Healthcare Reform Updates:  

May 7, 2015
March 23, 2015

Technical Bulletin:

EEOC Issues Proposed Rule on Employer-Sponsored Wellness Programs
April 27, 2015

Recorded Webinars:

Coordinating FMLA, ADA and Workers’ Compensation
April 23, 2015

Sections 6055 & 6056 Reporting – Updated – April 7

Coming Soon!

Recorded Webinar:

“Cadillac” Tax – late May 2015

ADDITIONAL RESOURCES

Healthcare Reform Update Archive
Recorded Webinar Archive
Directions Newsletter Archive
Technical Bulletin Archive
GBS Healthcare Reform Resources Website

Health & Welfare Benefits

IRS Releases 2016 HSA Dollar Values
Arthur J. Gallagher & Co.

5 Reasons Employees Avoid Wellness Programs
Benefits Pro

5 Ways to Encourage Healthy Workplace Living
Benefits Pro

Is Your HSA Plan Making the Grade?
Benefits Pro

Supreme Court Grants Review Of “Equitable Relief” Case Involving Dissipated Funds
Spencer's Benefits

Human Resources View

Rethinking and Rebalancing Compensation and Benefits Cost with Revenue
Arthur J. Gallagher & Co.

General Counsel Report Concerning Employer Rules
Meckler Bulger Tilson Marick & Pearson LLP

Reducing the Risk of Employee Identity Theft
Property Casualty 360

How to Create a Successful Absence Management Program
Benefits Pro

Retirement

DOL Proposes Rules To Protect Consumers From Conflicts Of Interest In Retirement Advice
Spencer's Benefits

State Law Review

Ohio Law to Align with PPACA’s Age and Hour Requirements
Arthur J. Gallagher & Co.

What’s New in State Laws
CCH, Incorporated

Important Reminder!

Upcoming Deadlines
Arthur J. Gallagher & Co.
IRS Releases 2016 HSA Dollar Values

Arthur J. Gallagher & Co.

The IRS just released the inflation adjusted amounts for Health Savings Accounts (“HSAs”) for 2016. The new HSA limits for deductibles, out-of-pocket limits, and annual contributions will be of particular interest to employers with high deductible medical plans and those considering implementing high deductible health plans. The 2016 HSA limits are:

<table>
<thead>
<tr>
<th></th>
<th>Self-Only Coverage</th>
<th>Coverage Other Than Self-Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Out-of-Pocket Maximum</td>
<td>$6,550</td>
<td>$13,100</td>
</tr>
<tr>
<td>Minimum Annual Deductible</td>
<td>$1,300</td>
<td>$2,600</td>
</tr>
<tr>
<td>Maximum Annual Contribution*</td>
<td>$3,350</td>
<td>$6,750</td>
</tr>
</tbody>
</table>

*Does not include the additional $1,000 catch-up contribution available to individuals age 55 and older.

Note: The Patient Protection and Affordable Care Act (“PPACA”) has limited the out-of-pocket maximum employers sponsoring non-grandfathered medical plans may use since 2014. For 2014, the limit was equal to the out-of-pocket maximum for HSAs. However, beginning in 2015, the maximum out-of-pocket limits for non-grandfathered medical plans and high deductible health plans began to diverge. That divergence will continue in 2016 when the out-of-pocket maximums for high deductible health plans will be $6,550 for self-only coverage and $13,100 for other than self-only coverage. The out-of-pocket maximums that may be used under a non-grandfathered health plan in 2016 will be $6,850 for self-only coverage and $13,700 for other than self-only coverage.

More information on indexed cost-sharing values under PPACA is available in our March 23, 2015 Healthcare Reform Update newsletter article “Notice of Benefit and Payment Parameters Establishes Standards for 2016.” Click here for a copy.

5 Reasons Employees Avoid Wellness Programs

Benefits Pro

Are most wellness plans designed to make people with health risks healthier? Whether or not that is the intent of plan designers, new research suggests that healthy employees don’t think wellness plans are worth participating in.

HealthMine, the consumer health engagement provider, decided to find out why research indicates that nearly half of employees don’t go for all the incentives offered by their company wellness program.
So it asked 750 employees with access to a company wellness plan, but who had not taken advantage of the full range of incentives, what kept them from doing so.

The overwhelming response was: The plan isn’t designed for me. The lack of relevance far outweighed such other factors as convenience, forgetfulness and security concerns.

The lack of relevance came through in the responses to two options: “I’m doing what I need to be healthy,” and “The incentive wasn’t meaningful.”

But convenience wasn’t far behind. If one includes the need for more effective reminders in the convenience category, the single category rang up 45 percent of non-engagers.

Let’s take a look at the categories and the responses.

Already making good choices: 36 percent

By far the largest portion of the disengaged said they didn’t view the wellness plan as necessary to them because they were already following a healthy lifestyle. For a plan designer, this is crushing news. More than a third of your employees don’t think the plan has any meaning for a healthy person? If you don’t go back to the drawing board to address this, you are offering a failed benefit.

The incentive wasn’t meaningful to me: 24 percent

These folks may not be rejecting the entire wellness program. But, like those in the “good choices” group, they’re telling you your incentives menu is flawed. Take a look at it. If it’s too skewed toward weight management, smoking cessation and managing chronic diseases, you’re probably not doing anything to improve the physical, emotional and mental well-being of more than half of your workforce.

Achieving an incentive wasn't inconvenient: 23 percent

Does your plan limit when and where employees can work toward a plan goal? Find ways to open up engagement: Break times just for plan incentives. Once-a-week incentive conversion lunches, with the food brought in at company expense. Mobile access to working toward those incentives will encourage folks to do so on their time, not the time you established for it.

I needed more/better reminders: 22 percent

It’s a busy world out there, with generational distinctions, new workplace flexibility models emerging and conflicting demands on everyone’s time. Think about how people conduct their days. They use a combination of calendar, text messages, phone calls … all available to them digitally. Adapt by asking workers how they want to be reminded, then make it happen.

Concerns about data security/confidentiality: 12 percent

Despite management’s best assurances, a certain portion of the workforce will always be reluctant to offer up any personal data they aren’t legally required to. This group may represent those who will be the most difficult to engage, despite plan design changes. However, gamification could make a dent in these numbers. After all, if something looks like it might be more fun than “dangerous” or “intrusive,” people will tend to give it a try.

Copyright © 2015 BenefitsPro, A Product of National Underwriter
5 Ways to Encourage Healthy Workplace Living

A lot of wellness is about fitness challenges and weight loss and other physical components. But many workplaces are missing the boat on a big opportunity: healthy eating.

This was the main takeaway from Brian Wansink during a session Thursday at the Human Resource Executive Health and Benefits Leadership Conference, who said companies need to make small cultural changes to the workplace to encourage employees to be healthy.

Wansink, a behavioral scientist, food psychologist and Cornell University professor, is a proponent of small lifestyles changes that will ultimately shift the culture.

"It's easy to think fitness plays a critical role in wellness, but it doesn't always," he told a room of benefits managers. "There are other components."

Wansink shared a few tips on how to embrace healthy eating and living in the workplace. Among them:

Get your workers away from their desks. One big problem is employees aren't leaving their desks at work, even during lunch hour. Not only do people who eat at their desk eat more and often unhealthier food, they will eat later, too, to reward themselves for not leaving their desk during lunch. This practice also has a bigger effect than just on the waistline: Employees who eat at their desk like their manager less, their company less and generally become disgruntled, Wansink said.

Give your break room a makeover. This one move can "dramatically change who of your employees sticks around the office," Wansink said. Think things like free (healthy) food and drinks, open seating and a table, TVs, and an open, inviting atmosphere.

Have a workplace cafeteria. Yes, it's time for you to consider a workplace cafeteria. Workplace cafeterias can fundamentally change the way your employees eat and think about food, as cafeterias can offer healthy foods, including lots of fruits and vegetables and sugar-free drinks, and offer half portions. Small changes that can only be done at a cafeteria can have a big and lasting, impact on your employees, Wansink said.

Think of healthy as a bad word. Though it may sound counterintuitive, when you are making healthy changes at the workplace, don't use the word healthy. "You don't want to use the word healthy. Healthy is often seen as a four-letter word," Wansink said. "It makes people think they are giving up something or not eating something that's good to eat or fills you up. Instead, use the word fresh or something else."

Have a contract. Consider having employees sign a "health conduct code." "Usually employees sign a conduct code about how they won't steal pens, so what about signing something that makes you responsible for some part of your health?" Wansink said. Then reward them for following it. If employees participate in a workplace wellness challenge or have healthy snacks at their desk or attend a session on healthy living, then they can get points. And they can use those points for a lower premium or an extra vacation day, Wansink said.

Copyright © 2015 BenefitsPro, A Product of National Underwriter

Is Your HSA Plan Making the Grade?

As health savings accounts continue to grow in popularity, it’s becoming evident that not all HSA plan designs
are created equal. While plan design changes can seem cumbersome, our experience tells us that a well-designed plan helps drive higher enrollment and higher savings for the employer and employee.

This is all done while improving employee health and well-being through educating and engaging employees on how to be smarter health care consumers. A well-designed plan helps lower the barriers to enrollment while maximizing the potential savings of an HSA.

We’ve created a checklist below to see if your employers’ plans are making the grade.

1.) **Contribute to employee accounts.** An employers’ contribution to employees’ accounts is the single most effective way to get employees to save. The amount should be significant enough to grab attention. We recommend contributing earlier in the year to help overcome the fear of an unexpected health care expense early in the year.

2.) **Price high-deductible plan competitively.** In general we recommend that the plan be priced very competitively — if not the lowest monthly premium option. Consider this — if not for a lower premium, what is motivating employees to choose a high-deductible health plan (HDHP)?

3.) **Allow pre-tax contributions.** When you do this, employees get the current tax savings on their HSA contributions, as opposed to waiting for tax returns, while also enjoying the convenience of payroll deductions to contribute to their accounts. This also saves employers on payroll taxes and expenses.

4.) **Incorporate wellness.** HSAs and wellness can be a great match. An HDHP partnered with an HSA is a clear way to engage employees and motivate positive behavioral change. Employees having to think about their own finances as related to their health can be a strong motivator for change. It will be important to educate and communicate on this topic year-round.

5.) **Cover accountholder fees.** This may seem like a small thing considering the low dollar amount per month, but covering these fees for employees makes a significant difference in how employees view the value of their plan.

6.) **Make sure your plan is compliant and is structured correctly.** This goes without saying, but in order to make contributions, wellness incentives, etc., the plan will need to be structured correctly. Brokers/agents and plan administrators have the opportunity to ensure that these requirements are being met in tandem with employers.

While it's difficult to narrow this list down to a few items, we believe these items are key to any plan design for HSAs. Once a plan is making the grade, make sure employers are taking the time to educate and communicate to employees regularly. Year-round communication is key and will help in reaching any HSA goals and ultimately motivating employee behavior change.

Supreme Court Grants Review Of “Equitable Relief” Case Involving Dissipated Funds

*Spencer's Benefits*

The Supreme Court has agreed to review the Eleventh Circuit’s ruling in an unpublished opinion regarding the meaning of “equitable relief” under ERISA Sec. 502(a)(3). The petition for certiorari indicates that there is a 6-2
circuit split on the issue and that the question presented “requires a uniform national answer.” The case is *Robert Montanile v. Board of Trustees of the National Elevator Industry Health Benefit Plan* (No. 14-723).

The petition’s question presented is as follows: “Does a lawsuit by an ERISA fiduciary against a participant to recover an alleged overpayment by the plan seek ‘equitable relief’ within the meaning of ERISA Sec. 502(a)(3) if the fiduciary has not identified a particular fund that is in the participant’s possession and control at the time the fiduciary asserts its claim?”

**Background.** On December 1, 2008, Robert Montanile was injured in a car accident involving a drunk driver. Montanile suffered injuries to his neck and lower back, requiring lumbar spinal fusion surgery and other medical treatment to reduce his pain and loss of function. The National Elevator Industry Health Benefit Plan (Plan), in which Montanile was a participant, paid Montanile’s initial medical expenses of $121,044.02.

Montanile filed a lawsuit against the driver of the other car for negligence and eventually obtained a $500,000 settlement. Out of the settlement funds, Montanile paid his attorneys a $200,000 contingency fee and $63,788.48 to reimburse out-of-pocket expenses.

After Montanile accepted the settlement, the Board of Trustees of the National Elevator Industry Health Benefit Plan (Board), as fiduciary for the Plan, asserted that the Plan had the right to be reimbursed out of the settlement proceeds for the medical expenses paid on Montanile’s behalf. The Board and Montanile, through counsel, attempted to negotiate a resolution from June 2011 through January 2012. After settlement discussions reached an impasse, the Board filed a single-count ERISA lawsuit to enforce the Plan’s reimbursement provision. The district court granted summary judgment in the Board’s favor in the amount of $121,044.02, which was what the Board had paid as Montanile’s medical expenses.

**Dissipation of funds.** On appeal, Montanile argued that the district court erred in finding that the Board could impose an equitable lien on the settlement funds because the funds had been spent or dissipated. The Eleventh Circuit explained that this argument was foreclosed by the court’s then-recent holding in *AirTran Airways, Inc. v. Elem.*, which held that an equitable lien immediately attached to settlement funds where a plan provision’s unambiguous terms gave the plan a first-priority claim to all payments made by a third party. The AirTran court held that the settlement funds were “specifically identifiable,” and a plan participant’s dissipation of the funds thus “could not destroy the lien that attached before” the dissipation. As such, the Eleventh Circuit found that the Board could impose an equitable lien on Montanile’s settlement, even if dissipated, if his health benefit Plan gave the Plan a first-priority claim to the settlement payments Montanile received.

**Terms of SPD.** Because the summary plan description (SPD) did give the Plan a first-priority claim to settlement proceeds Montanile received from a third party, Montanile resorted to an alternative argument. He contended the SPD was not a governing Plan document and thus its terms were not enforceable as part of the Plan.

The Eleventh Circuit disagreed, holding that the SPD constituted a written instrument that set out enforceable “terms of the plan.” Thus, pursuant to ERISA Sec. 502(a)(3), the Board could enforce the term found in the SPD that gave it a subrogation interest in sums recovered from third parties. As such, the court affirmed the district court’s grant of summary judgment in favor of the Board in the amount of $121,044.02.

Healthinsurancenews Courtnews ERISAnews
Rethinking and Rebalancing Compensation and Benefits Cost with Revenue: How to Better Align Business and Employee Objectives

Arthur J. Gallagher & Co.

Has your organization evaluated the ratio of its compensation and benefit costs to revenue? It’s an important ratio that affects base salary levels, incentive compensation arrangements, staffing levels, salary increase pools, available funds for retirement and the employer’s share of healthcare. Rising healthcare costs have made current compensation and benefit strategies unsustainable for many employers, complicating their ability to achieve and maintain a workable equilibrium between maximizing profits and optimizing talent.

The constant focus on cost containment has both short- and long-term impacts. Simply put, if labor costs rise faster than revenue growth, an organization’s viability is threatened. How, then, can you develop sustainable compensation and benefit strategies that enable you to recruit, retain and reward the employees who drive growth?


From bending the trend of rising healthcare costs through qualitative wellness programs, to devising strategies for competitive, more flexible pay, to examining defined contribution options like a private exchange, the whitepaper looks at the varied aspects of meeting the challenge of effectively balancing compensation and benefit costs with revenue. Kent also outlines practical next steps to help you strategically evaluate your organization’s compensation and benefits program.

Click here for a copy of our whitepaper.

General Counsel Report Concerning Employer Rules

Mec...
"Bad" Language

Do not discuss customer or employee information outside of work, including phone numbers and addresses.

"Good" Language

Do not disclose confidential financial data, or other non-public proprietary company information. Do not share confidential information regarding business partners, vendors or customers.

Professionalism

On the one hand, the NLRB will find that language requiring an employee to be respectful of coworkers, clients, or competitors is lawful, because employers have a legitimate business interest in having employees behave professionally and courteously with respect to these individuals. On the other hand, the NLRB will find that, without further clarification or context, language prohibiting an employee from being disrespectful, negative, inappropriate or rude towards the employer or management is unlawful. Critically, the NLRB noted that even employee criticism that is false or defamatory will retain the Act's protection unless the statements are maliciously false. Despite the approval of the term "disrespectful" in the "good" language, the NLRB recently has reinstated employees who used profanity to bosses when complaining about employer actions. So caution is advised when imposing discipline under this kind of policy.

"Bad" Language

Disrespectful conduct or insubordination, including but not limited to, refusing to follow orders from a supervisor or a designated representative.

"Good" Language

Being insubordinate, threatening, intimidating, disrespectful or assaulting a manager/supervisor, coworker, customer, or vendor will result in discipline.

Employee Interactions with Coworkers

While protected concerted speech will lose its protection if it crosses the line into "intemperate, abusive and inaccurate statements," an employee's right to debate, and even to argue, with his coworkers about unions, management and the terms and conditions of their employment is fairly well established. See Memorandum, at 10 (quoting Linn v. United Plant Guards, 383 U.S. 53 (1966)). Thus, employers must be careful not to maintain a policy containing a blanket prohibition against negative or inappropriate discussions without further clarification as to the subject matter of those discussions.

"Bad" Language

Do not make insulting, embarrassing, hurtful, or abusive comments about other company employees online and avoid the use of offensive, derogatory, or prejudicial comments.

"Good" Language

The company prohibits threatening, intimidating, coercing, or otherwise interfering with the job performance of fellow employees or visitors. The company also prohibits the use of racial slurs, derogatory comments, or insults.
Media Contact

An employee does have the right to talk to the media on his own behalf or on behalf of others. However, an employee may not have the right to communicate to the media that s/he is speaking on behalf of the company. It is important that media contact policies clearly distinguish between those two things.

<table>
<thead>
<tr>
<th>&quot;Bad&quot; Language</th>
<th>&quot;Good&quot; Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees are not authorized to speak to any representatives of the print and/or electronic media about company matters unless designated to do so by human resources, and must refer all media inquiries to the company media hotline.</td>
<td>The company strives to anticipate and manage crisis situations in order to reduce disruption to our employees and to maintain our reputation as a high quality company. To best serve these objectives, the company will respond to the news media in a timely and professional manner only through the designated spokespersons.</td>
</tr>
</tbody>
</table>

Company Logos, Copyrights, and Trademarks

Although a copyright-holder has a clear interest in protecting its intellectual property, that does not impair the right of an employee to use the company logo on picket signs, leaflets and other protest material because the employer's property rights are not implicated by the employees' non-commercial use of the logos for that purpose.

<table>
<thead>
<tr>
<th>&quot;Bad&quot; Language</th>
<th>&quot;Good&quot; Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do not use any company logos, trademarks, graphics, or advertising materials in social media without the company's permission.</td>
<td>It is important to respect all copyright and other intellectual property laws. For the company's protection as well as your own, it is critical that you show proper respect for the laws governing copyright, fair use of copyrighted material owned by others, trademarks, and other intellectual property, including the company's own copyrights, trademarks, and brands.</td>
</tr>
</tbody>
</table>

Photography and Recording

Employees have the right to photograph and make recordings in the workplace in furtherance of their protected concerted activity on breaks or other non-work time, and therefore an employer may not maintain a blanket prohibition against using or possessing personal cameras and recording devices in the workplace.

<table>
<thead>
<tr>
<th>&quot;Bad&quot; Language</th>
<th>&quot;Good&quot; Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>No employee shall use any recording device, including but not limited to audio, video, or</td>
<td>Due to the potential for issues such as invasion of privacy, sexual or other</td>
</tr>
</tbody>
</table>
digital equipment for the purpose of recording any employee or employer operation. No employee shall wear a cell phone, make personal calls, or view or send text messages while on duty.

harassment, and the protection of the company's proprietary business information, employees may not take, distribute, or post pictures, videos, or audio recordings while on working time. Employees also may not take pictures or make recordings of work areas. An exception to the rule concerning pictures and recordings of work areas would be to engage in activity protected by the National Labor Relations Act, including, for example, taking pictures of health, safety and/or working condition concerns or of strike, protest, and work-related issues and/or other protected concerted activity.

**Departing from Work**

Although an employer does not have to retain an employee who leaves his post for a reason unrelated to protected concerted activity, a rule that regulates when an employee can leave work will be unlawful if an employee could reasonably read it to forbid protected strike actions and walkouts. See Memorandum, at 17 (citing Purple Communications, Inc., 361 NLRB No. 43 (Sept. 24, 2014)).

<table>
<thead>
<tr>
<th>&quot;Bad&quot; Language</th>
<th>&quot;Good&quot; Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to report to your scheduled shift for more than three consecutive days without prior authorization or walking off the job during a scheduled shift is prohibited.</td>
<td>Walking off of a shift, failing to report for a scheduled shift, and leaving early without supervisor permission are grounds for immediate termination.</td>
</tr>
</tbody>
</table>

**Conflicts of Interest**

Engaging in protected concerted activity may be contrary to the employer's best interests. Thus, an employer rule that could reasonably be read to prohibit such activities would be unlawful. However, an employer can narrow the rule by providing examples that construe the rule to protect only the employer's legitimate business interests.

<table>
<thead>
<tr>
<th>&quot;Bad&quot; Language</th>
<th>&quot;Good&quot; Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employees may not engage in any action that is not in the best interest of the employer.</td>
<td>Employees must refrain from any activity or having any financial interest that is inconsistent with the company's best interest and also must refrain from activities, investments, or associations that compete with the company, interferes with one's judgment concerning the company's best interests, or exploits one's position with the company for personal gains.</td>
</tr>
</tbody>
</table>
It must be remembered that this Memorandum does not have the force of law. However, the Memorandum sets out the General Counsel's view of the kinds of rules his office will attempt to strike down when encountered in the course of an unfair labor practice charge. The Memorandum also reflects the clear tendencies shown by the Board in deciding these kinds of cases under the current Administration. Several of those Board decisions are likely to face court challenges, and may not ultimately be upheld. For now, we recommend that employers carefully review their rules in light of this guidance. You may not wish to adopt the "good" language set forth in the Memorandum, but you should balance the risks of maintaining a current rule against the operational problems changes may bring.

If you have any questions, please contact Joe Tilson, Anna Wermuth, Jeremy Glenn, Alexandra Wright or any MBT employment attorney.

**MBT E-Alert Archive**

Our e-alert archive can be viewed [here](#).

**About MBT**

MBT is a leading litigation firm with offices in Chicago, Phoenix and San Francisco. In addition to concentrating in labor and employment law, our attorneys focus on commercial litigation, insurance coverage, professional liability defense, attorney fee disputes and environmental law. For more information, please visit [www.mbtlaw.com](http://www.mbtlaw.com).

**Join our Mailing List!** [Click here](#)

---

**Reducing the Risk of Employee Identity Theft**

*Property Casualty 360*

Employees – they’re an organization’s greatest asset and, sometimes they’re also the greatest liability.

Employers have an obligation to keep their employees’ best interests top of mind, but they also need to keep a watchful eye on them. This can be particularly true when it comes to identity theft.

We’ve all seen the screaming headlines on high-profile cyber breaches. Typically, these events are focused on financial data stored by big retailers (which is why they’re big news) and are often the result of mysterious hackers working halfway around the globe.

However, cyber breaches aren’t always the stuff of movies or the trending topic of the day. Frequently a breach is far more mundane, and very often employees are at the center of these breaches, whether as victims or perpetrators.

**A duty to protect employees**

Everyone understands that employers must protect personal data. Typically the focus is on customer data, however employee data is just as important and just as vulnerable.

Identity theft is on the rise and the human resources department is a logical target for would-be identity thieves because it’s a treasure trove of personal data: social security numbers, home addresses, bank account numbers and other confidential information. Data theft does not have to be a cybercrime; it could be a matter of a file
cabinet not being secured and a lot of paper-based confidential employee information can be found sitting in a drawer.

When a breach occurs and an employee has her identity stolen, there is almost always a corresponding drop in productivity as she puts her life back together. The identity theft victim has to deal with credit card companies, banks, organizations where she has memberships, social media platforms… the list can be shockingly long.

**Employees also cause risk**

While there are significant incentives for employers to protect employees from the possibility of identity theft, it’s also vitally important to protect the organization from employees.

Frequently, theft comes from an otherwise trusted employee. According to the Association of Certified Fraud Examiners, the more senior an employee is in a company, the greater organizational losses tend to be. There’s some logic to this since these are professionals with access to information. When you add the pressures of high-level positions with the typical bumps and bruises of life—divorce, mounting bills, and the like—the temptation to pilfer personal information can become too great for some people to resist.

Employee negligence can also lead to data breaches and identity theft. They may not mean any harm, but employees can be careless. They can lose their business smartphone, laptop or other equipment. Maybe they always choose 123ABC as their device password. Greater care needs to be taken with equipment and passwords to protect information.

**What employers can do**

It’s dangerous for employers and employees to think they know everything about protecting personal information. Employers should be actively and continually engaged in a conversation about security. Many companies require employees to sign an employment agreement that makes it clear that the business owns all work-related data and that employees must be careful. However, that is frequently the end of the conversation.

Employers must educate their workforce on an ongoing basis. By raising awareness of the employees’ responsibilities and the susceptibility to identity theft, employers can create a more secure environment.

It begins with having better paper security because not all data theft is cyber theft. Employees, especially those in HR, must understand the importance of locking file drawers and not leaving personal information out in the open. There should also be a policy for shredding documents and it must be enforced.

Employers must also have clear cut rules about securing personal devices. Personal laptops, tablets and smartphones are often filled with work-related information, and employees must be vigilant about safeguarding these devices. Employees have a tendency to ignore security measures (like using passcodes) because they view them as inconvenient. An ongoing conversation should address the critical nature of this so-called inconvenience. Reinforce the need to report a loss or theft immediately so that data loss can be minimized. Also, set rules for social media to prevent employees from inadvertently sharing confidential information online.

Finally, employers have to do more than talk the talk on data security – they need to set an example and invest in security measures that help keep information protected as tightly as possible.

Copyright © 2015 PropertyCasualty360, A Product of National Underwriter
How to Create a Successful Absence Management Program
Benefits Pro

Among the many responsibilities that fall to an employee benefits manager, one of the most important is absence management. An effective absence management program reduces lost worker productivity and limits the liability for mismanagement of employee absences, ultimately producing a positive impact on a company’s bottom line. Yet, management of this important function is often overlooked or misunderstood.

Brokers and advisors can play an important role in ensuring that employers address this need. By understanding the basics of sound absence management, as well as the resources and third-party expertise available in the marketplace, they can help employers to a proven path for successful absence management.

The need for absence management

In the past few years, numerous changes have impacted how employers track employee leaves. While the Patient Protection and Affordable Care Act has garnered much of the attention, other federal rulings have had an effect on the benefits landscape as well. The Department of Labor released additional regulations for the Family Leave Act, while the EEOC has updated requirements as part of the Americans with Disabilities Act Amendments Act (ADAAA). These changes have forced employers to focus greater attention on their absence tracking and reporting practices.

The cost of mismanaged absences can be steep. For example, a recent lawsuit regarding a mishandled FMLA claim resulted in a court-ordered payment of damages totaling more than a million dollars in lost pay and attorney fees. The risks of lawsuits or fines for non-compliance are simply not worth it, and an effective absence management program can greatly reduce this exposure.

The state of employer absence management programs

The 2015 Guardian Absence Management Activity Index and Study provides a snapshot of employer proficiency with absence management programs. Based on employer activity on 10 elements of a potential absence management program, the majority of employers have programs that are not considered advanced. The data also shows that larger employers are more likely to have advanced programs than smaller companies.

The level of effort employers make to reduce absenteeism is highly correlated to their degree of program advancement. And, not surprisingly, companies with highly advanced programs are more than twice as likely as those with less advanced programs to achieve desired outcomes.

Opportunities for improvement

While many companies have absence management efforts in place, the Guardian study suggests that opportunities for improvement exist, considering that:

- 58 percent of employers have difficulty interpreting federal and state leave laws
- 54 percent of employers have challenges ensuring employees are able to perform their essential duties before returning employees to work
- 42 percent of employers lack staff resources to manage absenteeism

Even as companies are actively trying to improve their productivity and absence management capabilities, the statistics suggest they still struggle to do it well. And these challenges exist for companies of all sizes, ranging
from 50-person organizations to companies with 20,000 employees.

**A four-step approach**

1. Setting a solid philosophy. A philosophy that emphasizes return-to-work and employee health and wellness programs is the key to getting started. A company’s early decisions are often based on its underlying philosophy.

2. Taking key foundational steps. Getting buy-in from senior management and following a strategic communications campaign are essential to having the greatest impact on program efforts.

3. Developing an effective model. Using the same outside resource for short-term disability and FMLA administration, and making health management referrals are key predictors of success.

4. Carefully measuring success. It’s important to determine how program effectiveness will be assessed. Nearly half (48 percent) of all employers reported employee engagement to be the most critical measure of success.

**Outsourcing options for managing absenteeism**

While all employers continue to grapple with managing absenteeism, certain tasks have become less burdensome thanks to increased access to expert advice, third-party technology and tools, and more outsourcing options. This reduces some of the regulatory, decision-making and reporting challenges, particularly when applying ADA/ADAAA regulations and coordinating a variety of absence types.

It’s now easier for smaller organizations to outsource their absenteeism needs so they can start or improve an existing absence management program and manage it effectively.

More carriers now provide services to companies with as little as 50 employees that traditionally were only available to larger companies.

**Absence management best practices**

There are five best practices that are the strongest predictors for achieving six positive outcomes: enhancing productivity; improving employee experience; reducing lost time; decreasing overall absenteeism; increasing return-to-work rates; and reducing direct costs.

1. A full return-to-work program. A surprising number of companies do not have a written return-to-work policy, yet this is paramount as a foundational step.

2. Access to usage/claims reports. Detailed reporting for disability and FMLA is needed so there’s knowledge about know why people are out and how quickly they resume work.

3. Referrals to health management programs. The ability to provide employees with assistance programs (EAP), disease management or wellness programs helps them get back to work more quickly.

4. A central portal for reporting. Whether it’s for FMLA, STD or PTO, it’s important to have a central place where employees report their absences. A single resource means more reliable data and more accurate reporting.

5. Using the same STD resource for FMLA and additional benefit programs. It can be challenging for two separate carriers to manage these functions because they’re not integrated from a claims management perspective.
Getting started

Absence management is a specialized field that requires a proactive approach. With recent marketplace advances in technology, reporting and expertise, there are numerous options for employers to pursue. Employers who are just getting started can follow a series of prescriptive steps to establish their programs and continually improve them. Brokers, agents and consultants, as part of their fiduciary responsibilities, can help bring attention to the importance of absence management to their clients and refer them to available resources.

Copyright © 2015 BenefitsPro, A Product of National Underwriter

Retirement

DOL Proposes Rules To Protect Consumers From Conflicts Of Interest In Retirement Advice

*Spencer's Benefits*

The Department of Labor (DOL) has released a proposed rule that will protect 401(k) and IRA investors by mitigating the effect of conflicts of interest in the retirement investment marketplace. A White House Council of Economic Advisers analysis found that these conflicts of interest result in annual losses of about 1 percentage point for affected investors—or about $17 billion per year in total.

Under the proposals, retirement advisers will be required to put their clients’ best interests before their own profits. Those who wish to receive payments from companies selling products they recommend and forms of compensation that create conflicts of interest will need to rely on one of several proposed prohibited transaction exemptions.

“This boils down to a very simple concept: if someone is paid to give you retirement investment advice, that person should be working in your best interest,” said Secretary of Labor Thomas E. Perez. “As commonsense as this may be, laws to protect consumers and ensure that financial advisers are giving the best advice in a complex market have not kept pace. Our proposed rule would change that. Under the proposed rule, retirement advisers can be paid in various ways, as long as they are willing to put their customers’ best interest first.”

The DOL proposal also would update and close loopholes in a nearly 40-year-old regulation. The proposal would expand the number of persons who are subject to fiduciary best interest standards when they provide retirement investment advice. It also includes a package of proposed exemptions allowing advisers to continue to receive payments that could create conflicts of interest if the conditions of the exemption are met. In addition, the announcement includes a comprehensive economic analysis of the proposals’ expected gains to investors and costs.

The proposed “best interest contract exemption” represents a new approach to exemptions that is broad, flexible, principles-based and can adapt to evolving business practices. It would be available to advisers who make investment recommendations to individual plan participants, IRA investors, and small plans. It would require retirement investment advisers and their firms to formally acknowledge fiduciary status and enter into a contract with their customers in which they commit to fundamental standards of impartial conduct. These include giving advice that is in the customer’s best interest and making truthful statements about investments and their
compensation.

If fiduciary advisers and their firms enter into and comply with such a contract, clearly explain investment fees and costs, have appropriate policies and procedures to mitigate the harmful effects of conflicts of interest, and retain certain data on their performance, they can receive common types of fees that fiduciary advisers could otherwise not receive under the law. These include commissions, revenue sharing, and 12b-1 fees. If they do not, they generally must refrain from recommending investments for which they receive conflicted compensation, unless the payments fall under the scope of another exemption.

In addition to the new best interest contract exemption, the proposal also includes other new exemptions and updates some exemptions previously available for investment advice to plan sponsors and participants. For example, the proposal includes a new exemption for principal transactions. In addition, the proposal asks for comment on a new “low-fee exemption” that would allow firms to accept conflicted payments when recommending the lowest-fee products in a given product class, with even fewer requirements than the best interest contract exemption.

Finally, the proposal carves out general investment education from fiduciary status. Sales pitches to large plan fiduciaries who are financial experts, and appraisals or valuations of the stock held by employee-stock ownership plans, are also carved out.

For more information, visit [http://www.dol.gov/ebsa/regs/conflictsofinterest.html](http://www.dol.gov/ebsa/regs/conflictsofinterest.html).

Fiduciarynews 401knews DOLnews

---

State Law Review

**Ohio Law to Align with PPACA’s Age and Hour Requirements**

*Arthur J. Gallagher & Co.*

Due to recent changes in Ohio law, the administration of fully-insured group health plans issued or renewed in Ohio will soon be easier. Effective on or after January 1, 2016, fully-insured group health plans issued or renewed in Ohio, are no longer required to cover dependent children through age 28. The change in Ohio state law does not impact requirements under the Patient Protection and Affordable Care Act (“PPACA). Therefore, a fully-insured group health plan (regardless of employer size) must still extend coverage to dependent children through the end of the month of their 26th birthday to remain in compliance with PPACA.

In what seems to be contrary to the purpose of bringing Ohio law in alignment with federal law, Ohio’s definition of dependent continues to differ from federal law. Ohio law continues to define a spouse as a dependent and defines dependent child as the “natural child, stepchild, or adopted child of the employee”. This new definition still differs from federal law. Under federal law, the definition of a dependent does not include a spouse and a dependent child does not include a stepchild.

This leads to an interesting split between Ohio law and federal law that could conceivably lead to a self-insured plan excluding stepchildren from coverage because coverage of stepchildren is not required for the avoidance of employer shared responsibility penalties, while a fully-insured plan issued in Ohio could not.

A similar gap arises regarding coverage of a spouse as a dependent under federal and Ohio law. Under federal law, a spouse is not a dependent. Therefore, employers who sponsor self-insured plans are not required to
cover a spouse. Ohio law continues to define a spouse as a dependent. Under Ohio law, coverage of a “dependent” that is not explicitly defined by the carrier and the plan terms, would be defined according to Ohio state law, requiring coverage of a spouse.

**Compliance Pointer:**

Self-insured plans that previously opted to follow Ohio state law (extending coverage for dependent children through age 28) may want to consider modifying their definition of dependent children to align with the federal definition and new state definition.

<table>
<thead>
<tr>
<th>Federal Law</th>
<th>Ohio Law for Policies Issued or Renewed on or after January 1, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Applies to all group health plans (including self-insured plans)</td>
<td>• Applies to fully-insured group health plans</td>
</tr>
<tr>
<td>• Insurance coverage extension applies through the end of the month when the dependent child reaches age 26</td>
<td>• Insurance coverage extension applies through the end of the month when the dependent child reaches age 26</td>
</tr>
<tr>
<td>• Extension applies to natural children and an adopted child (may, but not required to include stepchildren and foster children)</td>
<td>• Extension applies to natural children, stepchildren, or an adopted child</td>
</tr>
<tr>
<td>• No other limitations or eligibility restrictions are permitted</td>
<td>• No other limitations or eligibility restrictions are permitted</td>
</tr>
<tr>
<td></td>
<td>• Coverage does not cease if the child is unable to sustain employment due to a mental or physical disability and obtains primary support and maintenance from the insured</td>
</tr>
</tbody>
</table>

Under the new requirements, a fully-insured plan issued in Ohio can no longer limit coverage based upon student status or residency, employment, or Medicare/Medicaid eligibility because doing so would violate federal law. However, Ohio law does not allow coverage to terminate if the child reaches age 26, but cannot sustain employment due to a mental or physical disability and obtains primary support and maintenance from the insured.

**Compliance Pointer:**

When dependent children lose eligibility upon turning age 26, they are entitled to COBRA. A loss of coverage due to the change in the age requirements from age 28 to 26 would also trigger a right to COBRA coverage.
Small employers in Ohio who sponsor fully-insured group health plans will also be able to adopt a definition of full-time employee that is consistent with federal law. Under current Ohio law, a small employer\(^1\) in Ohio, must offer health coverage to employees who work at least 25 hours per week. Effective for fully-insured group health plans issued or renewed on or after January 1, 2016, small employers must only offer health coverage to employees who work at least 30 hours per week.

<table>
<thead>
<tr>
<th>Federal Law</th>
<th>Ohio Law for Policies Issued or Renewed on or after January 1, 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Applies to all group health plans (including self-insured plans)</td>
<td>- Applies to fully-insured group health plans sponsored by small employers in Ohio</td>
</tr>
<tr>
<td>- All employers with at least 50 or more employees (including full-time equivalents) must offer health coverage to employees working at least 30 or more hours per week to avoid possible penalty</td>
<td>- A small employer is defined as one with at least two but no more than 50 eligible employees during the preceding calendar year</td>
</tr>
<tr>
<td>- Employers may use an appropriate look-back period to determine the average hours of variable-hour or seasonal employees</td>
<td>- Increases the minimum number of hours an employee must work to be considered an eligible employee from 25 to 30 hours</td>
</tr>
<tr>
<td></td>
<td>- Does not allow the use of special counting rules to determine the number of hours worked so an employer cannot rely upon averaging</td>
</tr>
</tbody>
</table>

**Spousal Carve-out:**

There is an increasing trend for employers (who sponsor a fully-insured of self-insured plan) to carve-out or eliminate coverage for spouses who have other group health plan coverage available through their employers. Some employers have opted to impose a surcharge instead of an outright carve-out, if the employee’s spouse has other group health plan coverage available. Carve-outs are not prohibited under federal or Ohio state law. However, before implementing this type of change, it is important to discuss this matter with your consultant.

The intent of this analysis is to provide general information regarding the provisions of current healthcare reform legislation and regulation. It does not necessarily fully address all your organization’s specific issues. It should not be construed as, nor is it intended to provide, legal advice. Your organization’s general counsel or an attorney who specializes in this practice area should address questions regarding specific issues.

\(^1\) Defined as an employer with at least two but no more than 50 eligible employees during the preceding calendar year.
What’s New in State Laws

CCH, Incorporated

For busy Human Resources professionals who want ready access to what is new and what has recently changed in State laws, here is a brief update.

**Alaska Unemployment Insurance**

Contribution rates for 2015 range from 1.00% to 5.4% for eligible employers, based on payroll decline experience. For 2015, the average benefit cost rate used to determine the rates is 0.020956, and the actual calculated trust fund solvency adjustment is 0.030939. The standard rate is 3.02%, and the employee tax rate is 0.57%. Rates for new employers depend on NAICS classification.

**Arizona Background Checks**

The state has amended its background checks law with respect to fingerprinting (Ch. 160 (S. 1295), L. 2015).

**Arkansas Background Checks**

The state has amended its background checks law with respect to who may view a criminal background check (Act 861 (S. 807), L. 2015).

In addition, the state has amended its job reference liability law to allow employer references to be delivered in various media and to clarify the timeliness of an employment reference consent form for an employee who remains with an employer for less than six months (Act 949 (H. 1637), L. 2015).

**Arkansas Fair Employment Practices**

Governor Asa Hutchinson signed the state’s Religious Freedom Restoration Act (RFRA) into law on April 2, 2015. The new Arkansas law conforms closely to its federal counterpart, providing that government action may not substantially burden a person’s right to exercise of religion, even where the substantial burden results from a rule of general applicability, unless applying the substantial burden to the person’s exercise of religion in the particular instance (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest (S. 975, L. 2015, effective April 2, 2015).

**Arkansas Family Medical Leave**

The state has enacted a law modifying the use of shared leave under the Uniform Attendance and Leave Policy Act pertaining to state employees (Act 389 (H. 1468), L. 2015, enacted March 12, 2015).

**Connecticut Unemployment Insurance**

There is a fund balance tax of 1.4% in effect for 2015. Accordingly, the minimum contribution rate is 1.9%, and the maximum contribution rate is 6.8%. The new employer’s rate for 2015 is 4.9%.

**Idaho Background Checks**

The state has amended its background checks law with respect to specified school employees and fees (H. 190, L. 2015).

**Idaho Unemployment Insurance**

For 2015, rates for positive-balance Idaho employers will range from 0.453% to 1.510%, and rates for deficit-
balance employers will range from 2.717% to 5.4%. The standard rate is 1.585%. The Work Force Development Tax is in effect this year, and the rate varies with each employer class. There is also a Special Administration Reserve Fund tax in 2015.

**Indiana Fair Employment Practices**

On March 26, 2015, Governor Mike Pence signed the Religious Freedom Restoration Act (RFRA) (Public Law 3-2015 (S. 101)) into law.

Indiana’s RFRA provides that a governmental entity may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability.

A governmental entity may substantially burden a person's exercise of religion only if the governmental entity demonstrates that application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.

The law’s enactment sparked an apparently unanticipated firestorm from opponents who claim that it would be used to discriminate against the LGBT community.

On April 2, 2015, Governor Pence signed Public Law 4-2015 (S. 50) to clarify that the state’s freshly minted broad religious freedom bill cannot be used to discriminate against lesbian, gay, bisexual, and transgender individuals. Indeed, the “fix” makes clear that none of its provisions authorize businesses to discriminate based on sexual orientation or gender identity.

Specifically, S. 50 provides that the provisions of the new law do not authorize providers to “refuse to offer or provide services, facilities, use of public accommodations, goods, employment, or housing to any member or members of the general public on the basis of race, color, religion, ancestry, age, national origin, disability, sex, sexual orientation, gender identity, or United States military service.”

The “fix” also expressly states that the new chapter does not establish a defense to a civil action or criminal prosecution for any of any of those same actions. Nor does the chapter “negate any rights available” under the state constitution.

Like the Indiana religious freedom law itself, the “fix” is effective July 1, 2015.

**Kentucky Fair Employment Practices**

The state has enacted a law requiring the Human Rights Commission to make reasonable accommodations to assist persons with disabilities in filing written sworn employment discrimination complaints (Act 40 (S. 47), L. 2015, enacted March 20, 2015).

**Kentucky Health Insurance Benefit Coverage**

A health benefit plan issued or renewed on or after January 1, 2016, shall provide coverage for all colorectal cancer examinations and laboratory tests specified in current American Cancer Society guidelines for complete colorectal cancer screening of asymptomatic individuals (Ch. 10 (S. 61), L. 2015).

**Kentucky Veterans’ Preference**

The state has enacted a law allowing private employers to have a voluntary veterans’ preference employment policy (H. 164, L. 2015).
Michigan Unemployment Insurance

Contribution rates for employers with three or more years of experience will continue to range from 0.06% to 10.3% in 2015. The maximum rate of 10.3% includes a 6.3% maximum chargeable benefit component, a 3.0% maximum account building component, and a 1.0% maximum nonchargeable benefits component. Note that if the employer has submitted no quarterly tax reports, that employer's maximum tax rate will be 10.3%, and the employer also will be assessed a penalty of 3.0%, which is separate from the contribution rate. In addition, the new employer rate remains at 2.7%, except for new construction employers.

The nonchargeable benefits component (NBC) for 2015 may range from 0.06% to 1.0%, depending upon an employer's experience.

Montana Overtime

An exemption from the state’s overtime requirements for outfitters assistant, which was scheduled to end on August 31, 2015, has been extended to December 31, 2017 (S. 152, L. 2015).

Montana Veterans’ Preference

The state has enacted a law authorizing private employers to adopt hiring preferences for veterans (S. 196, L. 2015).

Nebraska Veterans’ Preference

The state has enacted a law allowing private employers to adopt a voluntary veterans’ preference policy (L.B. 272, L. 2015, enacted March 12, 2015).

Nevada Minimum Wage

The Office of the Labor Commissioner announced on March 31, 2015, that the minimum wage that will take effect on July 1, 2015, will remain unchanged from the previous year. The minimum wage for employees who receive qualified health benefits from their employers will remain at $7.25 per hour, and the minimum wage for employees who do not receive health benefits will remain at $8.25 per hour.


Nevada Overtime

The Office of the Labor Commissioner announced on March 31, 2015, that the rate for daily overtime will remain the same on July 1, 2015. Employees who receive qualified health benefits from their employer and earn less than $10.875 per hour, and employees earning less than $12.375 per hour who do not receive qualified health benefits must be paid overtime whenever they work more than 8 hours in a 24-hour period. Nevada requires daily overtime in addition to the requirement of payment of overtime for working more than 40 hours in a workweek. Changes in the daily overtime rate are dependent on any increase in the minimum wage. Since the

New Mexico Overtime

A temporary exemption from the state’s overtime requirements for airline workers who voluntarily trade work shifts is made permanent.

A 2013 law, S. 352, added a provision to permit airline employees to voluntary trade shifts and to exempt them from the overtime requirement of payment of one and one-half times an employee’s hourly rate of pay for each hour worked over 40 hours in a week of seven days, if the hours worked are: (1) worked by an employee of an air carrier providing scheduled passenger air transportation subject to Subchapter II of the federal Railway Labor Act or the air carrier's subsidiary that is subject to Subchapter II of the federal Railway Labor Act; (2) not required by the employer; and (3) arranged through a voluntary agreement among employees to trade scheduled work shifts, provided that the agreement (a) is in writing, (b) is signed by the employees involved in the agreement, (c) includes a requirement that an employee who trades a scheduled work shift is responsible for working the shift so agreed to as part of the employee’s regular work schedule, and (d) does not require an employee to work more than (i) 13 consecutive days, (ii) 16 hours in a single work day, (iii) 60 hours within a single work week, or (iv) can be required as provided in a collective bargaining agreement to which the employee is subject. The 2013 law would have repealed the exemption on July 1, 2015.

S. 70, L. 2015, enacted on April 2, 2015, removes the repeal to make the exemption permanent, effective as of June 19, 2015.

New York Minimum Wage

Effective April 1, 2015, the living wage rates for the City of Syracuse are $12.77 per hour if the employer provides health insurance, or $15.08 per hour if the employer does not provide health insurance.

North Dakota Background Checks

The state has extended its background checks law relating to the office of the adjutant general and the parks and recreation department (H. 1105 and H. 1125, L. 2015).

North Dakota Equal Pay

The state’s equal pay law has been amended with respect to unpaid wages, penalties, and recordkeeping (H. 1257, L. 2015, enacted March 19, 2015).

North Dakota Fair Employment Practices

The state has enacted a law requiring each state agency, department, and institution to adopt and enforce a policy on employee harassment, including sexual harassment. The policy must clearly define harassment and specify the responsibilities of the employee, supervisor, and the agency, department, or institution (H. 1428, L. 2015).
North Dakota Pregnancy Discrimination

The state has enacted a law making it a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified individual because that individual is pregnant. An employer is not required to provide an accommodation that would disrupt or interfere with the employer's normal business operations; threaten an individual's health or safety; contradict a business necessity of the employer; or impose an undue hardship on the employer, taking into consideration the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation (H. 1463, L. 2015).

North Dakota Recordkeeping Requirements

Recordkeeping requirements under the state’s equal pay law have been amended.

Effective August 1, 2015, an employer subject to the equal pay law must make, keep and maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment for each employee employed; must preserve such records for as long as the employee is employed and for two years after that; and must make such reports from the records as the Commissioner prescribes (H. 1257, L. 2015).

North Dakota Veterans’ Preference

The state has enacted a law amending provisions relating to the public employment preference for veterans in specified positions (H. 1131, L. 2015, enacted March 16, 2015).

South Dakota Minimum Wage

Effective July 1, 2015, employers will be able to pay employees under the age of 18 a reduced minimum wage of $7.50 per hour. This wage is not subject to the annual wage adjustments pursuant to Section 60-11-3.2. No employer may take any action to displace an employee, including a partial displacement through a reduction in hours, wages, or employment benefits, in order to hire an employee at the reduced youth rate (S. 177, L. 2015).

Tennessee Concealed Carry

Effective July 1, 2015, no employer shall discharge or take any adverse employment action against an employee solely for transporting or storing a firearm or firearm ammunition in an employer parking area in a manner consistent with the state’s gun laws (S. 1058, L. 2015).

Tennessee Family Medical Leave

The state’s law relating to leave for state employees has been amended to delete the provision limiting to 30 days the aggregate of sick leave used for maternity and paternity leave if both parents are state employees. The change took effect upon becoming law on April 6, 2015 (S. 950, L. 2015).

Utah Breastfeeding Rights

The state has enacted a law requiring public employers to provide reasonable break periods for a public employee who is breastfeeding, for up to one year following the birth of the public employee’s child, in order for the employee to breast feed or express milk. The employee must also be given access to a room with privacy in order to breastfeed or express milk and a refrigerator for storage of breast milk. Public employers must also adopt written policies in support of breastfeeding that identify the ways in which the employer will comply with the law. Further, the law specifically prohibits discrimination against an employee who is breastfeeding in the workplace (H. 242, L. 2015).
Utah Concealed Carry

The state has amended its conceal carry law to eliminate the definition of concealed dangerous weapon (H. 300, L. 2015).

Utah Fair Employment Practices

The state has amended its antidiscrimination law to define “pregnancy, childbirth, or pregnancy-related conditions” to include breastfeeding or medical conditions related to breastfeeding (H. 105, L. 2015, enacted March 20, 2015).

As previously reported, Governor Gary Herbert has signed a bill that balances antidiscrimination protections for LGBT individuals with legitimate religious objections and concerns that may come into play along with those protections. The new law adds protections against discrimination based on gender identity and sexual orientation, as well as measures that preserve rights to reasonably express religious and moral beliefs in an employment setting. The bill, S.B. 296, which will take effect May 12, 2015, modifies the Utah Antidiscrimination Act and the Utah Fair Housing Act to address both discrimination and religious freedoms.

Utah Veterans’ Preference

Effective May 12, 2015, private employers will be allowed to create voluntary, written veterans’ employment preference programs (H. 232, L. 2015).

Utah Wage Payment

Utah law regarding the payment of wages is amended to address the methods by which an employer may pay an employee after the employer separates the employee from employment.

Effective as of May 12, 2015, the employer must pay wages due within 24 hours of the time of separation at the specified place of payment. This 24-hour time requirement is met if (1) the employer mails the wages to the employee and the envelope that contains the wages is postmarked with a date that is no more than one day after the date on which the employer separates the employee from the employer’s payroll; or (2) within 24 hours after the employer separates the employee from the payroll, the employer (a) initiates a direct deposit of the wages into the employee’s account or (b) hand delivers the wages to the employee (S. 272, L. 2015).

Virginia Background Checks

The state has amended its background check law with respect to dissemination of criminal history information (S. 961, L. 2014, enacted March 19, 2015).

In addition, Governor Terry McAuliffe signed Executive Order 41 (2015) on April 3, 2015, reforming state hiring practices by removing questions regarding criminal history from employment applications. The “ban the box” order makes clear that criminal history shall not be a determining factor in employment decisions, unless an individual’s criminal history bears specific relation to the job for which they are being considered.

Virginia Child Labor

Law covering enforcement and civil penalties for violations is amended. Violators face civil penalties of not more than $10,000 for each violation that results in serious injury to a child or who dies in the course of employment and not more than $1,000 for each other violation. In determining the amount of the civil penalty, the appropriateness of the penalty to the size of the business of the person charged and the gravity of the violation will be taken into consideration. Effective July 1, 2015, the Commissioner of Labor is required to
notify employers by certified mail or overnight delivery service of an alleged violation of the law, and the employer may request an informal conference contesting the violation within 21 days of receipt of such notice. Any decision resulting from such informal conference is appealable to the appropriate circuit court only within 30 days of receipt of notice of such decision (Ch. 285 (S. 896), L. 2015).

**Virginia Health Insurance Benefit Coverage**

The state has amended its health insurance law with respect to autism spectrum disorder (Ch. 650 (H. 1940), L. 2014, enacted March 26, 2015, and effective July 1, 2015) and mental health parity (Ch. 649 (H. 1747), L. 2014, enacted March 26, 2015, and effective July 1, 2015).

**Virginia Medical Testing**

Virginia law prohibits employers from requiring an employee or job applicant to pay the cost of furnishing any medical records required by the employer as a condition of employment. Employers who violate this law are subject to a civil penalty not to exceed $100 for each violation. Effective July 1, 2015, the Commissioner of Labor is required to notify any employer alleged to have violated the law by certified mail or overnight delivery service, with such notice to contain a description of the alleged violation. The employer may request an informal conference contesting the violation within 21 days of receipt of such notice. Any decision resulting from such informal conference is appealable to the appropriate circuit court only with 30 days of receipt of notice of such decision (Ch. 285 (S. 896), L. 2015).

**Virginia Social Media Privacy**

Effective July 1, 2015, employers will be prohibited from requiring a current or prospective employee to disclose the username and password to his or her social media account. The measure also prohibits an employer from requiring an employee to add an employee, a supervisor, or an administrator to the list of contacts associated with the employee's social media account (Ch. 576 (H. 2081), L. 2015, enacted March 23, 2015).

**West Virginia Wage Payment**

Provisions of the wage payment and collection law are amended.

Employers, except railroad companies, must settle with employees at least twice a month, with no more than 19 days between settlements, unless otherwise provided by special agreement, pay wages due, less authorized deductions and authorized wage assignments (S. 318, L. 2015, effective June 12, 2015).

Also, a provision covering the payment of wages for persons separated from employment is amended. Unpaid wages are due on or before the next regular payday when wages would otherwise be due and payable. Payment may be made in person, through the regular pay channels, or, if requested by the employee, by mail.

The law is also clarified to provide that fringe benefits provided pursuant to an employee-employer agreement are to be paid according to the terms of the agreement, and to clarify the law relates to payment of wages upon separation from employment and does not cover whether overtime pay is due.

Employers who fail to pay wages following separation from employment are liable, in addition to any unpaid wages due, for liquidated damages in the amount of two times the amount of the unpaid wages due (S. 12, L. 2015, effective June 11, 2015).
Upcoming Deadlines
Arthur J. Gallagher & Co.

Keeping track of all of the compliance requirements that face employers sponsoring health and welfare plans has always been a challenge. The increase in requirements as a result of the Patient Protection and Affordable Care Act (“PPACA”) has added significantly to the burden. Each month this article will provide information on deadlines that are coming up in the next three months for a calendar year plan. Key requirements for June, July, and August 2015 are listed below.

Dates are based on the timing for a calendar year plan (except as noted); employers with non-calendar year plans will need to modify dates as appropriate.

**Deadlines for June, July, and August 2015**

- **June** – there are no general deadlines for calendar year plans that fall within the month of June. Non-calendar year plans may have deadlines for activities such as reporting creditable/non-creditable drug coverage to CMS or filing Form 5500.

- **July 29, 2015** – last day for ERISA plans to provide the Summary of Material Modification for plan changes in 2014 (210 days after the end of the plan year in which the change was made.) *Note: If the change was a material reduction, a Summary of Material Reduction must be provided much sooner – no later than 60 days after the date the change was adopted.*

- **July 31, 2015** – last day to pay PCORI fees for all plans. The PCORI fee for calendar year plans is $2.08 per covered life for 2014. Same date for all plans.

- **July 31, 2015** – last day to file Form 5500 (or Form 5558 for 2 ½ month extension to file Form 5500) for the 2014 plan year.

- **July 31, 2015** – medical loss ratio notices must be provided by insurance carriers to group policyholders that will receive a rebate for 2014. Same date for all policies.

- **August** – there are no general deadlines for calendar year plans that fall within the month of August. Non-calendar year plans may have deadlines for activities such as reporting creditable/non-creditable drug coverage to CMS or filing Form 5500.

**Ongoing Activities (Selected)**

Many compliance requirements apply every month. Some of the key ongoing requirements are:

- Marketplace notices - to all newly hired employees within 14 days of hire
- Provide the following materials when an employee becomes eligible for/enrolled in the health plan:
  - Summary of Benefits and Coverage (“SBC”) – upon eligibility
  - HIPAA Privacy Notice – upon enrollment
- COBRA General (Initial) Notice – to employee (& spouse if married) – upon enrollment
- HIPAA Special Enrollment Rights Notice – upon eligibility
- Part D certificate of creditable/noncreditable drug coverage- upon enrollment

In addition to federal requirements, some states have additional requirements such as reporting on the availability of dependent health coverage. Employers should check with their state(s) to determine what requirements and deadlines will apply.

Note: We include information about the above required communications indicating whether the requirement is triggered by the employee's eligibility or enrollment in the plan. Exact timing varies by requirement.

---

The intent of this Newsletter is to provide general information on employee benefit issues. It should not be construed as legal advice and, as with any interpretation of law, plan sponsors should seek proper legal advice for application of these rules to their plans. © 2015 Arthur J. Gallagher & Co.