PPi BENEFIT SOLUTIONS

GROUP TERM LIFE INSURANCE: A GUIDE FOR EMPLOYERS

Employers that offer GTLI benefits should closely review the compliance obligations related to this benefit to ensure the plan satisfies applicable ERISA fiduciary obligations and IRC Section 79 rules on nondiscrimination and imputed income.

Group term life insurance (GTLI) coverage provides a lump sum nontaxable death benefit to the named beneficiary or beneficiaries of individuals covered under the plan. Employers that offer GTLI benefits to their employees have several compliance obligations related to this popular employee benefit.

Whether the premium for GTLI is entirely employer-paid (as is the most common practice for basic life policies) or employee-paid (referred to as supplemental, voluntary, or optional life policies, to be referenced herein as "supplemental"), GTLI benefits must follow applicable ERISA fiduciary, disclosure, and reporting requirements and IRC Section 79 rules on nondiscrimination and imputed income. Courts across the country have found employers liable for GTLI administration failures under ERISA; this is also a DOL enforcement focus. Specifically, the consequences of noncompliance include liability for the benefit, penalties, and loss of tax-advantage status.

This guide provides an overview of the compliance obligations related to GTLI under ERISA and the Internal Revenue Code, along with practical tips to meet those obligations. Employers should consult with their legal counsel or tax advisor for advice specific to their plan design and administration practices.

OVERVIEW OF GTLI PLAN DESIGNS AND FEATURES

Most basic and supplemental GTLI plans have several features in common, the details of which are negotiated between employers and insurance carriers to meet the employer's goals for its GTLI program. For example, GTLI plans may include an age reduction formula that reduces the default death benefit when employees reach certain milestone ages (typically starting at age 65, although age reduction formulas can vary). In addition, state insurance laws often require GTLI plans to include a conversion option that gives employees a time-limited opportunity to convert group coverage to an individual whole life policy without evidence of insurability (EOI) when eligibility for the policy ceases due to an employee's termination, leave of absence, or reduction in standard hours. Group plans may also be designed to include a conversion option for lost coverage due to age reduction formulas or the eligibility status of dependent children.

Premium rates for converted coverage that does not require EOI are generally cost prohibitive but may be attractive to covered employees or dependent children whose health status renders them otherwise uninsurable. Some GTLI plans include a portability option, which allows employees to "port" the coverage post-termination according to rates set by the carrier. GTLI plans may also include a waiver of premium for disability feature, which applies when an employee becomes disabled according to the carrier's definition of disability. Similarly, some GTLI plans include a sickness/injury provision, which allows coverage to continue for a period of time following an employee's last day of work if premiums are paid.

Many employers couple their GTLI plans with accidental death and dismemberment (AD&D) coverage, as explained below.

Basic Life Insurance

In the context of employee benefits, basic life insurance generally refers to fully employer-paid GTLI that is provided to all benefits-eligible employees according to a death benefit schedule that is either a flat dollar amount (such as $100,000) or a multiple of salary to a maximum threshold (such as two times salary to a maximum of $200,000). Basic life insurance coverage is generally offered on a fully guaranteed issue (GI) basis, meaning that employees are not required to satisfy EOI criteria to qualify for the group coverage.

Supplemental Life Insurance

Supplemental life insurance generally refers to fully employee-paid GTLI that is made available to all benefits-eligible employees on an elective (voluntary) basis. Supplemental life insurance may be offered in fixed dollar amount increments (such as $5,000 or $10,000 increments) or in multiples of salary. The maximum supplemental life election allowed by the carrier should specify whether the limit is inclusive or exclusive of employer-paid basic life coverage amounts. Employers that implement new supplemental life insurance benefits are typically required to achieve a minimum level of employee participation, and carriers frequently offer robust enrollment programs to encourage employee participation in these benefit plans.

Supplemental life insurance plan designs generally provide a specified amount of coverage that is made available on a GI basis exclusively to employees who make a supplemental life election upon their initial election opportunity. Employees who forgo the purchase of supplemental life coverage upon their initial opportunity, or who initially elect less than the maximum GI coverage amount, will generally be required to satisfy EOI requirements for any subsequent supplemental life elections (referred to as "late entrant" elections).

Supplemental life insurance is typically offered according to age-banded rates in five-year increments, where the employee's age is measured according to terms agreed upon with the carrier (e.g., start of calendar month or year, end of calendar month or year, or actual date of birth). Employers that offer supplemental life insurance for employees often include options for enrolled employees to elect supplemental spouse/domestic partner and dependent child coverage according to benefit schedules that may reflect a fixed dollar limit of coverage or a fixed percentage of the employee's own supplemental life election. The age-banded rates for supplemental spouse/domestic partner coverage may be measured according to the employee's age or the age of the spouse/domestic partner, depending on the employer's plan administration preference and the options available from the carrier. The rates for supplemental dependent child coverage are typically uniform per increment of coverage (i.e., they are not generally age banded); the age parameters for supplemental dependent child coverage can vary by carrier but often exclude newborns.

AD&D Insurance

AD&D coverage provides a benefit exclusively for a death or dismemberment caused by an accident. Many GTLI carriers require employers to purchase group AD&D coverage in connection with basic life insurance plans, and some also require employers to offer supplemental AD&D coverage in connection with supplemental life insurance plans. The benefit schedules for AD&D policies often mimic the GTLI benefit schedules for ease of administration and employee education, but alternative AD&D plan designs may be available on a case-by-case basis. When the death of a covered participant qualifies under the terms of both a GTLI policy and an AD&D policy, death benefits are payable under both policies.

GTLI ERISA REQUIREMENTS

ERISA Applicability

ERISA defines an employee welfare benefit plan as a plan, fund or program that is established or maintained by an employer for the purposes of providing specifically listed benefits, through the purchase of insurance or otherwise, to participants and their beneficiaries. Among the benefits listed in the ERISA plan definition are benefits in the event of sickness, accident, disability or death. As a result, employer-sponsored GTLI and AD&D policies are ERISA plans subject to ERISA's plan document, amendment/termination, summary plan description (SPD), Form 5500 reporting, Summary Annual Report (SAR), disclosure, claim procedures, and fiduciary requirements (including following the plan terms). For plans exempted from ERISA (e.g., governmental and church plans), state law, which is outside the scope of this publication, will apply. Employers sponsoring these plans should consult with their carriers and legal counsel to understand their legal obligations. For an overview of ERISA compliance, see the PPI publication **ERISA Compliance Considerations for Health and Welfare Benefit Plans**.

However, the DOL regulations provide a safe harbor from ERISA's application for certain "voluntary" insurance arrangements where employees pay the full premium for coverage, and the employer has minimal involvement (referred to as the "voluntary plan safe harbor" but not necessarily linked to the term "voluntary life insurance," which simply means fully employee-paid

coverage). To qualify for the ERISA voluntary plan safe harbor, the employer's functions must be limited to allowing an insurer to offer and publicize the arrangement to employees, collecting premiums through post-tax payroll deductions and remitting those premiums to the insurer. The employer must not put any conditions on an employee's election of benefits and must not profit from it; importantly, the employer must not endorse the arrangement. The fact that employees pay their premiums post-tax is not a conclusive factor in determining whether ERISA applies. The plan must be scrutinized for employer endorsement (e.g., using the employer's name or associating the plan with other employer plans, assisting employees with enrollment and claim forms, negotiating with insurers, and record keeping beyond maintaining a list of enrolled employees).

Additionally, employers that seek to defend the plan's status under the ERISA voluntary plan safe harbor should make clear in enrollment materials and other employee communications that the arrangement is not an employer-sponsored ERISA plan (in contrast to other available benefits) and employee questions about the program should be redirected to the insurer.

Practical Tip: Since the consequences of ERISA noncompliance are significant and the endorsement determination is highly fact-specific, employers should seek a determination from their legal counsel before relying on ERISA's voluntary plan safe harbor.

See the PPI publication **ERISA Compliance Considerations for Health and Welfare Benefit Plans** for a more detailed discussion of the ERISA voluntary plan safe harbor.

Fiduciary Status

Under ERISA, parties that hold or exercise discretionary authority over plan management or assets are fiduciaries. An employer may be a plan fiduciary by design (i.e., named in plan) or by performing certain plan functions. In the GTLI context, employers can become functional fiduciaries by providing administrative services related to the plan, such as assisting with enrollment, distributing claim forms, and fielding questions about coverage.

Whether an employer is a functional fiduciary requires a fact-intensive analysis of the challenged act. Importantly, unknowingly acting as a fiduciary does not relieve GTLI plan sponsors from liability. The status is significant since fiduciaries are held to a higher code of conduct, similar to trustees, that involves duties of loyalty, prudence and impartiality.

Practical Tip: Employers should confirm their ERISA fiduciary status in relation to their GTLI benefit offering with their legal counsel. An employer may be a plan fiduciary by design (i.e., named in the plan) or by performing certain plan functions.

Administering GTLI Benefits

Administering life insurance coverage carries fiduciary risk. For example, courts have held that employers breach their plan fiduciary duties when they accept premiums for nonexistent coverage (e.g., where a participant is ineligible, EOI has not been approved, or coverage has lapsed). Dependent child eligibility, which varies by plan and ends at different ages and/or by disability or student status, must be closely monitored. Similar to when an employer provides inaccurate benefit summaries, acceptance of premiums leads employees to believe their coverage is in effect. ERISA participants have a right to accurate information; consequently, a plan administrator's provision of inaccurate coverage information may be a breach of fiduciary duty.

Practical Tip: Employers should establish procedures to ensure that they are processing premium deductions only for eligible coverage and notifying employees when coverage ends or is reduced.

Employers may also be acting as fiduciaries when administering GTLI beneficiary designations. Some courts have found an employer's failure to relay pertinent information to the insurer to be a breach of fiduciary duty. For example, an employer's failure to maintain accurate beneficiary records (leading the insurer to pay death benefits to an incorrect beneficiary) may make the employer liable for the payment of death benefits to the correct beneficiary. Employers should ensure that the plan document describes procedures for designating and changing beneficiaries and claim payment procedures if no beneficiary designation is made or if the designated beneficiary is a minor.

Practical Tip: As fiduciaries, employers should take great care to adequately communicate GTLI eligibility requirements (including GI and EOI requirements, dependent child eligibility, age-banded rates and recurring voluntary life election opportunities throughout the life cycle of the employee), ensure premiums are only collected on verified active coverage, and maintain accurate beneficiary designations.

Employers may need to respond to coverage inquiries from a deceased participant's family member who is not the designated beneficiary (but may have assumed otherwise). Great care must be taken to maintain accurate beneficiary designation records with clear procedures for participants to change those designations in accordance with the plan terms. When responding to a participant's family member who is not the designated beneficiary, employers (as GTLI plan administrators) may indicate that the inquiring party is not entitled to GTLI benefits without providing further details regarding the benefit amount or the named beneficiary. Given the sensitive nature of such inquiries, employers should review such communications with legal counsel and should recognize the risk that benefit entitlements may be challenged.

Conversion and Portability Responsibilities

Similar fiduciary obligations apply when employers communicate options to continue coverage when eligibility for some or all of a GTLI benefit terminates. While most employers are familiar with COBRA and state continuation rights and notice requirements that arise when group health plan coverage ends, they may be less attuned to potential notice obligations when GTLI coverages end. To be clear, GTLI coverage is not subject to COBRA or state health coverage continuation laws, but notices regarding conversion and/or portability rights may need to be distributed when a covered employee loses GTLI coverage, depending on the plan terms.

Typically, GTLI coverage ends when active employment ends or when a participant otherwise ceases to meet the eligibility criteria for coverage (including the definition of an eligible dependent child). GTLI plans often include a right to convert group coverage to an individual policy and sometimes also include a portability provision. There may also be a waiver of premium for disability benefit or a sickness/injury continuation option. These features enable employees to continue coverage in some form when they would otherwise lose eligibility. While not required under ERISA, many state insurance laws require carriers to provide certain conversion privileges. The conditions and processes for exercising such continuation options are controlled by the terms of the specific plan. Beyond that, carrier agreements may require employers to assist with meeting notice requirements related to conversion privileges.

Practical Tip: Employers sponsoring GTLI plans should take care to understand their administrative obligations relative to the applicable continuation terms of the plan. Importantly, employers should be aware that required notices are not necessarily handled by the carrier, sometimes leaving the employer legally responsible for notice failures. Employers should ensure that proper procedures are in place to provide adequate notices and accurately respond to coverage inquiries to avoid fiduciary liability for claims that can arise when participants are deprived of GTLI conversion or portability rights.

First, employers should confirm the details regarding whether the employer or the carrier is responsible for distributing conversion or portability notices and when and how they must be distributed. These details are generally memorialized in plan documents or carrier agreements and vary by carrier. Employers should review the plan terms to confirm the specific information that needs to be provided to satisfy the notice requirement.

Practical Tip: Employers that are responsible for providing GTLI conversion or portability notices should maintain documentation of mailing and delivery (e.g., first class mail return receipt requested) according to the employer's record retention policies.

Second, even if the carrier is responsible for providing conversion or portability notices, employers should have consistent procedures for responding to life coverage information requests from employees. Note that FMLA only provides protection for health benefits, not non-health benefits such as life or disability coverage. The eligibility terms of the GTLI plan document determine when coverage ends, and timelines can vary depending on the need for leave. Participants who lose eligibility based on leave related to a terminal illness are of particular concern since they are unlikely to obtain life coverage elsewhere. Understandably, these employees and family members are more likely to ask questions about benefits entitlements.

Employers should include a description of continuation options that reference applicable plan terms with any leave policies, leave communications, and offboarding materials. Anyone designated to respond to life coverage inquiries should be trained in when and how a group plan can be converted to an individual policy, ported, or continued on life waiver of premium or during sickness/injury. Importantly, an employer's response to life coverage inquiries should not be limited to answering precise questions because employees may not know which specific questions to ask. Meaning, there should be no potentially harmful omissions (e.g., confirming a plan's right to convert coverage without mentioning the deadline to exercise that right). Oversights and omissions can be avoided by furnishing the life plan document and SPD to participants upon receipt of an inquiry, even if the documents were previously provided.

Practical Tip: Employers should take steps to ensure that all applicable conversion, portability, waiver of premium, or sickness/injury continuation rights and rules – especially those regarding deadlines – are clearly, completely, accurately, and timely communicated to employees. Employers should include a description of continuation options with reference to applicable plan terms with any leave policies, leave communications, and offboarding materials.

GTLI SECTION 79 REQUIREMENTS

Introduction

In general, all employer-provided benefits, including GTLI, are taxable at the federal level unless the Internal Revenue Code (IRC) provides a specific exclusion. (Note that state taxation considerations are outside the scope of this publication.) Even where employees pay the full cost of supplemental coverage (also known as voluntary or optional, referred to herein as "supplemental"), IRC Section 79 requires employers to tax the benefit to the extent the employment relationship allows employees to benefit from group rates that are better than the uniform IRS Premium Table rates (hereinafter "Table rates" or "Table"; see Appendix A, **IRS Premium Table Rates Cost Per $1,000 of Coverage Per Month**). Section 79 provides a tax exclusion for the first $50,000 of GTLI coverage, as long as certain nondiscrimination requirements are met. Any coverage amount above $50,000, or coverage that does not meet Section 79's nondiscrimination requirements, is taxable to the employee.

Life insurance provided to fewer than ten employees will not qualify as GTLI under Section 79 except for: 1) certain insurance provided to all full-time employees; or 2) certain plans covering employees of multiple employers (e.g., union plans). Employers with life insurance plans covering fewer than ten employees should confirm Section 79 applicability with their tax advisor or legal counsel.

Section 79 Applicability: The "Straddle Rule" for Supplemental Coverage

Section 79 rules apply to GTLI coverage that is carried by the employer, also referred to as "employer-provided" coverage. The concept of employer-provided coverage means: 1) the employer either pays for any part of the cost of the GTLI directly (or employees pay premiums via pre-tax salary reductions); or 2) the employer arranges for employees to make premium payments (i.e., via post-tax salary reductions) and the premiums paid by at least one employee subsidize those paid by at least one other employee. Whether such subsidizing (known as the "Straddle Rule") occurs is determined by whether the rates straddle the Table rates (see Appendix A). The Table establishes gradually increasing rates for each $1,000 of coverage per month based on age (in five-year age brackets). For purposes of the Table age brackets, an employee's age is determined by their age at the end of the taxable year, regardless of whether the employee is covered for employer-provided GTLI as of the end of the taxable year.

Practical Tip: This broad definition of "employer-provided" will likely include many GTLI plans offered by employers, since employers typically either 1) pay the GTLI coverage cost themselves; or 2) arrange for their employees to pay the cost through some sort of salary reduction based on group rates that straddle the Table rates.

If the employee-paid supplemental coverage is under a separate policy from the employer-paid basic coverage, it will not be considered employer-provided when additional requirements are satisfied. A policy that is not considered employer-provided falls outside Section 79. Employees still pay for such coverage post-tax, but they are not subject to Section 79's imputed income or nondiscrimination rules. Specifically, to be exempted from Section 79, premiums charged for supplemental coverage must be underwritten independently from the amounts charged for basic coverage (e.g., not packaged together so that the basic life

coverage would be subject to re-rating if supplemental coverage is terminated). Additionally, the premiums charged to employees must not "straddle" the Table rates.

The Straddle Rule: Whether Employee-Paid Post-Tax Coverage Under a Separate Policy Is Subject to Section 79

Example: **Coverage paid by employees post-tax at straddling rates.** ABC Corp offers supplemental GTLI coverage with premiums paid entirely by employees via post-tax salary reductions. Premium rates for supplemental GTLI coverage are underwritten jointly with ABC Corp's basic coverage. The premium rates for supplemental GTLI coverage vary from the Table rates. Employee A's premium rate is lower than the Table rate corresponding to her age. Employee B's premium rate is higher than the Table rate corresponding to his age.

Result: The supplemental coverage premium rates charged to ABC Corp Employees straddle the Table rates. The supplemental coverage is subject to Section 79's nondiscrimination and imputed income rules. (Note: it doesn't matter if the policies are underwritten jointly or independently; supplemental coverage is always subject to Section 79 if the rates straddle the Table rates.)

Example: **Coverage paid by employees post-tax at Table rates.** DEF Corp offers supplemental GTLI coverage with premiums paid entirely by employees via post-tax salary reductions. The premiums charged for supplemental GTLI coverage are determined independently of DEF Corp's basic GTLI coverage. All premium rates for supplemental GTLI coverage are set at the Table rates based on the employee's age bracket.

Result: Supplemental coverage is provided under a separate policy with premium rates that do not straddle the Table. The supplemental coverage is not subject to Section 79's nondiscrimination or imputed income rules. (Note that if the rates are underwritten jointly with the employer-paid coverage, then the supplemental coverage is subject to Section 79.)

GTLI Imputed Income Rules

The value of GTLI coverage in excess of the excludable amount ($50,000, assuming nondiscrimination requirements are satisfied) must be imputed back to the employee using Table rates, regardless of the premium rates charged by the carrier. As noted in the Section 79 Applicability sub-section above, GTLI coverage requiring income imputing includes supplemental coverage that is fully employee-paid with post-tax dollars under a policy that is deemed employer-provided (either because this coverage is underwritten jointly with the employer-paid coverage or because the rates straddle the Table rates).

Importantly, the GTLI exclusion, and therefore also the net amount of coverage subject to the imputed income calculation, is determined on a calendar-month basis. For purposes of determining the employee's tax liability, all employer-provided GTLI coverage on the employee's life provided during any calendar month or portion thereof is considered when applying the $50,000 exclusion. There are no tax consequences to the employee for any given calendar month if the total amount of such coverage for that month does not exceed $50,000 (assuming nondiscrimination requirements are satisfied). However, if the employee receives more than $50,000 of employer-provided GTLI coverage on their own life for a period of coverage (a calendar month or portion thereof), then the value of the coverage amount (based on Table rates) in excess of $50,000 – less any premium costs paid by the employee with post-tax contributions – must be included in the employee's gross income for tax purposes. Employers must consult with their tax advisors on tax withholding and reporting specifics.

Practical Tip: Some states allow employees who wish to avoid the tax impact of GTLI imputed income to waive employer-provided GTLI coverage above excludable amounts, if also permitted by the carrier contract. Employers that wish to structure their GTLI benefits to permit such waivers should confirm the details of applicable state law or carrier restrictions.

Calculating GTLI Imputed Income

Employers must include the value of GTLI coverage above $50,000 (assuming nondiscrimination requirements are satisfied) in taxable income if the employer paid for a portion of the coverage or if the rates paid by employees "straddled" the Table rates. In those circumstances, income must be imputed to the employee in order to tax the value of the coverage as determined by the Table rates.

After determining the value of coverage according to the Table rates per month of coverage, that amount is reduced by the amount, if any, that the employee paid on a post-tax basis toward the purchase of all employer-provided GTLI coverage for the same coverage month. Employee payments toward the purchase of GTLI coverage do not include amounts contributed by pre-tax salary reduction under a cafeteria plan or amounts paid for non-employer-provided GTLI coverage. In other words, the value of the coverage according to the Table rates may only be reduced by post-tax employee contributions; employer contributions and employee pre-tax contributions do not reduce the aggregate value. Note that employees who pay the full cost of employer-provided GTLI with post-tax dollars may still have imputed taxable income if the premiums they pay are lower than the Table rates (i.e., if the employment relationship allows them to benefit from group rates that are better than the Table rates). Employees who pay the full cost of employer-provided GTLI with post-tax dollars at or above the Table rates will have no imputed income.

Step-By-Step Process for Calculating GTLI Imputed Income

Step 1: On a per-employee per-month (PEPM) basis, determine the total amount of employer-provided GTLI coverage (this includes coverage that is employer-paid in any part, pre-tax employee-paid coverage, and post-tax employee-paid supplemental coverage if the rates straddle the Table rates).

Step 2: On a PEPM basis, subtract $50,000 (the excludable amount, assuming nondiscrimination requirements are satisfied) from the total amount of GTLI coverage in Step 1. The net amount of GTLI coverage is subject to the imputed income calculations described in the remaining steps.

Step 3: Use the age-bracketed Table rates to determine the PEPM value of coverage based on the employee's age at the end of the taxable year. Multiply the monthly value of coverage by the number of full or partial calendar year months during which the employee had employer-provided GTLI coverage. The product reflects the gross annual value of coverage for purposes of processing imputed income for the calendar year.

Step 4: Subtract from the gross annual value of coverage (Step 3) the annual amount of any premium that was paid by the employee with post-tax contributions. The result is the net amount of imputed income that is subject to tax withholding and reporting for the calendar year.

Example: An employee who will turn 40 years old at the end of the calendar year receives $250,000 in employer-provided GTLI coverage in all 12 months of the calendar year. $100,000 in coverage is paid by the employer, while $150,000 in coverage is paid by the employee via post-tax salary deductions, totaling $100 for the year.

After subtracting the $50,000 excludable amount (assuming a nondiscriminatory plan), this yields $200,000 in net GTLI coverage that is subject to the imputed income calculation for all 12 months of the calendar year. According to the Table, the value per $1,000 of GTLI coverage per month for an individual age 40 through 44 is $0.10. The product of 12 (number of months of coverage) times 200 (net number of thousands of dollars of coverage) times $0.10 (age-bracketed rate per the Table) is $240. The taxable amount of GTLI coverage is therefore $240 for the full calendar year, regardless of the actual GTLI rate charged by the carrier. The employee paid $100 in premium post-tax. Therefore, the remaining $140 must be imputed as income to the employee for taxability purposes for the calendar year.

Practical Tip: Employers should explore setting up their payroll systems to calculate GTLI imputed income ratably on a per payroll or monthly basis throughout the year rather than performing the calculation once annually at the end of the calendar year. An advantage of the former approach is that it avoids the exercise of going back and capturing partial year coverage months for mid-year hires or for employees who are on a leave of absence at the end of the calendar year. It also avoids the additional labor of calculating and processing GTLI imputed income on a case-by-case basis for midyear employment terminations.

GTLI Nondiscrimination Rules

Section 79 allows for the value of up to $50,000 of employer-provided GTLI coverage for an employee to be excluded from the employee's gross income. However, certain nondiscrimination requirements must be satisfied in order for all employees to benefit from the $50,000 coverage tax exclusion.

Note that Section 79's nondiscrimination rules do not apply to certain plans maintained for church employees. This exemption is limited to church plans as defined in Section 414. Employers seeking to rely on this exemption must consult with their tax advisor or legal counsel on applicability.

At a high level, the nondiscrimination rules provide that employer-provided GTLI plans cannot discriminate in favor of key employees with respect to eligibility to participate in the plan or contributions or benefits under the plan. In the context of Section 79, a key employee is defined as an officer with annual compensation in excess of the specified threshold ($200,000 for 2022; $215,000 for 2023; $220,000 for 2024), a more-than-5% owner/shareholder or a more-than-1% owner with compensation in excess of $150,000. Part-time or seasonal employees, full-time employees with fewer than three years of service, and certain employees covered by a collectively bargained agreement may be excluded from testing. Former employees (e.g., retirees) are tested separately from active employees.

Practical Tip: Employer-provided GTLI plans that offer all full-time employees the same fixed dollar or multiple of salary benefit will pass the relevant eligibility and benefits nondiscrimination tests (Section 79 provides a safe harbor for these coverage designs). By contrast, GTLI plans that provide benefits exclusively or at a lower cost to key employees, or that provide a higher fixed dollar or multiple of salary benefit to one or more key employees (such as a plan that provides a $200,000 benefit to the company's CEO but a $100,000 benefit to all other employees), are at risk of being discriminatory. Any GTLI plan that does not cover all benefits-eligible employees at the same fixed dollar amount or multiple of salary formula requires further scrutiny under the nondiscrimination rules.

When a GTLI plan fails the Section 79 nondiscrimination tests as to one or more key employees, all key employees lose the benefit of excluding from income tax the value of the first $50,000 of employer-provided coverage. (Non-key employees are not affected by a discriminatory plan design.) Employers that suspect their GTLI plan may not pass nondiscrimination tests and that were previously applying the $50,000 coverage exclusion to key employees should consider alerting their key employees to anticipated additional imputed income as soon as possible. Employers are encouraged to review the proper taxation of their specific GTLI benefits with their tax advisors.

Dependent Coverage

Section 79 does not apply to dependent life insurance, which is generally taxable. However, up to $2,000 of employer-provided coverage for an employee's dependent can be excluded from the employee's gross income under Section 132 as a de minimis fringe benefit. If the dependent coverage exceeds $2,000, the entire dependent coverage value is taxable, not just the amount over $2,000. In other words, the tax exclusion is totally lost.

However, even if the employer-provided dependent coverage amount is greater than $2,000, the dependent coverage may still be excludable from income as a de minimis fringe benefit if the excess (if any) of the cost of insurance over the amount the employee paid for it on a post-tax basis is so small that accounting for it is unreasonable or administratively impracticable. Because the IRS has not provided a standard for what amount would be unreasonable or administratively impracticable, employers wishing to rely on a de minimis exclusion on dependent coverage over $2,000 must review this matter with their tax advisor or legal counsel. Note that the de minimis fringe benefit exclusion that applies to employer-provided dependent life insurance does not apply to benefits provided to domestic partners unless the domestic partner is a tax dependent of the employee, which is not common.

Like with GTLI coverage on an employee's life under Section 79, the taxable value of employer-provided dependent coverage is determined by the Table rates (based on the dependent's age at the end of the taxable year). If the employee paid for dependent coverage at rates that are below the Table rates, then the amount of imputed income equals the value calculated according to the Table rate minus the premium paid by the employee on a post-tax basis. (Dependent life insurance cannot be purchased with pre-tax dollars.) If the employee paid for dependent coverage at rates that are at or above the Table rates, then no income is imputed.

SUMMARY

Employers that offer GTLI benefits to their employees should closely review the various compliance obligations related to this benefit to ensure that the plan complies with applicable ERISA fiduciary requirements, the benefit design is not discriminatory, and that GTLI imputed income is properly calculated according to the IRS Premium Table rates and reported for coverage amounts above $50,000.

RESOURCES

IRS Group-Term Life Insurance

IRS Publication 15-B

Questions and Answers Relating to Nondiscrimination Requirements for Group-Term Life Insurance

APPENDIX A

IRS Premium Table Rates Cost Per $1,000 of Coverage Per Month

Age	Cost
Under 25	$0.05
25 through 29	$0.06
30 through 34	$0.08
35 through 39	$0.09
40 through 44	$0.10
45 through 49	$0.15
50 through 54	$0.23
55 through 59	$0.43
60 through 65	$0.66
65 through 69	$1.27
70 and older	$2.06

Source: IRS Publication 15-B

PPI does not provide legal or tax advice. Compliance, regulatory and related content is for general informational purposes and is not guaranteed to be accurate or complete. You should consult an attorney or tax professional regarding the applica-tion or potential implications of laws, regulations or policies to your specific circumstances.

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