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Important Reminder!

Upcoming Deadlines
Arthur J. Gallagher & Co
Deadline to Certify Compliance with HIPAA Standard Transactions Approaching

Arthur J. Gallagher & Co.

With the on again/off again HIPAA health plan identification ("HPID") requirement deadline, it is easy for some controlling health plans to overlook the other HIPAA deadline that remains in effect for the end of this year. The Department of Health and Human Services ("HHS") delayed certification of compliance with HIPAA electronic transaction operating rules and standards to December 31, 2015 (originally scheduled for December 31, 2013). The deadline for certifying compliance with the standard transaction rules remains in place and is fast approaching despite the delay of HPID compliance.

Background

One of the goals of the Health Insurance Portability and Accountability Act ("HIPAA") is to use electronic health care claims processing and the standardization of certain operating rules to reduce health care costs. Specifically, the HIPAA rules provide that covered entities that engage in certain specified transactions (called "HIPAA standard transactions") electronically are required to comply with rules that standardize the format and content of the electronic transactions – which are electronic exchanges involving the transfer of information from one covered entity to another. These rules are called the "Electronic Data Interchange" ("EDI") standards.

The EDI standards apply to the following covered transactions:

- Health claims or equivalent encounter information;
- Health claims attachments;
- Enrollment and disenrollment in a health plan;
- Eligibility for a health plan;
- Health plan premium payments;
- Health claim status;
- Electronic funds transfer and electronic remittance advice; and
- Referral certification and authorization.

Certification of Compliance with the EDI Standards

A health plan is required to certify that it is in compliance with the EDI standards by December 31, 2015. Although HHS has yet to provide specific guidance as to the procedure for submitting certification to HHS, there are no indications that this deadline will be extended. Regulations thus far have proposed a process for certifying compliance with respect to three specific types of HIPAA standard transactions: eligibility for a health plan, health claims status, and electronic funds transfer ("EFT") and electronic remittance advice ("ERA").

The original statutory deadline for certification by health plans was December 31, 2013. However, this was officially extended for two years to December 31, 2015. It should be noted, however, that while the deadline to certify compliance was extended, the underlying requirement to comply with the EDI standards has not been
extended. Health plans with electronic transactions involving eligibility were required to comply by January 1, 2013 and compliance with the EFT and ERA rules was required by January 1, 2014.

According to the statute, health plans have to also certify compliance with the following standard transactions by December 31, 2015: health claims or equivalent encounter information; health claims attachments; enrollment and disenrollment in a health plan; health plan premium payments; health claims attachments; and referral certification and authorization. The deadline for both certifications is technically the same – December 31, 2015. However, as HHS has noted, there is no standard for health claims attachments and no operating rules for any of the transactions listed in this paragraph. Therefore, it is generally expected that the deadline for certification of compliance with these standard transactions will be extended beyond December 31, 2015. Note, however, that the same is not expected for the three standard transactions listed above.

*Obtaining Certification*

HHS requires controlling health plans (“CHPs”) to certify compliance with HIPAA standard transactions above. A subhealth plan (“SHP”) may certify itself or the appropriate CHP may certify on behalf of the SHP.

According to guidance, the health plan is the entity that must certify compliance with the HIPAA standard transaction rules. Generally, for fully-insured health plans the insurer will be the CHP and need to obtain the EDI certification. Self-insured plans, however, will need to rely on assurances from certain business associates (such as third-party administrators (“TPA”) which perform the standard transactions for the plan. In this case, self-insured plans should reach out to their TPAs sooner rather than later to get assurances of compliance with the standard transaction rules.

CHPs will need to obtain assurance that the TPA has obtained certification from one of two approved methods used to certify compliance – either HIPAA Credential or Phase III CORE Seal.

Both the HIPAA Credential or Phase III CORE Seal certification methods are administered by the Council for Affordable Quality Healthcare (“CAQH”). The decision of which method to choose is left up to the CHP and may be based on a number of factors such as the type of testing that is required and which vendor will conduct testing. For more information on the two methods, please read our Technical Bulletin “Health Plan Certification of Compliance with HIPAA Electronic Transaction Standards.”

Once the TPA has obtained certification under one of the two methods and notified the health plan, the health plan will be in a position to submit a statement of compliance to HHS once additional guidance has been provided.

*HPID Compliance Delayed, Standard Transactions Compliance Not Delayed*

Health plans are required to obtain unique 10-digit, numeric identifier, called a health plan identifier (“HPID”). Large health plans were required to obtain their HPIDs by November 5, 2014 (with small health plans required to do so by November 5, 2015). The HPID requirement has been delayed by HHS indefinitely. Although the HPID requirement has been delayed, CHPs are still faced with the certification requirement for standard transaction compliance by December 31, 2015.

*Action Steps*

Thus far HHS has not provided guidance specifically outlining the forms needed, the amount of information that must be provided (other than some guidance on counting and reporting covered lives) or the procedure necessary to complete certification. By itself, this does not indicate that a delay is coming; therefore, CHPs (and SHPs) should continue (or begin) the process for certifying compliance with HIPAA’s EDI rules for electronic
transactions. Self-insured plans will need to obtain assurances from their TPAs that they are complying with HIPAA’s standard transactions requirements. These plans should not wait until the end of the year or for HHS to release guidance with specific certification procedures to reach out to their TPAs. Self-insured plans should speak with their TPAs early to ensure compliance with the HIPAA standard transactions requirements.

**Health & Welfare Benefits**

**IRS Releases Indexed Dollar Values for 2016**

*Arthur J. Gallagher & Co.*

The IRS recently issued several 2016 cost-of-living adjustments for employee benefit plans. Many of the dollar limits that apply to benefit plans are unchanged for 2016 because the increase in the cost-sharing index did not meet the threshold needed to trigger an adjustment. Some values have modest increases for 2016. [Click here](#) for a copy of IRS Rev. Proc. 2015-53 which has indexed amounts for 2016.

**Health & Welfare Plans**

The chart below shows selected 2016 and 2015 values.

<table>
<thead>
<tr>
<th>Health &amp; Welfare Plan Values</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Healthcare Flexible Spending Accounts (salary reduction maximum)</td>
<td>$2,550</td>
<td>$2,550</td>
</tr>
<tr>
<td>Transportation Assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Parking</td>
<td>$255</td>
<td>$250</td>
</tr>
<tr>
<td>• Transit Passes/Vanpooling</td>
<td>$130</td>
<td>$130</td>
</tr>
<tr>
<td>Maximum Average Annual Wages for Calculation of Small Employer</td>
<td>$25,900</td>
<td>$25,800</td>
</tr>
<tr>
<td>Health Insurance Tax Credit</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adoption Assistance</td>
<td>$13,460</td>
<td>$13,400</td>
</tr>
<tr>
<td>Long Term Care Insurance Premiums</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Age 40 or less</td>
<td>$390</td>
<td>$380</td>
</tr>
<tr>
<td>• Ages 41–50</td>
<td>$730</td>
<td>$710</td>
</tr>
<tr>
<td>• Ages 51 – 60</td>
<td>$1,460</td>
<td>$1,430</td>
</tr>
<tr>
<td>• Ages 61– 70</td>
<td>$3,900</td>
<td>$3,800</td>
</tr>
<tr>
<td>• Ages 71 and older</td>
<td>$4,870</td>
<td>$4,750</td>
</tr>
<tr>
<td>Long Term Care Insurance Daily Benefit Limit</td>
<td>$340</td>
<td>$330</td>
</tr>
</tbody>
</table>
The 2016 dollar values for health savings accounts were released earlier this year. The May 2015 issue of Directions contains the article – “IRS Releases 2016 HSA Dollar Values” – click here for a copy.

**Retirement Plan Values**

IRS Publication IR-2015-118 released on October 21 also includes indexed values for retirement plans.

The chart below shows selected values that affect sections 401(k), 403(b) and 457 retirement plans. Although the selected values shown below are not changing for 2016, there are some values not shown in the chart—such as income limits applicable to Individual Retirement Accounts—that will change in 2016. Click here for a copy of IR-2015-118.

<table>
<thead>
<tr>
<th>Retirement Plan Values</th>
<th>2016</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Compensation Limit</td>
<td>$265,000</td>
<td>$265,000</td>
</tr>
<tr>
<td>Elective Deferrals Annual Limit</td>
<td>$18,000</td>
<td>$18,000</td>
</tr>
<tr>
<td>Catch-up Contributions (50 &amp; older)</td>
<td>$6,000</td>
<td>$6,000</td>
</tr>
<tr>
<td>Defined Contribution Annual Limit</td>
<td>$53,000</td>
<td>$53,000</td>
</tr>
<tr>
<td>Defined Benefit Annual Limit</td>
<td>$210,000</td>
<td>$210,000</td>
</tr>
<tr>
<td>Highly Compensated Employee (“HCE”)</td>
<td>$120,000</td>
<td>$120,000</td>
</tr>
<tr>
<td>Key Employee</td>
<td>$170,000</td>
<td>$170,000</td>
</tr>
</tbody>
</table>

Two of these values, HCE and Key Employee thresholds, affect cafeteria plans. The income threshold for HCEs, which will remain at $120,000 in 2016, is one of the factors used to determine who is a HCE for the nondiscrimination rules that apply to cafeteria plans. The dollar amount of compensation is one of the factors used to determine who is a Key Employee for the purpose of Internal Revenue Code Section 79.

At the same time, the Department of Health and Human Services (“HHS”) announced that the taxable wage base for Social Security taxes (“OASDI”) will remain at $118,500 in 2016 (the same as 2015). Click here for a copy of HHS’ news release and fact sheet. The 2016 dollar values for Medicare Part D were released earlier this year. Click here for a copy of our April 2015 Directions which includes the article “Medicare Part D Benefit Parameters for 2016.” Final values for Medicare Parts A and B (e.g., deductibles, coinsurance and premiums) are expected to be released soon.

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**Forget Raises, Employers Lean on Health Benefits to Retain Workers**

*Life Health Pro*

Wages are still stagnant, yet employers have found something else to help attract and retain employees: healthcare benefits. A good insurance plan has become a more vital tool than ever for hiring, according to a recent survey from the Society of Human Resources.

In general, the study found, companies are leaning on benefits to woo current and potential employees. Of the 460 human resources professionals in the survey, 33 percent said that in the last year their organizations used
benefits of some kind—ranging from paid leave to wellness programs—to keep employees at all levels from leaving the company. That marks a surge from just 18 percent who relied on benefits to retain staff in 2012.

Of all the perks, however, health care was by far the most frequently used for employee retention. A full 80 percent of HR professionals in the survey cited health benefits, more than retirement and vacation, as a way to keep talent, up from 58 percent in 2012.

"There are ways and combinations that employers can use to make their health-care plans more attractive," said Evren Esen, director of the SHRM’s survey programs. "A company may offer health-care coverage, but it might not be the best coverage. It might not include certain kinds of benefits such as Lasik surgery or bariatric surgery." In addition to covering high-cost medical services, like fertility treatments and egg freezing, some companies offer a variety of health plans that a wider swath of employees find more attractive. If the benefits package includes a health savings account, for example, an employer might kick in some seed money to jump-start the fund.

Some employers may also cover a larger chunk of the employee benefit contribution, said Esen. Employers eat, on average, about 76 percent of the cost of health insurance premiums, according to the SHRM’s research. That jibes with data from the Kaiser Family Foundation's findings in its 2015 Employer Health Benefits Survey, which noted that workers on average contribute just 18 percent of the premium for single coverage and 29 percent of the premium for family coverage—a figure that hasn't changed statistically since 2010.

Things might change soon. Employers would like to curb the cost of health care, which has risen for both employees and employers over the last 10 years. Total premiums have increased 61 percent, according to Kaiser, with employees footing a larger percentage of that bill than ever. Respondents to the SHRM survey think employees will pay more than half of the premium in the near future. Yet with retention as the No. 1 issue facing companies, per another SHRM survey, employers can't transfer too much of the financial burden to their employees.

"They know it’s so important to employees, but the costs are making it very difficult for employers to continue to offer health care the way that they have in the past," said Esen. "They are stuck between a rock and a hard place."

Still, health coverage as a benefit isn't going anywhere soon. Despite predictions that the exchanges created by the Affordable Care Act would end the era of employer-sponsored health care, most employers haven't ditched the benefit. "That would be too shocking for employees. They’ve been in this relationship with their employers for so long regarding health care," said Esen. "Maybe more companies expected that they would move to a different type of system and they’re seeing that’s just not really possible at this time."

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**IRS Issues Proposed Regulations Defining Marital Status**

*Arthur J. Gallagher & Co.*

IRS proposed regulations clarifying definitions related to marital status were published in the October 23 Federal Register. The proposed regulations relate to all federal tax provisions that involve marriage – e.g., filing status, person and dependency exemptions, and the standard deductions – and thus also impact tax provisions related to employer-sponsored benefit plans. The regulations were issued to implement the U.S. Supreme Court’s same-sex marriage decision in *Obergefell v. Hodges*. The proposed regulations provide that for federal
tax purposes, the terms “spouse,” “husband,” and “wife” mean an individual lawfully married to another individual and the term “husband and wife” means two individuals lawfully married to each other. The definitions apply regardless of sex.

In addition, the proposed regulations provide that a marriage of two individuals will be recognized for federal tax purposes if that marriage would be recognized by any state, possession, or territory of the United States. Whether a marriage conducted in a foreign jurisdiction would be recognized under this rule depends on whether the marriage would be recognized by at least one state, possession, or territory of the United States.

This proposed regulation clarifies rather than makes changes to prior guidance issued by the IRS in Revenue Ruling 2013-17. Guidance provided in other IRS regulations such as guidance addressing cafeteria plans, health plans and flexible spending accounts (Notice 201-1), and qualified retirement plans (Notice 2014-19) remain in effect.

The proposed regulations also confirm that registered domestic partnerships, civil unions or other similar relationships that are not denominated as marriages under a state’s law will not be treated as marriages under federal law.

These regulations will be effective when published in the Federal Register as final regulations.

Human Resources View

Performance Evaluations: HR May Want to Evaluate the Performance of Managers Who Do Them

Of all the tasks that HR hopes line managers will carry out effectively, performance reviews stand at or near the top of the list.

After all, proper evaluations form the core of so much of HR’s work. How can the organization properly promote, reward or – if need be – prune out the appropriate employees without a clear idea of how they’re doing?

And yet, supervisors make a number of serious mistakes when doing evaluations, according to a recent survey of almost 1,500 HR professionals at organizations ranging from under 250 to more than 10,000 employees.

If you have reason to believe that your line managers could be doing a better job with personnel evaluations, you might want to take a look at the most common of these mistakes:

1. Neglecting to follow up

What’s the use of doing a performance review if the manager doesn’t check back with the employee to see whether he or she is making progress in areas targeted by the review? Fully 40% of those surveyed said managers in their organizations regularly fail to do so.

2. Putting everyone in the same ‘satisfactory’ basket

Some 40% of survey respondents said their line managers try to avoid hurting people’s feelings or stirring jealousies among co-workers by rating everyone somewhere in the middle of whatever scale is being used. So
instead of seeing a healthy sprinkling of “unsatisfactories” and “excellents,” you end up looking at a whole bunch of “satisfactories” when you examine the results of a manager’s evaluations of his or her department. This tells you exactly nothing.

3. Focusing only on most recent performance

Almost 39% of those surveyed said managers are swayed too much by what the employee has done for them recently. In other words, managers doing an annual evaluation fall prey to an employee or employees gaming the evaluation by slacking off for 10 months and then working really hard for a few weeks leading up to the performance review.

4. Omitting reasons for the rating

You’d think this would rarely happen. But 37% of respondents say their managers do it often enough that it’s a problem.

5. Failing to create an improvement plan

This is another follow-up mistake, one that 26% of the survey respondents said they see frequently.

6. Giving in to the ‘halo effect’

This occurs when a manager focuses primarily or exclusively on one or two areas that the employee does well, and lets this color an evaluation that should also cover an employee’s shortcomings. Some 19% of respondents said they see this regularly from managers.

Other errors

According to the survey, other significant errors that managers make when doing evaluations include failure to complete them (14%), over-focusing on an incident from the time the manager began supervising the employee (14%), basing ratings on how much the employee’s personality and/or interests match the managers’ (13%), and underrating the employee based on a single negative impression (12%).

Make no mistake, performance evaluations are hard. It’s worth your while to make sure that line managers have the help and feedback they need to do them right.

Tips for Making Your Recruiting Process More Candidate-centric

CCH, Incorporated

Issue: You are looking to improve the overall experience of candidates who apply for jobs with your company. What are some best practices to consider that would make your company’s recruiting process more candidate-centric?

Answer: Prospective employees would like to receive more detailed information about the company and specific job opportunities, as well as more frequent human connection, according to ManpowerGroup Solutions. They also want organizations to initiate more frequent conversations in all phases of the hiring process, including status updates at key stages — such as completion of background checks — and even feedback on why they didn't get the position if that is the outcome.

"Companies don't need the latest and greatest technology as much as they need to make sure their interactions
with candidates are meaningful and considerate," explained Melissa Hassett, vice president of client delivery at ManpowerGroup Solutions RPO. "Personal interaction and individualization of the recruiting process goes a long way toward attracting the best talent. And letting people know as soon as they're not selected is just good manners. That's what protects the employer brand."

It’s important to get back to the basics when it comes to closing the gaps on candidate preferences and experiences. Employers should consider the following candidate-centric best practices:

1. **Automate less, talk more.** Company reputations suffer when proactive candidates attempt to follow-up on their applications, only to be lost in endless voicemail.

2. **Touch base at the touch points.** Candidates should receive calls at critical milestones of the hiring process, such as completion of background checks and drug tests.

3. **Tell them when they're out.** Candidates want employers to tell them when they are out of the running — at any point along the process.

4. **Referrals come first.** Employee referral programs are only successful if the referrals are considered before other applicants.

5. **Don't be coy about compensation.** Everything related to compensation and benefits should be spelled out as early in the process as the organization feels comfortable.

6. **Use social media.** Savvy companies encourage social media use by employees and don't script or control their messaging.

7. **Get out the welcome wagon.** Inviting a smaller number of pre-screened candidates to a hiring event satisfies their preferences for being able to present their qualifications in person.

8. **Smart candidates want smartphone accessibility.** While many of today's candidates want a human connection, they also want to be able to access information and application processes directly from their smartphones.

9. **Employ a "just-in-time" candidate information delivery system.** Employers interested in improving the candidate experience should ask for only the information necessary at each step in the process.

**Source:** *Making the Connection: Best Practices in Candidate Experience*, released September 28, 2015; ManpowerGroup Solutions, [http://www.manpowergroupsolutions.com](http://www.manpowergroupsolutions.com).

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**Retirement**

**Consistent 401(k) Participation Leads to Higher Account Balances**

*Employee Benefit Research Institute*

The average 401(k) account balance of workers who participated consistently in a 401(k) plan from year-end 2007 to year-end 2013 increased significantly between 2012 and 2013, according to an updated annual study by the Employee Benefit Research Institute (EBRI) and the Investment Company Institute (ICI) released today.
The study, “What Does Consistent Participation in 401(k) Plans Generate? Changes in 401(k) Account Balances, 2007–2013,” finds that average account balances increased in 2013 for consistent participants in all age cohorts. The increase in account balances reflects several factors, including employer and worker contributions, investment returns, withdrawals, and loans.

**Consistent Group Permits Meaningful Analysis of Potential for Accumulation of Assets**

The new study looks at the accounts of about 4.2 million “consistent participants”—those who remained active in the same 401(k) plan for the six-year period covering year-end 2007 to year-end 2013—among the 26.4 million participant accounts in the entire EBRI/ICI 401(k) database at year-end 2013. While the separate, annual update report on the EBRI/ICI 401(k) database is based on large cross sections of 401(k) plan participants with a wide range of tenure and participation experience, focusing on accounts that remain in the database for an extended period allows for a more meaningful analysis of the potential for 401(k) participants to accumulate retirement assets over time.

**Key findings of the EBRI/ICI analysis of consistent 401(k) participants:**

Overall, the average account balance of the consistent participants increased at a compound annual average growth rate of 10.9 percent from 2007 to 2013, to $148,399 at year-end 2013. That level, reflecting the higher age and tenure of the consistent group as well as the extended period of ongoing participation, was more than twice the average account balance of $72,383 among participants in the entire EBRI/ICI 401(k) database.

More than 2 in 5 401(k) participants in the consistent group had more than $100,000 in their 401(k) accounts at their current employers, with nearly a quarter having more than $200,000.

In contrast, in the broader EBRI/ICI 401(k) database, about 1 in 5 401(k) savers had accounts with more than $100,000, with 1 in 10 having more than $200,000.

The median 401(k) account balance for consistent participants increased at a compound annual average growth rate of 15.8 percent over the period, to $75,359 at year-end 2013. That level was more than four times the median account balance of $18,433 for participants in the entire EBRI/ICI 401(k) database.

**401(k) Participants Tend to Concentrate Their Accounts in Equity Securities**

Consistent participants in 401(k) plans, on average, held two-thirds of their 401(k) assets in equities, through equity funds, the equity portion of target date and non–target date balanced funds, or company stock. That’s similar to the asset allocation of the 26.4 million participants in the entire EBRI/ICI 401(k) database.

The full analysis is being published simultaneously in the September 2015 issues of EBRI Issue Brief and ICI Research Perspective.

The Employee Benefit Research Institute is a private, nonpartisan, nonprofit research institute based in Washington, DC, that focuses on health, savings, retirement, and economic security issues. EBRI does not lobby and does not take policy positions.

The Investment Company Institute (ICI) is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their
shareholders, directors, and advisers. ICI’s U.S. fund members manage total assets of $18.2 trillion and serve more than 90 million U.S. shareholders.

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### 3 Steps to Help Solve the Looming Retirement Crisis

*Life Health Pro*

The investment world is facing its biggest crisis ever, one that will harm millions of Americans if it’s not addressed head on, and soon. Such was the warning of Charles Ellis, about the retirement crisis to come, at this week’s Morningstar ETF conference in Chicago.

Many haven’t saved enough in their 401(k) plans nor will they receive enough in Social Security to live on during their lifetimes, which are growing longer because of improvements in health care. “The demography is undeniable,” said Ellis.

The median savings for American investors is $110,000, said Ellis, founder of financial consulting firm Greenwich Associates and co-author of the book “Falling Short: the Coming Retirement Crisis and What to Do About It.” That’s simply not enough for a retirement that could last 20, 25, 30 years or more. But, said Ellis, the problem can be solved if action is taken soon by employees, employers and the government.

Here’s what he recommends:

1. **Workers should retire later**

   The preferable age is 70 — not 62, when retirees can begin to collect Social Security, or 66 or 67, the "full" retirement ages for baby boomers, depending on their birth year.

   “Every year you continue working past 62 gets you 8 percent more in Social Security payments,” Ellis said. By age 70, that's equivalent to 76 percent more in monthly payment than what would be collected at age 62, according to Ellis. “Putting in another 20 percent of time gets you 76 percent more in Social Security.”

   Working longer also means more years to save for retirement at a time when many people can afford to save more because they likely won’t be supporting children anymore. Someone earning $60,000 a year, for example, could afford to save 12 percent of earnings, which after earning a moderate 6 percent annually would yield an additional $150,000 in retirement funds, Ellis said.

   But working longer isn’t always easy. Employers often don’t want to hire older workers or keep them on the payroll, for a variety of reasons. To that point, Ellis suggested that employees “keep up to date with their skills, learn new skills, think ‘young’ and understand their choices.”

2. **Employers should adopt automatic enrollment for 401(k) plans.**

   Ellis recommended that employers use “best practices” for defined contribution plans, automatically enrolling employees from their first day of work but allowing them to opt out if they choose. The automatic enrollment rate should be the same as the employer match, Ellis said, implying that employers should make matching contributions.

   BlackRock CEO Laurence Fink has made similar recommendations for employers and has also called the investment community to task. In a May 2013 talk with MBA students at the NYU Stern School of Business,
Fink said the asset management industry needs to measure its performance against investors’ objectives and liabilities rather than against benchmarks.

“Investors don’t care if they’re holding a mid-cap stock or Mexican government bond, but whether an investment helps them achieve long-term outcomes like sending their kids to college, buying a house, and funding a decent retirement,” Fink said.

Employers should also make borrowing against 401(k) balances more difficult, Ellis said, because even though the borrower will pay back the money -- his or her own -- those funds will not be earning any returns while the loan is out. Such loans essentially reduce retirement savings. “Urge people to stay in their plan or roll it over into an IRA, but not to spend it,” Ellis said.

Finally, employers should also educate employees about the importance of saving for retirement and about how to invest. “Most people view their 401(k) plan as retirement security, but they haven’t had investment responsibility before,” Ellis said.


Government has a choice, Ellis said, when it comes to shoring up Social Security: Put more money in the system or take less money out. Ellis prefers the latter. More specifically, he wants government to means test retirees like himself who don’t need the money.

Ellis does not favor raising the ceiling on income subject to Social Security taxes – currently set at $118,500 – or eliminating the ceiling altogether, which is the case for Medicare taxes. He also doesn't favor raising the Social Security or Medicare tax rate. These tax changes could help replenish the Social Security Trust Fund, which will be depleted by 2033, and the Medicare Hospital Insurance Trust Fund, depleted by 2030, according to the latest trustee reports.

There are precedents for such changes. Under the Affordable Care Act, the Medicare tax rate was raised to 2.35 percent from 1.45 percent for incomes over $200,000 for single taxpayers and over $250,000 for couples filing jointly.

State Law Review

Employers Beware and Prepare: What You Need to Know About the New California Fair Pay Act

Widely regarded as the strictest equal pay legislation in the U.S., California’s Fair Pay Act (Senate Bill 358), which becomes effective on January 1, 2016, modifies California’s existing wage discrimination statutes by lowering the bar for gender-based wage and salary claims, whether made by women or men, and by offering additional protections to claimants.

This article, co-authored by Helen McFarland of the San Francisco office of Cozen O’Connor (Cozen), and Shari Dunn of the Arthur J. Gallagher Human Resources and Compensation Consulting Practice (Gallagher

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Consulting) in Lafayette, CA, provides California employers with a summary of the new law and a guide to proactively preparing to defend themselves against any claims of noncompliance.

Although the actual revisions to existing law are minimal, and in some instances serve only to re-state how the current laws are being interpreted, the changes do have the potential to result in increased litigation against employers, who may now have to restructure and be able to defend their compensation systems. Compliance with the new law may affect an employer’s ability to offer competitive salaries to high value employees without impacting overall salaries within the organization. Further, the heightened focus on pay equality may re-invigorate plaintiffs’ lawyers and the California Department of Labor Standards Enforcement, who will be looking to test the boundaries of the mandates. In any event, employers are advised to be aware of the changes and prepared to address anticipated claims of illegal pay disparity.

California Labor Code §1197.5 (Section 1197.5) has prohibited discrimination in pay based on an individual’s gender since 1949. Largely unmodified since 1976, and similar to federal law, Section 1197.5 requires equal payment for “equal work” in the same establishment, except when payments are made pursuant to: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on any bona fide factor other than sex.

What Does The New Law Do?

Intending to eliminate reported, persistent pay disparities between women and men, the new law modifies Section 1197.5 in several ways:

1. **Nature of work**: Claimants need only prove that their work is “substantially similar work when viewed as a composite of skill, effort, and responsibility.” The previous requirement was to prove the job as “equal work.” This new, lower standard allows for comparisons between employees who perform similar tasks regardless of job title.

2. **Locations**: A claimant is no longer limited to making pay comparisons within “the same establishment.” Employees may now freely examine pay practices at any location the employer maintains.

3. **Burden of proof**: The new law clarifies that employers bear the burden of demonstrating that any wage differential falls into one of four specified exceptions, which means that the employer must affirmatively demonstrate that the *entire* wage differential is based on one or more of the following factors, free of gender bias and consistent with business necessity, which must now be “applied reasonably”:
   - a seniority system;
   - a merit system;
   - a system that measures earnings by quantity or quality of production; or
   - a bona fide factor other than sex, such as education, training, or experience

4. **Alternative business practices**: The employer’s bona fide factor defense will not apply if the employee demonstrates that an alternative business practice exists that would serve the same business purpose without producing the pay differential.
(5) **Enforcement:** Enforcement remains with the DLSE and individual claimants, as under the prior version, and penalties for violation remain the same.

(6) **Retaliation prohibition:** An employer may not discriminate or retaliate against any employee who wishes to enforce Section 1197.5.

(7) **Disclosure:** Employers may not prohibit: (1) an employee’s disclosure of his/her own wages; (2) open discussion of wages between employees; (3) inquiries about other employees’ wages; or (4) aiding or abetting employees from exercising their rights under this section. However, Section 1197.5 states that nothing creates an obligation on the part of the employer to disclose wages.

(8) **Record retention:** Employer record retention requirements are increased from two to three years.

**What Should Employers Do Now?**

Employers should expect that claimants and the DLSE will begin to actively test what tasks are considered “substantially similar” and what categories could properly qualify as a “bona fide factor other than sex.” The language appears to require employers to establish bona fide factors that are specifically crafted for each “position in question” and to analyze how those factors are consistent with a business necessity. The provisions also suggest that if an employee can come up with any alternative business practice that “would serve the same business purpose,” the employer’s defense will not apply.

In recent years, many employers have dispensed with job evaluation systems that compare internal job criteria, instead using predominantly market-based job classification methodologies. It appears that job evaluation tools may now become essential means of legal compliance with respect to what constitutes “substantially similar work.” Job levels established through the application of internal evaluation systems, in conjunction with labor market data, then become the framework within which non-discriminatory pay decisions can be made.

Cozen attorneys and Gallagher consultants agree that employers are well-advised to take the following steps to support them in defending against any claims under the new law:

1. **Audit:** Conduct an audit of actual, current wages and salaries paid, respectively, to men and women holding jobs involving substantially similar work across all locations. Note that job titles alone may not be sufficient indicators of substantially similar work. In cases where pay disparities exist between genders, document the causes of such disparities in terms of experience, tenure and/or performance, noting whether such bona fide factors explain the entire differential. If they don’t, adjust pay in a way that results in compliance.

2. **Job documentation:** Review and update all job descriptions to clearly identify, along with specific required knowledge, skills and abilities, minimum educational qualifications (as applicable), required experience (if any), and any licensure or certification that applies to each job in the organization. Current and accurate documentation is a primary tool for supporting job-specific pay differences.

3. **Job evaluation:** Apply a valid, quantitative job evaluation methodology to establish relative levels of job-specific skills and responsibilities as a means of measuring and leveling jobs across the organization. This will facilitate clearly defined job equivalencies that define “substantially similar work” within grades and salary ranges.

4. **Salary administration:** Implement specific salary range guidelines that apply to all pay decisions, including new hire salaries and pay increases for existing employees in connection with annual reviews, promotions, transfers, and other personnel actions. Internal guidelines should focus on
actual salaries, not just on the percentages of the increases, which can often perpetuate inequities. Differentiating criteria may include such objective, gender-neutral factors as legitimate performance metrics, experience and/or education. Utilizing equivalent guidelines for the hiring process will then prevent a carefully achieved internal equity from being disturbed by non-compliant salary offers.

(5) **Communication:** Employers may also want to consider updating human resources communication materials relating to compensation plan administration in order to more clearly illustrate how pay equity is evaluated and maintained. This will equip managers/supervisors with accurate and factual information to ensure clear employee understanding of what the law means to them.

(6) **Policy statements:** Rewrite policies as necessary to specifically prohibit pay discrimination based on gender. Include a statement that the employer does not prohibit discussions of salaries, nor can employees be required to disclose their personal compensation to any other employee.

(7) **Training:** Provide mandatory training for supervisors regarding employees’ freedom to discuss wages. In addition, train them on the methodology the employer uses to determine base pay levels and how those criteria are applied.

(8) **Records retention:** Lengthen records retention times from 2 to 3 years.

In summary, employers will bear significant burdens to ensure that basic pay decisions do not create unintended illegally discriminatory consequences across the organization. Utilizing transparent and effective salary administration policies will support compliance with Section 1197.5 and facilitate communication with employees on how the employer is maintaining an equitable pay program.

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**New Regulations Provide Needed Answers to Employers’ Questions Concerning the Massachusetts Earned Sick Time Law**

**Employee Benefit Plan Review**

**Robert M. Hale**

Recently, the Massachusetts Attorney General Maura Healey issued long awaited regulations concerning the Massachusetts Earned Sick Time Law (ESTL). The ESTL was enacted by a ballot initiative on November 4, 2014. The basic rule under the ESTL is that employees may accrue the right to use paid sick leave at the rate of one hour for every 30 hours worked, up to 40 hours per year, to be used for various purposes, most of which involve illness or medical care for the employee or a family member.

The enactment of the ESTL led to numerous questions and concerns on the part of employers. The Attorney General initially promulgated proposed regulations, which addressed some questions but left others unanswered and led to other concerns for employers.
The Attorney General then issued guidance providing a “safe harbor” for employers with paid time off policies to use for the period of July to December 2015, as an alternative to fully modifying existing policies to conform to the ESTL and to take into account paid time off already used in 2015. Following public hearings and other meetings with interested parties, the Attorney General finalized the regulations for the ESTL.

The immediate priority for employers with employees in Massachusetts is to decide whether they will use the safe harbor for the balance of 2015 or simply revise their policies effective July 1 to comply with the ESTL.

This article reviews the key provisions of the ESTL regulations that are relevant to using the safe harbor and to developing and administering policies to comply with the ESTL both during 2015 and in future years.

COVERED EMPLOYERS AND EMPLOYEES

All employers with employees in Massachusetts are covered by the ESTL. Employers with fewer than 11 employees need not provide paid leave but are obligated to provide at least unpaid leave. The 11-employee threshold counts all employees, both within and outside Massachusetts. The regulations include detailed rules concerning counting of employees for purposes of this threshold and the consequences of going above and below that threshold.

For an employee to be eligible for leave under the ESTL, the employee must have a primary place of work in Massachusetts. If an employee works in multiple states, Massachusetts will be the primary place of work if the employee works more time in Massachusetts than in any other single state. Note, however, that several other states and cities (including, without limitation, California, Connecticut, the District of Columbia, New York City, San Francisco, Seattle, Newark, Philadelphia, and Portland, Oregon) have recently developed paid sick leave laws that also may provide benefits to employees who work the required amount of time in those locations.

ACCRUAL OF LEAVE

Basic Rule and Categories of Employees

As stated previously, the basic rule is that an employee earns one hour of sick time for every 30 hours worked, including overtime hours. Only working time counts; sick time is not earned for the use of paid time off.

For hourly employees, the accrual is straightforward. All hours worked count, up to the cap described later. Employees who are exempt from overtime earn sick time at the rate of 40 hours per week, up to the cap, unless their jobs specify a lesser number of hours per week, in which case the lower number of hours applies. For other categories of employees, such as piece work employees, a “reasonable measure” of their hours should be used.

Start of Accruals

Accrual of sick time began when the ESTL went into effect on July 1, 2015. For employees who are hired after July 1, 2015, accrual begins at the start of employment.

Accrual Cap

An employer can cap accrual of sick time at 40 hours in a benefit year. If so required, when an employee accrues a balance of 40 hours of unused sick time in his or her sick time bank, the employee stops accruing sick time.

The “benefit year” can be any measurement year that the employer selects, such as a calendar year, an employee anniversary year, or a fiscal year. For purposes of this article, references to a “year” mean a “benefit year.”
**Rollover**

When the year ends, the employee’s then accrued, unused sick time balance rolls over into the new year. The rollover limit is the same as the annual accrual limit: 40 hours. When an employee possesses a bank of 40 hours of unused earned sick time, including rollover sick time, the employer may opt to delay further accrual (subject to an employer’s accrual cap of 40 hours per year) until the employee draws down the bank of earned sick time to below 40 hours.

**Payment**

An employer is not obligated to pay an employee for unused sick time, either at or before separation from employment. However, if an employer decides to pay an employee for an unused balance of sick time at the end of a year, a special rule applies, which is intended to ensure that an employee can use up to 16 hours sick time that would have been carried over if the employee had not been paid for accrued sick time. In that event, the employee’s accrual of new sick time in the new year will be applied to any time advanced to the employee under the special rule.

**Break in Service**

Breaks in service of less than four months do not affect an employee’s sick time bank. Special rules apply to breaks in service of between four and 12 months, which are beyond the scope of this article. An employee is not entitled to previously accrued but unused sick time after a break in service of 12 months or more.

**RATE OF SICK TIME PAY**

For hourly employees, sick time pay is based on an employee’s hourly rate. For a salaried exempt employee, the hourly rate is based on the weekly salary rate divided by 40 or, for those with a normal workweek of fewer hours, the number of hours in the normal workweek. For commissioned employees, the hourly rate is based on the employee’s base pay rate or the minimum wage rate, whichever is greater.

**USE OF SICK TIME**

**Qualifying Circumstances**

Earned sick time may be used for any of several purposes:

- Care for an employee’s own medical needs;
- Care for the medical needs of an employee’s child, spouse, parent, or parent’s spouse;
- Attendance at a routine medical appointment for the employee or for the employee’s child, spouse, parent, or parent’s spouse;
- Travel to or from an appointment, a pharmacy, or a location related to the care (e.g., an ill parent’s residence); or
- Addressing the psychological, physical, or legal effects of domestic violence.

**Vesting**
Although an employee accrues sick time from the start of employment, an employee does not have the right to use sick time until the employee has been employed for at least 90 days. For those employed when the ESTL takes effect, their date of hire rather than the effective date of the ESTL is used to measure whether the 90-day period has been completed. Thus, any current employee whose employment began on or before April 2, 2015, will have satisfied the vesting requirement when the ESTL takes effect.

**Annual Cap on Use**

Just as accruals may be limited to a balance of 40 hours, the right of employees to use sick time may be limited to 40 hours in a year.

**Increments of Use**

Employees may be required to use sick time in increments of at least one hour. If an employee uses more than an hour of sick time, the additional time will be measured in smaller increments if the employer uses smaller increments to account for absences or to measure use of other time. For example, if time for use of other absences is measured in 15-minute increments, an employee who reports to work one hour and 25 minutes late due to illness may be charged for the use of one and one-half hours of sick time, while an employee who reports to work 15 minutes late due to illness may be charged for the use of one hour of sick time.

Special rules apply, however, if an employee’s use of sick time requires the hiring or call-in of a replacement employee. If the employer calls in a replacement due to an employee’s inability to report on time due to the use of sick time, the employee may be charged for the use of sick time to the extent of the time worked by the replacement employee, up to a full shift.

**Notice of Use**

An employer may establish a written policy concerning notice of use of foreseeable sick time, for example, a routine medical appointment, requiring up to seven days’ notice. However, if the employee learns of a need for time off less than seven days before it is needed, the employee’s notice obligation is accordingly reduced.

If the need for sick time is not foreseeable, the required notice is the notice that is reasonable under the circumstances, which may in some cases mean no advance notice.

If the employee needs to use more than one day of sick time, the employer may require notice of the expected length, and if that is not known, daily notice from the employee or a surrogate (e.g., the employee’s spouse) may be required, unless such daily notice is unreasonable under the circumstances.

The employee does not need to specify that he or she is exercising legal rights to use paid sick time. However, time off is not protected as sick time unless the employer is on notice that the employee seeks to use time for one of the qualifying circumstances under the ESTL.

An employer may establish policies for notices of use of sick time, such as specifying the individual to whom notices of the use of sick time must be given. However, the employer may not establish a mechanism that is different than what is customarily used for notices of absences.

**DOCUMENTATION**

**When Documentation May Be Required**
The general rule is that medical documentation to support the use of sick time may not be required unless the employee is out of work for more than three consecutive days. However, there are some other circumstances that do not meet the three-day standard but in which medical documentation may be required:

- The absence exceeds 24 consecutive work hours;
- The employee has had four unforeseeable and undocumented absences within a three month period; or
- The absence occurs within the two-week period before the employee’s scheduled final day of employment (except that this does not apply if the individual is a temporary employee).

Regardless of whether these standards for requiring medical documentation are satisfied, an employer may require an employee to verify in writing that any use of sick time, regardless of the length, was for one of the qualifying circumstances.

In addition, if an employee exhibits “a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of sick time,” unless the employee provides “verification of authorized use.” The regulations do not specify what form that verification may take.

**What Documentation May Be Required**

For absences other than those related to domestic violence, the written documentation may be a statement signed by a health care provider indicating that there was a need to take earned sick time. The definition of a “health care provider” is the same as the definition under the Family and Medical Leave Act regulations, which includes various forms of health care providers, in addition to medical doctors.

The documentation may not require an explanation of the nature of any illness related to the sick time.

For absences related to the use of sick time due to domestic violence, the ESTL regulations identify numerous forms of acceptable documentation, including a signed statement by the employee attesting to the abuse. The employee may not be required to provide details concerning domestic violence.

Employees without health insurance who seek to use sick time may provide their own signed statement rather than one signed by a health care provider.

**What Deadline May Be Required for the Documentation**

The employer may impose a deadline of seven days for the submission of the documentation. An employee is entitled to relief from the deadline for “good cause,” which is not defined in the regulations.

**What Consequences May Be Imposed for Failure to Satisfy Documentation Requirements**

If an employee does not satisfy the documentation requirements in a timely manner “without reasonable justification,” the employer may recoup the amount paid for sick time from a future payment. To exercise this recoupment right, the employer must provide advance notice to employees of this right.

**Requiring Fitness for Duty Certifications**

Employers’ rights to require fitness for duty certifications in connection with an absence that includes the use of earned sick time are limited to circumstances in which

1. The certification is “customarily required,”
(2) It is consistent with industry practice or federal or state safety requirements, and

(3) Reasonable safety concerns exist regarding the employee’s ability to perform duties.

Literally read, this provision applies to absences that include the use of paid sick time even if they extend beyond the expiration of paid sick time rights and require that each of (1), (2), and (3) above be satisfied. Because the regulations simply state what employers may require without stating what is prohibited, it is not clear that all these elements need to be satisfied to require a fitness for duty certification in connection with a return from any period of absence that includes a use of sick time of any length.

INTEGRATION WITH PAID LEAVE POLICIES

General Rules

The regulations state that “[e]mployers may have their own sick leave or paid time off policies, so long as all employees can use at least the same amount of time, for the same purposes, under the same conditions, and with the same job protections provided in [the ESTL].” Different standards may apply to different categories of employees, as long as all employees have at least the minimum entitlement that is established by the ESTL.

Observations about Integration with Paid Time Off and Sick Leave Policies

For employers with paid time off policies who seek to use those policies to comply with the ESTL, advance notice requirements may need to be modified to take into account the use of paid time off for unforeseeable circumstances. To have the policy serve as the employer’s mechanism for compliance with the ESTL for all employees, the eligibility criteria need to be expanded to all employees whose primary location of work is Massachusetts, even if their work schedule would ordinarily render them ineligible.

If an employer uses a general paid time off policy as its mechanism for compliance and that policy provides at least 40 hours of paid time off, the employer is not required to provide additional time for qualifying sick time purposes under the ESTL. However, the regulations state that the policy should “make clear” that additional time for sick time will not be provided.

For employers with sick leave policies who seek to use those policies to comply with the ESTL, existing sick leave policies need to be conformed to the ESTL, which would typically require expanding the permissible uses for leave, as well as expanding those who may participate and possibly increasing the benefit level.

Lump-Sum Option

The regulations provide an option for minimum levels of paid time off or sick leave that would satisfy the ESTL without needing to track the accrual of hours based precisely on actual hours worked. Instead, the regulations set an average level of weekly hours that would lead to minimum monthly accrual levels. Specifically, those are as follows:

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<th>AVERAGE WEEKLY HOURS</th>
<th>MINIMUM MONTHLY ACCRUAL</th>
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<td>5 hours per month for 8 months</td>
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<td>24</td>
<td>4 hours per month for 10 months</td>
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<td>20</td>
<td>4 hours per month for 9 months</td>
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### SAFE HARBOR

Employers with a paid time off or paid sick leave that was in effect on May 1, 2015, may satisfy the ESTL for the balance of 2015 by satisfying the following safe harbor requirements:

- Ensure that full-time employees have the right to earn paid time off and/or sick leave of at least 30 hours for calendar year 2015.
- For all other employees, ensure that their accrual rate is the same as the accrual rate for full-time employees.
- Special rules apply to lump-sum allocation arrangements, under which lump-sum accruals may be halved for employees who begin coverage on July 1 and proportionately reduced for those hired thereafter. As with hourly or other accrual arrangements, the lump-sum allocations must otherwise be proportionate for part-time employees.
- Employees must have the same job-protection rights as under the ESTL for up to 30 hours of available time (or any lesser amount available).
- Up to 30 hours of available time must be permitted to be used for the same purposes applicable under the ESTL.
- Up to 30 hours of unused accrued time must be rolled over on January 1, 2016.

### CONCURRENT USE WITH OTHER LEAVE LAWS

Employees may use time off under the ESTL concurrently with any leave rights applicable to the same time off under other leave of absence laws, including the Family and Medical Leave Act, the Massachusetts Parental Leave Act, the Massachusetts Domestic Violence Leave Act, and the Massachusetts Small Necessities Leave Act, among other laws.

### PROHIBITION ON RETALIATION

The ESTL includes provisions prohibiting interference with leave rights and retaliation for opposing practices that an employee reasonably believes to be in violation of the ESTL. These prohibitions are similar to those under other leave of absence laws.
By the same token, if an employee fraudulently claims to use sick time for a qualifying circumstance that does not apply, the regulations specify that the employee may be disciplined.
RECORDKEEPING AND DISCLOSURE

Employers must keep accurate records of the accrual and use of earned sick time for each employee, for three years, and make the records available for an employee to review, within 10 business days of a request. However, if an employer provides time off to employees under a paid time off or vacation policy that complies with the ESTL, the employer is not required to track and keep a separate record of accrual and use of earned sick time.

Employers are required to post a notice prepared by the Attorney General that summarizes the ESTL in a conspicuous place accessible to employees in each location where employees work. Employers must include their policy on sick time or paid time off/vacation policy that complies with the ESTL in any employee handbook, or distribute a copy of the Attorney General’s notice to each eligible employee.

NEXT STEPS

Covered employers should consider whether to utilize the safe harbor to satisfy their obligations under the ESTL for the remainder of 2015. Even if they use the safe harbor, employers should begin preparing to make additional policy changes to comply with the ESTL after the safe harbor ends, with as little disruption to their current policies as possible. Issues to consider include:

- What “benefit year” to select (e.g., calendar, anniversary, or fiscal);
- Whether sick leave should be accrued or granted in a lump sum;
- Whether to pay employees for unused sick time at the end of a benefit year;
- Whether an existing paid time off policy should be used (and revised as necessary); and
- What rules should be established concerning advance notice for foreseeable leaves, how often and to whom notice should be given, and recoupment of paid sick leave that is not supported by documentation.

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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.

Arkansas Noncompetition Agreements

The state has enacted a law providing for the enforceability of a covenant not to compete agreement. Specifically, a covenant not to compete agreement is enforceable if the agreement is ancillary to an employment relationship or part of an otherwise enforceable employment agreement or contract to the extent that (1) the employer has a protectable business interest; and (2) the covenant not to compete agreement is limited with
respect to time and scope in a manner that is not greater than necessary to defend the protectable business interest of the employer (Act 921 (S. 998), L. 2015).

**California Civil Rights Act**

The state has enacted a law extending the protections of the Unruh Civil Rights Act to persons regardless of citizenship, primary language, or immigration status (Ch. 282 (S. 600), L. 2015).

**California Meal and Rest Periods**

California law prohibits an employer from requiring an employee to work during a meal or rest or recovery period mandated by an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, and establishes penalties for an employer's failure to provide a mandated meal or rest or recovery period. With certain exceptions, the law authorizes the commission to adopt or amend working condition orders with respect to break periods, meal periods, and days of rest for any workers in California consistent with the health and welfare of those workers.

Health care employers have relied on Industrial Welfare Commission Wage Orders (Nos. 4 and 5, from 1993 through 2000), and subsequent regulations, to allow employees to voluntarily waive one of their two meal periods on shifts exceeding 12 hours. The Orders continue to be enforced by the Division of Labor Standards Enforcement (DLSE).

However, a recent appellate court decision, *Gerard v. Orange Coast Memorial Medical Center* (2015) 234 Cal.App.4th 285, created uncertainty regarding the waiver that, without clarification, would require hospitals to alter scheduling practices. The California Court of Appeals concluded in that decision that certain language contained in a Wage Order of the Commission was invalid to the extent it conflicts with California Labor Code Section 512. Specifically, Section 512 prohibits waiver of a second meal period when an employee works more than 12 hours. Wage Orders 4 and 5, Section 11(D) have allowed such waivers in the health care industry since 1993.

In light of the court decision, statutory provisions have been amended effective October 5, 2015, to clarify that the health care employee meal period waiver provisions in Section 11(D) of Industrial Welfare Commission Wage Orders 4 and 5 were valid and enforceable on and after October 1, 2000, and continue to be valid and enforceable (Ch. 506 (S. 327), L. 2015, effective October 5, 2015).

**California Overtime Pay**

The Department of Industrial Relations issued memos on October 7 announcing adjustments in the overtime exemption for both computer software employees and for licensed physicians and surgeons for 2016.

*Computer software employees.* The California Department of Industrial Relations (DIR) has adjusted the computer software employee’s minimum hourly rate of pay exemption from $41.27 to $41.85, the minimum monthly salary exemption from $7,165.12 to $7,265.43, and the minimum annual salary exemption from $85,981.40 to $87,185.14, effective January 1, 2016, reflecting a 1.4% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers (August 2014 to August 2015).

California Labor Code Section 515.5 provides that such employees are exempt from the overtime requirements of Section 510 if certain criteria are met, including that the employee’s hourly rate of pay be not less than the statutorily specified rate, which is annually adjusted based on changes in the cost of living *(State of California Department of Industrial Relations, Office of the Director—Research Unit, Memorandum, from Maria Y.*
Licensed physicians and surgeons. The Department of Industrial Relations has adjusted the licensed physicians and surgeons employee’s minimum hourly rate of pay exemption from $75.19 to $76.24, effective January 1, 2016, to reflect a 1.4% increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers from August 2014 to August 2015.

The Department of Industrial Relations adjusts the minimum hourly rate of pay exemption for licensed physicians and surgeons on October 1 of each year, to be effective the following January 1, based on the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers (State of California Department of Industrial Relations, Office of the Director—Research Unit, Memorandum, from Maria Y. Robbins, Deputy Chief, Office of the Director, to Christine Baker, Director, DIR, on the subject of “Overtime Exemption for Licensed Physicians and Surgeons,” October 7, 2015, http://www.dir.ca.gov/OPRL/Physicians.pdf).

California Smoking in the Workplace

A pediatric day health and respite care facility may implement policies and procedures that prohibit smoking by patients, parents, staff, visitors, or consultants within the facility or on the premises, if the prohibition is clearly stated in the admission agreement, and notices are posted at the facility (Ch. 206 (A. 1147), L. 2015).

California Wage Payment

The California Labor Code Private Attorneys General Act of 2004 has been amended to provide employers with a right to cure a violation of the wage information requirement that an employer provide its employees with the inclusive dates of a pay period and the name and address of the legal entity that is the employer before an employee may bring a civil action under the Act. Employers must be fully compliant, with itemized wage statements provided to each aggrieved employee, before a violation would be considered cured. Also, the right to cure with respect to alleged violations would be limited to once in a 12-month period (Ch. 445 (A. 1506), L. 2015, effective October 2, 2015).

Colorado Minimum Wage

The Colorado Department of Labor and Employment - Labor Standards will be holding a rulemaking hearing on proposed Colorado Minimum Wage Order Number 32. The purpose of this rulemaking is to reflect the new state minimum wage pursuant to Article XVIII, Section 15, of the Colorado Constitution.

Proposed Colorado Minimum Wage Order Number 32 would amend 7 CCR 1103-1 to increase the state minimum wage from $8.23 per hour to $8.31 per hour, and the state tipped minimum wage from $5.21 per hour to $5.29 per hour effective January 1, 2016. If approved, Order 32 replaces the current Minimum Wage Order Number 31.

The hearing will be held Monday, November 9, at 2:00 p.m., at 633 17th Street, Second Floor, Suite 200, Denver CO 80202.

Any business that believes there will be a significant negative impact on small business, job creation or economic competitiveness may request that the Department of Regulatory Agencies require the rulemaking agency prepare a cost-benefit analysis of a proposed rule or amendment. This request must be made to the Department of Regulatory Agencies by Thursday, October 15, 2015 (Colorado Department of Regulatory Agencies).

District of Columbia Minimum Wage

The Council of the District of Columbia has adopted the “Wage Theft Prevention Correction and Clarification Emergency Declaration Resolution of 2015” to continue emergency and temporary legislation to amend the Wage Theft Act. Existing temporary legislation is set to expire on October 24, 2015, and this emergency resolution, which is effective from October 6, 2015, is necessary to make sure there is no gap in the law until a permanent bill can be adopted by the Council. The emergency measures amend the “Wage Theft Prevention Amendment Act of 2014,” effective February 26, 2015 (DC Law 20-157; 61 DCR 10157) (“Wage Theft Act”), to clarify when certain provisions shall take effect, who may bring an action on behalf of an employee, amend criminal penalties, clarify when amounts in the Wage Theft Prevention Fund may be spent, authorize the Mayor to issue rules, and clarify how the Mayor shall make certain information available to manufacturers. The changes are intended to enhance the ability of the District to enforce laws prohibiting wage theft (DC R 21-235 (PR21-376)).

District of Columbia Wage Payment

The Council of the District of Columbia has adopted the “Wage Theft Prevention Correction and Clarification Emergency Declaration Resolution of 2015” to continue emergency and temporary legislation to amend the Wage Theft Act. Existing temporary legislation is set to expire on October 24, 2015, and this emergency resolution, which is effective from October 6, 2015, is necessary to make sure there is no gap in the law until a permanent bill can be adopted by the Council. The emergency measures amend the “Wage Theft Prevention Amendment Act of 2014,” effective February 26, 2015 (DC Law 20-157; 61 DCR 10157) (“Wage Theft Act”), to clarify when certain provisions shall take effect, who may bring an action on behalf of an employee, amend criminal penalties, clarify when amounts in the Wage Theft Prevention Fund may be spent, authorize the Mayor to issue rules, and clarify how the Mayor shall make certain information available to manufacturers. The changes are intended to enhance the ability of the District to enforce laws prohibiting wage theft (DC R 21-235 (PR21-376)).

Florida HIV Testing

The state’s public health law has been amended with respect to the notification and consent procedures for performing HIV tests in health care and nonhealth care settings (Ch. 2015-110 (H. 321), L. 2015).

Florida Minimum Wage

The Miami-Dade County, Florida, living wage ordinance was not preempted by the Airline Deregulation Act (ADA) and the Federal Aviation Administration Authorization Act (FAAAA), and also passed constitutional muster, ruled the Eleventh Circuit in an unpublished decision. In finding the LWO was properly applied to a small air carrier at Miami International Airport, the appeals court concluded that the cargo handling work it performed for other airlines did not constitute a “service” within the meaning of the ADA’s preemption provision. Moreover, the LWO did not interfere with competitive market forces by dictating the types of services Amerijet was required to provide. Thus, there was nothing prohibitive about requiring Amerijet to pay a portion of its workforce a different wage. Additionally, because the airline failed to demonstrate that the county’s underlying motivation in enacting the LWO was protectionist, there was no showing that the ordinance violated the Commerce Clause ([Amerijet International, Inc. v. Miami-Dade County, Florida](https://www.dora.state.co.us/pls/real/SB121_Web.Show_Rule?p_rule_id=6345), September 21, 2015, *per curiam*).
Hawaii Health Insurance Benefit Coverage

“Luke’s Law” provides that each group accident and health or sickness insurance policy issued or renewed in Hawaii after January 1, 2016, shall provide to the policyholder and individuals under 14 years of age covered under the policy coverage for the diagnosis and treatment of autism (Act 235 (S. 791), L. 2015).

Hawaii Noncompetition Agreements

The state has enacted a law to stimulate its economy by prohibiting noncompete agreements and restrictive covenants that forbid post-employment competition for employees of technology businesses (H. 1090, L. 2015).

Idaho Access to Personnel Files

The state has relocated its public employment access to personnel files law to a new Title 74 (Transparent and Ethical Government) and Chapter 1 (Public Records Act) of the Idaho Code.

Indiana Background Checks

The state has amended its background check requirements under the child services and juvenile laws (P.L. 104 (H. 1434), L. 2015).

Iowa Minimum Wage

Effective November 1, 2015, employers in Johnson County will be required to pay employees a minimum wage of $8.20 per hour. The minimum wage will increase again on May 1, 2016, to $9.15 per hour, and on January 1, 2017, to $10.10 per hour. Beginning on July 1, 2018, and each July 1 after that, the Johnson County minimum wage will be increased by any increase in the cost of living.

The wage for tipped employees is $4.92 per hour, effective November 1, 2015; $5.49 per hour, effective May 1, 2016; and $6.06 per hour, effective January 1, 2017. If the combined wages plus tips do not equal the minimum wage, the employer is required to pay the difference. Employers may pay new employees a reduced minimum wage of at least $6.35 per hour for the first 90 days of employment only.

The ordinance applies to those working within the geographical boundaries of the county, including unincorporated areas and municipalities located within the county that have not adopted a conflicting ordinance (Ordinance 09-10-15-01, an Ordinance Establishing a Johnson County Minimum Wage, approved by the Johnson County Board of Supervisors on September 10, 2015).

Louisiana Background Checks

The Louisiana Department of Revenue shall be entitled to the criminal history record and identification files of the Louisiana Bureau of Criminal Identification and Information of any person who is required to qualify and register for the Public Registry of Motion Picture Investor Tax Credit Brokers. Fingerprints and other identifying information of the applicant shall be submitted to the bureau for qualification and registry and the bureau shall, upon request of the Department of Revenue and after receipt of such fingerprint card and other identifying information from the applicant, make available to the Department of Revenue all arrest and conviction information contained in the bureau's criminal history record and identification files which pertain to the applicant for qualification and registry. In addition, the fingerprints shall be forwarded by the bureau to the FBI for a national criminal history record check (Act 451 (S. 98), L. 2015).
Maine Minimum Wage

The City Council of the City of Portland adopted Order 297-4/15 on July 6 to amend the Portland City Code by adding a new Chapter 33 and establishing a minimum wage in the city, starting with an increase to $10.10 per hour for all employees in the city, effective January 1, 2016.

This order was returned for reconsideration and amended on September 9, 2015, to make changes relating to service employees to make the direct wage for such tipped employees the same as that covered under state law, under Maine Revised Statutes, Title 26, Chapter 7, Section 664(2). State law provides that the tip credit may not exceed 50% of the state minimum hourly wage (Employers must pay a cash wage of at least 50% of the state minimum wage).

Mississippi Health Insurance Benefit Coverage

Effective January 1, 2016, health insurance policies shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorder (H. 885, L. 2015).

Missouri Minimum Wage

The minimum wage in the City of St. Louis is $8.25 per hour, effective October 15, 2015.

St. Louis Mayor Francis Slay signed legislation to raise the minimum wage in the city to reach $11 by 2018 on August 28, 2015, following approval of the legislation by the Board of Aldermen. Under the new legislation, the hourly minimum wage in the city will be increased as follows: $8.25 on October 15, 2015; $9 on January 1, 2016; $10 on January 1, 2017; and $11 on January 1, 2018. Beginning January 1, 2019, and each January 1 after that, the minimum wage rate is to be increased based on the rate of inflation (City of St. Louis, Missouri, Office of the Mayor, News Release, August 28, 2015; Ordinance No. 70078 (Board Bill No. 93FSAA).—Update: On October 14, 2015, Judge Steven Ohmer of the St. Louis Circuit Court declared the St. Louis minimum wage ordinance invalid and banned the City from enforcing, one day before the ordinance was to take effect. Business groups challenged the increase, saying it violated existing state law. The Mayor is expected to appeal the ruling (http://hr.cch.com/ELD/CooperativeStLouis1014.pdf).

St. Louis also has a “living wage.” Effective as of April 1, 2015, the living wage is $12.56 per hour where health benefits are provided, and $16.58 per hour where health benefits are not provided; Wages required under Chapter 6.20 of the Revised Code of the City of St. Louis are $4.02 per hour. The living wage applies to employees of employers benefiting from certain taxpayer-funded contracts with the City of St. Louis or benefiting from multi-million dollar awards of taxpayer-funded financial assistance (St. Louis Living Wage Ordinance, Living Wage Adjustment Bulletin, Notice of St. Louis Living Wage Rates Effective April 1, 2015, https://www.stlouis-mo.gov/government/departments/supply/documents/upload/4-1-15-Living-Wage.pdf).

Living wage ban. On September 16, 2015, the Missouri General Assembly overrode Governor Jay Nixon’s veto of H. 722. This legislation includes a provision that no political subdivision shall establish, mandate or otherwise require an employer to provide to an employee: (1) a minimum or living wage rate; or (2) employment benefits; that exceed the requirements of federal or state laws, rules or regulations. This provision does not preempt any state law or local minimum wage ordinance requirements in effect on August 28, 2015 (H. 722, L. 2015, enacted September 16, 2015 (veto override) and effective October 16, 2015).

While St. Louis was able to enact a city minimum wage within the August 28 deadline, Kansas City did not.

The Kansas City Council had also passed an ordinance to raise the minimum wage, to $13 an hour by 2020. However, implementation of the ordinance was halted due to a referendum on the issue that was to go before the
voters—this question was ordered removed from the November 3 ballot, by Jackson County Presiding Judge Justine Del Muro, in light of the veto override of H. 722, because of unconstitutional inconsistency. H. 722 preempts action by Kansas City to require an increase in the minimum wage beyond that established by the state (City of Kansas City, Missouri, Sept. 23, 2015 Update on the Minimum Wage Ordinance, http://kcmo.gov/minimum-wage/).

Montana Minimum Wage

The minimum wage in Montana will remain unchanged at $8.05 per hour on January 1, 2016.

Montana Code Annotated Section 39-3-409 requires a minimum wage adjustment annually based on changes in inflation as measured by the Consumer Price Index (CPI) from August of the preceding year to August of the year in which the calculation is made. An adjustment to the minimum wage is to be calculated no later than September 30 of each year based on any increase in the CPI, rounded to the nearest five cents.

Based on an increase in the CPI of 0.20% from August 2014 to August 2015, the calculation used for determining the minimum wage rate for 2016 is:

$8.05 x .20% = $.02, rounded to $0.00 (nearest five cents).

The Department of Labor and Industry announces each October 1 if there are any changes in the state’s minimum wage. If there is a change, the change takes effect on January 1, which gives employers three months to modify budgets if necessary. Since there is no change, the minimum wage will remain at the 2015 rate of $8.05 per hour for 2016 (Montana Department of Labor and Industry, Commissioner’s Office, Notice of Montana 2016 Minimum Wage Determination, October 1, 2015, http://erd.dli.mt.gov/Portals/54/Documents/Labor-Standards/dli-erd-1s011.pdf; Montana Department of Labor and Industry, Labor Standards Bureau, Wage and Hour Unit, October 5, 2015).

Nevada Background Checks

The state has established within the Central Repository for Nevada Records of Criminal History a service to conduct a name-based search of records of criminal history of an employee, prospective employee, volunteer or prospective volunteer (Ch. 159 (A. 47), L. 2015).

New Jersey Minimum Wage

The minimum wage in New Jersey will not increase in 2016, but will instead remain at the current $8.38 per hour.

The state minimum wage is required to be adjusted by the New Jersey Department of Labor and Workforce Development each January 1 by any increase in the cost of living, based on changes in the Consumer Price Index for all wage earners and clerical workers (CPI-W, U.S. City Average), as released by the U.S. Department of Labor, Bureau of Labor Statistics, from August of the previous year to August of the current year.

The Department’s Division of Economic and Demographic Research determined that the change from August 2014 (234.030) to August 2015 (233.366) represents a .664 (or minus 0.28%) drop in the CPI-W. Since the cost of living did not increase, there will be no adjustment to the New Jersey minimum hourly wage on January 1, 2016 (State of New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Public Notice, 2016 Minimum Wage, September 21, 2015, http://lwd.dol.state.nj.us/labor/forms_pdf/lwdhome/MinWage.pdf). See Sec. 23 of Article 1 of the New Jersey State Constitution.
North Carolina Military Leave

The state has amended its military leave law to extend National Guard reemployment rights to members of the National Guards of other states, effective October 1, 2015 (Session Law 2015-161 (H. 254), L. 2015).

North Carolina Recordkeeping

Effective January 1, 2016, any person who intentionally gains access to the nonpublic areas of another's premises and engages in an act that exceeds the person's authority to enter those areas is liable to the owner or operator of the premises for any damages sustained. For the purposes of this law, an act that exceeds a person's authority to enter the nonpublic areas of another's premises includes an employee who enters the nonpublic areas of an employer's premises for a reason other than a bona fide intent of seeking or holding employment or doing business with the employer and thereafter without authorization captures or removes the employer's data, paper, records, or any other documents and uses the information to breach the person's duty of loyalty to the employer (Session Law 2015-50 (H. 405), L. 2015).

North Dakota Violence in the Workplace

The state has amended its definition of “stalking” to include the unauthorized tracking of a person's movements or location through the use of a global positioning system or other electronic means that would cause a reasonable person to be frightened, intimidated, or harassed and which serves no legitimate purpose (H. 1321, L. 2015).

Ohio Minimum Wage

The minimum wage in Ohio will not increase in 2016, but instead will remain at the current minimum wage rate of $8.10 per hour for non-tipped employees and $4.05 per hour for tipped employees, the Ohio Department of Commerce announced on September 25. The minimum wage applies to employees of businesses with annual gross receipts of more than $297,000 per year.

For employees at smaller companies with annual gross receipts of $297,000 or less per year after January 1, 2016, and for 14- and 15-year-olds, the state minimum wage is $7.25 per hour. For these employees, the state wage is tied to the federal minimum wage of $7.25 per hour, which requires an act of Congress and the President’s signature to change.

The Constitutional Amendment passed by Ohio voters in November 2006 states that Ohio’s minimum wage shall increase on January 1 of each year by the rate of inflation. The state minimum wage is tied to the federally determined Consumer Price Index (CPI-W) for urban wage earners and clerical workers for the 12-month period prior to September. This national CPI-W index declined 0.3 percent over the 12-month period from September 1, 2014 to August 31, 2015. The Constitutional Amendment states that the minimum wage level shall increase at the rate of inflation; therefore, a decrease in the CPI-W index means that the Ohio minimum wage will remain the same as in the previous year (State of Ohio, Department of Commerce, News Release, September 25, 2015). See Section 34a of Article II of the Ohio Constitution.

Oklahoma Background Checks

The state has amended its background check law with respect to medical foster homes, effective November 1, 2015 (S. 115, L. 2015).

Also, the state has amended the background check provisions for out-of-state teachers (S. 20, L. 2015).
Oregon Health Insurance Benefit Coverage

The state has amended its maternity coverage law with respect to gender-neutral language (Ch. 629 (H. 2478), L. 2015).

Oregon Minimum Wage

The minimum wage in Oregon will not increase in 2016.

Despite overall rising housing, child care and other household costs, the state minimum wage will remain the same at $9.25 per hour in 2016, Oregon Labor Commissioner Brad Avakian announced on September 16.

Each year, Commissioner Avakian calculates the minimum wage by measuring the increase to the Consumer Price Index (CPI), a federal figure published by the United States Bureau of Labor Statistics to track prices for a fixed “market basket” of urban goods.

The annual wage adjustment is calculated each September for the following calendar year, based on any increase during the previous 12 months in the U.S. City Average Consumer Price Index for All Urban Consumers for All Items. Since the cost of living as measured August 2014 to August 2015 did not increase, the minimum wage for Oregon will not be adjusted and will remain at the current $9.25 per hour (State of Oregon Bureau of Labor and Industries (BOLI) Press Release, September 16, 2015, http://www.oregon.gov/boli/SiteAssets/pages/press/09.16.15_Avakian%20announces%202016%20minimum%20wage%20increase.pdf).

Pennsylvania Child Labor

The Child Labor Act has been amended to provide that an individual who is at least 12 years of age may be employed as a youth sports official and is not required to obtain a work permit. Youth sports officials who are 12 and 13 years of age shall be subject to the same work hour limitations established in Section 3 for individuals who are 14 and 15 years of age. “Youth sports official” is defined to mean a minor who enforces the rules and supervises the participants of a youth sporting event, including, but not limited to, an umpire or referee (Act 44 (H. 315), L. 2015, enacted October 7, 2015, and effective 60 days from the date of enactment).

Washington Minimum Wage

Washington state’s minimum wage will stay the same in 2016—$9.47 per hour—because the national Consumer Price Index did not increase, the state Department of Labor and Industries announced on September 30.

Changes to the minimum wage are based on the nationwide Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the 12-month period ending each August 31. According to the federal Bureau of Labor Statistics, the CPI-W decreased 0.3 percent between August 2014 and August 2015.

The Department of Labor and Industries announces the state’s minimum wage each year in September as required under Initiative 688, which Washington voters approved in 1998. Under the law, the minimum wage cannot be decreased.

Washington’s minimum wage applies to workers in both agricultural and non-agricultural jobs. Youth ages 14-15 may be paid 85 percent of the adult wage, $8.05 per hour (Washington State Department of Labor and Industries News Release, September 30, 2015, http://lni.wa.gov/News/2015/pr150930a.asp).
Wyoming Unemployment Insurance

For 2016, the taxable wage base in Wyoming will be $25,500. This is an increase of $800 over the taxable wage base amount of $24,700 that was applicable in 2015.

Important Reminder!

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 additional requirements imposed on employers by 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 December 2015, January 2016, and February 2016 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 December 2015, January and February 2016

- **December 15, 2015** – deadline for providing the Summary Annual Report (SAR) for calendar year plans that extended their Form 5500 filing for 2 ½ months.

- **December 31, 2015** – deadline for annual notices including CHIPRA and the Women's Health and Cancer Right Act unless those notices were included as part of annual enrollment.

- **December 31, 2015** – deadline for self-insured non-federal governmental plans to provide HIPAA opt out notice to employees.

- **January 15, 2016** – first payment of Transitional Reinsurance Contributions due.

- **January 30, 2016** – quarterly payment of Michigan Health Insurance Claims Assessment

- **February 1, 2016** (because January 31, 2016 is a Sunday) – due date to provide Form W-2 Wage and Tax Statement, Form 1095-B Health Coverage (by certain self-insured health plans), and Form 1095-C Employer-Provided Health Insurance Offer and Coverage (by applicable large employers) to employees. (Note: The deadline to provide Form 1095-B or 1095-C may be extended by a maximum of 30 days by sending a letter to the IRS.)

- **February 29, 2016** – deadline to submit paper copies of Forms 1094-B and 1095-B (reports from insurers and certain self-insured plans on Minimum Essential Coverage provided in 2015) and Forms 1094-C and 1095-C (reports by Applicable Large Employers on offers of coverage to full-time employees in 2015) to IRS. (Electronic filing deadline is March 31, 2016.) Employers who are unable to file Forms 1094-B and 1095-B, or Forms 1094-C and 1095-C with the IRS by the applicable deadline may apply for an automatic 30-day extension by completing Form 8809 by the filing deadline to avoid incurring penalties.
• **February 29, 2016** – deadline for disclosure of creditable/noncreditable drug coverage to CMS on the CMS website.

**2016 Medicare Values**

Updated values for Medicare are generally released in early to mid-November each year. Updated values for Medicare Part D (drug coverage) are released in May.

**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
  - Medicare 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.*

Our list focuses on major federal and, in some cases state, requirements that will impact a significant number of employers. It is not intended to be a comprehensive list.

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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.