

# EMPLOYMENT LAWSCENE ALERT: IRS ANNOUNCES 2017 EMPLOYEE BENEFIT PLAN LIMITS

The Internal Revenue Service recently published the cost-of-living adjustments to the dollar limits under various employer-sponsored retirement and health plans for 2017. The majority of the dollar limits are either unchanged or will increase only slightly.

Employer-sponsors of benefit plans should update payroll and plan administration systems for the 2017 limits and ensure that any new limits are incorporated into relevant participant communications, enrollment materials and summary plan descriptions, as applicable.

## Health FSA Employee Contribution Limit Increasing to \$2,600

For 2017, the maximum dollar limitation on employee salary reductions for contribution to health flexible spending arrangements (health FSAs) will increase to \$2,600 from the prior limit of \$2,550.

## 2017 Qualified Retirement Plan Limits

For retirement plans beginning on and after January 1, 2017, the following dollar limitations apply for tax-qualified retirement plans:

- The elective deferral limit under Section 402(g) or the Internal Revenue Code (Code) will remain unchanged at \$18,000 for employees who participate in:
  - Code Section 401(k) plans;
  - Code Section 403(b) plans; and
  - Most Code Section 457 plans.
- The catch-up contribution limit for those age 50 and over under will remain unchanged at \$6,000 for all plans other than SIMPLE 401(k) and SIMPLE IRAs. (For these SIMPLE plans, the catch-up contribution limit for those age 50 and over under will remain unchanged at \$3,000).
- The limitation on the annual benefit for a defined benefit plan will increase from \$210,000 to \$215,000.
- The limitation on annual additions (meaning total employee plus employer contributions) to a participant's defined contribution plan will increase from \$53,000 to \$54,000.
- The limit on the amount of annual compensation taken into account under a tax-qualified retirement plan will increase from \$265,000 to \$270,000.
- The limitation used in the definition of a highly compensated employee (HCE) under Code Section 414(q) will remain unchanged at \$120,000.
- The limitation used in the definition of a key employee in a top-heavy plan under Code

Section 416 will increase from \$170,000 to \$175,000.

- The dollar amount under Code Section 409(o) for determining the maximum account balance in an employee stock ownership plan (ESOP) subject to a five-year distribution period will increase from \$1,070,000 to \$1,080,000. The dollar amount used to determine the lengthening of the five-year distribution period will increase from \$210,000 to \$215,000.

## Prior Guidance on Additional 2017 Limits

### Social Security Taxable Wage Base

On October 18, the Social Security Administration announced that the Social Security wage base for 2017 will increase significantly (from \$118,500) to \$127,200. This is the maximum wage base subject to the FICA tax and is also the maximum “integration level” for plans using “permitted disparity.”

### 2017 Health Savings Account Limits

The combined annual contributions to an HSA must not exceed the maximum annual deductible HSA contribution, which for 2017, is \$3,400 for single coverage and \$6,750 for family coverage. The catch-up contribution for eligible individuals age 55 or older by year end remains at \$1,000.

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## **EMPLOYMENT LAWSCENE ALERT: NEW FLSA OVERTIME RULES MAY HAVE EMPLOYEE BENEFIT PLAN IMPLICATIONS**

The Department of Labor’s (DOL’s) final overtime rule (the [Final Rule](#)) takes effect December 1, 2016. As described in our [prior post](#), the cumulative effect of the Final Rule will be to significantly expand the categories of employees eligible for overtime protection. As part of preparing to comply with the new wage and hour law, employers must also consider whether and how any changes to compensation practices will affect employee benefit plans. This post describes the tax-qualified retirement plan issues that employers should take into account as the December 1 Final Rule deadline approaches.

### Classification Changes

To the extent that benefit plan documents condition eligibility on an employee’s classification

(such as salaried, hourly, exempt, or non-exempt), compensation structures revised to comply with the Final Rule could cause large cohorts of employees to either lose or gain benefits. As an example, if a specific employee is reclassified from hourly to salaried status (or vice versa) in response to the Final Rule, that individual might gain (or lose) the right to participate in an employee benefit plan. Corresponding modifications to the terms of those plans may be necessary to continue to provide current benefit levels and, or, to ensure that retirement plans will continue to satisfy underlying participation requirements in light of resulting eligibility changes.

### Compensation Changes

By the same token, FLSA-related compensation adjustments may result in unanticipated changes to overall benefit contribution obligations. This is particularly true for 401(k)s, and similar tax-qualified retirement plans, under which employer contributions are calculated in accordance with a specific plan definition of “compensation.” The impact of pay changes on employer retirement plan contributions will vary case by case, but in general, may fluctuate not only to the extent that employee base pay is increased or decreased, but also by whether a given plan’s “compensation” definition includes or excludes overtime pay.

### Tax-Qualification Compliance Issues

In some cases, plan compensation definitions should be amended as required to attain a result in line with overall benefits and compensation objectives. Although a tax-qualified retirement plan may exclude (or be amended to exclude) overtime pay from its compensation definition, such exclusion is permissible only if the compensation taken into account after the exclusion satisfies annual nondiscrimination testing requirements. Employers that expect a significant increase in overtime wages as a result of compliance with the Final Rule, as well as employers with plans already excluding overtime pay, should determine now whether projected increases in overtime wages could affect their plans’ ability to continue to satisfy tax nondiscrimination requirements in light of existing or revised plan terms.

Employers choosing to amend a retirement plan’s compensation definition to exclude overtime pay will need to consider other legal and operational issues in addition to nondiscrimination testing. For example, in the case of a “safe harbor” 401(k) plan, the modification may need to be coordinated with the start of a plan year. In addition, time may be needed to update payroll systems and plan administrative processes to properly capture the new pay exclusion.

### Proceed with Caution before Reducing Benefits to Offset New Overtime Costs

Some employers may be facing higher compensation costs as part of a strategy for

maximizing the available exemption from the overtime rules. While it may be tempting to offset some of these costs by reducing employee benefits spending, it is crucial to consider underlying benefit-related legal requirements as they proceed. In some cases, benefit reductions are limited by law, while in others, unintended consequences may result.

For example, the Affordable Care Act requires large employers (generally 50 employees and above) to either offer “affordable” and “minimum value” health care coverage to certain employees or risk exposure to significant tax penalties. A large employer may incur penalties, without regard to whether an employee is exempt or non-exempt under the Final Rule, if he or she works more than 30 hours per week but is not offered ACA-compliant coverage. A reduction or elimination of an employer premium contribution (or an increase in employee cost sharing) must therefore be carefully analyzed to assess the extent to which it could affect a group health plan’s “minimum value” and “affordability” metrics, thereby increasing employer exposure to ACA penalties.

### Conclusion

It is no surprise that the Final Rule requires many employers to make extensive changes to their compensation and employee classification practices. What may be more surprising is the extent to which FLSA-related changes promise to impact employee benefit plans, as well. To avoid any benefits cost or compliance surprises, employers should carefully review whether and how sponsored employee benefit plans will be affected by other changes made to comply with the Final Rule.

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## **NINTH ANNUAL MILWAUKEE ARCHBISHOP’S CRS RECEPTION**

Earlier this month, OCHDL proudly sponsored a charitable event at the Wisconsin Club, downtown Milwaukee, in honor of Catholic Relief Services; the official international humanitarian agency of the Catholic community in the United States. The event had many influential guests in attendance, including Archbishop ListECKI, Dr. Carolyn Woo, CEO and President of CRS, and Coach Wojciechowski of Marquette University. The event generated a great deal of awareness, as well as the much needed funds to support this overall amazing cause.



Catholic Relief Services is one of the largest international aid organizations in the world. They are also one of the most efficient and effective: Ninety-seven percent of their expenditures

go directly to programs that benefit individuals overseas. As part of the universal mission of the Catholic Church, they work with local, national and international Catholic institutions and structures, and other organizations, to assist people on the basis of need, without regard to race, religion or nationality. They alleviate suffering and provide assistance to more than 100 million people in need who live in some of the most impoverished places in over 100 countries.

O'Neil Cannon are honored to have been a part of such a meaningful event and encourage everyone in the community to look into this selfless agency.

*Read more about CRS >>*

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## **ATTORNEY TREVOR C. LIPPMAN SELECTED AS PARTICIPANT IN THE G. LANE WARE LEADERSHIP ACADEMY**

We are pleased to announce that Trevor C. Lippman was selected to participate in the inaugural class of the G. Lane Ware Leadership Academy. Trevor was 1 of 23 attorneys chosen to participate in this program.

The Wisconsin State Bar's Development Committee recently developed the G. Lane Ware Leadership Academy as an inclusive leadership development training program. The committee's objectives in creating this program are to empower participants with the skills, strategies, and resources to become effective leaders in all walks of life.

The G. Lane Ware Leadership Academy is a multi-session training program designed to help lawyers enhance their leadership skills, to build professional networks, to inspire involvement, and to foster professional development. The inaugural class will begin the program this November and end in the spring of 2017.

This is a great opportunity for Trevor to enhance his practice and enrich his career, and he is excited to be a participant.

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# FIRST PLACE IN THE 2016 STUDENT INTERN COMPETITION

In September, Jessica Schultz was awarded first place in the 2016 Turnaround Management Association (TMA) Chicago/Midwest Chapter Student Intern Competition. Jessica is currently a third-year law student at UW-Madison Law School, and she spent the summer of 2016 as a Law Clerk with O’Neil, Cannon, Hollman, DeJong and Laing, S.C.



TMA is a global non-profit organization comprised of turnaround and corporate renewal professionals with more than 9,000 members in 55 chapters worldwide. The competition involved both a written and oral component. Jessica’s application focused on work she performed with distressed and insolvent businesses under the supervision of Seth Dizard, a Shareholder of the firm who frequently serves as a court-appointed receiver for distressed companies.

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## CHRISTA WITTENBERG PUBLISHED AN ARTICLE IN WISCONSIN LAWYER MAGAZINE

Christa Wittenberg authored an article entitled “Testamentary Capacity: A Sliding-Scale Approach,” which appeared in the September issue of *Wisconsin Lawyer* magazine. The article discusses the complex estate planning issues and disputes that can arise in families with loved ones affected by dementia or diminished mental capacity. Given increasing life expectancies and the relative frequency with which these issues can arise, this is a situation that many people either have faced or will face in their lifetimes. When these issues arise, it is important to seek good legal advice promptly.

For more information you can contact Christa at 414-276-5000 or [Christa.Wittenberg@wilaw.com](mailto:Christa.Wittenberg@wilaw.com)

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## BEST LAWYERS® HONORS 15 ATTORNEYS IN

# 2017

O'Neil, Cannon, Hollman, DeJong and Laing S.C. is pleased to announce that 15 lawyers have been named to the 2017 Edition of *Best Lawyers*, the oldest and most respected peer-review publication in the legal profession.

*Best Lawyers* has published their list for over three decades, earning the respect of the profession, the media, and the public as the most reliable, unbiased source of legal referrals. Its first international list was published in 2006 and since then has grown to provide lists in almost 70 countries.

"*Best Lawyers* is the most effective tool in identifying critical legal expertise," said CEO Steven Naifeh. "Inclusion on this list shows that an attorney is respected by his or her peers for professional success."

Lawyers on the *Best Lawyers in America* list are divided by geographic region and practice areas. They are reviewed by their peers on the basis of professional expertise and undergo an authentication process to make sure they are in current practice and in good standing.

O'Neil, Cannon, Hollman, DeJong and Laing S.C. would like to congratulate the following attorneys named to the 2017 *Best Lawyers in America* list:

- James G. DeJong - Corporate Law, Mergers and Acquisitions Law, Securities/Capital Markets Law
- Seth E. Dizard - Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Litigation-Bankruptcy
- Peter J. Faust - Corporate Law, Mergers and Acquisitions Law
- John G. Gehringer - Commercial Litigation, Construction Law, Corporate Law, Real Estate Law
- Dennis W. Hollman - Corporate Law, Trusts and Estates
- Grant C. Killoran - Litigation-Health Care
- Dean P. Laing - Commercial Litigation, Personal Injury Litigation-Plaintiffs, Product Liability Litigation-Defendants
- Gregory W. Lyons - Commercial Litigation, Litigation-Insurance
- Gregory S. Mager - Family Law
- Patrick G. McBride - Commercial Litigation
- Thomas A. Merkle - Family Law
- Steven J. Slawinski - Construction Law

Since it was first published in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. *Best Lawyers* is based on an exhaustive peer-review survey. Over 54,000 leading attorneys cast more than 7.3 million votes on the legal abilities of other lawyers in their practice areas. Lawyers are not required or allowed to pay a fee to

be listed; therefore inclusion in *Best Lawyers* is considered a singular honor. *Corporate Counsel* magazine has called *Best Lawyers* “the most respected referral list of attorneys in practice.”

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## **ATTORNEY STEVEN SLAWINSKI FEATURED IN BLOG, PUBLISHED BY THE STATE BAR**

Attorney Steven J. Slawinski talks about a recent Seventh Circuit Court of Appeals decision in the latest [Construction Blog](#) article, published by the State Bar of Wisconsin Construction and Public Contract Law Section.

In this decision, the Seventh Circuit Court of Appeals weighed in on the application of promissory estoppel in the context of construction bidding.

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In this decision, the Seventh Circuit Court of Appeals faced the issue of whether a lender’s title insurance policy covers construction liens that arise from the lender’s decision to cease funding its construction loan due to a loan imbalance.

[Read Full Article>>](#)

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## **THE WILAW CONNECTION QUARTERLY NEWSLETTER**

## Newsletter Article Highlights:

- Firm Opens Green Bay Office
- U.S. DOL Announces That It Will Publish Final Rule to Update Overtime Regulation
- Understanding Alternative Disputes Resolution in Wisconsin: An Overview
- LEGISLATIVE ALERT: New Rules and Procedures Regarding Mortgage Foreclosures
- Choosing a Trustee: It Is All About Trust: Part 1-Discretion vs. Direction
- Proud to Be a Member of Meritas, A Multi-National Network of Business Law Firms

## Pleased to Announce:

- Welcome Attorney Robert R. Gagan
- Attorney Seth E. Dizard Joins NAFER
- Attorney Grant C. Killoran Re-Elected to the American Bar Association House of Delegates
- Attorney Erica N. Reib Elected to the Board of the State Bar's Labor and Employment Section

