### Fall 2012

### **Inside this Issue**

- 1 Second Circuit Court of Appeals Holds DOMA Unconstitutional
- 2 IRS Issues FAQs Relating to Federal Tax Treatment of Same-Sex Couples

PBGC Issues Guidance Increasing Premiums Beginning in 2012

DOL Fines Defined Benefit Plan Advisor \$1.27 Million for Failing to Disclose Fees

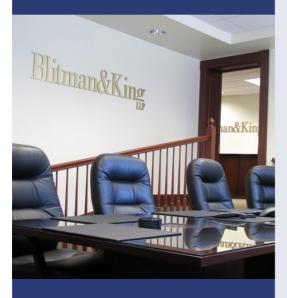
IRS Announces Termination of Letter Forwarding Program for Locating Plan Participants

3 Second Circuit Finds ERISA Withdrawal Liability Exception Does Not Apply Where Asset Purchaser Can Subsequently Reduce Employee Hours

IRS Issues Guidance Regarding Determining Full-Time Employees for Purposes of Health Reform Employer Shared Responsibility Requirements

4 Agencies Release Guidance on Health Reform's 90-Day Waiting Period Limit

IRS Releases Final Regulations on Health Insurance Premium Tax Credit for Coverage Purchased Through an Exchange



# BENEFITS

#### Second Circuit Court of Appeals Holds DOMA Unconstitutional

On October 18, 2012, the U.S. Court of Appeals for the Second Circuit, which covers New York, Connecticut, and Vermont, joined the U.S. Court of Appeals for the First Circuit in declaring Section 3 of the Defense of Marriage Act of 1996 ("DOMA") unconstitutional. *Windsor v. U.S.*, Docket No. 12-2335-cv (2<sup>nd</sup> Cir. Oct. 18, 2012).

Section 3 of DOMA defines "marriage" as a legal union between one man and one woman for purposes of federal law, thereby precluding same-sex spouses from certain benefits and coverages under the Social Security Act, ERISA, and the Internal Revenue Code.

The *Windsor* case involved a same-sex couple who were legally married in Canada, and who resided in New York, a state that recognizes same-sex marriage, for the duration of their 40-year union. Upon the death of one of the spouses, the IRS imposed over \$350,000 in federal estate taxes on the survivor. These taxes would not have been imposed if the couple's marriage were recognized for purposes of federal law.

In reviewing the lower court's finding that DOMA is unconstitutional, the Second Circuit agreed that Section 3 of DOMA violates the Equal Protection Clause of the 14<sup>th</sup> amendment to the Constitution, which guarantees equal protection of the laws to all individuals within a state's (and the federal government's) jurisdiction.

It is widely expected that this case, along with several other cases addressing the constitutionality of DOMA, will be heard by the United States Supreme Court in the coming months. If the Supreme Court finds Section 3 of DOMA unconstitutional, ERISA-covered plans will no longer be permitted to rely on DOMA to exclude benefits

## BENEFITS

## BENEFITS



Employers may rely on the guidance contained in this Notice at least through the end of 2014.

### Agencies Release Guidance on Health Reform's 90-Day Waiting Period Limit

On August 31, 2012, the DOL, IRS, and Department of Health and Human Services released temporary guidance relating to the Patient Protection and Affordable Care Act ("PPACA") mandate prohibiting group health plans from imposing waiting periods for coverage of more than 90 days in plan years beginning on or after January 1, 2014. The guidance, contained in IRS Notice 2012-59 and DOL Technical Release 2012-02, confirms that other conditions for plan eligibility, such as limiting coverage to full-time employees or to employees working at a particular location, are generally permissible so long as such conditions are not designed to avoid compliance with the 90-day waiting period limitation. The guidance also provides that the use of an initial eligibility measurement period will not be considered an attempt to avoid compliance with the 90-day waiting period limitation, as long as the coverage is effective no more than 13-months after the employee's start date. Further, cumulative hours of service eligibility requirements are permissible so long as the cumulative number of hours required does not exceed 1,200 hours, and coverage is available no later than the 91<sup>st</sup> day after the hours requirement is met. This guidance will remain in effect at least through the end of 2014.

### IRS Releases Final Regulations on Health Insurance Premium Tax Credit for Coverage Purchased Through an Exchange

On May 18, 2012, the IRS issued final regulations under the PPACA on the federal premium tax credit that will be available to qualifying individuals who purchase health coverage through an American Health Benefit Exchange ("Exchange"), beginning in 2014. The premium tax credit will be available to directly reduce a qualifying individual's who purchase health coverage through an American Health Benefit Exchange ("Exchange"), beginning in 2014. The premium tax credit will be available to directly reduce a qualifying individual's premium for coverage purchased through an exchange. In order to be eligible for a tax credit towards the cost of coverage purchased through an Exchange, an individual's household modified adjusted gross income must be between 100% and 400% of the federal poverty level ("FPL"). A qualifying individual must also not be eligible to enroll in "affordable" group health coverage that offers "minimum value." For this purpose, coverage is deemed to be "affordable" if the employee's required contribution for self-only coverage does not exceed 9.5% of his or her household income for the year. A plan provides "minimum value" if the plan's share of the total allowed costs of benefits provided under the plan is at least 60%. The determination of "minimum value" will be addressed in future guidance. As noted earlier, an employee of an employer with 50 or more full-time employees receives a premium assistance tax credit, the employer may be subject to a financial penalty under the employer shared responsibility provisions of the PPACA.



The information contained in this newsletter is only a summary of recent developments affecting employee benefit plans. It is not intended to take the place of specific legal advice. If you have questions concerning how these developments affect your plan, please contact Blitman & King LLP at one of the above locations.