations orders? 2-72

Reporting and Disclosure Requirements

Q 2:124 What are the employer's reporting and disclosure obligations under ERISA? 2-73
Q 2:125 Are all ERISA welfare benefit plans subject to all the reporting and disclosure requirements of ERISA? 2-74
Q 2:126 What is a summary plan description? 2-74
Q 2:127 Must the SPD be a single booklet? 2-74
Q 2:128 Must the SPD be written in a particular style? 2-75
Q 2:129 Must any particular information be included in the SPD? 2-76
Q 2:130 Does the full range of SPD requirements apply to HMOs offered by the employer? 2-79
Q 2:131 When must the SPD be distributed? 2-79
Q 2:132 Must the SPD be filed with the Department of Labor? 2-80
Q 2:133 What methods can the employer use to distribute SPDs? 2-81
Q 2:134 Must SPDs be updated periodically? 2-82
Q 2:135 Must plan participants be notified when an employee benefit plan is terminated? 2-83
Q 2:136 If the SPD and the official plan document contents differ, which governs the rights of employees? 2-83
Q 2:137 What COBRA continuation of group health plan coverage notices does ERISA require? 2-84
Q 2:138 What notice regarding QMCSOs does ERISA require? 2-85
Q 2:139 Are plan participants entitled to detailed notice of a partial or total claim denial? 2-86
Q 2:140 Are plan participants entitled to an annual statement of their plan benefits? 2-86
Q 2:141 What is a summary annual report? 2-86
Q 2:142 What information must be provided upon request to a participant or beneficiary? 2-86

Q 2:143 May employee benefit plan communications be delivered electronically? 2-88

Q 2:144 What documents regarding welfare benefit plans must be filed with the DOL? 2-91

Q 2:145 What welfare benefit plans are exempt from the requirement of filing a Form 5500? 2-91

Q 2:146 When is an accountant's report required to be filed with Form 5500 for a welfare benefit plan? 2-93

Q 2:147 Can Form 5500 be filed electronically? 2-93

Q 2:148 What is the penalty if a Form 5500 is late or was never filed? 2-93

Q 2:149 What documents regarding welfare benefit plans must be filed with the DOL? 2-93

Q 2:150 What recordkeeping requirements does ERISA impose on employers? 2-94

Q 2:151 What records relating to various plan documents must be kept and for how long? 2-94

Q 2:152 May employee benefit plan records be maintained electronically? 2-94

Q 2:153 Does the DOL have a program that reduces fines for plan administrators who voluntarily correct employee benefit plans? 2-95

Preemption of State Law

Q 2:154 What is preemption of state law? 2-97

Q 2:155 Does ERISA supersede and preempt state laws affecting welfare benefit plans? 2-98

Q 2:156 When does a state law involve but not "relate to" an ERISA plan and therefore avoid preemption? 2-98

Q 2:157 Do state laws imposing charges or taxes on hospital bills "relate to" ERISA plans? 2-99

Q 2:158 Does ERISA preempt state labor laws affecting employee welfare benefit plans? 2-100

Q 2:159 What are the exceptions to ERISA's preemption of state laws purporting to regulate employee benefit plans? 2-100

Q 2:160 What state laws are saved from preemption under ERISA's saving clause? 2-101

Q 2:161 What is ERISA's "deemer clause"? 2-102

Q 2:162 If an ERISA plan is fully insured, can state law regulate the content of the policy purchased to provide benefits under the plan? 2-103

Q 2:163 Does ERISA preempt state administration of claims laws? 2-105

Q 2:164 Does ERISA preempt state laws that prohibit automatic enrollment arrangements? 2-105

Q 2:165 Does ERISA preempt state laws that attempt to require employer contributions to private welfare benefit plans? 2-106

Q 2:166 Does ERISA preempt state laws that regulate insurance companies and third-party administrators providing claims and other administrative services to self-insured plans? 2-106
Q 2:167 Does ERISA preempt state laws taxing employee welfare benefit plans? 2-106
Q 2:168 Does ERISA preempt state laws taxing insurance policy premiums paid with respect to employee welfare benefit plans? 2-107
Q 2:169 May a state use its garnishment laws to attach an employee's interest in a welfare benefit plan? 2-107
Q 2:170 Can states regulate the benefits provided by multiple-employer welfare arrangements? 2-107
Q 2:171 If the MEWA is covered by ERISA and is not fully insured, can a state regulate the MEWA under its laws applicable to commercial insurance companies? 2-109
Q 2:172 Can a state regulate Association Health Plans? 2-110

Penalties and Enforcement

Q 2:173 What civil penalty applies to a failure to provide participants with information? 2-110
Q 2:174 What ERISA penalty applies to failure to give the required notice of the right to COBRA continuation of group health plan coverage? 2-111
Q 2:175 What is the civil penalty for failing to file annual reports? 2-111
Q 2:176 What are the penalties for a failure to comply with the fiduciary responsibility provisions of ERISA? 2-112
Q 2:177 What is the penalty for engaging in a prohibited transaction? 2-112
Q 2:178 How does ERISA protect participants and beneficiaries against interference with their rights? 2-113
Q 2:179 How might ERISA violations result in criminal penalties? 2-114
Q 2:180 When does ERISA permit civil suits? 2-115
Q 2:181 May an employee benefit plan be sued as a separate entity? 2-116
Q 2:182 Can a plan's insurer be sued for benefits under ERISA? 2-116
Q 2:183 Can an action under ERISA be brought in state court? 2-116
Q 2:184 Can the exclusive jurisdiction of U.S. district courts under ERISA be defeated by filing, in a state court action, a complaint that asserts only state-law causes of action? 2-117
Q 2:185 What additional protection does ERISA provide to individuals seeking redress under the statute? 2-117
Q 2:186 What other enforcement authority does ERISA provide to the Secretary of Labor? 2-118
Q 2:187 What is the effect of mandatory arbitration of claims on a participant's ability to bring an ERISA action? 2-118

Remedies for Breach of Fiduciary Duties

Q 2:188 What remedies are available against ERISA fiduciaries who breach their fiduciary duties? 2-118

Q 2:189 May an ERISA plan sue, in its own name, a fiduciary of the plan for breach of fiduciary duties? 2-119

Q 2:190 May a plan participant, beneficiary, or fiduciary sue a breaching fiduciary of the plan under ERISA Section 409 and recover damages in his or her individual capacity? 2-119

Q 2:191 What kind of other equitable or remedial relief can a court require for a breach of fiduciary duty? 2-119

Q 2:192 Is a fiduciary of an ERISA plan who commits a fiduciary breach subject to extra contractual compensatory or punitive damages under ERISA? 2-120

Q 2:193 Can a plaintiff in an action for breach of fiduciary duty under ERISA Section 409(a) demand a jury trial? 2-120

Q 2:194 What is the statute of limitations for an action for breach of fiduciary duty under ERISA? 2-120

Remedies of Plan Participants and Beneficiaries

Q 2:195 Can a plan participant or beneficiary bring suit to recover plan benefits or to enforce his or her rights under the plan? 2-121

Q 2:196 Can a plan participant or beneficiary bring suit if the plan administrator fails to provide plan information as required under ERISA? 2-121

Q 2:197 Can a plan participant or beneficiary bring a civil action for any other reason under ERISA? 2-122

Q 2:198 Can a plan participant sue to enforce a summary plan description if it differs from the terms of the written plan? . . . 2-122

Q 2:199 Can a plan participant or beneficiary bring an action for plan benefits without exhausting the plan's administrative remedies? 2-122

Q 2:200 May a plan participant or beneficiary suing for and receiving payment of plan benefits receive compensatory or punitive damages? 2-123

Q 2:201 Is a plan participant or beneficiary suing for plan benefits entitled to a jury trial? 2-124

Q 2:202 Is a participant or beneficiary who wins a suit for benefits also entitled to attorneys' fees and costs? 2-124

Chapter 3 Group Health Plans: Structure and Administration

Impact of the Affordable Care Act

Q 3:1 Does the Affordable Care Act require an employer to adopt a new group health plan? 3-3

Q 3:2 How does the Affordable Care Act affect group health plans? 3-4
Q 3:3 When are group health plans required to comply with the Affordable Care Act? 3-5

Grandfathered Health Plans Under the Affordable Care Act

Q 3:4 What is a grandfathered health plan? 3-5
Q 3:5 Will all types of changes to a group health plan cause it to lose grandfathered plan status? 3-7
Q 3:6 Do changes in plan enrollees affect a plan's grandfathered status? 3-8
Q 3:7 Do changes in benefits under the plan affect grandfathered status? 3-10
Q 3:8 Do changes in cost sharing affect grandfathered status? 3-10
Q 3:9 Do changes in an employer's contributions for coverage affect grandfathered status? 3-12
Q 3:10 Do changes in annual limits affect grandfathered status? 3-14
Q 3:11 Will a change in insurance cause an insured plan to lose its grandfathered status? 3-15
Q 3:12 How do the grandfather rules apply to collectively bargained plans? 3-15
Q 3:13 How do the grandfather rules apply to wellness programs? . . . 3-16

Basic Concepts

Q 3:14 What is a group health plan? 3-16
Q 3:15 What is medical care? 3-19
Q 3:16 Do treatments or procedures that are cosmetic in nature or promote an individual's general well-being qualify as medical care? 3-21
Q 3:17 When can health reimbursement arrangements cover over-the-counter drugs? 3-23
Q 3:18 Is a group health plan required to cover all expenses that are considered medical care expenses? 3-24
Q 3:19 When does an employer have a medical plan? 3-25
Q 3:20 Is a health care FSA under a cafeteria plan considered a medical plan? 3-26
Q 3:21 Is dread disease coverage or first occurrence coverage a medical plan? 3-27
Q 3:22 Is a long-term care insurance plan considered to be a medical plan? 3-27
Q 3:23 Is a Section 401(h) retiree medical account under a pension or annuity plan considered a medical plan? 3-27
Q 3:24 Is a minimum number of employees a tax prerequisite for a medical plan? 3-28

Q 3:25 Is a self-employed individual considered an employee? 3-28

Employer Responsibility for Health Coverage

Q 3:26 Does federal law require an employer to provide a group health plan? 3-29
Q 3:27 Which employers are subject to the employer shared responsibility requirements?. 3-30
Q 3:28 How is the number of employees calculated for purposes of determining an employer's status as an applicable large employer? 3-31
Q 3:29 What is the employer shared responsibility penalty for large employers that do not offer health coverage? 3-35
Q 3:30 When is an employer that offers health coverage subject to an employer shared responsibility penalty? 3-36
Q 3:31 What kind of health coverage must be offered to employees to avoid a penalty under the employer shared responsibility requirements?. 3-37
Q 3:32 When does employer-provided coverage provide minimum value? 3-38
Q 3:33 When is employer-provided coverage affordable for an employee? 3-39
Q 3:34 How are wellness incentives taken into account in determining if employer-provided coverage provides minimum value and is affordable? 3-41
Q 3:35 How are employer contributions to health reimbursement arrangements taken into account in determining if employer-provided coverage provides minimum value and is affordable? 3-41
Q 3:36 How are flex credits under a cafeteria plan taken into account in determining if employer-provided coverage provides minimum value and is affordable? 3-42
Q 3:37 How is an opt-out payment treated for purposes of the minimum value and affordability requirements?. 3-43
Q 3:38 How does an employer meet the requirement to offer coverage to employees? 3-44
Q 3:39 When are employees eligible for premium tax credits? 3-45
Q 3:40 How are full-time employees counted for purposes of the employer shared responsibility penalty? 3-47
Q 3:41 Are employers required to file returns in connection with the employer shared responsibility requirements?. 3-53
Q 3:42 How is the employer responsibility assessed and paid? 3-54
Q 3:43 Is an employer required to pay the cost of group health plan coverage for employees? 3-56
Q 3:44 Are employees required to enroll in an employer's group health plan? 3-56
Q 3:45 Are the shared responsibility provisions constitutional?. 3-58

Health Insurance Exchanges and Group Health Insurance

Q 3:46 What is a Health Insurance Exchange? 3-60
Q 3:47 What is a qualified health plan? 3-61
Q 3:48 What is an essential health benefits package? 3-62
Q 3:49 What is a SHOP? 3-64
Q 3:50 Are qualified small employers required to purchase health coverage through an Exchange? 3-66
Q 3:51 Does federal law provide protections for employers seeking group health insurance coverage? 3-66
Q 3:52 How must a plan sponsor handle medical loss ratio rebates? 3-68

Types of Plans

Q 3:53 How does an employer make medical benefits available to employees? 3-71
Q 3:54 What is an HMO? 3-72
Q 3:55 How are traditional HMOs different from traditional medical plans? 3-73
Q 3:56 What is a federally qualified HMO? 3-74
Q 3:57 What is a PPO? 3-76
Q 3:58 How does a PPO differ from an HMO? 3-76
Q 3:59 What is a point-of-service plan? 3-77
Q 3:60 What is a defined contribution health plan? 3-77
Q 3:61 What is a dental maintenance organization? 3-78
Q 3:62 What is a multiple-employer welfare arrangement? 3-78
Q 3:63 What is an Association Health Plan? 3-78
Q 3:64 What is a collectively bargained medical plan? 3-79

Funding Types and Cost Sharing

Q 3:65 How is an employer-provided group health plan funded? 3-80
Q 3:66 May an employer share the cost of a group health plan with employees? 3-80
Q 3:67 What is managed care? 3-82
Q 3:68 What is utilization review? 3-82
Q 3:69 What is preadmission certification? 3-83
Q 3:70 What is concurrent review? 3-84
Q 3:71 What is retrospective review? 3-84
Q 3:72 What is a second surgical opinion procedure? 3-85
Q 3:73 What is individual case management? 3-85
Q 3:74 How are preferred providers incorporated into health care arrangements? 3-86

Q 3:75 Does ERISA prevent employers from including managed care or cost containment features in their group health plans? . . . 3-86

Plan Administration

Q 3:76 How does the Affordable Care Act affect administration of a group health plan? . . . 3-89

Q 3:77 Are there specific requirements for health plan SPDs? . . . 3-89

Q 3:78 What requirements does the Affordable Care Act mandate for health plan benefit and coverage explanations? . . . 3-90

Q 3:79 What requirements apply to the use of electronic media for health plan transactions? . . . 3-94

Q 3:80 Is a health plan permitted to use electronic means to communicate with plan participants and maintain plan records? . . . 3-96

Q 3:81 How do the federal medical privacy and security regulations affect the administration of group plans? . . . 3-100

Q 3:82 What fiduciary duty exists regarding the selection of health care providers or plans? . . . 3-101

Q 3:83 When can health plans be sued by plan participants for a breach of fiduciary duty? . . . 3-103

Q 3:84 Must employer contributions to group health plans be held in trust? . . . 3-104

Q 3:85 Are group insurance policy dividends under a group health plan's group insurance policy treated as plan assets? . . . 3-105

Q 3:86 Must managed care plans pass on their negotiated discounts to plan participants? . . . 3-106

Q 3:87 Must an employer's determinations regarding its employees' eligibility for group health plan coverage always be given deference? . . . 3-108

Q 3:88 Are employers acting in a fiduciary capacity when communicating about the likely future of plan benefits? . . . 3-108

Health Benefit Claim Processing and Review

Q 3:89 Does federal law govern the processing and review of health benefit claims? . . . 3-109

Q 3:90 What types of claims are subject to the claim procedure regulations? . . . 3-109

Q 3:91 What time limits apply to the processing of health benefit claims? . . . 3-110

Q 3:92 Do the claim procedure regulations govern the time frame for paying claims? . . . 3-112

Q 3:93 Are group health plans required to follow specific procedures in processing health benefit claims? . . . 3-113

Q 3:94 Are group health plans subject to specific procedures and time limits for reviewing denied claims? . . . 3-113

Q 3:95 What are the Affordable Care Act requirements for an internal review process? 3-115

Q 3:96 What are the Affordable Care Act requirements for external review of an adverse benefit decision? 3-117

Q 3:97 When can a claimant take a claim to court? 3-118

Q 3:98 Can a plan limit the time period for filing a lawsuit? 3-119

Q 3:99 Can a health care provider sue a plan to collect payment for medical expenses incurred by a plan participant? 3-120

Coordination of Benefits

Q 3:100 What is a coordination of benefits provision? 3-122

Q 3:101 What is the purpose of a COB provision? 3-122

Q 3:102 Do all group health plans have COB provisions? 3-122

Q 3:103 What if only one plan has a COB provision? 3-123

Q 3:104 Are COB provisions uniform? 3-123

Q 3:105 Does ERISA preempt state COB laws for self-insured and/or insured group health plans? 3-124

Q 3:106 What is the overall scheme of the COB rules? 3-124

Q 3:107 What are the general rules concerning coordination of insured plan benefits payable to an individual who is covered both as an employee or retiree and as a dependent under separate plans? 3-125

Q 3:108 Which plan pays first when a retired individual is covered under a retiree medical plan and Medicare and is also covered as a dependent under a spouse's medical plan for active employees? 3-126

Q 3:109 What are the general rules for COB for dependent children when each parent has coverage? 3-126

Q 3:110 How are insured plan benefits coordinated if an employee is laid off or retires? 3-127

Q 3:111 How are insured plan benefits coordinated if an individual is covered under COBRA continuation coverage and is also covered under another plan? 3-128

Q 3:112 If none of the previous rules determines which plan pays first, how is the determination made? 3-128

Q 3:113 What if all of the order of determination rules fail to determine which plan pays first? 3-128

Q 3:114 How much does a secondary plan pay? 3-129

Q 3:115 Can state law prohibit a self-insured employee benefit plan from subtracting benefits payable under the state's no-fault law or require the plan to be the primary payer with the no-fault insurance carrier as the secondary payer only? 3-130

Subrogation

Q 3:116 What is subrogation? 3-130

Q 3:117 Are subrogation provisions enforceable by a group health plan? **3-131**

Legal Requirements Affecting Health Plans

Q 3:118 Are medical plans subject to ERISA? **3-134**

Q 3:119 Does federal law require continued health coverage for terminated and retired employees? **3-135**

Q 3:120 Must health coverage be provided to individuals who take family or medical leave? **3-135**

Q 3:121 Must medical plan coverage be extended when an employee takes military leave? **3-136**

Q 3:122 Must a medical plan cover care of veterans' non-service-connected disabilities in a Veterans Administration facility? . . **3-136**

Q 3:123 Must a medical plan cover inpatient care for military retirees and their dependents in military hospitals? **3-136**

Q 3:124 May a plan reduce or terminate medical coverage for an individual who is eligible for Medicare? **3-137**

Q 3:125 Do state insurance laws or state laws mandating the coverage of particular benefits or health care providers apply to group health plans? **3-137**

Tax Treatment of Employers

Q 3:126 May an employer deduct its contributions to or payments under a medical benefit plan? **3-138**

Q 3:127 What is the small employer health insurance credit? **3-138**

Q 3:128 Are group health plans subject to any excise taxes or fees? . . . **3-144**

Tax Treatment of Participants

Q 3:129 Are the employer's contributions to an employer-sponsored medical plan taxable to employees? **3-145**

Q 3:130 Is employer-sponsored group health plan coverage required to be reported on an employee's Form W-2? **3-145**

Q 3:131 What types of health benefit plans are required to be reported on employees' Forms W-2? **3-146**

Q 3:132 How is the reportable cost of employer-sponsored coverage calculated? **3-151**

Q 3:133 How is the cost of employer-sponsored health coverage reported on Form W-2? **3-154**

Q 3:134 Are contributions made by an employer for health care for an employee's spouse or dependents taxable to the employee? **3-155**

Q 3:135 What is the tax treatment of coverage for an employee's adult child? **3-157**

Q 3:136	What is the tax treatment of employer payments or reimbursements for employees' premiums for individual health insurance policies?	3-157
Q 3:137	What is the tax treatment of an employer's payment for an employee's coverage under a group health plan sponsored by the employer of the employee's spouse?	3-158
Q 3:138	Are employer contributions for medical coverage for retired employees taxable to those individuals?	3-159
Q 3:139	Are employer contributions for medical coverage for a deceased employee's surviving spouse and dependents taxable to those individuals?	3-160
Q 3:140	Are employer contributions for medical coverage for laid-off employees taxable to those individuals?	3-160
Q 3:141	Are employer contributions for medical coverage under a severance plan taxable to terminated employees?	3-160
Q 3:142	Are employer contributions toward premiums for COBRA continuation coverage taxable to qualified beneficiaries?	3-160
Q 3:143	How are health benefits for an employee's same-sex spouse treated for tax purposes?	3-161
Q 3:144	What if the employer's plan covers domestic partners?	3-162
Q 3:145	What is the tax treatment of employer-provided medical coverage for pre-adoptive children?	3-164
Q 3:146	Are benefits received under an employer-provided health plan taxable to employees?	3-164
Q 3:147	How are highly compensated individuals taxed if a self-insured group health plan discriminates in favor of highly compensated employees?	3-165
Q 3:148	If a self-insured group health plan is discriminatory, must the employer withhold taxes from the amount included in the gross income of highly compensated individuals?	3-165
Q 3:149	Are payments received by an employee under a fixed indemnity health plan excludable from income?	3-166
Q 3:150	What is the tax treatment of employee wellness programs?	3-167
Q 3:151	Are benefits received by retired employees under an employer-provided medical plan taxable to those individuals?	3-168
Q 3:152	Are benefits received under an employer-provided medical plan by the surviving spouse and dependents of a deceased employee taxable to those individuals?	3-168
Q 3:153	Are benefits actually received by laid-off employees under an employer-provided medical plan taxable to those individuals?	3-168
Q 3:154	Is a health care bonus that covers a plan's annual insurance deductible excluded from income under Code Section 105?	3-169
Q 3:155	What if the benefits are being received by terminated employees under a severance plan that provides medical coverage?	3-169

Q 3:156	Can a self-insured plan reimburse expenses incurred by an employee before the plan is adopted?	**3-169**
Q 3:157	Is an employer-provided advance reimbursement or loan to cover future medical expenses excludable from an employee's income?	**3-170**
Q 3:158	What is the income tax treatment of premiums paid for medical insurance coverage by a self-employed individual?	**3-171**
Q 3:159	What is the income tax treatment of medical care coverage of a self-employed individual under a self-insured plan maintained by the individual?	**3-172**
Q 3:160	What is the income tax treatment of premiums for medical insurance coverage paid by a partnership for coverage of its partners?	**3-172**
Q 3:161	What is the income tax treatment of medical care coverage provided to partners under a self-insured plan maintained by the partnership?	**3-172**
Q 3:162	What is the income tax treatment of premiums for medical insurance coverage for shareholder-employees of S corporations?	**3-173**
Q 3:163	What is the income tax treatment of medical benefits received by a shareholder-employee of an S corporation under a self-insured medical plan?	**3-175**

Health Reimbursement Arrangements

Q 3:164	How are payments to an employee under a health reimbursement arrangement treated for tax purposes?	**3-175**
Q 3:165	Can contributions to an HRA be made through salary reductions or otherwise provided through a cafeteria plan?	**3-176**
Q 3:166	What benefits can be provided through an HRA?	**3-177**
Q 3:167	Can an HRA continue to reimburse former employees following retirement or termination of employment?	**3-178**
Q 3:168	Can an HRA reimburse medical expenses of a designated beneficiary following the death of the employee account holder?	**3-180**
Q 3:169	If an employee is covered by both a health care FSA and an HRA, which plan pays first?	**3-180**
Q 3:170	Can the value of unused vacation and sick leave be contributed to an HRA when the employee retires?	**3-181**
Q 3:171	May an employee or retiree receive unused reimbursement amounts from an HRA in cash or other benefits?	**3-182**
Q 3:172	Can an HRA make expense reimbursements using debit or credit cards?	**3-182**

Medical Savings Accounts

Q 3:173	What is a medical savings account?	**3-186**

Q 3:174 Who is eligible for a medical savings account? 3-187
Q 3:175 What is a high-deductible health plan for purposes of an MSA? 3-187
Q 3:176 What other medical coverage can an MSA participant have? 3-188
Q 3:177 What is the maximum annual contribution that can be made to an MSA? 3-188
Q 3:178 Do any nondiscrimination rules apply to employer contributions made to MSAs? 3-189
Q 3:179 How long does an employer or individual have to make MSA contributions? 3-189
Q 3:180 Do any tax reporting requirements apply with respect to MSAs? 3-189
Q 3:181 What can amounts in an MSA be used for? 3-189
Q 3:182 Are earnings on amounts in an MSA taxable to the individual? 3-190
Q 3:183 Are distributions from the MSA for payment of medical expenses taxable to the individual? 3-190
Q 3:184 What is the income tax treatment of MSAs at death? 3-190

Health Savings Accounts

Q 3:185 What is a health savings account? 3-190
Q 3:186 Who may establish an HSA? 3-191
Q 3:187 What is a high-deductible health plan for purposes of an HSA? 3-192
Q 3:188 Are there special rules for determining whether a network plan qualifies as an HDHP? 3-194
Q 3:189 Can an individual qualify for HSA participation if he or she has other health coverage in addition to an HDHP? 3-195
Q 3:190 Can an individual qualify for HSA participation if he or she is covered by a health care FSA or an HRA? 3-197
Q 3:191 Can a self-insured medical reimbursement plan sponsored by an employer be an HDHP? 3-199
Q 3:192 How are expenses applied against the HDHP deductible? 3-199
Q 3:193 How and when is an HSA established? 3-200
Q 3:194 Who may contribute to an HSA? 3-201
Q 3:195 How much may be contributed to an HSA? 3-201
Q 3:196 How does the full-contribution rule for part-year HSA eligible individuals work? 3-204
Q 3:197 What kinds of contributions can be made to an HSA? 3-206
Q 3:198 What is the tax treatment of an eligible individual's HSA contributions? 3-206
Q 3:199 Is there a deadline for making contributions to an HSA for a tax year? 3-207
Q 3:200 What happens if excess or incorrect contributions are made to an individual's HSA? 3-208

Q 3:201 What is the tax treatment of an HSA? **3-210**

Q 3:202 Can rollover contributions be made to an HSA?............ **3-210**

Q 3:203 When can an individual receive distributions from an HSA and how are distributions taxed? **3-212**

Q 3:204 What are the qualified medical expenses that are eligible for tax-free distributions? **3-213**

Q 3:205 Must employers who make contributions to an employee's HSA determine whether HSA distributions are used exclusively for qualified medical expenses?.............. **3-214**

Q 3:206 What happens to the money remaining in an HSA when the account holder dies?............................. **3-214**

Q 3:207 Can an HSA be used to borrow or lend money? **3-215**

Q 3:208 Do any nondiscrimination rules apply if an employer makes contributions to HSAs for employees? **3-215**

Q 3:209 Who are comparable participating employees for purposes of the comparability rules?........................... **3-216**

Q 3:210 When are employer contributions considered comparable? ... **3-218**

Q 3:211 What are the special comparability rules for contributions to the HSAs of non-highly compensated employees?........... **3-220**

Q 3:212 How are comparable contributions made?................ **3-221**

Q 3:213 Can an employer recoup excess noncomparable contributions from an employee's HSA?......................... **3-223**

Q 3:214 Do the comparability rules apply to HSA contributions made through a cafeteria plan?........................... **3-223**

Q 3:215 What are the reporting rules for an HSA?................. **3-224**

Q 3:216 Are HSAs subject to COBRA continuation coverage under Code Section 4980B?............................. **3-224**

Q 3:217 May eligible individuals use debit, credit, or stored-value cards to receive distributions from an HSA for qualified medical expenses? **3-224**

Q 3:218 Can an HSA account holder authorize someone else to withdraw funds from his or her HSA?.................. **3-225**

Q 3:219 Can a partnership or S corporation contribute to an HSA on behalf of a partner or S corporation shareholder-employee?............................ **3-225**

Q 3:220 What is the tax treatment of a partnership's contributions to a partner's HSA?.................................. **3-225**

Q 3:221 What is the tax treatment of an S corporation's contributions to the HSA of a shareholder-employee?.................. **3-226**

Q 3:222 Are HSAs subject to ERISA?.......................... **3-227**

Employee Assistance Programs

Q 3:223 What is an employee assistance program? **3-228**

Q 3:224 Why do employers make EAPs available to their employees? **3-228**

Q 3:225 What are the basic types of EAPs? 3-229
Q 3:226 Is EAP participation voluntary? 3-229
Q 3:227 Are EAP services always confidential? 3-229
Q 3:228 Is an EAP an ERISA plan? 3-230
Q 3:229 What are the consequences of an EAP being an ERISA plan? . 3-231
Q 3:230 Is an EAP subject to COBRA? 3-231
Q 3:231 Is an EAP subject to the requirements for group health plans? . 3-231

Workers' Compensation

Q 3:232 Are employers required to provide employees with medical benefits under state workers' compensation laws? 3-232
Q 3:233 Are medical benefit plans maintained in compliance with the requirements of state workers' compensation laws subject to ERISA? 3-232
Q 3:234 If an employer maintains a medical benefit plan subject to ERISA that provides coverage for job-related injuries or illnesses, are an employee's tort remedies against the employer under state law preempted? 3-235

Chapter 4 Group Health Plans: Mandated Benefits and Standards

Basic Rules

Q 4:1 How does federal law regulate the coverage and benefits provided by group health plans? 4-3
Q 4:2 How does the Affordable Care Act regulate group health plan coverage and benefits? 4-5
Q 4:3 Which plans are subject to the group health plan requirements? 4-5
Q 4:4 Are expatriate health plans subject to the group health plan requirements? 4-8
Q 4:5 Are all covered plans required to comply with the requirements of the Affordable Care Act? 4-9
Q 4:6 Are any health benefits excepted from the group health plan requirements? 4-9
Q 4:7 Is "wraparound" coverage an excepted benefit? 4-12
Q 4:8 Are employee assistance programs excepted benefits? 4-13
Q 4:9 How do the group health plan requirements apply to health reimbursement arrangements and other employer payment plans? 4-14
Q 4:10 What is a Qualified Small Employer Health Reimbursement Arrangement? 4-19
Q 4:11 What is an Individual Coverage Health Reimbursement Arrangement? 4-22

Q 4:12	What is an Excepted Benefit Health Reimbursement Arrangement?	**4-29**
Q 4:13	Are health care flexible spending arrangements subject to the group health plan requirements?	**4-30**
Q 4:14	Are high-deductible health plans and health savings accounts subject to the group health plan requirements?	**4-31**
Q 4:15	Do the group health plan requirements apply to partners and self-employed individuals?	**4-31**
Q 4:16	What special requirements apply to multiemployer plans and multiple-employer welfare arrangements?	**4-32**
Q 4:17	Do any of the group health plan requirements undercut ERISA's preemption of state law provisions?	**4-33**
Q 4:18	If a state law imposes limits on group health plans, does ERISA or the state law control?	**4-33**
Q 4:19	What penalties are imposed for violations of the group health plan requirements?	**4-33**
Q 4:20	Do individuals have a right to bring a private lawsuit under the group health plan requirements?	**4-35**
Q 4:21	What are the disclosure requirements for group health plans?	**4-36**
Q 4:22	What is a material reduction in covered services or benefits?	**4-37**

Nondiscrimination Based on Health Status

Q 4:23	Does federal law prohibit group health plans from discriminating based on health status?	**4-38**
Q 4:24	What is a health factor?	**4-39**
Q 4:25	What are eligibility rules?	**4-39**
Q 4:26	Do the nondiscrimination rules require a group health plan to provide specific benefits?	**4-40**
Q 4:27	Can a plan apply different rules to different groups of employees?	**4-41**
Q 4:28	May a group health plan require an individual to pass a physical exam or fill out a health questionnaire before enrolling in the plan?	**4-43**
Q 4:29	May a plan deny coverage to an otherwise eligible individual because he or she is hospitalized on the enrollment date?	**4-44**
Q 4:30	May a plan deny coverage for employees who are not actively at work on the enrollment date?	**4-45**
Q 4:31	May a plan impose any enrollment restrictions on late enrollees?	**4-46**
Q 4:32	May a plan deny benefits for an injury because of how it occurred?	**4-46**
Q 4:33	Can a group health plan deny enrollment or benefits to an individual who engages in a high-risk activity?	**4-46**

Q 4:34 Can a group health plan charge higher premiums to some individuals because of health factors? 4-47
Q 4:35 May a group health plan provide more favorable eligibility rules or premiums for individuals with adverse health factors? 4-48
Q 4:36 May a group health plan reward employees with discounts for good health or good health habits? 4-49
Q 4:37 What is a wellness program? 4-50
Q 4:38 What are the nondiscrimination requirements for wellness programs? 4-50
Q 4:39 May a group health plan use genetic information when administering the plan? 4-55
Q 4:40 What plans are covered by the genetic information nondiscrimination requirements? 4-56
Q 4:41 What is the prohibition on the use of genetic information to adjust group rates? 4-57
Q 4:42 What is the prohibition on requesting or requiring genetic tests? 4-58
Q 4:43 What is the prohibition on the collection of genetic information? 4-59

Prohibition of Discrimination in Favor of Highly Compensated Employees

Q 4:44 Do the nondiscrimination rules of Code Section 105 apply to all employer-provided medical plans? 4-62
Q 4:45 What is a self-insured medical reimbursement plan? 4-62
Q 4:46 When is a group health plan nondiscriminatory under Code Section 105(h)? 4-63
Q 4:47 Who is a highly compensated individual? 4-63
Q 4:48 When does a group health plan discriminate as to eligibility? . . . 4-64
Q 4:49 When does a group health plan discriminate with respect to benefits? 4-64
Q 4:50 Do the Section 105(h) nondiscrimination rules apply to executive-only physical examination programs? 4-65
Q 4:51 If an employer has multiple group health plans, are they tested separately under Code Section 105(h)? 4-66
Q 4:52 If a discriminatory group health plan is included in a cafeteria plan, what is the effect on the cafeteria plan? 4-66
Q 4:53 What are the consequences if a group health plan is discriminatory? 4-66

Waiting Periods and Preexisting-Condition Exclusions

Q 4:54 Can a group health plan impose a waiting period for coverage under the plan? 4-66
Q 4:55 Can a group health plan rescind coverage for a participant or beneficiary once it has begun? 4-70

Q 4:56 Can a group health plan impose any preexisting-condition exclusions on coverage under the plan? 4-72
Q 4:57 What is a preexisting-condition exclusion? 4-73

Coverage Limits and Cost-Sharing Requirements

Q 4:58 Does federal law restrict or prohibit a group health plan from imposing lifetime and annual limits on covered services? 4-75
Q 4:59 What plans are subject to the prohibitions on lifetime and annual limits under the Affordable Care Act? 4-76
Q 4:60 Are group health plans permitted to impose cost-sharing requirements on plan participants? 4-77
Q 4:61 What are essential health benefits for purposes of the prohibitions on annual and lifetime limits and the cost-sharing limits? 4-79
Q 4:62 What special requirements apply to emergency services? 4-79

Dependent Coverage Requirements

Q 4:63 Are group health plans required to provide coverage for spouses and dependent children? 4-82
Q 4:64 When is a group health plan required to provide dependent coverage for a participant's adult child? 4-82
Q 4:65 What is the requirement to provide dependent coverage for college students on medically necessary leaves of absence? . 4-84
Q 4:66 Does federal law permit a group health plan to exclude adopted children and children placed for adoption? 4-85
Q 4:67 When is a child considered to be placed for adoption? 4-86
Q 4:68 If the participant's or beneficiary's support obligation terminates, can the group health plan require reimbursement for expenses incurred on behalf of a child during the child's placement for adoption? 4-87
Q 4:69 Must a group health plan cover the birth expenses of a child adopted or placed for adoption to the same extent as birth expenses of a child born to the plan participant? 4-87
Q 4:70 Is a group health plan required to cover the expenses of the birth mother? 4-88
Q 4:71 Must a group health plan cover birth and other expenses of a child incurred prior to placement for adoption if the plan participant or beneficiary must pay such expenses as a condition of the adoption? 4-88
Q 4:72 If the group health plan's coverage is being provided through an HMO, must the plan cover expenses for birth, illness, or accident outside the service area occurring prior to or during transit of an adoptive child to the HMO service area? 4-88
Q 4:73 Do the adopted-child provisions of ERISA apply to children of retirees? 4-89

Q 4:74 Are group health plans required to recognize same-sex spouses or domestic partners? 4-89
Q 4:75 May employers require employees to provide documentation of their dependents' eligibility? 4-91

Special Enrollment Rights

Q 4:76 Are group health plans and health insurance issuers required to provide special enrollment periods for individuals or their dependents? 4-92
Q 4:77 Under what circumstances must a plan or issuer provide a special enrollment period for individuals who lose other coverage? 4-93
Q 4:78 Under what circumstances must a plan or issuer provide a special enrollment period for new dependents by reason of marriage, birth, adoption, or placement for adoption? 4-94
Q 4:79 Are there notice and procedural rules applicable for purposes of special enrollment? 4-95

Mandated Benefits and Patient Protections

Q 4:80 Does federal law require group health plans to provide specific benefits? 4-96
Q 4:81 What are the requirements for preventive services under the Affordable Care Act? 4-97
Q 4:82 Does federal law require a health plan to allow employees to choose their health care providers? 4-100

Mental Health and Substance Use Disorder Benefits

Q 4:83 How does federal law regulate mental health and substance use disorder benefits? 4-103
Q 4:84 What plans are required to comply with the parity requirements? 4-105
Q 4:85 What are the parity requirements for annual and lifetime dollar limits? 4-106
Q 4:86 What are the parity requirements for financial requirements and treatment limitations? 4-107

Benefits for Maternity, Newborns, and Mothers

Q 4:87 Does federal law require a medical plan to offer maternity benefits? 4-113
Q 4:88 Does federal law require group health plans to cover abortions? 4-114
Q 4:89 Does federal law require group health plans to cover prescription contraceptives? 4-115
Q 4:90 Can a group health plan limit hospitalization benefits for newborns and mothers or require that such benefits be authorized or precertified as a condition of coverage? 4-117

Q 4:91 Does federal law permit group health plans to reduce or eliminate coverage for pediatric vaccines? **4-119**

Benefits Under the Women's Health and Cancer Rights Act

Q 4:92 What is the Women's Health and Cancer Rights Act? **4-119**

Q 4:93 Under WHCRA, may group health plans, insurance companies, or HMOs impose deductibles or coinsurance requirements for reconstructive surgery in connection with a mastectomy? **4-120**

Q 4:94 What are the notice requirements under the WHCRA? **4-120**

Qualified Medical Child Support Orders

Q 4:95 Does a group health plan have to honor a qualified medical child support order? **4-121**

Q 4:96 When is a court order a QMCSO? **4-122**

Q 4:97 What information will an employer receive in connection with a QMCSO? **4-123**

Q 4:98 To which group health plans does a QMCSO apply? **4-123**

Q 4:99 What are the plan administrator's responsibilities regarding a QMCSO? **4-123**

Q 4:100 What must employers and plan administrators do upon receipt of a QMCSO? **4-124**

Q 4:101 What if an order names an employee who is not enrolled in the plan? **4-125**

Q 4:102 If a plan provides benefits solely through an HMO or other managed care organization, is the plan required to provide comparable benefits to a child who lives outside the HMO's service area? **4-126**

Q 4:103 May a plan provide benefits to a child of a participant pursuant to a medical child support order that is *not* a qualified order? **4-126**

Q 4:104 What type of coverage must be provided to a child under a QMCSO? **4-127**

Q 4:105 Does a group health plan have to provide any information to a custodial parent or state child support enforcement agency before the plan receives a medical child support order? **4-127**

Q 4:106 If the plan requires additional employee contributions for coverage of a child under a QMCSO, who is responsible for the payments? **4-128**

Q 4:107 How should benefits for a child receiving coverage under a QMCSO be paid? **4-128**

Q 4:108 May a group health plan impose preexisting-condition restrictions or exclusions on a child named in a QMCSO? . . . **4-128**

Q 4:109 When may a plan cancel coverage for a child under a QMCSO? **4-129**

Q 4:110 Does a child covered by a group health plan pursuant to a QMCSO have any right to COBRA continuation coverage? 4-129
Q 4:111 Must rights associated with QMCSOs be disclosed in the group health plan's SPD? 4-129
Q 4:112 What rights does the alternate recipient named in a QMCSO have? 4-129
Q 4:113 How is a QMCSO enforced? 4-129

Medicare Secondary-Payer Rules

Q 4:114 Can medical coverage be reduced or terminated if an individual is eligible for Medicare? 4-130
Q 4:115 When does a plan take into account Medicare entitlement or eligibility? 4-133
Q 4:116 What is the additional prohibition against differentiating benefits based on either eligibility for or entitlement to Medicare on the basis of ESRD? 4-134
Q 4:117 For purposes of applying the MSP rules, when is the individual deemed to be in current employment status? 4-135
Q 4:118 Can an employer provide any financial incentive for employees who are Medicare beneficiaries not to enroll in the employer's group health plan? 4-136
Q 4:119 Can an employer refuse to cover, or provide less medical coverage for, older employees or older spouses who are entitled to Medicare? 4-136
Q 4:120 Can retiree medical plans be entirely secondary to Medicare? 4-137
Q 4:121 May a group health care plan refuse to pay expenses that are subject to Medicare private contracting? 4-138
Q 4:122 What sanctions apply for violating the Medicare secondary-payer rules? 4-139
Q 4:123 Can CMS force employers or plans to repay Medicare overpayments? 4-140
Q 4:124 Will a breach of fiduciary duty occur if the plan administrator's cooperation with the CMS Medicare overpayment enforcement scheme would violate the terms of the plan or the requirements of ERISA? 4-141
Q 4:125 Is an employer or group health plan required to do anything if Medicare has mistakenly paid primary rather than secondary? 4-143
Q 4:126 When does the obligation to report a potential Medicare overpayment arise? 4-144
Q 4:127 Once the employer, plan, or other third-party payer has sufficient information to infer that a Medicare overpayment may have occurred, who must be notified? 4-144
Q 4:128 What party is obligated to make the report of a possible Medicare overpayment? 4-144

Q 4:129	What specific details about a possible Medicare overpayment must be reported?	**4-145**

Children's Health Insurance Program

Q 4:130	What is the Children's Health Insurance Program?	**4-146**
Q 4:131	When do employees qualify for group health plan premium assistance under CHIP?	**4-146**
Q 4:132	What special enrollment rights are permitted in connection with CHIP?	**4-147**
Q 4:133	What notices are employers required to provide to employees in connection with CHIP?	**4-147**
Q 4:134	Are employers subject to disclosure or reporting requirements in connection with CHIP?	**4-150**

Privacy and Security Requirements

Q 4:135	What are the HIPAA privacy and security rules?	**4-150**
Q 4:136	Who is covered by the privacy and security rules?	**4-151**
Q 4:137	What is a health plan for purposes of the privacy and security rules?	**4-152**
Q 4:138	What is protected health information?	**4-152**
Q 4:139	What is a health plan's business associate?	**4-153**
Q 4:140	Can a group health plan disclose PHI to a business associate?	**4-154**
Q 4:141	When is disclosure of PHI required or permitted?	**4-154**
Q 4:142	Must a plan obtain an individual's consent before disclosing PHI?	**4-155**
Q 4:143	May a group health plan disclose PHI to the sponsoring employer?	**4-156**
Q 4:144	May a group health plan disclose PHI to a friend, relative, or other individual who is assisting a plan participant with health care matters?	**4-156**
Q 4:145	How do the privacy rules affect the administration of other workplace laws, such as the FMLA and the ADA?	**4-157**
Q 4:146	May a group health plan disclose PHI to the employer for use in administering other benefit plans, such as sick leave or disability plans?	**4-158**
Q 4:147	Do plan participants have to be notified about the privacy rules?	**4-158**
Q 4:148	What special rights do plan participants have with respect to PHI?	**4-159**
Q 4:149	Are there penalties for violations of the privacy rules?	**4-159**
Q 4:150	May an employer access medical information about an employee in connection with a credit investigation?	**4-160**
Q 4:151	Are there specific requirements for disposing of protected health information?	**4-160**

Chapter 5 Retiree Medical Benefits

The Affordable Care Act

Q 5:1 How does the Affordable Care Act affect retiree medical benefits? 5-1

Q 5:2 Does the Affordable Care Act's prohibition of lifetime coverage limits apply to retiree health plans? 5-4

Obligation to Provide Retiree Medical Benefits

Q 5:3 Is an employer legally obligated to provide retiree medical benefits? 5-5

Q 5:4 What are the primary legal issues for retiree medical plans? . . . 5-5

Q 5:5 Once an employer decides to offer a retiree medical plan, does it have a duty to employees and potential plan participants to adopt the best plan it can afford? 5-5

Q 5:6 Are retiree medical benefits a form of deferred compensation that vests upon retirement? 5-6

Q 5:7 Once an employer voluntarily offers retiree medical benefits, does ERISA require that retirees become vested in them? 5-6

Q 5:8 Once an employer voluntarily offers retiree medical benefits, does the Consolidated Omnibus Budget Reconciliation Act require that retirees become vested in them? 5-6

Q 5:9 Are retiree medical benefits a mandatory subject of collective bargaining? 5-7

Tax Treatment of Retiree Health Benefits

Q 5:10 Is a retiree taxed on employer-provided health benefits? 5-7

Q 5:11 Can an employer deduct its contributions for retiree health benefits? 5-8

Q 5:12 Are retiree health plans subject to special health plan fees? . . . 5-8

Q 5:13 Can retiree health benefits be provided through a tax-qualified pension or annuity plan? 5-9

Q 5:14 Can retirees use qualified retirement plan distributions to pay health insurance premiums or medical expenses on a tax-favored basis? 5-10

Q 5:15 Can funds in a health reimbursement arrangement be used to reimburse a retired employee's postretirement medical expenses? 5-10

Q 5:16 Can an employer contribute the value of a retiring employee's unused sick days to a health reimbursement arrangement on a tax-favored basis? 5-11

Q 5:17 Can funds in a health savings account be used for a retired employee's post-retirement medical expenses? 5-11

Cost Containment Design

Q 5:18 What options are available to an employer seeking to control retiree medical costs? 5-12
Q 5:19 How can an employer incorporate pension-type goals into a retiree medical plan? 5-12
Q 5:20 How can an employer reduce retiree medical benefit costs through plan design? 5-12

Plan Cutbacks—Legal Issues

Q 5:21 Once an employer has adopted a retiree health plan, can the plan be changed or terminated? 5-13
Q 5:22 Is an employer subject to a collective bargaining agreement free to amend, modify, or terminate a retiree medical plan before expiration of the collective bargaining agreement? . . . 5-14
Q 5:23 Is an employer subject to a collective bargaining agreement free to terminate retiree medical coverage upon expiration of the collective bargaining agreement? 5-16
Q 5:24 Can an employer have a retiree medical plan with benefits based on age and length of service? 5-17
Q 5:25 What is the government's enforcement position on retiree health plans that provide different benefits for older and younger retirees? 5-19
Q 5:26 If an employer includes retiree medical benefits in an "early out" program, can it reduce or terminate those benefits later? . . . 5-21
Q 5:27 Once an employer has offered an "early out" program promising lifetime medical benefits, what happens to those benefits if the company merges with another company? 5-22
Q 5:28 If an employer reduces severance pay by the value of retiree medical benefits as permitted under the ADEA, can the employer subsequently amend, modify, or terminate the retiree medical plan? 5-23
Q 5:29 Do statements about "lifetime benefits" prevent an employer from amending or terminating its retiree medical plan? 5-23
Q 5:30 Can an employer mislead its employees about its intention to retain its retiree medical plan? 5-24

Coordination with Medicare

Q 5:31 Can retiree medical plans be entirely secondary to Medicare? . . 5-25
Q 5:32 Can an employer provide any financial incentive to encourage employees who are Medicare beneficiaries not to enroll in the employer's group health plan? 5-26
Q 5:33 What sanctions apply for violating the Medicare secondary-payer rules? 5-26

Retiree Prescription Drug Benefits

Q 5:34 What is the retiree prescription drug plan subsidy? 5-27

Q 5:35 When is retiree prescription drug coverage considered actuarially equivalent to Medicare for purposes of the retiree prescription drug subsidy? 5-27
Q 5:36 How does an employer claim the retiree prescription drug subsidy?. 5-28
Q 5:37 What are the disclosure requirements for plans that provide prescription drug coverage? 5-29
Q 5:38 How does an employer apply for the prescription drug subsidy?. 5-30
Q 5:39 How is the retiree prescription drug subsidy treated for income tax purposes?. 5-31
Q 5:40 What is an EGWP/Wrap? 5-31

Trust Requirement

Q 5:41 Are employee contributions to retiree medical plans considered plan assets subject to ERISA's trust requirement? 5-32

Financial Accounting Rules

Q 5:42 What financial accounting requirements apply to retiree welfare benefits? 5-32
Q 5:43 What are the financial accounting requirements if an employer is not legally obligated to provide retiree benefits?. 5-33
Q 5:44 How is the retiree prescription drug subsidy treated for financial accounting purposes? 5-33
Q 5:45 What are the financial accounting requirements for retiree medical plans? 5-34
Q 5:46 Is an employer required to fund its postretirement welfare benefits? 5-34

Funding Options

Q 5:47 What options are available to an employer that wishes to reduce its accounting liability by prefunding retiree medical benefits on a tax-advantaged basis? 5-34
Q 5:48 How much of an employer's liability for retiree medical benefits can be funded under the welfare benefit fund rules of Code Sections 419 and 419A?. 5-35
Q 5:49 How much of an employer's liability for retiree medical benefits can be funded using a Section 401(h) account under a pension or annuity plan? 5-35
Q 5:50 Can an employer fund its liability for retiree medical benefits under a profit sharing retirement plan? 5-36
Q 5:51 Can an employer transfer any portion of a pension plan surplus to fund retiree medical benefits? 5-36
Q 5:52 Does financing with corporate-owned life insurance help reduce an employer's accounting liability? 5-37

Q 5:53 Can retirement plan benefit payments be deferred and used as a pretax cafeteria plan contribution for retiree medical coverage? 5-38
Q 5:54 Can an employer fund retiree medical benefits using a rabbi trust or agency agreement? 5-39

Chapter 6 COBRA Requirements for Continuation of Coverage Under Group Health Plans

Overview

Q 6:1 What is the purpose of the COBRA continuation of coverage rules? 6-2
Q 6:2 Where can the COBRA continuation of coverage requirements be found? 6-2
Q 6:3 When must the option of continuing group health plan coverage be provided? 6-3

Covered Plans

Q 6:4 What is a “group health plan” for COBRA continuation of coverage purposes? 6-3
Q 6:5 What is a plan that is “maintained or contributed to by an employer or employee organization” for COBRA purposes? . 6-4
Q 6:6 Can individual health policies provided by an employer constitute a group health plan subject to COBRA? 6-4
Q 6:7 What is “medical care”? 6-5
Q 6:8 Is a medical plan of a governmental entity considered a group health plan for COBRA purposes? 6-7
Q 6:9 Are self-insured plans subject to COBRA? 6-7
Q 6:10 Is a plan maintained by a voluntary employees’ beneficiary association subject to COBRA? 6-7
Q 6:11 Are cafeteria plans subject to COBRA? 6-7
Q 6:12 Are employee assistance programs subject to COBRA? 6-7
Q 6:13 Are medical savings accounts or health savings accounts subject to COBRA? 6-8
Q 6:14 Are health reimbursement arrangements subject to COBRA? 6-8
Q 6:15 Are long-term care plans subject to COBRA? 6-10
Q 6:16 Are plans maintained solely for corporate directors, independent contractors, and the self-employed subject to COBRA? 6-11
Q 6:17 How are multiple-employer welfare arrangements treated under COBRA? 6-11
Q 6:18 Are multiemployer plans subject to COBRA? 6-12

Definition of "Plan" for COBRA Purposes

Q 6:19	Is a medical plan ever considered to be two or more separate group health plans, not a single plan, for COBRA purposes?	6-12
Q 6:20	What is the significance of the number of plans?	6-13

Covered Employers

Q 6:21	Are all employers subject to COBRA?	6-13
Q 6:22	How is an employer defined for COBRA purposes?	6-14
Q 6:23	Does COBRA cover the domestic subsidiary of a foreign corporation and/or the foreign parent of a domestic corporation?	6-14
Q 6:24	Are any employers too small to be subject to COBRA?	6-15
Q 6:25	How is the typical-business-day standard satisfied?	6-16
Q 6:26	Which individuals are counted as employees in deciding whether an employer is too small for its group health plans to be subject to COBRA?	6-17
Q 6:27	How does an employer count employees?	6-17
Q 6:28	Are entities under common control aggregated to determine eligibility for the small-employer exemption?	6-18
Q 6:29	How does the small-employer exemption apply to multiemployer plans?	6-18
Q 6:30	What happens if an employer in an exempt small-employer plan increases its workforce?	6-18
Q 6:31	What happens if an employer covered by COBRA reduces its workforce below 20 employees?	6-20
Q 6:32	What special COBRA requirements apply if an employer goes bankrupt?	6-20
Q 6:33	When a business reorganization occurs, which employer must provide COBRA continuation coverage?	6-20

Qualified Beneficiaries

Q 6:34	Who is a qualified beneficiary?	6-21
Q 6:35	Who is a covered employee?	6-22
Q 6:36	Can a self-employed individual be a covered employee?	6-23
Q 6:37	Are there special rules for nonresident aliens?	6-23
Q 6:38	Can a dependent child be a qualified beneficiary when the event is the parents' divorce?	6-23
Q 6:39	Is a same-sex spouse or domestic partner covered under a group health plan required to be recognized as a qualified beneficiary?	6-24
Q 6:40	If a qualified beneficiary who is receiving COBRA coverage subsequently acquires a new family member, does that new family member also become a qualified beneficiary?	6-25
Q 6:41	Can a retiree be a qualified beneficiary?	6-25

Qualifying Events

Q 6:42	What is a qualifying event?	**6-25**
Q 6:43	Why are the qualifying-event provisions included in COBRA?	**6-26**
Q 6:44	Must group health plan coverage actually cease in order to be considered "lost" for COBRA purposes?	**6-26**
Q 6:45	Can a reduction in coverage trigger COBRA rights?	**6-27**
Q 6:46	What if the individual loses coverage due to total disability?	**6-27**
Q 6:47	What if the loss of coverage is not simultaneous with the event?	**6-27**
Q 6:48	What if an individual's coverage is reduced in anticipation of a qualifying event?	**6-28**
Q 6:49	When is coverage "lost" in an employer bankruptcy?	**6-28**
Q 6:50	Is the Federal Deposit Insurance Corporation or a bank that takes over the assets and employees of a failed bank obligated to continue COBRA coverage for the failed bank's employees?	**6-29**
Q 6:51	Can a voluntary termination, such as quitting or abandoning a job, constitute a qualifying event?	**6-30**
Q 6:52	Is involuntary termination, for example, firing, a qualifying event?	**6-30**
Q 6:53	What behavior qualifies as gross misconduct that would make a terminated employee ineligible for COBRA coverage?	**6-30**
Q 6:54	Is a strike or walkout a qualifying event?	**6-35**
Q 6:55	Is a layoff a qualifying event?	**6-35**
Q 6:56	Is a call to active duty in the armed forces a qualifying event?	**6-35**
Q 6:57	When does termination of employment occur for individuals other than common-law employees?	**6-36**
Q 6:58	Can a qualifying event ever occur with regard to an employee's spouse or dependent even if the employee remains covered?	**6-36**
Q 6:59	Can placing a disabled employee on inactive-employee status be a qualifying event?	**6-36**
Q 6:60	What if the employee becomes entitled to Medicare?	**6-36**
Q 6:61	What if the employee and his or her spouse separate prior to divorce without a court order granting a legal separation?	**6-37**
Q 6:62	Does a protective order issued against an estranged spouse constitute a legal separation that triggers COBRA continuation coverage?	**6-37**
Q 6:63	What if the employee and his or her spouse obtain a court order granting a legal separation, but the group health plan coverage does not terminate when the spouses are separated?	**6-38**
Q 6:64	Can an event that occurs before a plan is subject to COBRA serve as a qualifying event?	**6-38**

Q 6:65 Is FMLA leave a qualifying event? 6-39
Q 6:66 When does the COBRA-qualifying event occur for an employee who fails to return to work at the end of his or her FMLA leave?. 6-39
Q 6:67 What if the employer eliminates group health coverage during an employee's family leave? 6-40
Q 6:68 Is an employer's cessation of contributions to a multiemployer plan a qualifying event? 6-40
Q 6:69 Who provides COBRA coverage for qualified beneficiaries when an employer stops contributing to a multiemployer plan? 6-40
Q 6:70 Is a dependent child's loss of student status a qualifying event? 6-40

Notice to Participants

Q 6:71 Must the summary plan description for a group health plan explain the COBRA continuation coverage rules? 6-43
Q 6:72 Must the plan notify employees and spouses of the existence of COBRA continuation rights before a qualifying event occurs? 6-43
Q 6:73 Must plan administrators use any particular wording for required COBRA notices? 6-44
Q 6:74 Is there a prescribed method for distributing initial notices?. . . . 6-46
Q 6:75 May COBRA notices be sent electronically?. 6-47
Q 6:76 Must separate notices be sent to the employee and his or her spouse? 6-47
Q 6:77 What happens if the dependent is covered under the plan due to a qualified medical child support order? 6-47
Q 6:78 Who must notify the plan administrator when a qualifying event occurs? 6-48
Q 6:79 Must each affected qualified beneficiary give notice of a qualifying event that will cause more than one qualified beneficiary to lose coverage?. 6-50
Q 6:80 Must the employer provide specialized counseling with regard to COBRA rights? 6-51
Q 6:81 What must the plan administrator do after being notified of a qualifying event? 6-51
Q 6:82 Must a plan administrator notify a COBRA beneficiary when COBRA coverage is terminated? 6-55
Q 6:83 Is the COBRA notice following a qualifying event required to be in writing?. 6-55
Q 6:84 What happens if a qualified beneficiary turns down COBRA continuation coverage? 6-56
Q 6:85 What happens if the plan administrator is not notified of a qualifying event? 6-56

Q 6:86 Is the plan administrator relieved of the duty to notify qualified beneficiaries of their COBRA rights if it hires others to perform that duty? 6-57
Q 6:87 What happens if the plan administrator fails to notify qualified beneficiaries of their COBRA rights?. 6-57
Q 6:88 Does the plan administrator have to guarantee that the qualified beneficiary actually receives the COBRA notice? . . . 6-59
Q 6:89 Are COBRA notices required in connection with leave under the FMLA? 6-62
Q 6:90 Is special treatment of COBRA notices required where the person entitled to elect COBRA coverage is mentally incapacitated? 6-63
Q 6:91 Can an employer or plan administrator be held liable for a COBRA continuation notice sent in error? 6-64

COBRA Election and Enrollment

Q 6:92 Who is entitled to make a COBRA election?. 6-65
Q 6:93 What is the minimum permitted election period? 6-65
Q 6:94 When does the COBRA election period begin? 6-65
Q 6:95 Is the COBRA election period always limited to 60 days? 6-65
Q 6:96 What happens if the notice is not sent on time? 6-66
Q 6:97 Is the COBRA continuation election considered made when it is sent or when it is received? 6-67
Q 6:98 Are qualified beneficiaries who waive COBRA continuation coverage allowed to change their minds?. 6-67
Q 6:99 Must group health plan coverage be provided during the interim period when the qualified beneficiary is deciding whether to elect COBRA coverage?. 6-67
Q 6:100 What happens to claims incurred by the qualified beneficiary before making a decision about COBRA continuation coverage? 6-68
Q 6:101 How do direct service plans such as health maintenance organizations handle payment for services rendered during the election period but before an election is made?. 6-68
Q 6:102 Can an employer speed up the decision by withholding money or benefits? 6-69
Q 6:103 Must a plan provide coverage once a qualified beneficiary elects COBRA coverage but before he or she forwards the initial premium payment?. 6-69
Q 6:104 Must each qualified beneficiary be allowed to make an independent election?. 6-70
Q 6:105 Can the employee elect COBRA coverage on behalf of family members? 6-70
Q 6:106 Can a covered employee decline coverage on behalf of his or her spouse and dependents? 6-70

Type and Extent of Required Coverage

Q 6:107 What type of coverage must be offered to qualified beneficiaries? 6-71

Q 6:108 Must qualified beneficiaries demonstrate insurability in order to qualify for continuation coverage? 6-72

Q 6:109 What is the effect on continuation coverage if the employer changes the coverage available to employees who have not undergone a qualifying event? 6-72

Q 6:110 Must a plan permit qualified beneficiaries to participate in an open enrollment period? 6-72

Q 6:111 Can a qualified beneficiary pick up coverage for family members outside of an open enrollment period? 6-73

Q 6:112 Can a COBRA beneficiary change his or her coverage other than during an open enrollment period? 6-73

Q 6:113 When COBRA continuation coverage is elected, how are deductibles handled? 6-74

Q 6:114 If family members select different continuation options, how is the remaining deductible amount computed? 6-74

Q 6:115 How are annual plan limits handled for COBRA coverage? 6-75

Q 6:116 If an individual on COBRA continuation has other group health insurance, how are benefits coordinated? 6-75

Q 6:117 How do the COBRA continuation coverage requirements apply to cafeteria plans? 6-76

Q 6:118 Are there COBRA requirements for health care flexible spending accounts? 6-77

Duration of Coverage

Q 6:119 What is the maximum required COBRA continuation period? . . 6-80

Q 6:120 Is the maximum COBRA continuation coverage period ever extended? 6-80

Q 6:121 When is a qualified beneficiary entitled to a disability extension? 6-81

Q 6:122 What if a qualified beneficiary qualifies for both a disability extension and an extension because of a second qualifying event? 6-83

Q 6:123 Can an employee ever have the 18-month period extended due to the multiple qualifying event rule? 6-83

Q 6:124 From what date is the maximum COBRA continuation period counted? 6-83

Q 6:125 Can a plan terminate the coverage of a qualified beneficiary for cause during the COBRA continuation period? 6-84

Q 6:126 Is early termination of the COBRA continuation period ever permitted? 6-85

Q 6:127 Exactly when can coverage under another group health plan cut off COBRA continuation coverage? 6-87

Q 6:128 Can COBRA coverage for existing qualified beneficiaries be cut off if the employer's workforce drops below 20 employees? . **6-89**

Q 6:129 After the COBRA continuation period ends, must the qualified beneficiary be given a chance to enroll in an individual conversion health plan? **6-89**

Q 6:130 How much time must a qualified beneficiary be given to elect the conversion plan? **6-90**

Premiums

Q 6:131 Who pays for COBRA continuation coverage? **6-90**

Q 6:132 When can a state pay COBRA premiums on behalf of a qualified beneficiary? **6-91**

Q 6:133 How is the applicable premium that the qualified beneficiary can be required to pay calculated? **6-91**

Q 6:134 Which individuals are similarly situated for purposes of determining the applicable premium? **6-91**

Q 6:135 How is the cost of an insured plan calculated for applicable premium purposes? **6-92**

Q 6:136 How is the cost of a self-insured plan calculated? **6-92**

Q 6:137 What is the time period used to calculate COBRA premiums? . **6-93**

Q 6:138 When can a group health plan change the COBRA premium rate during a premium period? **6-93**

Q 6:139 Can the employee direct the employer to credit his or her premium payment to a particular month or months? **6-94**

Q 6:140 What is the premium determination period for an employer with several group health plans? **6-95**

Q 6:141 Does each qualified beneficiary have a separate determination period? **6-95**

Q 6:142 Can the employer charge all COBRA qualified beneficiaries a single, blended rate when active employees are charged either a single or a family rate? **6-95**

Q 6:143 Can the employer charge an individual premium rate to each family member who enrolls? **6-95**

Q 6:144 Can a plan increase the premium charged to a COBRA continuee who adds new dependents? **6-95**

Q 6:145 Can a COBRA continuee who chooses a different plan during an open enrollment period be charged the premium for the new coverage? **6-96**

Q 6:146 Must COBRA continuees pay the same increases in the premium charged by a group health plan to similarly situated individuals who have not undergone a qualifying event? **6-96**

Q 6:147 When determining COBRA cost, must an employer take into account experience refunds and policy dividends received from an insurance company? **6-97**

Q 6:148 When is the first payment for COBRA continuation coverage due? **6-97**

Q 6:149 Can the employer take any steps to speed up the payment of the initial premium? 6-97

Q 6:150 How must the first payment be credited? 6-98

Q 6:151 After the initial payment, can the qualified beneficiaries be required to pay premiums quarterly or semiannually? 6-98

Q 6:152 When are premium payments deemed made? 6-98

Q 6:153 What is the grace period, if any, for making premium payments? 6-99

Q 6:154 What if the initial COBRA premium is not paid on time? 6-99

Q 6:155 Can the employer cancel coverage during the grace period and then reinstate it if the qualified beneficiary pays the overdue premium? 6-100

Q 6:156 What happens if a COBRA payment is not made in full? 6-100

Q 6:157 How are COBRA premiums treated for income tax purposes? 6-100

Mergers and Acquisitions

Q 6:158 When does a buyer become responsible for a seller's COBRA responsibilities and liabilities? 6-100

Q 6:159 Can the buyer and seller allocate the responsibility for providing COBRA coverage by contract? 6-102

Q 6:160 Is COBRA coverage required to be offered if employees continue health care FSA participation under either the seller's or buyer's plan following a sale of business assets? 6-102

Preemption of State Continuation Laws

Q 6:161 Why are state continuation coverage laws important? 6-103

Q 6:162 How do state continuation of coverage laws differ from federal COBRA requirements? 6-104

Q 6:163 Does ERISA preempt state continuation laws? 6-105

Q 6:164 Does ERISA preempt state-law bad-faith claims relating to COBRA? 6-106

Q 6:165 Does the Public Health Service Act preempt state continuation of coverage laws? 6-108

COBRA Enforcement and Sanctions

Q 6:166 Which agencies have the power to enforce COBRA? 6-108

Q 6:167 How are COBRA violations penalized? 6-108

Q 6:168 How much is the excise tax imposed for COBRA violations? 6-109

Q 6:169 When does the noncompliance period used to calculate the excise tax begin? 6-109

Q 6:170 When does the noncompliance period end? 6-109

Q 6:171 When is a COBRA violation considered "corrected"? 6-109

Q 6:172	Is there a grace period before the excise tax applies?	6-109
Q 6:173	Does an audit of the employer affect the excise tax?	6-110
Q 6:174	What is the excise tax under the special audit rule?	6-110
Q 6:175	Is there a maximum excise tax that can be imposed with respect to a single-employer plan?	6-110
Q 6:176	Is there a maximum excise tax that can be imposed for a violation committed by a multiemployer plan?	6-110
Q 6:177	Is there a maximum excise tax that can be imposed on persons other than employers or multiemployer plans?	6-111
Q 6:178	Who else besides employers and multiemployer plans can be liable for excise tax?	6-111
Q 6:179	May the IRS waive the excise tax penalty for a COBRA violation?	6-111
Q 6:180	How is the excise tax penalty for COBRA violations reported and collected?	6-112
Q 6:181	What is the penalty for failure to notify employees and qualified beneficiaries of their COBRA rights?	6-112
Q 6:182	Are penalties for violations of the notice requirements imposed automatically?	6-113
Q 6:183	Does the $110-per-day penalty apply in the case of breaches of COBRA provisions other than the notice requirement?	6-115

Plan Year

Q 6:184	What is a group health plan's plan year?	6-115
Q 6:185	What is the plan year if the plan document does not specify a plan year or there is no plan document?	6-115

Chapter 7 Cafeteria Plans

The Affordable Care Act

Q 7:1	How does the Affordable Care Act affect cafeteria plans?	7-2

Basic Concepts

Q 7:2	What is a cafeteria plan?	7-3
Q 7:3	Is an employer required to establish a cafeteria plan?	7-4
Q 7:4	What is the key requirement for having a Section 125 cafeteria plan?	7-4
Q 7:5	Is a choice between cash and a qualified benefit available through pretax salary reductions enough to qualify as a cafeteria plan?	7-5
Q 7:6	May an employer make cafeteria plan contributions over and above employee salary reduction contributions?	7-5
Q 7:7	What is the importance of complying with Code Section 125?	7-6

Q 7:8 Why are cafeteria plans economically attractive to employers and employees? 7-8

Written Plan Requirement

Q 7:9 Must a cafeteria plan be in writing? 7-9
Q 7:10 What must the plan document of a cafeteria plan contain? 7-9
Q 7:11 Can a written cafeteria plan be amended? 7-10

Eligible Employees

Q 7:12 Who can participate in a cafeteria plan? 7-11
Q 7:13 May a cafeteria plan cover a participant's spouse, dependents, or other beneficiaries? 7-11
Q 7:14 May a Section 125 cafeteria plan cover former employees? . . . 7-12
Q 7:15 Must a cafeteria plan cover former employees who elected COBRA continuation coverage? 7-12
Q 7:16 May a cafeteria plan cover partners, sole proprietors, or S corporation shareholders? 7-12

Permitted Benefit Choices

Q 7:17 When can a benefit be treated as cash? 7-13
Q 7:18 Which benefits are qualified benefits? 7-13
Q 7:19 Can a cafeteria plan offer group term life insurance coverage in excess of $50,000? 7-14
Q 7:20 Is group term life insurance on the lives of a participant's spouse and children a qualified benefit? 7-15
Q 7:21 Is long-term disability insurance a qualified benefit, and are there any special considerations in including such coverage in a cafeteria plan? 7-16
Q 7:22 Is a group legal services plan a qualified benefit? 7-16
Q 7:23 Are there any tax-favored benefits that are not qualified benefits? 7-16
Q 7:24 When can premiums for COBRA health care continuation coverage be paid through a cafeteria plan? 7-17
Q 7:25 Can payment or reimbursement of an employee's premiums for individual accident and health insurance be included as a cafeteria plan option? 7-18
Q 7:26 Can a cafeteria plan ever offer deferred compensation as a qualified benefit? 7-20
Q 7:27 Is paid time off includable in a cafeteria plan? 7-22
Q 7:28 Can a cafeteria plan offer the choice between a qualified benefit or nothing? 7-23

Use-It-or-Lose-It Rule

Q 7:29 What is the use-it-or-lose-it rule? 7-24

Q 7:30 What special rules apply if an employer adopts a grace period? . . . **7-25**

Q 7:31 May an employer make up forfeited benefits outside the qualified cafeteria plan? . . . **7-27**

Q 7:32 What cafeteria plan provisions could violate the ban on indirect deferred compensation? . . . **7-27**

Q 7:33 How does the forfeiture rule affect the way vacation pay options must be structured? . . . **7-28**

Q 7:34 Does the prohibition against using a cafeteria plan to defer compensation affect insurance-type benefits? . . . **7-28**

Q 7:35 What happens to amounts that are forfeited under the use-it-or-lose-it rule? . . . **7-28**

Salary Reduction

Q 7:36 What is a salary reduction contribution? . . . **7-29**

Q 7:37 Can retirement plan distributions be used as employer contributions to a retiree medical cafeteria plan? . . . **7-30**

Period of Coverage

Q 7:38 What period must a cafeteria plan election cover? . . . **7-31**

Q 7:39 Why is the period of coverage for a cafeteria plan important? . . . **7-31**

Elections

Q 7:40 How must cafeteria plan elections be structured to ensure that qualified benefits do not lose their favorable tax treatment? . . . **7-32**

Q 7:41 When is a benefit considered currently available and therefore taxable? . . . **7-33**

Q 7:42 Is a benefit currently available if its receipt is limited or restricted? . . . **7-33**

Q 7:43 Must the cafeteria plan provide an annual enrollment period? . . . **7-33**

Q 7:44 Must an individual make an affirmative election to participate in a cafeteria plan? . . . **7-34**

Q 7:45 Can an election to participate in a cafeteria plan be made electronically? . . . **7-36**

Q 7:46 Can a cafeteria plan election be retroactive? . . . **7-37**

Q 7:47 Do new employees have to make cafeteria plan elections immediately at the time of hire? . . . **7-38**

Q 7:48 May a cafeteria plan use a one-time election that renews automatically unless a participant revokes it? . . . **7-38**

Q 7:49 What happens if an employee is permitted to change his or her mind after the election becomes effective? . . . **7-39**

Q 7:50 Are there any exceptions to the prohibitions against revocation of an election to participate in a cafeteria plan? . . . **7-39**

Q 7:51 May a plan permit an employee to revoke an election for health coverage when enrollment in a health plan is permitted because of special enrollment rights? 7-40
Q 7:52 May a revocation of a cafeteria plan election be permitted because of a change in status? 7-40
Q 7:53 What types of health coverage changes may be permitted when a change of status event occurs? 7-42
Q 7:54 What types of changes in group term life and disability coverage are permitted when an employee experiences a change in status? 7-44
Q 7:55 How do the change in status rules apply to dependent care assistance and adoption assistance benefits? 7-44
Q 7:56 Is revocation of an election to participate in a cafeteria plan permitted if an employee separates from service? 7-45
Q 7:57 May a cafeteria plan permit revocation of an election to participate because of changes in the cost of a particular benefit? 7-46
Q 7:58 May a cafeteria plan permit an employee to make an election change if there is change in the coverage provided for a particular benefit? 7-47
Q 7:59 May a cafeteria plan permit a new election because of a new plan option for coverage added during the plan year or the improvement of an existing option? 7-48
Q 7:60 May a cafeteria plan permit revocation of an election to participate because of changes in coverage under another health care plan? 7-48
Q 7:61 Under what circumstances can a cafeteria plan permit an employee to revoke an election for health coverage in order to enroll in a qualified health plan through a Health Insurance Exchange? 7-49
Q 7:62 Do the Section 125 irrevocable election rules apply to a 401(k) option that is included in the cafeteria plan? 7-51
Q 7:63 May a cafeteria plan permit midyear changes in an employee's salary reduction contributions to a health savings account? 7-51

Premium Conversion Plans

Q 7:64 What is a premium conversion plan? 7-52
Q 7:65 Is a premium conversion plan a cafeteria plan? 7-52
Q 7:66 Is a premium conversion feature always beneficial to plan participants? 7-53

Flexible Spending Arrangements

Q 7:67 What is a flexible spending arrangement? 7-54
Q 7:68 Is there a dollar cap on the amount that can be contributed to a health care FSA? 7-55

Q 7:69	What types of expenses may be reimbursed under a health care FSA?	**7-56**
Q 7:70	Can a health care FSA reimburse expenses for nonprescription medicines or drugs?	**7-57**
Q 7:71	Is a health care FSA required to qualify as a Section 105 accident or health plan?	**7-58**
Q 7:72	What insurance-type characteristics must a health care FSA exhibit?	**7-58**
Q 7:73	Why must health care FSA coverage be uniform throughout the period of coverage?	**7-59**
Q 7:74	Is there a limit on the amount of expenses that can be reimbursed by a health care FSA?	**7-59**
Q 7:75	How does a plan ensure that a participant cannot manipulate the amount of coverage under a health care FSA?	**7-59**
Q 7:76	When must an expense be incurred in order to be reimbursable by a health care FSA?	**7-60**
Q 7:77	Can a health care FSA allow unused contributions to be carried over to the following plan year?	**7-62**
Q 7:78	What type of substantiation must a cafeteria plan require for claims for reimbursement from a health care FSA?	**7-63**
Q 7:79	Can a health care FSA make expense reimbursements using debit and credit cards?	**7-64**
Q 7:80	May an employee who has an HSA elect a health care FSA?	**7-68**
Q 7:81	Are there any special considerations if an employee wants to switch from a health care FSA for one plan year to an HSA for the next year?	**7-69**
Q 7:82	What design restrictions are applicable to dependent care FSAs under cafeteria plans?	**7-70**
Q 7:83	Can unused contributions under a health care FSA be used to reimburse excess expenses under a dependent care FSA and vice versa?	**7-72**
Q 7:84	Can debit, credit, or stored-value cards be provided to participants in a dependent care FSA?	**7-72**
Q 7:85	May transferred employees continue FSA participation after part of a business is sold?	**7-74**
Q 7:86	What is a qualified reservist distribution?	**7-75**

Trust Requirement

Q 7:87	Are salary reduction contributions to a cafeteria plan required to be held in trust?	**7-76**

Section 125 Nondiscrimination Rules

Q 7:88	Must cafeteria plans satisfy any nondiscrimination rules?	**7-78**
Q 7:89	Who are highly compensated individuals?	**7-79**

Q 7:90 What is the nondiscriminatory eligibility test imposed by Code Section 125? 7-80

Q 7:91 How does a cafeteria plan meet the eligibility test? 7-80

Q 7:92 What is the nondiscriminatory contributions and benefits test imposed on cafeteria plans by Code Section 125? 7-81

Q 7:93 Are there any safe harbor nondiscrimination tests for cafeteria plans? 7-82

Q 7:94 What is the nondiscriminatory 25 percent concentration test imposed on cafeteria plans by Code Section 125? 7-83

Q 7:95 Are collectively bargained plans subject to the nondiscrimination rules of Code Section 125? 7-84

Q 7:96 What are the plan limits for collectively bargained benefits? 7-84

SIMPLE Cafeteria Plan

Q 7:97 What is a SIMPLE cafeteria plan? 7-84

Q 7:98 Which employers are eligible to maintain a SIMPLE cafeteria plan? 7-85

Q 7:99 What is the minimum eligibility and participation requirement for a SIMPLE cafeteria plan? 7-85

Q 7:100 What is the minimum contribution requirement for a SIMPLE cafeteria plan? 7-86

Tax Treatment of Cafeteria Plan Benefits

Q 7:101 Can a benefit ever become taxable because it is offered through a cafeteria plan? 7-87

Q 7:102 What are the tax consequences of a cafeteria plan that is discriminatory under Code Section 125? 7-87

Q 7:103 What happens if a qualified benefit fails a nondiscrimination test of a Code Section other than Code Section 125? 7-88

Q 7:104 What happens if the plan violates a structural requirement of Code Section 125? 7-88

Q 7:105 Are cafeteria plan benefits subject to payroll taxes? 7-89

Q 7:106 Is the amount of salary reduction used to “purchase” qualified benefits subject to FICA tax or federal unemployment tax? 7-89

Q 7:107 Does receipt of dependent care assistance benefits under a cafeteria plan reduce the child care tax credit otherwise available to an employee? 7-90

Reporting and Disclosure Requirements

Q 7:108 Must the plan administrator file a Form 5500 for a cafeteria plan? 7-90

Effect of Other Laws

Q 7:109 Is a cafeteria plan subject to ERISA? 7-90

Q 7:110	Is a cafeteria plan subject to COBRA?	**7-91**
Q 7:111	Is a cafeteria plan subject to the Medicare secondary-payer rules?	**7-91**
Q 7:112	How does the Americans with Disabilities Act of 1990 affect health care FSAs?	**7-92**
Q 7:113	How does the Family and Medical Leave Act of 1993 affect cafeteria plans?	**7-92**
Q 7:114	Must an employee taking FMLA leave be permitted to revoke an existing election of group health plan coverage under a cafeteria plan?	**7-92**
Q 7:115	Must an employee returning from FMLA leave be permitted to be reinstated if his or her group health plan coverage under a cafeteria plan terminated during the FMLA leave?	**7-93**
Q 7:116	Who is responsible for making premium payments under a cafeteria plan when an employee on FMLA leave elects to continue group health plan coverage?	**7-94**
Q 7:117	What payment options are required or permitted in the case of an employee on FMLA leave who elects to continue group health plan coverage under a cafeteria plan?	**7-94**
Q 7:118	What happens if an employee chooses to continue health coverage on a pay-as-you-go basis but does not make the required premium payments?	**7-95**
Q 7:119	What rules apply to health care FSA coverage for employees on FMLA leave?	**7-95**
Q 7:120	What restrictions apply to employee contributions during an FMLA leave that spans two cafeteria plan years?	**7-97**
Q 7:121	What payment options are available to an employee who is on paid FMLA leave?	**7-97**
Q 7:122	What requirements apply to non-health benefit plan coverage during FMLA leave?	**7-97**

Chapter 8 Dependent Care Assistance and Adoption Assistance

Dependent Care Assistance Programs

Q 8:1	What is a dependent care assistance program?	**8-1**
Q 8:2	Does the Employee Retirement Income Security Act apply to dependent care assistance programs?	**8-1**
Q 8:3	Are employees taxed on benefits received from an employer-provided dependent care assistance program?	**8-2**
Q 8:4	Are there tax advantages for employers that contribute to dependent care assistance programs?	**8-2**
Q 8:5	What are qualified child care expenses for purposes of the tax credit for employer-provided child care expenses?	**8-3**

Q 8:6	What are qualified child care resource and referral expenses for purposes of the tax credit for employer-provided child care expenses?	8-3
Q 8:7	May partners, S corporation shareholders, and sole proprietors receive tax-favored dependent care assistance benefits under an employer-provided program?	8-4
Q 8:8	May an employee who receives dependent care assistance benefits under an employer-provided program also claim the Section 21 tax credit for dependent care?	8-4
Q 8:9	Does the dependent care assistance program have to be in writing?	8-5
Q 8:10	What is the exclusive-benefit requirement for employer-provided dependent care assistance programs?	8-5
Q 8:11	What disclosure of program benefits is required to be made to eligible employees?	8-5
Q 8:12	What is the maximum amount of tax-favored benefits that may be provided by a dependent care assistance program?	8-6
Q 8:13	If the employee's spouse does not work and is neither disabled nor a full-time student, can the employee receive tax-free reimbursements under the employer's dependent care assistance program?	8-7
Q 8:14	Under the employer's plan, who can be a qualifying dependent?	8-8
Q 8:15	What types of dependent care expenses can the employer's program cover?	8-9
Q 8:16	Are employer-provided dependent care assistance programs subject to nondiscrimination rules?	8-10
Q 8:17	What are the nondiscrimination tests?	8-11
Q 8:18	What are the tax consequences if the employer's written dependent care assistance program fails the Section 129(d) nondiscrimination requirements?	8-12
Q 8:19	What are the tax consequences if the employer's dependent care assistance program fails the Section 129 written plan requirement?	8-12
Q 8:20	Is the employer required to pay Federal Insurance Contribution Act (FICA) tax or Federal Unemployment Tax Act (FUTA) tax on, or withhold taxes from, dependent care assistance program payments?	8-12
Q 8:21	Can a dependent care assistance program be made a part of a cafeteria plan?	8-13
Q 8:22	What is the dependent care tax credit?	8-13
Q 8:23	Does the employer have any obligation to help the employee determine which tax benefit—the exclusion or the credit—is more advantageous?	8-14
Q 8:24	Is there any information that the employee must provide the IRS?	8-14

Q 8:25	Is an employer required to report any dependent care assistance program information to the IRS?	8-14
Q 8:26	Can an employer use a debit or other payment card to provide benefits under a dependent care assistance program?	8-15

Adoption Assistance Programs

Q 8:27	Are adoption assistance programs subject to ERISA?	8-15
Q 8:28	Can an adoption assistance program be included in a cafeteria plan?	8-15
Q 8:29	What are the requirements for an adoption assistance program under Code Section 137?	8-16
Q 8:30	What are qualified adoption expenses?	8-16
Q 8:31	Who is an eligible child?	8-17
Q 8:32	What is the income tax treatment of payments or reimbursements made to an employee for qualified adoption expenses?	8-18
Q 8:33	Who is a child with special needs?	8-19
Q 8:34	What is the income limitation on the amount of employer-provided adoption expense benefits that may be excluded from income?	8-20
Q 8:35	For foreign adoptions, what additional limitations apply to the Section 137 exclusion from income?	8-20
Q 8:36	Are there other tax breaks for adoption expenses?	8-22
Q 8:37	Is an employer that offers an adoption assistance program required to file an annual report with the IRS?	8-23
Q 8:38	Are employer-provided adoption expense benefits subject to withholding, FICA, and FUTA?	8-23
Q 8:39	Do any special reporting requirements apply to an employee claiming the exclusion?	8-24

Chapter 9 Group Long-Term Care Insurance

Basic Concepts

Q 9:1	What is long-term care insurance?	9-1
Q 9:2	What types of care and services are typically covered by group long-term care insurance?	9-1
Q 9:3	What additional features are typically included in group long-term care insurance?	9-2
Q 9:4	Is group long-term care insurance considered accident and health insurance?	9-2
Q 9:5	What are the tax requirements for a qualified long-term care insurance contract?	9-3
Q 9:6	What are qualified long-term care services?	9-4
Q 9:7	Who is a chronically ill individual?	9-4

Employee Benefits Answer Book April 16, 2020 16:31

Q 9:8 What are activities of daily living? 9-5
Q 9:9 What is a plan of care prescribed by a licensed health care practitioner? 9-5
Q 9:10 Who is a licensed health care practitioner? 9-5
Q 9:11 What constitutes "substantial assistance" under the ADL trigger? 9-5
Q 9:12 What is severe cognitive impairment? 9-5
Q 9:13 What are the consumer protections that a long-term care insurance contract must satisfy? 9-6

Taxation Issues

Q 9:14 May employers deduct the cost of group long-term care insurance for their employees? 9-7
Q 9:15 Are employees taxed on the monthly value of employer-paid group long-term care insurance? 9-7
Q 9:16 Are premiums that employees pay for group long-term care insurance deductible? 9-7
Q 9:17 How are employees taxed on benefits received under group long-term care insurance? 9-8
Q 9:18 Are there any tax reporting requirements for group long-term care insurance plans? 9-9

Characterization Under Other Laws

Q 9:19 Is group long-term care insurance subject to ERISA? 9-9
Q 9:20 Do the COBRA continuation of coverage requirements apply to group long-term care insurance? 9-10
Q 9:21 Does the requirement of the Family and Medical Leave Act to continue health coverage during a period of family and medical leave apply to group long-term care insurance? 9-10
Q 9:22 Is group long-term care insurance subject to group health plan requirements? 9-10

Inclusion in Cafeteria Plans

Q 9:23 Can long-term care insurance be included under the employer's cafeteria plan? 9-11

Chapter 10 Disability Income Plans

Basic Concepts

Q 10:1 What is a disability income plan? 10-1
Q 10:2 Does federal law require employers to provide employees with disability income benefits? 10-2
Q 10:3 What state-mandated disability income benefits must employers provide to employees? 10-2

Q 10:4	What types of disability income plans do employers typically provide?	10-2
Q 10:5	Can employer-provided disability benefits be offset by other benefits?	10-3
Q 10:6	Does ERISA apply to disability-income-type plans?	10-6
Q 10:7	Do employers also provide any dismemberment benefits?	10-7
Q 10:8	Does the Consolidated Omnibus Budget Reconciliation Act apply to disability income or dismemberment plans?	10-8
Q 10:9	Do any tax or other nondiscrimination rules apply to disability plans?	10-8
Q 10:10	Are disability income plans subject to the ADEA?	10-8
Q 10:11	Can an employer limit eligibility for disability income coverage based on age?	10-9
Q 10:12	Can an employer limit the level or duration of disability income benefits based on age?	10-9
Q 10:13	May an employer increase an employee's share of the cost of disability income benefits based on age?	10-9
Q 10:14	Are all disability income benefits required to comply with the ADEA as amended by the Older Workers Benefits Protection Act?	10-10
Q 10:15	May an employer-provided LTD plan provide lesser benefits for mental disabilities than for other disabilities?	10-10

Plan Administration

Q 10:16	What are some of the major administrative problems with disability plans?	10-12
Q 10:17	How is a determination of disability made?	10-13
Q 10:18	Is a disability plan required to follow any particular procedures in processing benefit claims?	10-15
Q 10:19	What are disability benefits for purposes of the claims procedures?	10-16
Q 10:20	Do the claims procedure regulations apply to requests for a determination of whether an individual is eligible for coverage under a disability plan?	10-16
Q 10:21	Can a plan set a time limit for submitting a claim for benefits?	10-16
Q 10:22	Are disability benefit plans subject to any time limits in making benefit decisions?	10-17
Q 10:23	Is a plan required to give any explanation when it denies a claim for disability benefits?	10-18
Q 10:24	Is a plan's review of an adverse benefit determination subject to time limits or other restrictions?	10-19
Q 10:25	Can a claimant agree to an extension of the time period for deciding a claim?	10-21
Q 10:26	Can a plan offer claimants additional appeals beyond what the regulations require?	10-21

Q 10:27 Do the claims regulations specify a time limit for paying claims? 10-22
Q 10:28 Can claimants authorize someone else to act on their behalf with respect to a claim? 10-22
Q 10:29 If a plan terminates disability benefits, must the plan treat the termination as an adverse benefit determination? 10-22
Q 10:30 If a claimant has designated an authorized representative, is the plan required to provide benefit determinations and other notifications to the representative, to the claimant, or to both? 10-22
Q 10:31 Must a participant exhaust all administrative remedies under ERISA before filing a lawsuit to recover LTD benefits? 10-23
Q 10:32 If the plan administrator or its medical consultant disagrees with the treating physician, whose opinion controls? 10-23
Q 10:33 What if the employee does not submit evidence of disability? . . 10-26
Q 10:34 Must evidence of disability be strictly medical in nature? 10-28
Q 10:35 Is the plan administrator bound by a determination of Social Security disability? 10-30
Q 10:36 Can the employee's claim for long-term disability benefits be denied if the employee had a prior medical condition? 10-32
Q 10:37 What if a former employee becomes disabled at a later date? . . 10-33
Q 10:38 Can a plan administrator ever terminate disability benefit payments once the individual has begun receiving them? . . . 10-35
Q 10:39 Is a disabled participant who tries to obtain training for a new occupation or who returns to work on a limited schedule disqualified from receiving further LTD benefits? 10-39
Q 10:40 Can a former employee be precluded by the terms of his or her former employer's disability insurance policy from continuing to receive long-term disability benefits after beginning employment with another company that paid a higher salary? 10-39

Trust Requirement

Q 10:41 Are employee contributions toward LTD coverage required to be held in trust? 10-40

Benefit Calculations

Q 10:42 How are disability benefits calculated? 10-40

Tax Treatment of Employers

Q 10:43 Are employer contributions to, or payments under, a disability income plan deductible for federal income tax purposes? . . . 10-41

Tax Treatment of Employees

Q 10:44 Are employees taxed on the cost of monthly employer-provided disability coverage? 10-41
Q 10:45 Can disability insurance be paid for by a qualified retirement plan? 10-42
Q 10:46 Are benefits paid under a dismemberment-type plan taxable to the employee? 10-43
Q 10:47 Are benefits paid under a disability income plan taxable to the employee? 10-44
Q 10:48 When are disability premiums considered paid by the employee? 10-45
Q 10:49 How does an employer calculate the amount that is taxable to an employee receiving disability income payments under a plan involving both employer and employee contributions? 10-47
Q 10:50 What if the employer contributes a different amount for each class of employees under the disability income plan? 10-47
Q 10:51 What if the plan contains other types of benefits besides disability income benefits? 10-48
Q 10:52 How is the taxable amount determined if a group insurance policy is used to fund the disability income plan? 10-48
Q 10:53 How is the taxable amount determined if the disability income plan is self-insured? 10-49
Q 10:54 How is the taxable amount determined if individual insurance policies are used to fund a disability income plan? 10-49
Q 10:55 How is the taxable amount of disability income payments determined if each employee is given the option of contributing to the disability income coverage on a pretax salary reduction basis or on an after-tax basis? 10-50
Q 10:56 Are taxable disability income benefits subject to mandatory wage withholding? 10-50
Q 10:57 Can the employee make a third-party payer of temporary disability payments withhold? 10-51
Q 10:58 Are all recipients of long-term disability income benefits entitled to demand that a third-party payer withhold? 10-51
Q 10:59 When does a valid request for voluntary withholding by a third-party payer take effect? 10-52
Q 10:60 May an employee change or withdraw a voluntary withholding request? 10-52
Q 10:61 Can a collective bargaining agreement override the voluntary withholding rules? 10-52
Q 10:62 Are taxable disability income payments subject to Social Security withholding? 10-52
Q 10:63 Who is responsible for Social Security withholding? 10-52
Q 10:64 How are disability income payments required to be reported? 10-53

Tax Treatment of Self-Employed Persons and Subchapter S Corporation Shareholder-Employees

Q 10:65 What is the income tax treatment of insurance premiums paid by a sole proprietor for disability income insurance coverage? 10-53

Q 10:66 What is the income tax treatment of disability income benefits received by a sole proprietor under an insured plan maintained by the sole proprietorship? 10-54

Q 10:67 What is the income tax treatment of disability income benefits received by a sole proprietor under a self-insured plan maintained by the sole proprietorship? 10-54

Q 10:68 What is the income tax treatment of insurance premiums paid by a partnership for disability income insurance coverage of its partners? 10-54

Q 10:69 What is the income tax treatment of disability income benefits received by a partner from an insured disability income plan maintained by the partnership? 10-55

Q 10:70 What is the income tax treatment of disability income benefits received by a partner under a self-insured disability income plan maintained by the partnership? 10-55

Q 10:71 What is the income tax treatment of insurance premiums paid by a Subchapter S corporation for insured disability income coverage maintained for shareholder-employees of the corporation and the benefits received by the shareholder-employees? 10-55

Q 10:72 What is the income tax treatment of disability income benefits received by shareholder-employees of a Subchapter S corporation under an insured disability income plan maintained by the corporation? 10-56

Q 10:73 What is the income tax treatment of disability income benefits received by a shareholder-employee of a Subchapter S corporation from self-insured disability income coverage maintained by the corporation? 10-56

Chapter 11 Group Term Life Insurance Plans

Basic Concepts

Q 11:1 What is a group term life insurance plan? 11-2

Q 11:2 What is group term life insurance for Code Section 79 purposes? 11-2

Q 11:3 May group term life insurance be combined with other benefits? 11-2

Q 11:4 Are employer-provided group term life insurance plans eligible for favorable tax treatment? 11-2

Q 11:5 How does an employer-provided group term life insurance plan qualify for favorable tax treatment under Code Section 79? 11-3
Q 11:6 Does Code Section 79 apply only to term life insurance policies? 11-3
Q 11:7 Can an employer provide group term life insurance coverage for its employees under Code Section 79 by purchasing a group policy from its wholly owned life insurance subsidiary? 11-3
Q 11:8 Can spouses and dependents be insured under a Section 79 group term life insurance plan? 11-4
Q 11:9 Can group term life insurance provided under a tax-qualified retirement plan qualify for Section 79 treatment? 11-4
Q 11:10 Can state law affect the coverage eligible for special treatment under Code Section 79? 11-5
Q 11:11 Is an employer-provided group term life insurance plan subject to ERISA? 11-5
Q 11:12 Does the Age Discrimination in Employment Act of 1967 apply to employer-provided group term life insurance? 11-5
Q 11:13 What are the reporting and disclosure requirements for group term life insurance? 11-5

General Death Benefit Requirement

Q 11:14 What type of benefit must a plan offer to qualify as group term life insurance under Code Section 79? 11-6
Q 11:15 What is a survivor monthly income benefit, and can it qualify as a general death benefit? 11-6

“Group of Employees” Requirement

Q 11:16 What types of employees may a Section 79 group term life insurance plan cover? 11-6
Q 11:17 Who is an “employee” under a Section 79 group term life insurance plan? 11-7
Q 11:18 Are corporate directors and independent contractors employees under Code Section 79? 11-7
Q 11:19 Does stock ownership affect characterization as an employee? 11-7
Q 11:20 Would an S corporation shareholder or a partner be treated as an eligible employee? 11-7
Q 11:21 Does coverage for dependents qualify for favorable tax treatment under Code Section 79? 11-8
Q 11:22 Is there a minimum number of employees an employer-provided group term life insurance plan must cover in order to qualify under Code Section 79? 11-8
Q 11:23 If a single-employer plan fails the minimum size requirement, can it still qualify under Code Section 79? 11-8

Q 11:24 If a multiemployer plan fails the minimum size requirement, can it still qualify for Section 79 treatment? 11-9
Q 11:25 Can any employees be excluded when applying either of the two exceptions to the minimum size rules?. 11-10

Policy Carried Directly or Indirectly by the Employer

Q 11:26 What is a "policy" under Code Section 79? 11-10
Q 11:27 Must two or more policies issued by one insurer be treated as one policy for Section 79 qualification purposes? 11-10
Q 11:28 May an employer elect to treat two or more term policies issued by the same insurer (or its affiliate) as separate policies?. 11-11
Q 11:29 Why would an employer want to treat two or more group term obligations as separate policies? 11-11
Q 11:30 If employees are covered by both term policies and permanent policies issued by the same insurer (or its affiliate), can the employer ever treat them as two separate policies? 11-12
Q 11:31 Why would an employer want to treat a term life insurance policy and a permanent life insurance policy issued by the same insurer (or its affiliate) as two separate policies? 11-12
Q 11:32 When would Code Section 79 apply to a single insurance policy with both a term and a permanent feature?. 11-12
Q 11:33 Should an employer seek Section 79 treatment for a single policy combining term and permanent benefits? 11-13
Q 11:34 When is the employer considered to be directly or indirectly carrying a policy for purposes of Code Section 79? 11-13
Q 11:35 How is an employee-pay-all plan treated under these rules?. . . 11-14
Q 11:36 Why can it be undesirable for an employee-pay-all plan to be treated as employer-provided group term life insurance?. . . . 11-14
Q 11:37 How does an employee-pay-all plan avoid the impact of the straddling rule that applies under Code Section 79? 11-15
Q 11:38 Does an employee-pay-all group term life insurance policy that has nonsmoker premium rates at or below Table I rates and smoker premium rates above Table I rates trigger the straddling rule? 11-16

Benefit Formula Precluding Individual Selection

Q 11:39 How can a benefit formula preclude individual selection so as to satisfy Code Section 79?. 11-17
Q 11:40 Can a benefit formula meet the "precludes individual selection" test if coverage varies according to how much an employee elects to contribute? 11-17

Nondiscrimination Rules

Q 11:41 What are the basic nondiscrimination rules under Code Section 79? 11-18

Q 11:42 Who is a key employee, in whose favor a plan cannot discriminate? 11-18

Q 11:43 When is eligibility to participate discriminatory under Code Section 79? 11-19

Q 11:44 When are benefits discriminatory under Code Section 79? 11-19

Q 11:45 Are group term life insurance policies tested separately in determining whether the employer's plan is discriminatory? 11-20

Q 11:46 Can a plan that provides separate layers of coverage pass these nondiscrimination tests? 11-20

Q 11:47 How is additional group term life insurance that employees purchase under a Code Section 79 plan treated for nondiscrimination testing purposes? 11-21

Q 11:48 How are the Section 79 nondiscrimination rules applied to a plan covering both active and retired employees? 11-21

Q 11:49 What is the effect of the grandfather rules under Code Section 79? 11-21

Other Plan Design Limitations

Q 11:50 If a discriminatory group term life insurance benefit is included in a cafeteria plan, will it disqualify the cafeteria plan? 11-23

Q 11:51 Is an employer subject to the ADEA allowed to limit eligibility for group term life insurance benefits based on age? 11-23

Q 11:52 Is an employer subject to the ADEA allowed to limit the amount of group term life insurance benefits based on age? 11-23

Q 11:53 Can an employer subject to the ADEA increase the employees' share of the cost of group term life insurance based on age? 11-24

Q 11:54 Can an employer subject to the ADEA limit eligibility, based on age, for extension of group term life insurance during disability? 11-24

Q 11:55 Can employer-provided group term life insurance be reduced or eliminated at retirement? 11-24

Q 11:56 Does the ADA prohibit charging more for employees who are smokers? 11-25

Preemption of State Insurance Laws

Q 11:57 Why are state insurance laws important? 11-25

Q 11:58 How does ERISA's "saving clause" preserve state regulation of group term life insurance policies insuring ERISA plans? 11-26

Plan Administration Issues

Q 11:59 Can an employer keep policy dividends and premium rebates if the group term life insurance is contributory? 11-27

Q 11:60 What if a deceased employee did not properly enroll for life insurance benefits? 11-27

Q 11:61 What happens if an employee dies before a valid beneficiary designation under the group term life insurance plan? 11-28
Q 11:62 What if a beneficiary designation form is not properly completed? 11-29
Q 11:63 If the deceased employee designates a beneficiary under the group term life insurance plan but then names a different beneficiary under his or her will, which beneficiary designation controls? 11-31
Q 11:64 What if a deceased employee indicated an intent to change his or her beneficiary designation, but did not complete the necessary forms? 11-31
Q 11:65 What is a plan administrator to do when faced with competing claims from more than one individual? 11-32
Q 11:66 What if the plan administrator has already paid the designated beneficiary when it receives notice that another individual claims to be the beneficiary? 11-33
Q 11:67 What if a deceased employee never changed his or her beneficiary designation of a spouse following a divorce? 11-34
Q 11:68 What if the beneficiary is the one who caused the insured employee's death? 11-36
Q 11:69 What recourse does a plan administrator have when paying benefits for a minor beneficiary to a parent or guardian who may be unreliable? 11-38
Q 11:70 What adverse consequences could result from switching to a successor insurance policy or changing insurance carriers? . 11-38
Q 11:71 Must the plan pay interest on delayed payment of group term life insurance benefits? 11-40
Q 11:72 May the plan delay payment of the benefit in order to provide the designated beneficiary or beneficiaries time to select a form of payment? 11-40
Q 11:73 What administrative difficulties can arise when the employer processes group term life insurance claims for distraught surviving family members?. 11-40
Q 11:74 If the group term life insurance policy is canceled, is the plan fiduciary required to notify participants of the cancellation?. 11-42

Trust Requirement

Q 11:75 Are employee contributions toward coverage under the employer's group term life insurance policy plan assets for ERISA purposes? 11-43
Q 11:76 Are there any exemptions from ERISA's trust requirement for employee contributions? 11-44
Q 11:77 Are pretax contributions for group term life insurance under a cafeteria plan treated as employee contributions for purposes of the trust requirement? 11-44

Taxation Issues

Tax Treatment of Employer Contributions

Q 11:78 Are an employer's contributions for group term life insurance coverage for employees tax deductible? 11-44

Q 11:79 Does an employer's deduction hinge on compliance with Code Section 79? 11-45

Income Tax Treatment of Coverage Provided to Employees

Q 11:80 How, generally, are employees taxed for group term life insurance coverage under Code Section 79 when the plan is not discriminatory? 11-45

Q 11:81 How should the employer calculate the annual amount that is included in the employee's gross income under Code Section 79? 11-45

Q 11:82 How are employee contributions toward coverage taken into account when calculating imputed income under Code Section 79? 11-46

Q 11:83 Are disabled employees subject to tax under Code Section 79? 11-47

Q 11:84 Does an employee who has retired have imputed income under Code Section 79? 11-47

Q 11:85 What are the tax consequences if the employer's group term life insurance plan fails the Section 79 nondiscrimination tests? 11-48

Q 11:86 How is "actual cost" determined under a discriminatory group term life insurance plan? 11-48

Q 11:87 What if the plan is discriminatory under Code Section 79 for only a part of a taxable year? 11-49

Q 11:88 Are there any planning strategies an employee can use to avoid imputed income under Code Section 79? 11-49

Q 11:89 When will designating a charity as beneficiary avoid imputed income under Code Section 79? 11-49

Q 11:90 When will designation of the employer as beneficiary avoid imputed income under Code Section 79? 11-50

Q 11:91 Can an assignment other than to a charity or to the employer avoid imputed income for an employee under Code Section 79? 11-50

Q 11:92 Can an employee deduct his or her contributions for group term life insurance coverage? 11-50

Q 11:93 If a policy contains both term and permanent benefits and is subject to Code Section 79, how is the employee's coverage taxed? 11-51

Q 11:94 What is the tax treatment under Code Section 79 of policy dividends under a policy including a permanent feature? 11-51

Q 11:95 If the policy year and the employee's taxable year are different, how is the cost of the permanent coverage allocated between taxable years? 11-52

Q 11:96 Is imputed income under Code Section 79 subject to federal income tax withholding? 11-52

Q 11:97 Is imputed income under Code Section 79 subject to Federal Insurance Contributions Act tax? 11-52

Q 11:98 Is imputed income under Code Section 79 subject to federal unemployment tax (FUTA)? 11-53

Q 11:99 If employer-provided group term life insurance coverage does not qualify under Code Section 79, what are the tax consequences for employees? 11-53

Income Tax Treatment of Death Benefits

Q 11:100 Are death benefits paid under a Section 79 group term life insurance plan subject to federal income tax? 11-53

Q 11:101 If a death benefit is paid out in installments, or as an annuity, how are the payments taxed? 11-53

Q 11:102 Are death benefits from a group term life insurance plan payable in the form of a life annuity subject to the Section 72 provisions governing annuities? 11-54

Tax Treatment of Premium Rebates

Q 11:103 Does an employer have income when it receives a premium rebate under a group term life insurance policy? 11-54

Q 11:104 In what year is an employer required to take a taxable premium rebate into its federal gross income? 11-55

Q 11:105 What is the federal income tax treatment of premium rebates paid to employees under a contributory or employee-pay-all group term life insurance plan? 11-55

Q 11:106 Is a taxable premium rebate paid to employees subject to wage withholding for federal income tax, FICA, and FUTA purposes? 11-56

Q 11:107 What is the federal income tax treatment if the employer or insurer, instead of paying employees a premium rebate, waives employee contributions under the group life insurance policy for a limited period? 11-56

Q 11:108 What are the federal income tax consequences if the surplus under a group life insurance policy, instead of being paid as a premium rebate, is used to establish or increase the amount of a premium stabilization reserve? 11-56

Federal Estate and Gift Taxation

Q 11:109 Are group term life insurance death benefits includable in the deceased employee's federal gross estate? 11-57

Q 11:110	Is there anything the employee can do to shelter the death benefit from federal estate tax?	11-57
Q 11:111	What kind of assignment of group life insurance coverage is necessary to remove it from the employee's gross estate?	11-57
Q 11:112	What are the incidents of ownership the employee must surrender to make a successful assignment?	11-57
Q 11:113	Can an assignment fail to shelter the death benefit from tax because the employee dies too soon after it is made?	11-58
Q 11:114	Must a group term policy be reassigned each year?	11-58
Q 11:115	Will the estate tax be affected if the assignee pays the employee's share of the premiums under a contributory group term life insurance plan?	11-59
Q 11:116	Should employees generally assign their group life insurance to remove it from their federal gross estates?	11-59
Q 11:117	Will an assignment result in federal gift tax liability?	11-59
Q 11:118	How is an assignment valued for federal gift tax purposes?	11-60

Chapter 12 Death Benefits Other Than Employee Group Term Life Insurance

Dependent Group Term Life Insurance

Q 12:1	What is a dependent group term life insurance plan?	12-1
Q 12:2	Who pays the cost of a dependent group term life insurance plan?	12-2
Q 12:3	Is a dependent group term life insurance plan subject to ERISA?	12-2
Q 12:4	Is a dependent group term life insurance plan subject to the Age Discrimination in Employment Act?	12-2
Q 12:5	May an employer deduct its premium payments for dependent group term life insurance?	12-3
Q 12:6	Are an employee's own contributions toward dependent group term life insurance coverage deductible?	12-3
Q 12:7	Is the cost or value of dependent group term life insurance coverage provided to an employee by his or her employer included in the employee's gross income for federal income tax purposes?	12-3
Q 12:8	Is dependent group term life insurance subject to Section 79 income tax treatment?	12-4
Q 12:9	How are the death benefit proceeds under a dependent group term life insurance plan taxed?	12-4
Q 12:10	Can dependent group term life insurance be made part of a cafeteria plan?	12-5

Accidental Death Benefits

Q 12:11 What is an accidental death benefit plan? 12-6
Q 12:12 How does an employer typically provide AD&D coverage? 12-7
Q 12:13 Is an AD&D plan subject to ERISA? 12-7
Q 12:14 Is an AD&D plan subject to the ADEA? 12-7
Q 12:15 Must an employer pay life insurance benefits to the estate of a worker who was wrongfully discharged? 12-7
Q 12:16 May the employer deduct its premium payments for AD&D insurance? 12-8
Q 12:17 Is employer-provided AD&D coverage taxable income to employees? 12-8
Q 12:18 How are the death benefit proceeds under an employer-provided accidental death benefit plan taxed? 12-8
Q 12:19 What is the income tax treatment of the dismemberment benefits that are received by an employee under employer-provided AD&D coverage? 12-9

Business Travel Accident Insurance

Q 12:20 What is business travel accident insurance? 12-9
Q 12:21 Is a business travel accident insurance plan subject to ERISA? 12-9
Q 12:22 Are "side visits" made during business travel covered under the terms of a group accidental death benefit policy? 12-9
Q 12:23 Is a business travel accident plan subject to the ADEA? 12-10
Q 12:24 Can an employer deduct its premium payments for business travel accident insurance? 12-10
Q 12:25 Is employer-provided business travel accident insurance coverage taxable to employees? 12-10
Q 12:26 How are the proceeds of business travel accident insurance taxed? 12-11

Group Universal Life Insurance

Q 12:27 What is group universal life insurance? 12-11
Q 12:28 What is variable GUL insurance? 12-12
Q 12:29 How is GUL insurance typically provided to employees? 12-12
Q 12:30 Is GUL insurance subject to Section 79 group term life insurance treatment? 12-12
Q 12:31 Is a GUL plan an employee benefit plan subject to ERISA? 12-13
Q 12:32 Is a GUL plan subject to the ADEA? 12-13
Q 12:33 Are employer contributions to GUL coverage tax deductible? . . 12-13
Q 12:34 How are GUL death benefit proceeds treated for federal income tax purposes? 12-13
Q 12:35 How are GUL payments to an employee during his or her lifetime treated for federal income tax purposes? 12-14

Q 12:36	What is a modified endowment contract, and how does this characterization affect employee taxation on lifetime payouts under a GUL policy?	**12-15**
Q 12:37	What is the seven-pay test that an employee's GUL coverage must satisfy to avoid the modified endowment contract treatment?	**12-15**
Q 12:38	If GUL coverage satisfies the seven-pay test for the first seven years, is it assured of escaping modified endowment contract treatment thereafter?	**12-16**
Q 12:39	If an employee's GUL coverage fails the seven-pay test at any time, can the failure be cured?	**12-16**
Q 12:40	If the failure of the seven-pay test is not cured, will prior distributions (including loans) also become subject to modified endowment contract treatment?	**12-17**
Q 12:41	Does the date on which GUL coverage begins affect the application of the modified endowment contract rules?	**12-17**

Uninsured Death Benefits

Q 12:42	Are employer-provided uninsured death benefits subject to ERISA?	**12-17**
Q 12:43	Is an employer-provided uninsured death benefit plan subject to the ADEA?	**12-18**
Q 12:44	May an employer deduct an uninsured death benefit it pays on behalf of an employee?	**12-18**
Q 12:45	Are employer-provided uninsured death benefits taxable income to the recipient?	**12-18**
Q 12:46	Is a death benefit funded through a VEBA treated as an uninsured death benefit or as life insurance proceeds?	**12-18**

Split-Dollar Life Insurance

Q 12:47	What is a split-dollar plan?	**12-19**
Q 12:48	Is split-dollar life insurance subject to ERISA?	**12-21**
Q 12:49	Can an employer deduct its premium payments under a split-dollar plan?	**12-21**
Q 12:50	Are benefits received by an employee under a split-dollar insurance arrangement subject to tax?	**12-21**
Q 12:51	What are the basic tax principles under the final split-dollar regulations?	**12-22**
Q 12:52	Does an employer's payment of part or all of the annual premium under a traditional split-dollar insurance arrangement result in taxable income to the employee?	**12-24**
Q 12:53	When may an employer use an insurer's published premium rate to determine the value of an employee's current life insurance protection under a split-dollar insurance arrangement?	**12-26**

Q 12:54 What is the income tax treatment of death benefit proceeds under a split-dollar plan? 12-27
Q 12:55 What is the federal estate tax treatment of death proceeds under a split-dollar insurance plan? 12-27
Q 12:56 What is a split-dollar plan rollout, and what are its tax consequences to the employee and employer? 12-27
Q 12:57 What is a reverse split-dollar plan, and what are its tax consequences to the employee? 12-28
Q 12:58 What is an equity split-dollar arrangement? 12-29
Q 12:59 How is an employee taxed under an equity split-dollar arrangement? 12-30

Bonus Life Insurance

Q 12:60 What is a bonus life insurance plan? 12-33
Q 12:61 What is the income tax treatment of a bonus life insurance plan? 12-33
Q 12:62 Is a bonus life insurance plan subject to ERISA? 12-34

Death Benefits Under Qualified Retirement Plans

Q 12:63 Can a tax-qualified retirement plan provide death benefit coverage for plan participants? 12-34
Q 12:64 How does the incidental test apply in the case of life insurance coverage provided under a qualified pension plan? 12-34
Q 12:65 How does the incidental test apply to life insurance coverage provided under a qualified profit sharing plan? 12-35
Q 12:66 How does the incidental test apply to life insurance purchased with voluntary employee contributions? 12-35
Q 12:67 What rules apply in determining whether the life insurance is purchased with employer contributions? 12-35
Q 12:68 Is an employee taxed on life insurance coverage provided under a qualified retirement plan? 12-35
Q 12:69 How should an employer determine the value of the life insurance protection taxable to an employee under a qualified retirement plan? 12-36
Q 12:70 How are life insurance death benefits paid to an employee's estate or beneficiary under a qualified retirement plan treated for federal income tax purposes? 12-36
Q 12:71 Can tax-qualified retirement plans provide preretirement death benefits to employees other than through the purchase of life insurance? 12-36
Q 12:72 Can tax-qualified retirement plans provide postretirement death benefits? 12-37
Q 12:73 Can excess pension assets be used to purchase retiree group term life insurance? 12-37

Accelerated Death Benefits

Q 12:74 What is an accelerated death benefit? 12-38
Q 12:75 What kinds of medical or health-related conditions may qualify an insured to elect accelerated death benefits under a life insurance policy? 12-38
Q 12:76 Is an accelerated death benefit payable in a lump sum? 12-39
Q 12:77 How is the face amount of the policy reduced? 12-39
Q 12:78 If the policy has a cash value, how does payment of an accelerated death benefit affect the cash value? 12-39
Q 12:79 What is the federal income tax treatment of an accelerated death benefit received by an employee under a group life insurance policy? 12-40
Q 12:80 Who is a terminally ill insured? 12-40
Q 12:81 What is the federal income tax treatment of an accelerated death benefit received by an insured employee under a group life insurance policy for medical reasons other than terminal illness? 12-40
Q 12:82 Does the exclusion from income for accelerated death benefits apply where the life insurance contract is employer-owned (a COLI contract)? 12-41
Q 12:83 Are employers likely to favor an accelerated death benefit option as a part of their group life insurance programs for employees? 12-41

Living Benefits

Q 12:84 What is a living benefit? 12-41
Q 12:85 Who is a qualified viatical settlement provider? 12-41
Q 12:86 How is a living benefit different from an accelerated death benefit? 12-42
Q 12:87 How is the living benefit paid? 12-42
Q 12:88 Why would an insured individual want a living benefit? 12-42
Q 12:89 Are living benefits a ghoulish practice? 12-42
Q 12:90 Do federal securities laws apply to living benefits companies? 12-43
Q 12:91 Are living benefits companies regulated in any manner? 12-43
Q 12:92 How does a living benefit differ from traditional life insurance? . . 12-43
Q 12:93 When a living benefits company takes an irrevocable assignment of an individual's life insurance policy, does the company have an insurable interest in the individual's life? 12-44
Q 12:94 Is a living benefit option available only from independent, non-insurance companies? 12-44
Q 12:95 Are living benefit payments taxable to the insured? 12-44

Chapter 13 Fringe Benefits

Overview

Q 13:1 What are fringe benefits under Code Section 132? 13-2

No-Additional-Cost Services

Q 13:2 What is a no-additional-cost service? 13-2

Q 13:3 What types of services may qualify as no-additional-cost services under Code Section 132? 13-3

Q 13:4 What types of services do not qualify as no-additional-cost services? 13-3

Q 13:5 Do services provided only to employees qualify as no-additional-cost services? 13-3

Q 13:6 Must a no-additional-cost service be provided to employees for free? 13-3

Q 13:7 May an employee's family members receive no-additional-cost services? 13-3

Q 13:8 For purposes of the no-additional-cost rule, how is an employer's cost of providing the service to employees determined? 13-4

Q 13:9 What is the line of business limitation? 13-5

Q 13:10 How are lines of business determined? 13-5

Q 13:11 Can an employee receive a no-additional-cost service from an unrelated employer? 13-6

Q 13:12 What nondiscrimination requirements apply to no-additional-cost services under Code Section 132? 13-6

Q 13:13 What happens if a no-additional-cost benefit is discriminatory? . 13-7

Employee Discounts

Q 13:14 What is an employee discount? 13-7

Q 13:15 What is a qualified employee discount? 13-7

Q 13:16 How large can a qualified employee discount be under Code Section 132? 13-7

Q 13:17 What form may a qualified employee discount take? 13-8

Q 13:18 If an employer offers property or service to its nonemployee customers at a discounted price, how is the amount of the Section 132 qualified employee discount affected? 13-8

Q 13:19 What type of property qualifies for a tax-free employee discount? 13-8

Q 13:20 When determining the qualified employee discount on property, how is the employer's gross profit percentage calculated? 13-8

Q 13:21 What amount is taxable to an employee if the goods he or she purchases are damaged, distressed, or returned? 13-9

Q 13:22 How is a qualified discount on services calculated? 13-9
Q 13:23 Can an employee's family members also receive a tax-free employee discount? 13-9
Q 13:24 Can qualified employee discounts be provided by a second, unrelated party? 13-10
Q 13:25 What nondiscrimination rules apply to qualified employee discounts? 13-10

Working Condition Fringe Benefits

Q 13:26 What is a working condition fringe benefit? 13-11
Q 13:27 What requirements must be met in order for employer-provided property or services to be working condition fringe benefits? 13-12
Q 13:28 What property or services constitute working condition fringe benefits? 13-12
Q 13:29 Are cell phones or other telecommunications devices excludable as working condition fringe benefits?. 13-13
Q 13:30 When is lodging treated as a working condition fringe benefit? . 13-14
Q 13:31 What employer-provided products and services are not working condition fringe benefits? 13-16
Q 13:32 What nondiscrimination rules apply to working condition fringe benefits? 13-17

Aircraft

Q 13:33 Is an employee's use of a private aircraft owned or leased by his or her employer a working condition fringe benefit? 13-17
Q 13:34 If an employee travels by air for both business and personal reasons, what is the tax treatment of the trip? 13-18
Q 13:35 What is the result if a trip on a company aircraft is primarily a personal trip, and the business purpose is secondary? 13-18
Q 13:36 What is the result if members of an employee's family fly in company aircraft along with the employee? 13-18
Q 13:37 What rules apply for valuing taxable trips in an employer-provided aircraft? 13-19
Q 13:38 Are the SIFL valuation rules the same for all employees? 13-19
Q 13:39 Who is a control employee? 13-19
Q 13:40 Who is a control employee in the case of a governmental employer? 13-20
Q 13:41 Can a former employee be a control employee? 13-20
Q 13:42 Do the higher valuation rules for a control employee also apply to the personal trips on company aircraft by family members of the control employee?. 13-20
Q 13:43 What if some passengers on a company-provided aircraft are traveling primarily for business purposes and others are traveling primarily for personal reasons?. 13-20

Q 13:44 How does the 50 percent seating capacity rule apply when a trip involves multiple flights? . . . 13-21
Q 13:45 Can an employer use either the fair market value rule or the special SIFL rule in valuing employer-provided aircraft usage? . . . 13-21
Q 13:46 Is the amount of taxable employer-provided aircraft travel subject to wage withholding? . . . 13-21
Q 13:47 Can an employer deduct the full cost of an employee's personal trip on a company aircraft? . . . 13-22

Cars and Other Vehicles

Q 13:48 Is the use of an employer-provided vehicle excludable as a working condition fringe benefit? . . . 13-25
Q 13:49 What kinds of employer-provided vehicles can qualify as a working condition fringe benefit? . . . 13-26
Q 13:50 Does the value of the employer-provided vehicle affect its treatment as a working condition fringe benefit? . . . 13-26
Q 13:51 What rules apply if an employee uses more than one employer-provided vehicle? . . . 13-27
Q 13:52 Is an employee required to substantiate his or her business use of an employer-provided car? . . . 13-27
Q 13:53 How is the business use of an employer-provided car substantiated? . . . 13-27
Q 13:54 What kinds of records will be considered adequate for substantiation of business use? . . . 13-27
Q 13:55 When must the records used for substantiation of business use be prepared? . . . 13-28
Q 13:56 Is a written record always required for substantiation of business use? . . . 13-28
Q 13:57 What if some of the documentation needed to substantiate the business use of a car is confidential? . . . 13-28
Q 13:58 Is there a safe harbor for substantiating an employee's use of an employer-provided vehicle for business only? . . . 13-28
Q 13:59 What must be contained in the employer's written policy statement concerning business use only? . . . 13-29
Q 13:60 What is the result if an employer makes a vehicle available to an employee for both business use and commuting? . . . 13-29
Q 13:61 What information must be contained in an employer's written policy statement on business and commuting use? . . . 13-30
Q 13:62 How is the taxable personal use of an employer-provided vehicle calculated? . . . 13-30
Q 13:63 Do any special conditions apply when electing special vehicle valuation rules? . . . 13-31
Q 13:64 How is the fair market value of an employer-provided vehicle determined? . . . 13-31
Q 13:65 How does the annual lease value method work? . . . 13-32

Q 13:66	How does the cents-per-mile valuation rule work?	13-34
Q 13:67	How does the commuting valuation rule work?	13-36

Club Dues

Q 13:68	When is reimbursement of club dues a working condition fringe benefit?	13-36

***De Minimis* Fringe Benefits**

Q 13:69	What is a *de minimis* fringe benefit?	13-37
Q 13:70	What kinds of property or services constitute *de minimis* fringe benefits?	13-37
Q 13:71	What products and services do not qualify as *de minimis* fringe benefits?	13-39
Q 13:72	Do any nondiscrimination requirements apply to *de minimis* fringe benefits?	13-40

Employer-Operated Eating Facilities

Q 13:73	Do *de minimis* fringe benefits include the value of meals provided to employees at an employer-operated eating facility for employees?	13-40
Q 13:74	What qualifies as an employer-operated eating facility for employees?	13-41
Q 13:75	How is the revenue/operating-cost test applied?	13-41
Q 13:76	What items constitute the direct operating costs of an employer-operated eating facility?	13-42
Q 13:77	What nondiscrimination rules apply to the exclusion of employer-provided meals as a *de minimis* fringe benefit under Code Section 132?	13-43
Q 13:78	How are employees taxed on nonexcludable meals furnished at employer-provided eating facilities?	13-43

Meal Money and Local Transportation Fare

Q 13:79	Are occasional meal money and local transportation fare excludable from gross income under Code Section 132 as *de minimis* fringe benefits?	13-44

Employer-Provided Transportation in Unusual Circumstances and Because of Unsafe Conditions

Q 13:80	What special rules apply to employer-provided transportation such as taxi fare?	13-45
Q 13:81	When do unusual circumstances exist?	13-45
Q 13:82	When do unsafe conditions exist?	13-45
Q 13:83	What additional exclusion is available for employer-provided transportation because of unsafe conditions?	13-45

Q 13:84 Who is a qualified employee for purposes of receiving transportation solely because of unsafe conditions? 13-46
Q 13:85 For purposes of the Section 61 exclusion, when are unsafe conditions considered to exist? 13-46
Q 13:86 What type of employer-provided transportation counts toward the special exclusion for unsafe conditions? 13-47
Q 13:87 How are qualifying trips valued? 13-47

On-Premises Athletic Facilities

Q 13:88 What is an on-premises athletic facility?. 13-47
Q 13:89 Can the value of on-premises athletic facilities be excluded from the employee's gross income?. 13-47
Q 13:90 What conditions must be satisfied in order for the value of on-premises athletic facilities to be excluded under Code Section 132? 13-47
Q 13:91 When is an athletic facility considered to be on the premises of an employer? 13-48
Q 13:92 When is an employer considered to be operating an on-premises athletic facility?. 13-48
Q 13:93 May an employee's family members also use an employer's on-premises athletic facilities on a tax-free basis?. 13-48

Qualified Transportation Fringe Benefits

Q 13:94 What is a qualified transportation fringe benefit?. 13-49
Q 13:95 Must a qualified transportation fringe benefit plan be in writing? 13-50
Q 13:96 What is a commuter highway vehicle?. 13-50
Q 13:97 What is a transit pass? 13-50
Q 13:98 What is qualified parking? 13-50
Q 13:99 What is the current tax treatment of bicycle commuting reimbursement? 13-51
Q 13:100 Are all qualified transportation fringe benefits exempt from income tax? 13-52
Q 13:101 Can employers offer employees a choice between cash or qualified transportation benefits? 13-52
Q 13:102 What are the dollar limits on qualified transportation fringe benefits? 13-53
Q 13:103 Are the dollar limits on qualified transportation fringe benefits indexed for inflation? 13-54
Q 13:104 Can an employer reimburse an employee in cash for the cost of a qualified transportation fringe benefit? 13-54
Q 13:105 May an employer offer both a compensation reduction election and cash reimbursements for the same parking expenses?. . 13-55
Q 13:106 Are transit passes subject to special rules? 13-56

Q 13:107	What are the rules for using debit cards to provide transit benefits?	**13-57**
Q 13:108	Is a qualified transportation fringe benefit received by an employee subject to income tax withholding or to Social Security and the Federal Unemployment Tax Act?	**13-60**
Q 13:109	How are excludable qualified transportation fringes calculated?	**13-60**
Q 13:110	May employers distribute transit passes in advance?	**13-61**
Q 13:111	What is a compensation reduction arrangement?	**13-61**
Q 13:112	Is there a limit to the amount of the compensation reduction?	**13-62**
Q 13:113	When must the employee have made a compensation reduction election, and under what circumstances can the amount be paid in cash to the employee?	**13-62**
Q 13:114	Are compensation reduction elections revocable?	**13-62**
Q 13:115	What happens if an employee's actual qualified transportation costs are less than his or her compensation reduction election for a period?	**13-63**
Q 13:116	May an employer provide nontaxable cash reimbursements under Code Section 132(f) for periods longer than one month?	**13-63**
Q 13:117	How do the qualified transportation fringe benefit rules apply to vanpools?	**13-64**
Q 13:118	Can qualified transportation fringe benefits be provided to individuals who are not employees?	**13-65**
Q 13:119	May an employee receive qualified transportation fringe benefits from more than one employer?	**13-65**
Q 13:120	How does an employer determine nondeductible expenses for employee parking?	**13-65**
Q 13:121	Does the deduction disallowance rule for transportation fringe benefits apply to nonprofit employers?	**13-68**
	Moving Expense Reimbursements	
Q 13:122	What is the current tax treatment of moving expense reimbursements?	**13-68**
	Qualified Retirement Planning Services	
Q 13:123	Are employer-provided retirement planning services included in an employee's gross income?	**13-69**
	Meals and Lodging Furnished for the Employer's Convenience	
Q 13:124	Is the value of meals furnished by an employer to an employee and his or her family included in the employee's gross income?	**13-70**

Q 13:125 Is the value of lodging furnished by an employer to an employee and his or her family included in the employee's gross income? 13-70
Q 13:126 Does the meals exclusion apply if an employee receives a cash meal allowance? 13-70
Q 13:127 Does the meals exclusion apply to an employee if the employer provides groceries rather than finished meals? 13-71
Q 13:128 What is considered "business premises of the employer" for purposes of the meals and lodging exclusions? 13-71
Q 13:129 Is actual physical presence on the business premises of the employer required for the meals and lodging exclusions to be allowed? 13-71
Q 13:130 When are meals deemed furnished for the convenience of the employer? 13-72
Q 13:131 When are meals provided without a charge considered furnished for the convenience of the employer? 13-72
Q 13:132 What are some substantial noncompensatory business reasons of an employer for providing meals without charge to an employee? 13-72
Q 13:133 When are meals considered to be furnished for a compensatory business reason? 13-75
Q 13:134 When are meals furnished with a charge considered to be provided for the convenience of the employer? 13-75
Q 13:135 When is an employee considered to accept lodging as a condition of employment? 13-76
Q 13:136 What is the tax treatment if an employee is charged a flat amount for lodging? 13-77
Q 13:137 What special treatment applies to lodging provided to employees of educational institutions? 13-77
Q 13:138 Which institutions are considered educational institutions for the purposes of special treatment? 13-77
Q 13:139 What lodging is considered to be qualified campus lodging? . . 13-77
Q 13:140 Is the exclusion for qualified campus housing unlimited? 13-78
Q 13:141 Is the value of meals and lodging furnished to employees subject to income tax withholding and to FICA and FUTA taxes? 13-78

Employee Gifts and Achievement Awards

Q 13:142 If an employer makes a gift to an employee in cash or in property, how is the gift treated by the employee for federal income tax purposes? 13-78
Q 13:143 What is an employee achievement award? 13-79
Q 13:144 What is not considered tangible personal property for purposes of the employee achievement award rules? 13-79
Q 13:145 What is a meaningful presentation? 13-79

Q 13:146	When is an award considered payment of disguised compensation?	**13-79**
Q 13:147	What qualifies as a length-of-service award?	**13-80**
Q 13:148	What qualifies as a safety achievement award?	**13-80**
Q 13:149	May an employer deduct the cost of an employee achievement award?	**13-80**
Q 13:150	What is a qualified plan award?	**13-81**
Q 13:151	Is an employee required to include the value of an employee achievement award in his or her gross income?	**13-81**
Q 13:152	How do employee achievement award rules apply to partnerships and sole proprietorships?	**13-82**
Q 13:153	Is an employee achievement award that exceeds the excludable amount under Code Section 74(c) always taxable?	**13-82**
Q 13:154	Is an employee achievement award received by an employee subject to income tax withholding and to FICA and FUTA?	**13-82**

Disaster Relief Assistance

Q 13:155	Is employer-provided disaster relief assistance includable in an employee's gross income?	**13-83**
Q 13:156	What is a qualified disaster relief payment?	**13-84**

Group Legal Services Plans

Q 13:157	What is a group legal services plan?	**13-84**
Q 13:158	Does ERISA apply to group legal services plans?	**13-84**
Q 13:159	Are employees taxed on benefits received from employer-provided group legal services plans?	**13-84**

Identity Theft Protection Services

Q 13:160	Is the value of employer-provided identity theft protection service included in an employee's income?	**13-85**

Chapter 14 Educational Assistance

Educational Assistance Programs

Q 14:1	What is an educational assistance program?	**14-1**
Q 14:2	Does ERISA apply to educational assistance programs?	**14-2**
Q 14:3	Are educational assistance programs required to be funded?	**14-2**
Q 14:4	Can educational assistance be offered in a cafeteria or salary reduction plan?	**14-2**
Q 14:5	What types of educational assistance can the employer's program cover?	**14-3**

Q 14:6	Can the employer's educational assistance program cover graduate courses?	14-3
Q 14:7	May partners, S corporation shareholders, and sole proprietors receive tax-favored educational assistance program benefits under an employer-provided plan?	14-3
Q 14:8	Can an educational assistance program provide benefits to retired, disabled, or laid-off employees?	14-3
Q 14:9	Can an educational assistance program provide benefits to spouses or dependents who are not employees of the employer?	14-4
Q 14:10	What is the exclusive benefit requirement for employer-provided educational assistance programs?	14-4
Q 14:11	Does the educational assistance program have to be in writing?	14-4
Q 14:12	What disclosure of program benefits must be made to eligible employees?	14-4
Q 14:13	Are employer-provided educational assistance programs subject to nondiscrimination rules?	14-4
Q 14:14	What are the nondiscrimination tests?	14-5
Q 14:15	Are employees taxed on receipt of educational assistance benefits?	14-5
Q 14:16	What is the maximum amount of tax-favored benefits that may be provided by an educational assistance program?	14-6
Q 14:17	What are the tax consequences if the employer's educational assistance program fails the Section 127 nondiscrimination tests?	14-6
Q 14:18	Is the employer required to pay FICA or FUTA taxes on, or withhold taxes from, educational assistance program payments?	14-6
Q 14:19	Is an employer required to report an educational assistance program to the IRS?	14-6

Qualified Scholarships and Tuition Reductions

Q 14:20	Is an educational assistance program the only way in which an employee can receive tax-free treatment of amounts received for educational expenses?	14-7
Q 14:21	What is a scholarship or fellowship grant?	14-7
Q 14:22	What is the qualified scholarship exclusion from income?	14-7
Q 14:23	What are qualified tuition and related expenses?	14-7
Q 14:24	What is an educational organization as described in Code Section 170(b)(1)(A)(ii)?	14-8
Q 14:25	Who is a candidate for a degree?	14-8
Q 14:26	Is a qualified scholarship excludable from gross income if it is provided in return for services?	14-8
Q 14:27	If only a portion of a scholarship or fellowship grant is a payment for services, how is the exclusion determined?	14-9

Q 14:28 How are these rules on payment for services applied? **14-9**
Q 14:29 When is a qualified tuition reduction excludable from income? **14-9**
Q 14:30 What is a qualified tuition reduction? **14-9**
Q 14:31 Can a qualified tuition reduction be provided for graduate-level education? **14-10**
Q 14:32 Are there nondiscrimination rules that apply to qualified tuition reduction programs? **14-11**
Q 14:33 If a qualified tuition reduction program is discriminatory, are the benefits taxable to all participants or only to those in the highly compensated employee category? **14-11**
Q 14:34 Is a qualified scholarship program or a qualified tuition reduction plan subject to ERISA? **14-11**
Q 14:35 Can an employer provide qualified scholarships to employees' children? **14-11**

Job-Related Educational Benefits

Q 14:36 How are employer-provided educational benefits treated for federal income tax purposes if the benefits do not qualify for exclusion under Code Section 127 or 117? **14-12**
Q 14:37 What employer-provided educational benefits are considered deductible as employee business expenses under Code Section 162 and thus excludable from gross income? **14-13**
Q 14:38 What kinds of educational expenses are considered expenses incurred to maintain or improve skills required in the employee's job? **14-13**
Q 14:39 When is education considered to meet the express requirements of the employer and therefore to be excludable from gross income? **14-13**
Q 14:40 What employer-provided educational benefits do not qualify as deductible employee business expenses and therefore are not excludable from gross income? **14-14**
Q 14:41 What expenses qualify as educational expenses? **14-14**
Q 14:42 Can the employer exclude the cost of the educational benefit from the employee's gross income if the employer reimburses or advances the cost to the employee in cash rather than paying the cost directly to the educational institution? **14-14**
Q 14:43 Are employer-provided educational benefits not qualifying under Code Section 127 or 117 subject to income tax withholding? **14-15**
Q 14:44 Are employer-provided educational benefits not qualifying under Code Section 127 or 117 subject to FICA and FUTA tax? **14-15**

Education Savings Plans

Q 14:45 How can employers help employees fund the cost of a child's education? 14-15
Q 14:46 What are Coverdell education savings accounts? 14-15
Q 14:47 Who is an eligible beneficiary of a Coverdell education savings account? 14-16
Q 14:48 What are the limits on contributions to a Coverdell education savings account? 14-17
Q 14:49 How are distributions from a Coverdell education savings account treated for tax purposes? 14-17
Q 14:50 What happens if a beneficiary completes his or her education before exhausting the funds in a Coverdell education savings account? 14-18
Q 14:51 If an employer makes a contribution to a Coverdell education savings account for an employee's child, how is the contribution treated for tax purposes? 14-19
Q 14:52 What is a Section 529 college savings plan? 14-19
Q 14:53 What is an employer-sponsored Section 529 college savings plan? 14-21

Chapter 15 Paid Time Off and Severance Pay Plans

Paid Time Off Plans

Q 15:1 Are employers required to provide paid time off? 15-1
Q 15:2 Does the tax law provide any incentives for employers to provide paid leave? 15-2
Q 15:3 What is a PTO plan? 15-2
Q 15:4 Are unfunded PTO plans subject to ERISA? 15-2
Q 15:5 Are funded PTO plans subject to ERISA? 15-2
Q 15:6 Are PTO plans subject to nondiscrimination requirements? 15-3
Q 15:7 Are PTO plans subject to state laws? 15-4
Q 15:8 Is vacation pay taxable income to employees? 15-6
Q 15:9 When can the value of unused vacation and other paid time off be contributed to a 401(k) retirement plan? 15-6
Q 15:10 When can the value of unused vacation or other paid time off be contributed to a health reimbursement arrangement? 15-8
Q 15:11 May an employer deduct PTO expenses? 15-9
Q 15:12 When may an accrual-basis employer deduct PTO expenses? 15-9
Q 15:13 What are the tax consequences if an employee forgoes time off and has the value of the leave donated to charity? 15-9
Q 15:14 What is the tax treatment of employee leave-sharing programs? 15-10

Employer Credit for Paid Family and Medical Leave

Q 15:15	What is the employer credit for paid family and medical leave?	15-12
Q 15:16	What kinds of leave qualify for the paid family and medical leave credit?	15-13
Q 15:17	What are the minimum paid leave requirements?	15-14
Q 15:18	Who is a qualifying employee?	15-15
Q 15:19	How does the employer calculate the required wage payments for paid family and medical leave?	15-15
Q 15:20	What is the amount of the credit for paid family and medical leave?	15-16
Q 15:21	Is an employer's paid family leave policy required to be in writing?	15-17
Q 15:22	Is the employer required to provide notice to employees of the paid family and medical leave policy?	15-18
Q 15:23	How does an employer claim the credit for paid family and medical leave?	15-18

Severance Pay Plans

Q 15:24	What is a severance pay plan?	15-18
Q 15:25	Are funded severance pay plans considered employee benefit plans subject to ERISA?	15-18
Q 15:26	Are unfunded severance pay plans subject to ERISA?	15-18
Q 15:27	What is the effect of an amended severance pay policy when the plan lacks the "magic" words of an amendment procedure as required by ERISA Section 402(b)(3)?	15-22
Q 15:28	What if the severance policy has never been communicated to employees?	15-22
Q 15:29	What effect does revoking a severance policy have on previously accrued severance benefits?	15-22
Q 15:30	Is an individual contractual arrangement with executives for severance benefits a severance pay plan subject to ERISA?.	15-23
Q 15:31	Under ERISA, is a severance pay plan considered a welfare benefit plan or a pension plan?	15-23
Q 15:32	May an employer-provided severance pay plan provide that the amount of severance pay will be determined on a case-by-case basis?	15-24
Q 15:33	May an employer condition the payment of severance pay on the employee signing a release of claims against the employer?	15-24
Q 15:34	Can an employee who has signed a waiver of claims against the employer file a discrimination claim with the EEOC?	15-27
Q 15:35	How does the Age Discrimination in Employment Act regulate the content of severance pay plans?	15-28

Q 15:36 Can an employer subject to the ADEA reduce or deny severance pay if an employee is eligible for, or receives, retirement benefits? 15-29

Q 15:37 Does a severance plan that is skewed in favor of younger workers automatically violate the ADEA? 15-29

Q 15:38 May an employer subject to the ADEA reduce or deny severance pay if an employee is eligible for, or receives, retiree health benefits? 15-30

Q 15:39 Can an employer subject to the ADEA require an individual to sign a waiver as a condition of receiving severance benefits? 15-31

Q 15:40 How must the ADEA waiver be worded? 15-32

Q 15:41 Must an employee receive something of value in return for signing an ADEA waiver? 15-32

Q 15:42 Is the employer required to give a minimum period to consider the waiver agreement or to revoke it after signing it? 15-33

Q 15:43 To require an ADEA waiver of rights and claims, what disclosure must an employer make in connection with an exit incentive or other employment termination program offered to a group or class of employees? 15-34

Q 15:44 Can the terms and conditions of a severance package be challenged as discriminatory under Title VII of the Civil Rights Act of 1964? 15-35

Q 15:45 May an employer deny severance pay due to an employee's bad acts? 15-36

Q 15:46 Must an employer provide severance pay if a former employee becomes employed by a successor employer? 15-36

Q 15:47 Is an employee entitled to severance pay if he or she is offered a job with a successor employer but turns it down? 15-38

Q 15:48 Is an employee who resigns entitled to severance benefits? . . . 15-39

Q 15:49 Are employees entitled to severance pay when they were never actually unemployed? 15-39

Q 15:50 Will an acquiring employer be required to give severance benefits based on years of service with a prior employer? . . . 15-40

Q 15:51 Does an employer have an ERISA fiduciary duty to disclose that it is considering adopting a severance plan? 15-40

Q 15:52 Does an employer have an ERISA fiduciary duty not to terminate a severance pay plan? 15-43

Q 15:53 Does the employer have a fiduciary duty not to misrepresent the likely future of severance plan benefits? 15-44

Q 15:54 Must an employer provide severance pay to all employees? . . . 15-45

Q 15:55 What if state law mandates that employers provide severance pay? 15-45

Q 15:56 Is severance pay taxable income to the recipient? 15-45

Q 15:57 Are severance pay plans subject to the special rules for nonqualified deferred compensation? 15-47

Q 15:58 May the employer deduct severance pay? 15-51

Golden Parachute Payments

Q 15:59 What is a golden parachute agreement? 15-52
Q 15:60 Is a golden parachute agreement subject to ERISA? 15-53
Q 15:61 Do golden parachute payments receive special federal income tax treatment? 15-53
Q 15:62 Has the IRS issued guidance on golden parachute payments? . 15-54
Q 15:63 What is the federal income tax definition of a parachute payment? 15-54
Q 15:64 Who is a disqualified individual? 15-55
Q 15:65 Are there certain types of payments that are not considered parachute payments? 15-55
Q 15:66 Is the payer of the parachute payment necessarily the corporation for which the disqualified individual provides services? 15-57
Q 15:67 When is a payment contingent on a change in ownership or control? 15-57
Q 15:68 What constitutes an excess parachute payment, subject to a 20 percent excise tax imposed on the recipient and not deductible by the payer? 15-58
Q 15:69 When does a change in ownership of the corporation occur? 15-59
Q 15:70 When does a change in the effective control of the corporation occur? 15-59
Q 15:71 What kind of stock is counted in determining whether there has been a change in ownership or control of a corporation? 15-60
Q 15:72 When does a change in the ownership of a substantial portion of the corporation's assets occur? 15-60
Q 15:73 When is a bankruptcy treated as a change in ownership or control that triggers the golden parachute rules? 15-61
Q 15:74 How does a disqualified individual pay the excise tax on an excess golden parachute payment? 15-62
Q 15:75 Is the disqualified individual permitted to deduct the 20 percent excise tax he or she is required to pay upon receipt of an excess parachute payment? 15-63
Q 15:76 Is the payment of an excess parachute payment to a disqualified individual subject to tax withholding? 15-63
Q 15:77 Is the payment of an excess parachute payment subject to FICA and FUTA tax? 15-63
Q 15:78 Do golden parachute payments violate public policy? 15-63

Chapter 16 Family and Medical Leave

Basic Concepts

Q 16:1 What is the Family and Medical Leave Act of 1993? 16-2
Q 16:2 Is a family and medical leave policy conforming to the FMLA a welfare benefit plan subject to ERISA? 16-2

Covered Employers

Q 16:3 Which employers are subject to the FMLA? 16-3
Q 16:4 When are two or more corporations treated as a single employer for purposes of the FMLA? 16-4
Q 16:5 For purposes of the 50-employee test, when is an individual deemed to be "employed" by an employer? 16-6
Q 16:6 Can a business that does not qualify as a covered employer ever be required to provide family or medical leave? 16-8

Eligible Employees

Q 16:7 Is an employer subject to the FMLA required to provide family or medical leave to all its employees? 16-9
Q 16:8 How do the FMLA service requirements apply to airline pilots and flight crew members? 16-16
Q 16:9 How do the FMLA service requirements apply in the case of members of the National Guard and Reserve who are called to active duty? 16-17
Q 16:10 Can an employee who has not met the 1,250-hour test ever qualify for FMLA leave? 16-18

Qualifying Family and Medical Leave

Q 16:11 What kinds of family or medical conditions or emergencies qualify for leave under the FMLA? 16-18
Q 16:12 Is an employee who does not have a biological or legal relationship to a child eligible for FMLA leave to care for the child? 16-21
Q 16:13 Is an employee entitled to take leave under the FMLA when a family member is called up for military service or is injured in the line of duty? 16-23
Q 16:14 When can an employee take military caregiver leave? 16-24
Q 16:15 When can an employee take leave on account of a qualifying exigency related to a family member's call to active military duty? 16-27
Q 16:16 What is a serious health condition under the FMLA? 16-29
Q 16:17 Under the FMLA, what constitutes "continuing treatment by a health care provider"? 16-30
Q 16:18 How have the courts interpreted the phrase *serious health condition* under the FMLA? 16-32

Q 16:19 When is an employee unable to perform the functions of his or her position? **16-34**

Q 16:20 When is an employee needed to care for a family member or covered servicemember? **16-34**

Q 16:21 When is an employee entitled to take leave to care for an adult son or daughter? **16-37**

Q 16:22 How long a period of FMLA leave must an employer provide to an eligible employee? **16-39**

Q 16:23 May an employer select the 12-month period in which an employee's 12-week FMLA leave entitlement occurs? **16-40**

Q 16:24 What special requirements apply to leave for birth or adoption of a child? **16-42**

Q 16:25 What special limit applies to a husband and wife working for the same employer? **16-42**

Q 16:26 Must FMLA leave be taken on a continuous and full-time basis? **16-43**

Q 16:27 May an employer temporarily transfer an employee who requests intermittent or reduced-schedule FMLA leave? **16-44**

Q 16:28 How does an employer count the amount of FMLA leave used by an employee? **16-45**

Q 16:29 How is the amount of FMLA leave used for reduced or intermittent leave determined? **16-46**

Q 16:30 Do salary deductions for unpaid FMLA leave cause an executive, administrative, or professional employee to lose such designation under the FLSA? **16-48**

Q 16:31 Is there any lifetime maximum on the amount of FMLA leave that can be taken for a particular event or condition? **16-48**

Q 16:32 Can an employer require an employee to provide notice that FMLA leave will be taken? **16-49**

Q 16:33 Can an employer terminate an employee while the employee is on FMLA leave? **16-51**

Q 16:34 How may the employer treat an employee's failure to give notice of the need for FMLA leave? **16-51**

Q 16:35 How specific must an employee's request for FMLA leave be? **16-52**

Q 16:36 How soon must an employer respond to an employee's request for FMLA leave? **16-54**

Q 16:37 Can an employee be required to waive his or her rights under the FMLA? **16-56**

Certification of FMLA Leave Eligibility

Q 16:38 When can an employer require proof of an employee's eligibility for FMLA leave? **16-57**

Q 16:39 What proof of entitlement to FMLA leave on the basis of a serious medical condition may an employer require an employee to provide? **16-59**

Q 16:40 Once a health care provider has certified the need for leave because of a serious medical condition, must an employee provide additional certifications? 16-62
Q 16:41 What proof of entitlement to family or medical leave on the basis of a child's birth or placement for adoption or foster care may an employer require an employee to provide? 16-63
Q 16:42 What certification is required when an employee requests leave because of a qualifying exigency related to a family member's military duty? 16-64
Q 16:43 What certification is required when an employee requests military caregiver leave? 16-65

Substitution of Paid Leave

Q 16:44 Is an employee entitled to be paid by his or her employer while on FMLA leave? 16-66
Q 16:45 Does the tax law provide any incentives for employers to provide paid family and medical leave? 16-67
Q 16:46 What if the employee is also eligible for paid leave? 16-68
Q 16:47 Is an employee who uses paid leave as a “substitute” for family or medical leave protected by the FMLA? 16-70

Employee Benefits During Leave

Q 16:48 Is an employee on FMLA leave entitled to continued coverage under the employer's health benefit plans? 16-72
Q 16:49 How are employee contributions toward group health plan coverage paid during FMLA leave? 16-73
Q 16:50 When does an employer's obligation to continue health plan coverage during FMLA leave end? 16-74
Q 16:51 What if the employee's group health coverage ceases during FMLA leave? 16-74
Q 16:52 Does the FMLA require an employee on FMLA leave to be provided with continued coverage under his or her employer's other benefit plans? 16-75

Rights upon Return from FMLA Leave

Q 16:53 Does an employee who has taken FMLA leave have a right to be reinstated when the leave period has expired? 16-76
Q 16:54 When is an employee considered to have been reinstated to the same or an equivalent position? 16-79
Q 16:55 What benefit plan rights does an employee have upon return from FMLA leave? 16-80

Failure to Return from FMLA Leave

Q 16:56 If an employee on FMLA leave does not return to work upon the expiration of the leave, can the employer recover from the employee the employer's cost of providing group health plan coverage during the leave? 16-81

Q 16:57 If an employer has paid the premiums for coverage other than health insurance during an unpaid FMLA leave, may the employer recover the payments if the employee fails to return from the leave? 16-82

Relationship to Group Health Plan Rules

Q 16:58 Is the group health plan coverage during FMLA leave considered to be continuation coverage for COBRA purposes? 16-82

Relationship to Cafeteria Plan Rules

Q 16:59 How does the FMLA affect cafeteria plans? 16-84

Q 16:60 Can an employee taking FMLA leave revoke an existing election of group health plan coverage under a cafeteria plan? 16-84

Q 16:61 If an employee's group health plan coverage under a cafeteria plan terminated during an FMLA leave, must the employee be permitted to choose to be reinstated upon his or her return from leave? 16-85

Q 16:62 When an employee on FMLA leave elects to continue group health plan coverage under a cafeteria plan, who is responsible for making premium payments? 16-85

Q 16:63 What payment options are required or permitted when an employee on unpaid FMLA leave elects to continue group health plan coverage under a cafeteria plan? 16-86

Q 16:64 What happens when an employee chooses to continue health coverage on a pay-as-you-go basis but does not make the required premium payments? 16-87

Q 16:65 What rules apply to health care FSA coverage for employees on FMLA leave? 16-87

Q 16:66 What restrictions apply to employee contributions during an FMLA leave that spans two cafeteria plan years? 16-89

Q 16:67 What payment options are available to an employee who is on paid FMLA leave? 16-89

Notice, Disclosure, and Recordkeeping Requirements

Q 16:68 What posting requirement must employers satisfy under the FMLA? 16-89

Q 16:69 Is an employer required to provide any other general notice of FMLA rights and responsibilities? 16-90

Q 16:70 What notices must be given to employees who request FMLA leave? 16-90
Q 16:71 What records are employers required to maintain under the FMLA? 16-93
Q 16:72 In what form are FMLA records required to be kept? 16-94

Relationship to State Laws

Q 16:73 Does the FMLA supersede all state and local laws requiring employers to provide family or medical leave? 16-94

Penalties and Enforcement

Q 16:74 Is an employee who exercises his or her rights under the FMLA protected from discrimination by his or her employer? 16-94
Q 16:75 What federal agency is responsible for the interpretation and enforcement of the FMLA? 16-95
Q 16:76 Can the DOL bring suit for violations of the FMLA? 16-95
Q 16:77 Can an employee bring a lawsuit against an employer for violations of the FMLA? 16-95
Q 16:78 What damages and penalties can an employer be liable for if it violates the FMLA? 16-97
Q 16:79 Can an employer be held liable for costs and fees in a successful lawsuit brought by an employee? 16-97
Q 16:80 Who can be held liable as an employer for FMLA violations? . . . 16-98
Q 16:81 What is the statute of limitations for a lawsuit claiming a violation of the FMLA? 16-98
Q 16:82 How are employees who request leave or otherwise assert FMLA rights protected? 16-98
Q 16:83 Does asking an employee to work during FMLA leave constitute interference with the employee's rights under the FMLA? 16-101
Q 16:84 How does the FMLA impact no-fault attendance policies? 16-103

Chapter 17 Age Discrimination in Employment Act of 1967

Basic Concepts

Q 17:1 What is the federal law that prohibits employment discrimination on the basis of age? 17-1
Q 17:2 What is the scope of the "protected class" of employees under the ADEA? 17-2
Q 17:3 Does the ADEA preempt state age discrimination laws? 17-2
Q 17:4 Which federal agency has the power to administer and enforce the ADEA? 17-3
Q 17:5 What constitutes age discrimination in employment? 17-3

Q 17:6 Does an employer practice that disadvantages older workers always violate the ADEA? 17-3
Q 17:7 What are reasonable factors other than age that can be used as a defense against age discrimination claims? 17-5

Covered Employers

Q 17:8 Which employers are subject to the ADEA? 17-7
Q 17:9 Do controlled-group rules apply when defining the employer for purposes of the ADEA's 20-employee test? 17-8

Covered Employees

Q 17:10 Does the ADEA cover independent contractors? 17-8
Q 17:11 Is a partner an employee for ADEA purposes? 17-8
Q 17:12 Does the ADEA apply to welfare benefits for retirees? 17-9
Q 17:13 Does the ADEA apply to U.S. citizens working abroad? 17-12

Providing Lesser Benefits to Older Workers

Q 17:14 Why was the OWBPA enacted? 17-12
Q 17:15 What are the requirements of the OWBPA? 17-13
Q 17:16 What is the effective date of the OWBPA amendments to the ADEA? 17-13

Bona Fide Plan Requirements

Q 17:17 What initial requirements must a welfare benefit plan meet in order to qualify for the differences in cost or the latitude in benefit design permitted under the ADEA regulations? 17-14

Cost-Equivalency Rule

Q 17:18 What is the cost-equivalency rule under the ADEA? 17-14
Q 17:19 What is the rationale for the cost-equivalency rule under the ADEA? 17-15
Q 17:20 Under the ADEA's cost-equivalency rule, what methods of cost comparison and adjustment are permitted? 17-15
Q 17:21 What is the benefit-by-benefit approach? 17-15
Q 17:22 What kind of cost data may be used under the ADEA to support a reduction in benefits? 17-15
Q 17:23 Must the cost of coverage for older workers be compared on a year-by-year age basis? 17-16
Q 17:24 If an employer reduces benefits based on age, must it do so for all age brackets? 17-16
Q 17:25 Can an older employee be required to make greater contributions to an employee benefit plan than a younger employee as a condition of employment? 17-17

Q 17:26 Can older employees be required to make greater contributions than younger employees to a voluntary employee benefit plan as a condition of participation in such a plan? 17-17
Q 17:27 Can older employees be given the option to pay more in order to receive full, unreduced benefits? 17-17
Q 17:28 How is the benefit-by-benefit approach applied to life insurance? 17-18
Q 17:29 How is the benefit-by-benefit approach applied to long-term disability insurance? 17-18
Q 17:30 Can an employer's employee welfare benefit plan coordinate with government-provided benefits? 17-19
Q 17:31 What is the benefit package approach? 17-19
Q 17:32 May the benefit package approach be used for any kind of employee benefit plan? 17-20

Using Retirement Benefits to Reduce Other Benefits

Q 17:33 Does the ADEA permit retirement benefits to be used to reduce long-term disability benefits? 17-20
Q 17:34 Can severance pay be denied or reduced because of eligibility for, or receipt of, retirement benefits? 17-22
Q 17:35 May severance pay be denied or reduced because of receipt of retiree health benefits? 17-22
Q 17:36 For purposes of calculating the permitted reduction of severance pay by the value of retiree health benefits, how is the value of the retiree health benefits determined? 17-23
Q 17:37 Must the employer make retiree health benefits available to all retirees regardless of age in order to be entitled under the ADEA to use the value of such benefits to reduce severance pay? 17-23
Q 17:38 Does the ADEA permit employers to reduce severance pay by the value of both pension benefits and retiree health benefits? 17-24
Q 17:39 If the employer reduces severance pay by the value of retiree medical benefits, as permitted under the ADEA, what recourse do retirees have in the event the employer fails to fulfill its obligation to provide retiree medical benefits? 17-24

Providing Greater Benefits to Older Workers

Q 17:40 May an employee benefit plan provide greater benefits to older employees on the basis of age without violating the ADEA? . . 17-24
Q 17:41 Is an employee required to file a complaint with the Equal Employment Opportunity Commission before filing a lawsuit under the ADEA? 17-25
Q 17:42 Are there time limits for filing an age discrimination complaint? 17-25

Waiver of ADEA Rights and Claims

Q 17:43 May an individual waive all rights and claims under the ADEA? 17-26
Q 17:44 What statutory requirements must be met in order for a waiver to be considered "knowing and voluntary"? 17-26
Q 17:45 What specific requirements apply to the wording of an ADEA waiver? 17-27
Q 17:46 Can future rights and claims under the ADEA be waived? 17-28
Q 17:47 Must an employee receive something of value in return for signing an ADEA waiver? 17-28
Q 17:48 Is an individual required to tender back consideration received in connection with an ADEA waiver before bringing a discrimination claim? 17-29
Q 17:49 Can an employer require a laid-off worker to sign a covenant not to sue in order to receive early retirement benefits, severance pay, or other benefits? 17-30
Q 17:50 If a former employee challenges an ADEA waiver, can the employer withhold any consideration it has not yet paid? . . . 17-31
Q 17:51 If a former employee successfully challenges an ADEA waiver, can the employer recover the consideration paid for the waiver? 17-31
Q 17:52 Is an employer required to give an employee a minimum period to consider the waiver agreement or to revoke it after signing it? 17-32
Q 17:53 What disclosure must an employer make in connection with an exit incentive or other employment termination program offered to a group or class of employees? 17-32
Q 17:54 Who must prove that a waiver under the ADEA is knowing and voluntary—the employer or the employee? 17-34
Q 17:55 Does a waiver that is knowing and voluntary under the ADEA restrict the EEOC's powers to investigate and enforce the ADEA? 17-34
Q 17:56 If the employee chooses termination rather than continuing to work under intolerable conditions, does this constitute a waiver of ADEA claims? 17-34

Arbitration of ADEA Claims

Q 17:57 Can an employer require an employee to agree to binding arbitration of employment disputes, including discrimination claims under the ADEA? 17-35

Penalties

Q 17:58 What are the penalties for violating the ADEA? 17-36
Q 17:59 What is the federal income tax treatment of cash awards and settlements made as a result of the ADEA? 17-36

Relationship to State Laws

Q 17:60 Does the ADEA preempt state age discrimination laws purporting to regulate welfare benefit plans? 17-37

Chapter 18 Americans with Disabilities Act of 1990

Basic Concepts

Q 18:1 What does the Americans with Disabilities Act of 1990 cover? . 18-2

Covered Employers

Q 18:2 Which employers are covered by the ADA? 18-2

Covered Employees

Q 18:3 Which employees are covered by the ADA?. 18-3
Q 18:4 Are former employees protected by the ADA? 18-4

Covered Disabilities

Q 18:5 What is a covered disability under the ADA? 18-4
Q 18:6 When do the changes made by the ADA Amendments Act apply? 18-5
Q 18:7 Why does the ADA also cover the perception of disability, even if no disability in fact exists?. 18-5
Q 18:8 When is an individual “regarded as” having a disability under the ADAAA rule? 18-7
Q 18:9 What is a physical or mental impairment under the ADA? 18-8
Q 18:10 What major life activities must the physical or mental impairment affect? 18-8
Q 18:11 When is a major life activity substantially limited by a physical or mental impairment?. 18-10
Q 18:12 Does mitigation of a disability affect ADA disability status? 18-11
Q 18:13 Are there physical or mental conditions that do not constitute impairments protected by the ADA?. 18-13
Q 18:14 What conditions are excluded from coverage under the ADA? 18-13
Q 18:15 Is illegal drug use an impairment protected under the ADA? . . . 18-14
Q 18:16 Are contagious diseases an impairment protected under the ADA? 18-14
Q 18:17 Is HIV an impairment protected under the ADA? 18-15
Q 18:18 Is smoking an impairment protected under the ADA? 18-15
Q 18:19 Is pregnancy an impairment protected under the ADA? 18-16
Q 18:20 Is obesity an impairment protected under the ADA? 18-16
Q 18:21 Is total disability an impairment protected under the ADA? 18-17

Q 18:22	Is epilepsy an impairment protected by the ADA?	**18-18**
Q 18:23	Is diabetes an impairment protected by the ADA?	**18-19**
Q 18:24	When is an intellectual impairment a disability for purposes of the ADA?	**18-20**
Q 18:25	When is a vision impairment a disability under the ADA?	**18-21**

Effect on Welfare Benefit Plan Design

Q 18:26	Is a benefit plan discriminatory under the ADA if it adversely affects individuals with disabilities?	**18-23**
Q 18:27	Does the ADA prohibit an employer from including a preexisting-condition clause in its health insurance plan?	**18-24**
Q 18:28	What is a disability-based distinction?	**18-25**
Q 18:29	Do all disability-based distinctions in a benefit plan violate the ADA?	**18-25**
Q 18:30	Does the ADA prohibit an employer from excluding or limiting coverage for a particular disability (such as AIDS) or group of disabilities?	**18-26**
Q 18:31	When is a disability-based distinction in a health insurance plan considered to be a subterfuge to evade the purposes of the ADA?	**18-28**
Q 18:32	Does the ADA prohibit an employer from excluding or limiting coverage under an employee benefit plan because of concerns about the impact on the plan of the disability of someone else with whom the employee has a relationship?	**18-29**
Q 18:33	Does the ADA require that dependent coverage under a health insurance plan be the same as employee coverage?	**18-31**
Q 18:34	Can employees demand more leave than is provided under an employer's benefit plans as a reasonable accommodation for a disability?	**18-31**

Disability Inquiries and Confidentiality

Q 18:35	May an employer make inquiries regarding an employee's or prospective employee's disability?	**18-36**
Q 18:36	Can an employer disclose medical information about an employee to others?	**18-37**
Q 18:37	May an employer make disability-related inquiries when an employee uses sick leave?	**18-38**
Q 18:38	Do the ADA confidentiality rules protect information obtained in connection with other employment laws, such as the FMLA?	**18-39**
Q 18:39	Can an employer identify employees who will need assistance in the event of an emergency?	**18-41**
Q 18:40	May a counselor in an employee assistance program ask an employee seeking help for personal problems about any physical or mental conditions the employee may have?	**18-42**

Q 18:41 May an employer make disability-related inquiries in connection with a wellness program? 18-42

Procedures for ADA Claims

Q 18:42 Is an employee required to file a complaint with the Equal Employment Opportunity Commission before filing a lawsuit under the ADA? 18-47

Q 18:43 What are the time limits for filing a complaint under the ADA? 18-47

Q 18:44 Can an employee who has claimed disability benefits also claim protection under the ADA? 18-47

Q 18:45 Can an employer require an employee to agree to binding arbitration of employment disputes, including discrimination claims under the ADA? 18-48

Penalties

Q 18:46 What sanctions apply to an employer that violates the ADA? 18-49

Q 18:47 Is an employer liable under the ADA for discrimination by an insurance company, third-party administrator, HMO, or other entity with which it has a contract? 18-49

Relationship to State Laws

Q 18:48 Does the ADA preempt state laws or other federal laws? 18-49

Chapter 19 Other Federal Laws

Labor Laws and Collective Bargaining

Q 19:1 Must an employer bargain with a labor union representing its employees concerning welfare benefits? 19-1

Q 19:2 Must an employer bargain with respect to welfare benefits for retired employees? 19-2

Q 19:3 Can temporary or contract employees be part of a collective bargaining unit? 19-2

Q 19:4 May an employer contribute to a welfare benefit fund administered by a labor union? 19-2

Q 19:5 May an employer contribute to a trust fund it does not control that provides welfare benefits to employees in a collective bargaining unit? 19-3

Q 19:6 May the employer unilaterally change welfare benefits for employees covered by a collective bargaining agreement? 19-3

Q 19:7 Must the employer bargain over a change in insurance carriers or another change in the method of funding the plan? 19-3

Q 19:8 May an employer terminate welfare benefit plan coverage for striking employees? 19-4
Q 19:9 May an employer terminate welfare benefit plan coverage for union employees when a collective bargaining agreement expires? 19-5
Q 19:10 May an employer offer or provide welfare plan benefits as an inducement to discourage union activity? 19-5
Q 19:11 May an employer terminate coverage of health or life insurance benefits for retirees required under a collective bargaining agreement once the collective bargaining agreement expires? 19-5
Q 19:12 Is an employee entitled to a jury trial in hybrid LMRA/ERISA actions? 19-7

Title VI of the Civil Rights Act of 1964

Q 19:13 What does Title VI of the Civil Rights Act of 1964 provide? 19-7
Q 19:14 What penalties apply if an employer violates Title VI? 19-7

Title VII of the Civil Rights Act of 1964

Q 19:15 What does Title VII of the Civil Rights Act of 1964 provide? 19-7
Q 19:16 Which employers are subject to Title VII? 19-7
Q 19:17 Does Title VII cover persons who are not common-law employees? 19-8
Q 19:18 Does discrimination on the basis of sex include discrimination based on pregnancy? 19-8
Q 19:19 Must an employer provide leave or other special accommodations to pregnant employees? 19-10
Q 19:20 How are employment benefits affected by the pregnancy disability provisions of Title VII? 19-12
Q 19:21 Does Title VII require that welfare benefits be provided for abortion? 19-12
Q 19:22 Does Title VII require health plans to provide coverage for prescription contraceptives? 19-13
Q 19:23 Does Title VII require health plans to provide coverage for infertility treatments? 19-15
Q 19:24 Must an employer provide the same benefits to an employee on leave for pregnancy-related conditions as it does for employees on leave for other reasons? 19-15
Q 19:25 May employees who are absent due to pregnancy-related disabilities be required to exhaust vacation benefits prior to receiving sick pay or disability benefits? 19-16
Q 19:26 Can a pregnant employee be discharged for excessive absenteeism? 19-16

Q 19:27 May time spent on leave for pregnancy-related reasons be treated differently from time spent on leave for other reasons when calculating credit toward vacations and pay increases? 19-17

Q 19:28 If the employer provides benefits for long-term or permanent disabilities, must such benefits be provided for pregnancy-related conditions? 19-17

Q 19:29 Can the employer limit pregnancy disability benefits to married employees? 19-17

Q 19:30 Can pregnancy disability benefits be limited to employees only? 19-18

Q 19:31 Can a female employee be required to purchase dependent or family coverage to receive coverage for her own pregnancy-related condition? 19-18

Q 19:32 Can the employer offer an employee-pay-all optional coverage that excludes pregnancy-related conditions or provides less coverage for them than for other medical conditions? 19-18

Q 19:33 May an employer exclude pregnancy-related conditions from one or more health insurance plans or options as long as it offers such coverage under at least one plan or option? 19-18

Q 19:34 On what basis must pregnancy-related conditions be reimbursed? 19-19

Q 19:35 Does Title VII encompass discrimination for failure to grant parental leave? 19-19

Q 19:36 Does Title VII prohibit discrimination based on sexual orientation or gender identity? 19-21

Q 19:37 What penalties apply if Title VII is violated? 19-21

Q 19:38 Can an employer require an employee to agree to binding arbitration of employment disputes, including discrimination claims under Title VII? 19-22

Equal Pay Act of 1963

Q 19:39 What does the Equal Pay Act provide? 19-23

Q 19:40 Which employers are subject to the Equal Pay Act? 19-24

Q 19:41 What penalties apply if the Equal Pay Act is violated? 19-24

Q 19:42 When does an act of pay discrimination take place? 19-24

Rehabilitation Act of 1973

Q 19:43 What does the Rehabilitation Act of 1973 provide? 19-25

Q 19:44 Which employers are covered by the Rehabilitation Act? 19-25

Q 19:45 Who is a handicapped individual under the Rehabilitation Act? 19-25

Q 19:46 To qualify for coverage under the Rehabilitation Act, must the employee's handicap be so severe as to render the employee unable to perform his or her job? 19-26

Employee Benefits Answer Book April 16, 2020 16:34

Q 19:47 Is acquired immune deficiency syndrome a covered handicap under the Rehabilitation Act? **19-26**

Q 19:48 Does the Rehabilitation Act permit an employer to exclude or limit coverage of AIDS under an employee welfare benefit plan? **19-26**

Worker Adjustment and Retraining Notification Act of 1988

Q 19:49 What does the Worker Adjustment and Retraining Notification Act provide? **19-27**

Q 19:50 Which employers are subject to the requirements of the WARN Act? **19-27**

Q 19:51 What is a plant closing under the WARN Act? **19-28**

Q 19:52 What is a mass layoff under the WARN Act? **19-28**

Q 19:53 What constitutes employment loss under the WARN Act? **19-29**

Q 19:54 Who is responsible for providing the WARN notice? **19-30**

Q 19:55 To whom must the WARN notice be given? **19-30**

Q 19:56 When must notice be served? **19-30**

Q 19:57 Are there any exceptions to the 60-day notice? **19-31**

Q 19:58 Are there any exceptions to the WARN Act notice requirement? **19-31**

Q 19:59 May an employer dispense with the 60-day notice requirement for employees who lose their jobs more than 30 days before the actual plant closing? **19-31**

Q 19:60 Must employers provide notice under the WARN Act when union members accept voluntary severance packages? **19-32**

Q 19:61 What penalties apply to WARN Act violations? **19-32**

Employee Benefits of Bankrupt Companies

Q 19:62 How are employee benefit obligations treated when an employer declares bankruptcy? **19-33**

Q 19:63 Can bankrupt companies avoid the obligation to pay benefits to retirees and their dependents? **19-34**

Q 19:64 Which benefits are protected? **19-35**

Q 19:65 Which plans are covered by the bankruptcy restrictions? **19-35**

Q 19:66 Are all retirees protected? **19-35**

Q 19:67 May retiree benefits covered under the act be modified or terminated while the bankruptcy case is pending? **19-35**

Q 19:68 Who is authorized to represent the retirees in negotiations about discontinuance? **19-35**

Q 19:69 What happens if the negotiations do not lead to a resolution? **19-35**

Q 19:70 Can the bankruptcy court later make further modifications of the retiree health benefits? **19-36**

Employee Benefits Answer Book April 16, 2020 16:34

Q 19:71 Can the employer stop paying benefits once the reorganization plan is approved? 19-36

Veterans' Health Care Amendments of 1986

Q 19:72 How do the Veterans' Health Care Amendments of 1986 affect health plan contracts? 19-36
Q 19:73 Who is a third-party payer from whom the Administrator of Veterans Affairs may recover expenses? 19-36
Q 19:74 What health plan contracts are covered? 19-37
Q 19:75 What are the health services for which the VA may recover expenses? 19-37
Q 19:76 How much is the VA authorized to recover? 19-37
Q 19:77 How does Title II of COBRA affect the health plan contracts of military retirees? 19-37
Q 19:78 What is a covered health plan contract? 19-38
Q 19:79 What are the health services for which the Secretary of Defense may recover expenses? 19-38

Uniformed Services Employment and Reemployment Rights Act of 1994

Q 19:80 What does the Uniformed Services Employment and Reemployment Rights Act of 1994 provide? 19-38
Q 19:81 Does USERRA protect servicemembers from a hostile work environment? 19-39
Q 19:82 Which employers are covered by the USERRA? 19-40
Q 19:83 What protected status is accorded to employees who perform service in the uniformed services? 19-41
Q 19:84 Does an employee have any special right to use accrued leave when he or she is called up for military service? 19-42
Q 19:85 What employee benefits must the employee receive while he or she is on deemed furlough or leave of absence? 19-43
Q 19:86 Can the employee be required to pay the employee cost, if any, of benefits continued during a military leave? 19-44
Q 19:87 What special rules apply to continuation of health plan coverage during military leave? 19-44
Q 19:88 How does an employee elect and pay for continuation coverage under the USERRA? 19-45
Q 19:89 How does a multiemployer health plan handle continuation coverage required by the USERRA? 19-46
Q 19:90 When is an employer obligated to reemploy a person who has been absent due to performance of uniformed service? 19-47
Q 19:91 What happens if an employee cannot be reemployed in the position he or she would have attained but for the break for military service? 19-50

Q 19:92	How soon must a returning servicemember be reemployed following his or her return from military service?	19-52
Q 19:93	Are there restrictions on terminating a returning servicemember following reemployment?	19-52
Q 19:94	If an employee welfare benefit plan provides benefits based on length of service, is an employee who returns from military service entitled to have such military service counted for purposes of the benefits?	19-53
Q 19:95	If an employee's health coverage terminates during a period of military service, must the coverage be reinstated upon reemployment?	19-54
Q 19:96	Does a period of military service count toward FMLA eligibility?	19-54
Q 19:97	What penalties apply if an employee's USERRA rights are violated?	19-55
Q 19:98	What is the effective date of the USERRA and its implementing regulations?	19-56
Q 19:99	Is an employer required to give employees notice of their rights under USERRA?	19-56
Q 19:100	Does USERRA provide leave rights for family members of military personnel?	19-56

Genetic Information Nondiscrimination Act of 2008

Q 19:101	What is the Genetic Information Nondiscrimination Act?	19-57
Q 19:102	What is genetic information?	19-58
Q 19:103	Are there circumstances in which an employer can request or obtain genetic information about an employee?	19-58
Q 19:104	How does the Genetic Information Nondiscrimination Act apply to wellness programs?	19-61

Miscellaneous

Q 19:105	Do any other federal laws regulate employee welfare benefit plans?	19-63
Q 19:106	May individuals sue under RICO in health benefits fraud claims?	19-64

Chapter 20 Funding and Financing Welfare Benefits

Overview of Funding Alternatives

Q 20:1	Does ERISA require that all welfare benefit plans be funded?	20-1
Q 20:2	What funding alternatives does an employer have for a welfare benefit plan?	20-1
Q 20:3	What is full insurance coverage?	20-2

Q 20:4	What are the advantages of the purchase of full insurance coverage?	20-2
Q 20:5	Are there any disadvantages to purchasing full insurance for a plan?	20-3
Q 20:6	What is self-insurance?	20-4
Q 20:7	What are the advantages of unfunded self-insurance?	20-4
Q 20:8	Are there any disadvantages to self-insurance?	20-5
Q 20:9	How is a trust used to self-fund benefits under a welfare benefit plan?	20-6
Q 20:10	What is the difference between self-insurance and self-funding?	20-6
Q 20:11	What are the advantages of self-funding a plan using a trust?	20-7
Q 20:12	Are there any disadvantages to funding a self-insured plan using a trust?	20-7
Q 20:13	What is a minimum premium insurance arrangement?	20-7
Q 20:14	What is a stop-loss insurance arrangement?	20-9
Q 20:15	Are minimum premium and stop-loss arrangements ever considered to be insured?	20-10
Q 20:16	What is an administrative-services-only arrangement?	20-11
Q 20:17	What are some other funding alternatives for welfare benefit plans?	20-11
Q 20:18	Does the method of funding affect the amount of an employer's tax deduction for welfare benefit plan contributions?	20-11

Welfare Benefit Fund Rules

Q 20:19	What is a welfare benefit fund under the Internal Revenue Code?	20-12
Q 20:20	Do any employer arrangements with insurance companies constitute welfare benefit funds?	20-13
Q 20:21	Are experience-rated group insurance contracts treated as welfare benefit funds?	20-14
Q 20:22	Are insurance contracts paid for solely by employee contributions considered welfare benefit funds?	20-14
Q 20:23	Besides experience-rated group insurance contracts, what other types of employer arrangements with insurance companies are not welfare benefit funds?	20-14
Q 20:24	What is a qualified nonguaranteed contract?	20-14
Q 20:25	Is a fund maintained for more than one employer a welfare benefit fund?	20-15
Q 20:26	Must there be a formal welfare benefit plan in order for the welfare benefit fund rules to apply?	20-16
Q 20:27	Must there be an employer-employee relationship for the welfare benefit fund rules to apply?	20-17

Q 20:28	What are the limits on an employer's tax deduction for contributions to a welfare benefit fund?	20-17
Q 20:29	What is a welfare benefit fund's qualified cost?	20-17
Q 20:30	What is a welfare benefit fund's qualified direct cost?	20-17
Q 20:31	What is a qualified asset account?	20-18
Q 20:32	What limits apply to a qualified asset account?	20-18
Q 20:33	How does an employer establish that the amount it contributes to a qualified asset account is reasonably and actuarially necessary and thus deductible?	20-19
Q 20:34	What are the safe-harbor limits for qualified asset accounts?	20-20
Q 20:35	Can a qualified asset account include a premium or cost stabilization reserve?	20-21
Q 20:36	Are all welfare benefit funds subject to the qualified asset account limits?	20-21
Q 20:37	If an employer has more than one welfare benefit fund, may the funds be aggregated in applying the asset account limits?	20-23
Q 20:38	Can a welfare benefit fund's qualified asset account include a reserve for future medical or life insurance benefits?	20-23
Q 20:39	Can an employer fund postretirement medical or life insurance benefits for individuals who have already retired?	20-24
Q 20:40	When can an employer fund and deduct reserves to fund postretirement benefits?	20-25
Q 20:41	Do any nondiscrimination rules apply to the funding of postretirement medical and life insurance benefits for employees?	20-26
Q 20:42	Besides nondiscrimination rules, what other special rule applies to funding postretirement medical and life insurance benefits for key employees?	20-26
Q 20:43	How is a welfare benefit fund's after-tax income determined?	20-27
Q 20:44	What are the tax consequences if an employer contributes more to a welfare benefit plan than can be deducted under the welfare benefit fund rules?	20-27
Q 20:45	Does investment income on a reserve for postretirement medical benefits accumulate tax-free?	20-27
Q 20:46	What are other circumstances where the income on a reserve held for postretirement medical benefits is not subject to tax?	20-28
Q 20:47	Are reserves established to fund postretirement medical and life insurance benefits required to be maintained separately from other benefit funds?	20-29
Q 20:48	Who pays the taxes, if any, on a welfare benefit fund's investment income?	20-30
Q 20:49	What federal excise taxes can apply to an employer maintaining a welfare benefit fund?	20-30

Q 20:50 What disqualified benefits trigger the 100 percent excise tax? . . 20-30
Q 20:51 How can the 100 percent excise tax triggered by a disqualified benefit be avoided? . . . 20-31

Voluntary Employees' Beneficiary Associations

Q 20:52 What is a VEBA? . . . 20-32
Q 20:53 Why are VEBAs useful? . . . 20-32
Q 20:54 How is a VEBA organized? . . . 20-32
Q 20:55 Who can join a VEBA? . . . 20-32
Q 20:56 Do all of the members of a VEBA have to be employees? . . . 20-33
Q 20:57 Can nonemployees be VEBA members? . . . 20-33
Q 20:58 Can retirees and other former employees be VEBA members? . . . 20-34
Q 20:59 Can spouses and dependents be VEBA members? . . . 20-34
Q 20:60 How is the requirement that VEBA membership be voluntary met? . . . 20-34
Q 20:61 May an employer control a VEBA? . . . 20-34
Q 20:62 What benefits may a VEBA provide? . . . 20-34
Q 20:63 Can a VEBA provide health benefits for a member's domestic partner or same-sex spouse? . . . 20-36
Q 20:64 What is prohibited inurement to a private shareholder or individual? . . . 20-37
Q 20:65 Do any special restrictions apply to the disposition of VEBA assets on termination? . . . 20-37
Q 20:66 What is the tax status of a VEBA? . . . 20-38
Q 20:67 What are the tax consequences to the employee when employer contributions are made to a VEBA? . . . 20-39
Q 20:68 What are the tax consequences to the employee when distributions are made from a VEBA? . . . 20-39
Q 20:69 May an employee deduct contributions to a VEBA? . . . 20-39
Q 20:70 May a VEBA provide benefits that discriminate in favor of highly compensated employees? . . . 20-40
Q 20:71 What are the nondiscrimination requirements for a VEBA? . . . 20-40
Q 20:72 Is there a limit on the amount of compensation that may be used as a base for VEBA benefits? . . . 20-40
Q 20:73 Must a VEBA file a notice with the IRS in order to be tax-exempt? . . . 20-41
Q 20:74 Are there any other reporting and recordkeeping requirements for VEBAs? . . . 20-41

Funding Postretirement Medical Benefits Under a Pension Plan

Q 20:75	May postretirement medical benefits be funded other than through a welfare benefit fund (including a VEBA or a retired lives reserve)?	**20-41**
Q 20:76	What requirements apply to the funding of retirement medical benefits through a pension plan or annuity plan?	**20-41**
Q 20:77	When do the retiree medical benefits qualify as subordinate to the retirement benefits under a pension or annuity plan?	**20-42**
Q 20:78	May a Section 401(h) account be maintained under a defined contribution money purchase pension plan?	**20-43**
Q 20:79	May a Section 401(h) account be maintained under a profit sharing plan?	**20-43**
Q 20:80	Does the Section 401(h) separate account requirement require a physical segregation of assets?	**20-44**
Q 20:81	What deductibility limits apply to employer contributions to fund retiree medical benefits under Code Section 401(h)?	**20-44**
Q 20:82	What must a Section 401(h) account do with employee forfeitures of retiree medical benefit accounts?	**20-44**
Q 20:83	May the funds in a Section 401(h) account be used to pay pension benefits under the plan?	**20-45**
Q 20:84	Are payments from a Section 401(h) account used to pay for retiree health coverage costs or benefits subject to income tax?	**20-45**
Q 20:85	Under what type of plan can a qualified transfer of excess pension assets be made to a Section 401(h) account?	**20-45**
Q 20:86	How does an employer determine the amount of excess pension assets that can be transferred in a qualified transfer to a Section 401(h) account?	**20-46**
Q 20:87	What is a qualified transfer of excess pension assets to a Section 401(h) account?	**20-46**
Q 20:88	What are qualified current retiree health liabilities?	**20-47**
Q 20:89	What vesting requirements apply in order to have a qualified transfer to a Section 401(h) account?	**20-47**
Q 20:90	What is the minimum cost requirement for retiree health benefits that an employer must satisfy in order to have a qualified transfer?	**20-47**
Q 20:91	Is there a limit on the amount of excess pension assets that can be transferred in a qualified transfer?	**20-50**
Q 20:92	What is the significance of the provision that a transfer of excess pension assets to a Section 401(h) account cannot contravene any other provision of law?	**20-51**
Q 20:93	What limits apply to employer contributions where a qualified transfer is made?	**20-51**
Q 20:94	What limits apply to employer tax deductions where a qualified transfer is made?	**20-51**

Q 20:95 What happens if the amount of the qualified transfer exceeds the qualified current retiree health benefits? 20-51
Q 20:96 If a qualified transfer is planned, are there special notice requirements under ERISA that must be followed? 20-52
Q 20:97 What effect does a qualified transfer have on the minimum funding rules for a pension plan? 20-52
Q 20:98 Does a qualified transfer violate the exclusive benefit requirement or the prohibited transaction and prohibited reversion rules of ERISA and the Code? 20-52
Q 20:99 What is a qualified future transfer? 20-53
Q 20:100 What is a collectively bargained transfer? 20-54
Q 20:101 Is the investment income of a Section 401(h) account subject to tax? 20-57

Funding Retiree Group Term Life Insurance Through a Pension Plan

Q 20:102 Can excess pension assets be used to fund the purchase of retiree group term life insurance? 20-57
Q 20:103 What is an applicable life insurance account? 20-57
Q 20:104 What kind of life insurance can be funded through a qualified transfer of excess pension assets? 20-57
Q 20:105 What special rules apply to qualified transfers of excess pension assets for retiree life insurance? 20-58
Q 20:106 What is the tax treatment of a qualified transfer to an applicable life insurance account? 20-59

Financing Welfare Benefits with Life Insurance

Q 20:107 How can an employer’s cost of welfare benefits be financed through the purchase of life insurance? 20-59
Q 20:108 How is employer-owned life insurance treated for income tax purposes? 20-60
Q 20:109 What is employer-owned life insurance? 20-61
Q 20:110 What are the special exceptions to the income exclusion limits for employer-owned life insurance? 20-62
Q 20:111 What are the notice and consent requirements for employer-owned life insurance contracts? 20-63
Q 20:112 What is leveraged COLI? 20-66
Q 20:113 Under what circumstances is interest on COLI policy loans deductible? 20-67
Q 20:114 If COLI is used to finance the benefits payable under an ERISA plan, is the COLI policy a plan asset for ERISA purposes? . . . 20-68

Chapter 21 Financial Accounting Rules for Nonpension Retiree and Postemployment Benefits

Postretirement Welfare Benefits

Q 21:1	What financial accounting considerations apply to postretirement welfare benefits?	21-1
Q 21:2	What is the FASB's position on how postretirement nonpension benefits should be treated for accounting purposes?	21-2
Q 21:3	What benefits are subject to the FASB accounting standards for postretirement benefit plans?	21-3
Q 21:4	Do the postretirement benefit accounting standards apply if an employer is not legally obligated to provide retiree benefits?	21-3
Q 21:5	What are the requirements for retiree medical plans?	21-4
Q 21:6	What is a defined contribution postretirement plan?	21-4
Q 21:7	What are the accounting requirements for a defined contribution postretirement plan?	21-4
Q 21:8	What is a defined benefit postretirement plan?	21-5
Q 21:9	What are the accounting requirements for a defined benefit postretirement plan?	21-5
Q 21:10	Is the accounting liability determined solely by the written terms of the postretirement plan?	21-5
Q 21:11	What special actuarial assumptions are required in the case of postretirement health care benefits?	21-6
Q 21:12	Does the FASB require that an employer fund its employees' postretirement welfare benefits?	21-6
Q 21:13	If an employer has funded its postretirement benefits, do the fund assets offset the employer's liabilities?	21-6
Q 21:14	How are postretirement benefits that are insured under an insurance contract treated for financial accounting purposes?	21-7

Disclosure Requirements

Q 21:15	What disclosure requirements for postretirement benefits must be included in financial statements?	21-7
Q 21:16	What disclosure requirements apply to defined benefit postretirement plans?	21-8
Q 21:17	What disclosure requirements apply to defined contribution postretirement welfare plans?	21-10
Q 21:18	What disclosures are required for multiemployer plans?	21-10
Q 21:19	What effect do the accounting requirements have on employers' financial statements?	21-11
Q 21:20	How does the accounting liability affect an employer's ability to conduct its business?	21-11

Reducing or Eliminating the Accounting Liability

Q 21:21 What steps can an employer take to limit or reduce its accounting liability? 21-12
Q 21:22 How does funding an employer's liability for retiree medical benefits affect the employer's financial accounting liability? . . 21-12
Q 21:23 How do retiree medical plan cutbacks affect an employer's liability? 21-13

Postemployment Benefits

Q 21:24 What is the difference between postemployment benefits and postretirement benefits? 21-13
Q 21:25 What postemployment benefits are subject to accounting standards? 21-13
Q 21:26 What is the FASB's position on how postemployment benefits should be treated for accounting purposes? 21-14