



Happy 30th!

The Swerdlins hosted a wonderful 30th anniversary party on October 14. They celebrated this milestone with their employees to let them know how much they are appreciated. Joanne and Dorn (left) enjoy a piece of anniversary cake. ■



contents

- 1 Happy 30th!
- 2 New Pain for Group Health Care Plans
- 3 FAQ
- 3 ESOP Valuations
- 3 How Long is Long Enough?
- 4 DOL Issues Final Regulation on Fee Disclosure
- 4 2011 Limits at a Glance
- 5 Form SSA update

In Every Issue

- 1 Dorn's Corner
- 5 What's Happenin'

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Dorn's Corner

This is our Fourth Quarter Newsletter and time for me to make my declaration for next year. I declare

2011 as The Year of The Golden Rule.

It seems to me that the prevailing use of the Golden Rule is, "Whoever has the gold makes the rules." I think the original meaning works a little better. The golden rule under the Judeo-Christian ethic is, "Do unto others as you would have them do unto you" or "Treat others as you want to be treated." Every major religion, while differing in many aspects, has an "Ethic of Reciprocity," (the fancy way to say the Golden Rule). For example,

Confucianism: Try your best to treat others as you would wish to be treated yourself, and you will find that this is the shortest way to benevolence.

Hinduism: One should not behave towards others in a way which is disagreeable to oneself. This is the essence of morality. All other activities are due to selfish desire.

My favorite story is about Hillel the Elder, a rabbi living about the time of Jesus. The story goes that he was challenged by a pagan, "I will convert to Judaism only if you can explain to me all of Jewish law while standing on one foot." Hillel responded (I guess he was standing on one foot), "What is

(continued on the back cover)

New Pain for Group Health Care Plans

Discrimination testing has been around for years for retirement benefit plans and self-funded insurance plans. Effective for plan years beginning after September 23, 2010, fully-insured group health plans are now subject to discrimination testing. Health care reform legislation now prohibits discrimination in favor of Highly Compensated Individuals (HCIs) for fully-insured group health plans.

Fully-insured group health plans must pass eligibility, benefits, and controlled group tests. Failure to pass these tests results in noncompliance, and noncompliance results in penalties. Penalties are assessed at \$100 per day for each individual to whom the failure relates.

Does this testing apply to your fully-insured group health plan? Testing is not required if every employee has access to the same benefits with the same employee contribution requirement. However, if you maintain a separate group health plan for your executive staff, or if you are a multi-state employer with different benefit packages for different locations, your plan may be subject to discrimination testing. The law allows some exceptions to the new rules. Your plan is not subject to testing if it is:

- “grandfathered,”
- an excepted benefits plan (e.g., vision, dental, and health FSA’s), and/or
- stand alone retiree-only plan.

Many employers hope to protect their plans through the “grandfathered” status. Unfortunately, retaining this status will be difficult, if not impossible; for example, you **cannot**:

- eliminate all (or substantially all) benefits to diagnose or treat a particular condition,
- increase in percentage or fixed amount cost sharing arrangements,



- increase in employee contribution rate by more than 5% over the rate in place on March 23, 2010, or
- addition of annual dollar limits on benefits or changes to annual dollar limits.

You **can** make changes to premiums and third party administrators. You may also make changes to the plan to comply with new legislation.

Your plan must be tested for discrimination if you do not qualify for one of the exceptions. To perform the testing, you must properly identify HCIs. The HCI definition is different from the Highly Compensated Employee definition used for retirement and cafeteria plan testing.

Once you identify the HCIs, testing can be performed. Your plan is required to pass one of three different eligibility tests. You may exclude from the test employees with less than three years of service, those younger than age 25 and certain others as defined by law. A benefits test must also be performed on your insured group health plan.

Needless to say, this newly required testing will affect many of the plans in existence today. Ultimately, the Plan Sponsor is responsible for making sure the testing is completed. Swerdlin & Company performs all types of discrimination testing for health and welfare plans, so if we can help you with this testing, please give us a call. ■

We're #5!

The Atlanta Business Chronicle has published the updated list of Atlanta's Top 20 Employee Benefits and Compensation Companies. We are pleased to tell you that Swerdlin is now ranked fifth on the list for 2010.

Q *If we have to give refunds because of a failed ADP/ACP test, when do our participants get taxed?*

A The taxes are due in the year the refund was made. For example, refunds for 2010 will be made in 2011. The participant will receive a Form 1099 in January, 2012 to file with his 2011 tax return.

Q *If the participant is under age 59½ when he receives his distribution, is there any way he can be exempt from the 10% tax penalty?*

A Yes. If the participant is age 55 during the year he terminates, he will not be subject to the 10% penalty. Note: this exemption does not apply to in-service or hardship distributions.

Q *Can we pay out Alternate Payees at any time, or do we have to wait until the participant is eligible to receive a distribution?*

A An Alternate Payee's account balance can be paid out at any time providing it is permitted by the plan document or QDRO (Qualified Domestic Relations Order) policy.

Q *Will the 10% early distribution penalty apply to an Alternate Payee?*

A No. These distributions are exempt from the penalty.

ESOP Valuations

On October 20, 2010, the Department of Labor issued proposed regulations regarding the valuation of shares held in an Employee Stock Ownership Plan (ESOP).

Should this proposal become law, it will change the status of valuation firms and make them a fiduciary to the plan. As such, they will be exposed to law suits and will need to purchase fiduciary liability insurance.

The ultimate effect of this proposal could drive up the costs for valuations and put smaller valuation firms out of business.

For more information on this proposed change, please call your Swerdlin Representative. We can provide you with more details and a sample letter to send to your Senators and Congressmen to voice your opposition. ■

How Long is Long Enough?

Two sections of ERISA deal with record retention.

Section 107 of ERISA requires anyone who must file a report (such as a Form 5500), or certify any information under Title 1 of ERISA, to maintain sufficient records to support these reports. This documentation (worksheets, receipts, etc.) must be kept for six years from the date of the filing.

Section 209 of ERISA requires every employer maintain the necessary records to substantiate the benefits due each employee. Employers must maintain records regarding plan benefits indefinitely, either in their original form or, under certain circumstances, in an electronic format. A personnel file for each employee, including salary information, hours worked and a copy of the executed benefit distribution form must be kept.

Employers should keep this information on file indefinitely, to protect themselves from a potential lawsuit from a participant. These records are usually the primary source for determining benefits. A number of courts have held that the burden shifts to the employer to prove that the benefits are correct. Employers cannot defend themselves against a claim if

the records are destroyed. Many court cases have been resolved when an employer produces employee records and account balance data. There is a civil penalty under ERISA Section 209 for each employee affected by such failure, unless it is shown that the failure is due to reasonable cause.

Over the years we have found that retention of historical records is often overlooked during mergers or acquisitions. If you are the new plan sponsor, it is your responsibility to obtain and maintain these historical records.

Call your Swerdlin Representative if you have any questions or concerns on this important requirement. ■



DOL Issues Final Regulation on Fee Disclosure

The long-awaited Department of Labor (DOL) regulation regarding fiduciary requirements for disclosure in participant-directed individual account plans was finally published on October 20, 2010. This article focuses on the fee and plan expense disclosure requirements.

Plan administrators must comply by the first day of the plan year beginning on or after November 1, 2011 ("applicability date"). A transitional rule allows the initial disclosure to be made to existing participants any time up to 60 days after the applicability date.

Under this regulation, the Plan Administrator is responsible for providing this disclosure information. The regulation provides a safe harbor whereby the Plan Administrator can assign this responsibility to their service provider or the issuer of the investment. The Plan Administrator will be deemed to have acted reasonably and in good faith.

When a participant is first eligible to direct his investments, and annu-

ally thereafter, a general explanation of the plan fees and expenses must be provided, including the following:

- A list of fees for general plan administration charged against participant accounts; and
- A list of fees for services provided on an individual basis, including, but not limited to:
 - plan loans
 - redemption fees
 - investment advice
 - brokerage windows
 - distribution fees

Each participant must be provided with a description of any changes to expenses within 30 to 90 days before the effective date of the change. An exception may be made for unforeseeable events or circumstances beyond the Plan Administrator's control. However, a notice of the change must be distributed as soon as reasonably practicable.

All plan-paid expenses must be reported at least quarterly. Typically these expenses are provided on the

participant statement.

Plan level expenses must include:

- The dollar amount actually charged during the quarter to the participant's account for administrative services;
- A description of the services provided to the participant for such amount; and
- If applicable, an explanation of expenses charged to the plan through the mutual fund expenses.

Participant level expenses must include:

- The dollar amount actually charged during the quarter; and
- A description of the services provided for such amount.

These are just a few of the disclosure requirements covered by the DOL regulation for participant-directed individual account plans. If you want to know more about these requirements, please give your Swerdlin Representative a call. ■

2011 Limits – No changes for the 3rd year in a row

IRS Dollar Limits	Code Section	2009	2010	2011
DB plan annual benefit limit	415(b)(1)(A)	\$195,000	\$195,000	\$195,000
DC plan annual addition limit	415(c)(1)(A)	49,000	49,000	49,000
Max 401(k) deferral	402(g)(1)	16,500	16,500	16,500
Max 401(k) catch-up deferral	414(v)(2)(B)(i)	5,500	5,500	5,500
Max SIMPLE deferral	408(p)(2)(E)	11,500	11,500	11,500
Max 457 deferral	457(e)(15)&(c)(1)	16,500	16,500	16,500
Def of HCE (highly compensated employee)	414(q)(1)(B)	110,000	110,000	110,000
Annual Compensation Limit	401(a)(17) & 404(l)	245,000	245,000	245,000
SEP Coverage	408(k)(2)(C)	550	550	550
SS Taxable Wage Base		106,800	106,800	106,800



Form SSA update

The IRS has now issued Form 8955-SSA for reporting a terminated participant's benefit that has not yet been distributed.

The new form was not available for reporting these benefits for the 2009 plan year. The special filing date for the 2009 plan year is the same as the filing due date for plan years ending in 2010. For calendar year plans, that will be July 31, 2011. If an extension is filed for the 2010 Form 5500, that extension also applies to the Form 8955-SSA. The IRS requires two separate forms be filed if applicable — one for 2009 and one for 2010.

Since this form contains confidential information, it is not part of the electronic filing, and a paper copy will be filed each year.

If Swerdlin & Company prepares your Form 5500 filing, we will send you the new Form 8955-SSA for the plan year ending 2009 along with the forms for 2010.

Your Swerdlin Representative is always available if you have any questions. ■

What's Happenin'

Congratulations to **Adrian Farnon** who was elected in August to the Steering Committee of the Worldwide Employee Benefits Network (WEB).

Congratulations to **Kathy Latour** and **Kim Hall** who were both promoted to the position of Pension Consultant.

Congratulations to **Tiffany Born** and her new husband, Casey Enoch who were married on October 23. They honeymooned in Las Vegas.

Anniversaries we celebrate this quarter: **Laura O'Connor**, 16 years; **Cynthia Navan Clark** and **Lee Swerdlin**, 12 years; **Beth Wright**, 10 years; **Adrian Farnon** and **Ricky Cox**, 8 years; **Alicia Turner**, 7 years; **Eric Myers** and **Marjorie Cade**, 4 years; **Janet Wadlington** and **Tim Bowen**, 3 years; **Catie Smith**, 1 year.

We welcome two new employees this quarter: **Scott Foreman** has joined the Defined Contribution Team (Blue Team) and **Gary Anderson** is working on Daily Recordkeeping Team (Platinum Team).

On October 6 and 7, **Karen Miracle**, **Connie Woodmansee**, **Lee Swerdlin** and **Susan Petrirena** attended an ESOP conference in St. Petersburg. Karen was the moderator of a discussion group on ESOP Communications.

On November 3, 4 and 5, **Donna Martin**, **Joanne Swerdlin**, **Karen Miracle**, **Lee Swerdlin** and **Susan Petrirena** attended the ESOP conference in Las Vegas, where they hosted a reception for our clients and friends. Susan was a speaker in one of the sessions.

In October, our client the Bobby Dodd Institute hosted a celebration of their supporters called Synergy 2010. **Kim Hall** and **Patti Williams** attended the event.

For Lee Denim Day, our employees wore blue jeans and their pink pins, donating \$135 to help find the cure for breast cancer. On November 20, many of our employees participated in a "Give Thanks" walk at Zoo Atlanta for St. Jude Children's Research Hospital. Each walker had sponsors who contributed, and Swerdlin & Company donated \$25 for each employee who walked that day. In total, we raised close to \$3,000.

Our employees have been busy this quarter raising money for our Christmas charity. The Blue Team sold homemade sandwiches, the Platinum Team hosted a brunch, and at our annual Halloween Carnival, employees wore costumes and played games. In total, these events raised \$650. ■

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Dorn's Corner

(continued from page 1)

hateful to yourself, do not do to your fellow man. That is the whole Torah, the rest is commentary. Go and study it." This is the Jewish version although the concept had been around way before Hillel.

President Kennedy, in his 1963 anti-segregation speech, was asking us to follow the Golden Rule. "It ought to be possible for every American to enjoy the privileges of being American without regard to his race or his color. In short, every American ought to have the right to be treated as he would wish to be treated, as one would wish his children to be treated."

One enhancement of the Golden Rule says, "Treat others as they wish to be treated." Some have called this the "Platinum Rule." How we want to be treated may not be the same as others want to be treated. For example, "I like baseball games so I will take my wife to a game," therefore, I am applying the Golden Rule. But if your wife doesn't like to go to baseball games, the Golden Rule is being misinterpreted.

Another tweak of the Golden Rule is to change it to something like this, "Treat myself as I deserve to be treated." What do I mean? We so often treat ourselves worse than we treat others. Many say that you really cannot love others until you learn to love yourself.

So, how do we love ourselves? Be aware of what you say to yourself,

your inner dialogue. I often put myself down, or otherwise criticize myself. I've mentioned this in previous Dorn's Corners. For example, I think: "I'm so stupid." "What an idiot I am." "I should know better than that." These internal messages work to lower our self esteem and distort our self-image.

The words we choose to speak out loud also indicate our inner feelings. "I was unable to do that." Am I physically or mentally disabled such that I could not perform the promised task? What I really mean is, "I choose not to do that." That is taking responsibility for what you did or did not do. The other is taking a victim's role. Begin to notice the words we choose, and let's take a step in the right direction towards treating ourselves with respect and responsibility. I think this is a great way to apply the Golden Rule.

In my life, I am working to upgrade my conversation by eliminating two words from my speech. The words are "try" and "should."

In most cases when I use the word "try" it means I may or may not do it. It shows no commitment, and leaves a "back door" for me to opt out of my commitment. "I'll try to finish that by next week." Next week comes and I haven't done what I promised. My response could easily be, "Well, I tried but couldn't do it." Again, a truer statement, without resorting to defensiveness or "poor me" status is, "I chose not do what I promised."

"You should do this" is often interpreted by the *should-ee* as a criticism and can be stated in a better way. "I should've done this" affects the *should-ee*, i.e., yourself, as a reprimand and a put-down. By the way, a *should-er* is one who says should to another, and the *should-ee* is the target of the *should-er*. (Please don't try to look up these words because I just made them up.) Simply substituting "could" for "should" generates a better result.

To work on this issue, I have offered to pay one dollar each time someone points out that I said "should" or "try." If I catch myself before someone else does, I don't have to pay. It's actually helping me clean up my conversations.

This Holiday Season, give your friends, co-workers, and family the gift of practicing the Golden Rule. We wish you a Happy and Healthy New Year. ■

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