Healthcare Reform Updates:

April 26, 2016
March 10, 2016

Technical Bulletins:

DOL Proposes New Claim and Appeal Rules for Disability Benefits
March 17, 2016

Supreme Court Sends ERISA Plans Racing to the Courthouse for Subrogation Recoveries
February 2, 2016

Recorded Webinars:

Consumer-Driven Health Plan Considerations
March 30, 2016

ERISA Fiduciary Obligations
February 29, 2016

Coming Soon!

Recorded Webinars:

The Basics of SBCs – May 2016

ADDITIONAL RESOURCES

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Health & Welfare Benefits

IRS Releases 2017 HSA Dollar Values
Arthur J. Gallagher & Co.

Don’t Skimp on the HIPAA Security Risk Analysis
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Care Coordination: Providers, Payers & Plans Put Consumer First
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New York State Requires Employers to Provide Paid Family Leave
Arthur J. Gallagher & Co.

San Francisco Enacts Paid Family Leave Ordinance
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What’s New in State Laws
CCH, Incorporated

Important Reminder!

Upcoming Deadlines
Arthur J. Gallagher & Co.
IRS Releases 2017 HSA Dollar Values

The IRS recently released the 2017 inflation adjusted amounts for Health Savings Account (“HSA”) and qualified high deductible health plans required in order to be HSA eligible. The limits for deductibles, out-of-pocket limits, and annual contributions will be of particular interest to employers with existing high deductible medical plans and those considering implementing high deductible health plans. The only change is a $50 increase in the maximum annual contribution for individuals with self-only coverage. The 2017 HSA limits are:

<table>
<thead>
<tr>
<th></th>
<th>Self-Only Coverage</th>
<th>Coverage Other Than Self-Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Out-of-Pocket Maximum</td>
<td>$6,550</td>
<td>$13,100</td>
</tr>
<tr>
<td>Minimum Annual Deductible</td>
<td>$1,300</td>
<td>$2,600</td>
</tr>
<tr>
<td>Maximum Annual Contribution*</td>
<td>$3,400</td>
<td>$6,750</td>
</tr>
</tbody>
</table>

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

Note: The Patient Protection and Affordable Care Act (“PPACA”) limits the out-of-pocket maximum employers sponsoring non-grandfathered medical plans. For 2014, the limit was equal to the out-of-pocket maximum for HSAs. However, beginning in 2015, the maximum out-of-pocket limits for non-grandfathered medical plans and high deductible health plans began to diverge. That divergence continues in 2017. The out-of-pocket maximums for HSA-compatible high deductible health plans will remain at $6,550 for self-only coverage and $13,100 for other than self-only coverage, while the out-of-pocket maximums that may be used under a non-grandfathered health plan in 2017 will be $7,150 for self-only coverage and $14,300 for other than self-only coverage.

More information on indexed cost-sharing values under PPACA is available in our Healthcare Reform Update newsletter article “Final 2017 Notice of Benefit and Payment Parameters Addresses Range of Issues.” [Click here](#) for a copy.

Don’t Skimp on the HIPAA Security Risk Analysis

Approximately fifty percent of the recent Resolution Agreements¹ between HIPAA covered entities and the Department of Health and Human Services’ Office for Civil Rights (“OCR”) involve failures to conduct a thorough Risk Analysis as required by the HIPAA Security Rule. OCR’s Phase 2 audit program is yet another

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¹ A Resolution Agreement is a contract signed by OCR and a covered entity under which the covered entity agrees to perform certain obligations (e.g., implement written policies and procedures, train staff) and make reports to OCR, generally for a period of two or three years.
reason to ensure that your organization has completed a current Risk Analysis because entities chosen either for a full audit or a HIPAA Security Audit will be asked to show evidence of a documented Security Risk Analysis.

A Security Risk Analysis is intended to be an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information (“ePHI”) held by a covered entity, such as an employer-sponsored health plan. Below, we briefly outline the major steps in conducting a HIPAA Security Risk Analysis using the framework from the National Institute of Standards and Technology’s Special Publication 800-30 Rev. 1: “Guide for Conducting Risk Assessments.”

**Risk Analysis Process**

**Step One:** Identify the scope of the Risk Analysis by determining which of your benefits are subject to HIPAA and who can or does access ePHI on behalf of your health plan.

**Step Two:** Gather data about who accesses ePHI on behalf of your organization and where it is accessed, maintained, or transmitted, within and to and from individuals outside of your organization on behalf of your health plan.

**Step Three:** Identify and document potential threats (natural, human, structural, or environmental) and vulnerabilities (such as a failure to use strong passwords). This step may require the assistance of an internal expert or third-party vendor.

**Step Four:** Assess security measures or controls currently in place to protect ePHI such as the use of secure web portals to exchange ePHI with carriers or third-party administrators.

**Step Five:** Estimate the likelihood that a threat may actually become a security incident, such as a hacking incident, a misdirected email, or a loss of ePHI due to a natural disaster. You may assign a number based on a scale of 1 through 4 or 1 through 10, with the higher numbers representing a higher likelihood. For example, a hurricane may impact your area once every five years, but a misdirected email may occur multiple times per month. The misdirected email thus is more likely to occur than the hurricane and would receive a higher score.

**Step Six:** Determine the level of impact from a threat; the level of impact is the degree of harm that can be expected to result from a particular unauthorized disclosure, modification, disruption, destruction, or loss of ePHI. You may also assign a numeric value to impact on a scale of 1 through 4 or 1 through 10, with higher values representing a higher impact. For example, a hurricane may cause a loss of electrical power and telephone communications for a period of three days, which makes ePHI unavailable during that period. The hurricane would thus have a high impact value assigned.

**Step Seven:** Determine the level of risk to confidentiality, integrity, and availability of ePHI by taking the likelihood that a threat will occur and weighing that against the impact of the threat. If you assigned numeric values in Steps Five and Six, you can multiply these together to create an overall risk score. The higher the overall risk score, the more urgent the issue.

**Step Eight:** Document. Document. Document. The HIPAA Security Rule requires a Risk Analysis to be documented, but does not require a specific format. However, at a minimum, your organization should create a report or chart showing threats, vulnerabilities, threat sources, the likelihood of each threat event occurring, the impact of any potential security incident, current controls and security measures or controls that should be followed to eliminate or reduce the associated risk to an appropriate level.

**Step Nine:** Repeat. A Risk Analysis is not intended to be performed once and never again. Risk Analyses are intended under the Security Rule to be periodic evaluations. An updated Risk Analysis should be performed if a
change in operating or business environment occurs, and if no such changes occur, then an updated Risk Analysis should be performed, as a rule of thumb, no less than every three years.

**Action Steps for Employers**

Many employers have already taken steps needed to comply with HIPAA’s requirements such as creating written Privacy and Security policies and procedures and conducting workforce member training, but may have overlooked the need to conduct a periodic Risk Analysis. If you do not have a current Risk Analysis, below are some action items to consider for your health plan:

- Create a Risk Analysis team, including individuals from your Human Resources or Benefits team, your HIPAA Security Officer (an individual in IT), and, potentially, an outside consultant.
- Follow the process outlined above to generate a draft risk report.
- Review the draft risk report with your Risk Analysis team.
- Review your organization’s compliance with the HIPAA Security Rule’s required and addressable safeguards and document your compliance.
- Revise the risk report as necessary to identify and prioritize areas for new or improved safeguards.
- Incorporate the risk report into an overall Risk Management Report.
- Repeat as necessary.

The best time to conduct a Risk Analysis is **before** you receive an audit notice from the OCR or you learn that your health plan has had a Breach (i.e., unauthorized access or disclosure of PHI). So, if you haven’t conducted a Risk Analysis yet, the time to get started is now.

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**Care Coordination: Providers, Payers & Plans Put Consumer First**

_Thompson Publishing Group_

Health plans and their sponsors should pay close attention to the health care providers that are improving consumer experiences and clinical outcomes, and take note of how they are doing it.

In a system where it’s every provider for himself, provider have little incentives to make it easier for patients to get care, to improve quality, or to publish quality ratings that help patients make choices. But when an integrated care system is in place, it is much easier to rate outcomes and patient satisfaction, health care executives told an April 12 session of the World Health Care Congress.

Opportunities for improvements in cost, time and convenience exist in (1) scheduling, (2) making test results available, (3) consultations and (4) diagnosing illnesses.

First steps to personalized care include enabling more consultations between physician and patient to take place via telephone, secure e-mail, image and video, according to Robert Pearl, MD, CEO of the Permanente Medical Group. Pearl said his organization, Kaiser Permanente, has performed 13 million virtual physician visits using these communication methods in the last 12 months.
A second example is storing a patient’s DNA samples in the provider’s electronic health record to figure out the best care for a given individual. This results in cost savings, more patient convenience and better quality of care, Pearl said.

But under the fee-for-service payment system, providers are not adopting the consumer improvements that arise from information technology, communication and innovative thinking like other economy sectors have. And patient care continues to be delivered at times and places that suit providers exclusively. The evolution to delivering care when and where it is best for the patient is long overdue, the speakers agreed.

**Patient-centered Innovations**

Improving care delivery and results requires structures that integrate several providers and change what providers are getting paid for, Pearl said, “because if every physician is trying to maximize their own revenue, then you can’t leverage things.”

“If what you’re paying for is each unit in the FFS model, then you’re really in trouble,” Pearl added. For example, if phone consultations are not billable, they will rarely happen — no matter how good they are for the patient — because they don’t fit in the provider’s revenue model. So health plans want to look for things like electronic medical records, mobile technologies for patient management and a strong leadership structure.

The source of consumer guidance should not be just the health plan, but health plans in partnership with hospital and other institutional partners to enhance patient choice and experience. Such partnerships help develop systems that enable patients to log on to a portal to find out information about cost, quality, recovery times and providers with the best outcomes, said Donald (Skip) Trump, MD, CEO of Inova Cancer Institute.

Patients have been asking for more convenient ways of scheduling and receiving care. Practices and health systems are seeing that these are worth it, because patients who have the opportunity to get care at 11 p.m. will not have to go to an emergency room at greater cost to insurers and the health system in general, added Ryan Petrizzi, vice president for consumer markets and product development at Amerihealth New Jersey.

Consumers must be disabused of the notion that higher cost and more inconvenient care are linked to better outcomes, Pearl said. Kaiser does that by controlling a large number of providers, and setting patient out-of-pocket fees at the same rate across the board. Then quality is honed though a centers-of-excellence model, which holds that providers that perform high numbers of the procedures (such as heart repair and transplants) cure patients better and faster, achieve fewer complications and save on costs.

Finally, price breaks are given to patients who choose to use telemedicine, emails and phone calls. Patients pay zero copays if they select the video, email or even telephone options, Pearl said. This is “much faster, from your physician, and in a way that’s more convenient for the patient.”

**Customizing Cancer Treatment**

One important form of personalized care is having all aspects of cancer care (radiation, chemotherapy, rehabilitative therapy and other consultations) being delivered in a single place. Patients sick with cancer are better off not having to travel all over the community to get interdisciplinary care, Trump said. It’s also good to broaden the types of professionals participating in the care, such as adding psychosocial counseling to cancer treatment. Another example is a home visits to address the dietary aspects of cancer and diabetes, Pearl and Trump agreed.
Secondly, genomic analysis can help individualize treatment — for example, by characterizing patient tumors to customize treatments and choose correct medications. Also, analyzing the genetic marks of healthy tissue helps to predict who is at risk, so doctors can tailor lifestyle changes and preventive approaches, Trump said.

Opportunities to streamline care are not always obvious, but they can be identified by listening to patient preferences. For example, Pearl learned that one-third of Kaiser cancer patients are willing to get surgery without meeting the surgeon in person first. The system also found that 70 percent of skin rashes can be diagnosed using images or video, without having an office visit.

A Step-By-Step Guide for Implementing a Successful Workplace Wellness Program
Employee Benefit Plan Review
Olivia Curtis

According to the U.S. Centers for Disease Control and Prevention, individual employee health can have a significant impact on the productivity and wellbeing of an entire organization. Organizations that invest in not only the at-work health of their employees by putting into place safety and accident prevention procedures, but also their employees’ overall health and wellness by implementing workplace wellness programs, enjoy significant benefits, including lower rates of employee absenteeism, increased employee productivity levels and reduced health care costs.

Although much of the discussion about workplace wellness programs seems to be dominated by the latest outrageous-sounding initiatives from companies like Google, the idea has been gaining traction with employers in recent years. While almost all of the respondents to a 2012 study published by the National Small Business Association said the health of their employees was important, about 40 percent said their business has never had nor tried to implement a workplace wellness program. A 2013 study conducted by the RAND Corporation, however, found that about half of all U.S. employers offered wellness initiatives, and a 2015 study released by the Society for Human Resource Management found that more than two-thirds of U.S. employers now offer wellness programs as part of their benefits package.

IMPLEMENTING A WORKPLACE WELLNESS PROGRAM

Implementing a workplace wellness plan is not always as simple as asking employees to increase physical activity or stop eating junk food, however. The more comprehensive and multi-faceted a company’s wellness program is, the more of an impact it will have on its workforce, and the greater the return on investment when it comes to factors like absenteeism, health care costs, and employee productivity.

When considering how to start an employee wellness program, employers should carefully consider the amount of resources they can dedicate to the project. This, of course, will likely vary greatly depending on the size of each employer’s workforce as well as their motivations for starting a wellness program. A company with a large but relatively young and healthy employee population may see a wellness program as a recruiting and company culture tool, but not necessarily as a big cost-saving mechanism. An organization with a smaller but generally older workforce with more chronic health issues that are driving up premium costs may be in more dire need of a wellness plan that targets and combats the causes of these conditions. These two businesses have completely different workforces and needs so the design of their workplace wellness plans would be completely different as well.

No matter what an employers’ budget, needs, or employee demographics, the general process of designing, implementing, and administering a workplace wellness program remains relatively similar. Companies who
carefully follow each step of this process are not only more likely to enjoy higher rates of employee participation and adoption, but also to enjoy a smoother and overall more successful wellness program.

**STEP 1: IDENTIFY THE GOALS OF THE PROGRAM**

The first step of any successful initiative is to identify the primary goals of the program. When it comes to workplace wellness, employers may have a number of goals such as improving employee morale or unity, decreasing rates of diabetes or high cholesterol amongst their employee population, or reducing the incidence of tobacco users. By defining the objectives of the program early on in the process, employers can ensure that any wellness initiatives and events that are developed later are directly related to those goals.

**STEP 2: COLLECT RELEVANT EMPLOYEE DATA**

Before actually reviewing and developing the elements of their wellness programs, employers should find out what their employees’ current health behaviors are. This does not have to be complicated. Employers can find out all the information they need to know by putting together a simple online survey that asks questions about their physical activity, nutrition, sleep, stress, and any number of other health factors, as well as what kind of incentives would appeal most to them. In order to avoid risk of HIPAA noncompliance, employers should make the survey anonymous and completely voluntary. Doing so will help the organization steer clear of any privacy violations while still getting the information they need to design an effective wellness program. Asking employees what their preferences are will take some of the guesswork out of the planning process, and understanding their current health behaviors will enable employers to more easily choose the most appropriate interventions.

**STEP 3: FORM THE RIGHT TEAM WITH THE RIGHT PEOPLE**

A wellness team provides the muscle to get things done, the ideas to keep things fresh, and the influence to keep the program strong. This team should be made up of people from different departments, of different levels of health, and with different interests. Having a diverse team increases the chances that a wellness program will have something for everyone. This team support also will aid in the longevity of the program by sharing the workload so one person does not become overwhelmed.

**STEP 4: DEVELOP THE PROGRAM**

Workplace wellness programs tend to include a wide range of incentives and activities. By having a greater number of ways to participate, companies hope to appeal to a greater percentage of their workforces. In addition, adding incentives that reward employees for taking part in the program or meeting certain objectives is a tried-and-true method of increasing participation levels. Many employers choose to offer financial incentives (gift cards, cash, extra vacation hours, contributions to employees’ health savings accounts, or lower insurance premiums), but employers that do not have the budget for these kinds of incentives can also explore alternative incentives like a certificate, company merchandise, or formal recognition from the CEO for achieving a specific health goal.

There are a number of activities that have been proven to positively impact employee health, chief among them being health screenings, health education events, and intervention or prevention initiatives.

Two popular health-screening options include biometric screenings and health risk assessments (HRAs). Biometric screenings are actual medical assessments that are administered by a licensed health professional, and measure a number of health factors, including cholesterol, blood pressure, body mass index (BMI) and glucose levels. HRAs are self-administered assessments that can either be conducted online or on paper. HRAs ask respondents to provide key information about their current health status, including the amount of physical activity they regularly get, for example.
Health education events or programs require a bit more effort and resources as they are usually organized or paid for by employers. Popular health education options include wellness fairs, seminars and individual counseling sessions with a licensed nutritionist or dietician.

Intervention and prevention initiatives are the ones that involve the most time and money spent by an employer, because these kinds of programs are aimed at changing employees’ health and lifestyle habits and usually require the most enticing incentives that will effectively motivate employees to participate. Popular options include weight-loss or physical activity challenges.

The most successful workplace wellness programs with the greatest ROI will include each of these three kinds of activities.

**STEP 5: COMMUNICATE WITH EMPLOYEES**

Employees cannot take advantage of a program they are not aware exists. Employers should put considerable effort into communicating the launch of their workplace wellness programs, sending out companywide emails, hanging flyers around the office, and announcing it in staff meetings. They may also want to consider having the initial communication about the program come from someone in a position of authority, such as the CEO or another executive. This will give the program more weight and encourage employees to take it more seriously. Once the program has been successfully rolled out, the communication can be taken over by someone else within the organization, such as the HR manager or another administrator.

**STEP 6: EVALUATE THE RESULTS**

Constant measuring and evaluation are the final keys to a successful workplace wellness program. Without the careful evaluation and comparison of results to program goals, employers won’t be able see what’s working and what’s not. Religiously measuring the effects of a wellness program’s progress better enables program administrators to demonstrate and prove the value of the program to company management, ensuring that the program is renewed year after year.

Knowing how to evaluate a wellness program’s success is often a stumbling block in and of itself for many employers, particularly when the program is in its infancy. For the first few years, wellness experts generally agree that employers should simply focus on measuring participation and satisfaction amongst employees. This can be done by tracking how many employees participate in each component of the program and then asking them (perhaps through an online survey) what they liked, what they didn’t like, and so on.

After a program has been in place for two or three years, employers can then start looking at more outcome-oriented results, such as changes in health factors or behaviors and absences, as well as increases in employee productivity and job satisfaction. These metrics can be measured in a variety of ways, including through biometric screenings, HRAs, satisfaction and self-reported behavior change surveys, or culture audits.

After three or four years, employers should then conduct a claims analysis to see what effect, if any, the program has had on medical claims and associated costs. This analysis should focus on both the actual number and types of claims (that is, hospitalizations and outpatient procedures), as well as the utilization of benefits that are encouraged through the wellness program, such as preventive care and other screenings.

**CONCLUSION**

While implementing a workplace wellness program does often require a significant up-front investment on the part of the employer, creating a culture of wellness within your organization is one of the most impactful things a company can do for its employees. Employers who stick with their wellness initiatives will not only experience lower healthcare costs and employee absence rates, they will also find that their employees will tend
to be happier, more engaged, and more productive workers, which is what every employer wants from their workforce.

Olivia Curtis is a wellness specialist for G&A Partners, a human resources outsourcing firm. A certified personal trainer and fitness nutritionist, Ms. Curtis may be reached at ocurtis@gnapartners.com.
DOL Releases New FMLA Guide

Arthur J. Gallagher & Co.

The Department of Labor ("DOL") recently released a new publication – "The Employer's Guide to the Family and Medical Leave Act." The purpose of the guide is to provide employers with basic information about the employer’s obligations under the Family and Medical Leave Act ("FMLA"). The guide is structured to follow the FMLA process from the initial determination that an employer is subject to the requirements of the FMLA to what happens at the end of the leave, as well as, what type of documentation must be maintained. It is designed to be user friendly and includes a number of graphic illustrations, flowcharts and timelines. Other helpful features are short paragraphs entitled “Did You Know” which responds to some common questions and a book icon with a clickable link to the pertinent section of the FMLA regulations. Many of the chapters indicate how FMLA may impact different types of employers such as private sector, public agency, schools, and the federal government.

The guide is organized into seven chapters:

1. **Covered Employers and General Notice Requirements** – a summary of the rules governing which employers are subject to the FMLA, the basic requirement for displaying the FMLA poster, and the requirement to provide general notice to employees.

2. **Employee Requests for Leave** – a description of the process once an employee requests leave - including the content and timing of the employee’s notice, determining if the employee is eligible for FMLA leave, and the employer’s notice obligations.

3. **Qualifying Reasons for Leave** – a short discussion of the different types of circumstances that qualify for FMLA leave including a chart clarifying what qualifies as a “serious health condition.”

4. **Certification Process** - a description of the process that covers medical certification and timing, including employer and employee responsibilities and what actions an employer may take if a medical certification is incomplete or insufficient.

5. **Military Family Leave** – a summary of the how the process works for military family leave including qualifying exigency leave. This chapter includes a description of how to calculate the military leave time frames along with an illustrative timeline.

6. **During an FMLA Leave** – a description of the process for designating leave as FMLA leave including content of the designation notice, rules for scheduling and taking FMLA, how to calculate FMLA leave, the applicable rules for the maintenance of health benefits during an FMLA leave, what happens at the end of the leave, and a discussion of FMLA’s recordkeeping requirements.

7. **FMLA Prohibitions** – a summary of things an employer may not do since they may interfere with an employee’s FMLA rights.

While the guide does not tackle complex issues that may arise when administering FMLA leaves, it does provide basic information on the requirements of the FMLA. Employers may want to download a copy which could be used as a training aid for new HR staff members. This guide may also be helpful in describing the
basic rules to individuals in management positions, such as supervisors, who may be involved in employee requests for leave. Finally, an April 2016 version of the FMLA poster is available on the DOL’s website.

Information on FMLA is available on the DOL website at:

- Main FMLA Page – http://www.dol.gov/whd/fmla

6 Best Practices for Managing Intermittent Leave

Benefits Pro

Proper management of intermittent leave is essential, as it can reduce lost employee productivity and help employers avoid the risk of fines, audits, or legal action that can result from improperly managed leave. Fortunately, there can be a balance between helping employees take time off work to manage their health and/or family matters, and fulfilling legal obligations.

When it comes to managing intermittent leave, the process may be confusing to human resources (HR) managers and the uncertainty of how to properly manage leave can create headaches and potential compliance nightmares.

To ensure your clients are helping employees while complying with Family and Medical Leave Act (FMLA) regulations, encourage them to take advantage of the following best practices for managing intermittent leave, which could help eliminate confusion.

Enforce FMLA’s employee notice requirements

For a foreseeable leave, such as a scheduled surgery, an employee must provide 30 days’ notice or provide notice as soon as possible and practical under the circumstances. For an unforeseen leave, such as a severe illness, an employee must provide documentation as soon as is possible and practical.

Enforce call-in procedures to see if absences qualify for FMLA protection

When an employee is claiming an absence under intermittent leave, consider asking the following questions to garner enough information to determine if the leave qualifies for FMLA leave:

- What job duties are you unable to perform?
- Have you previously taken a leave for this condition?
- When are you expected to return to work?

Track use carefully

Proper tracking enables employers to provide just the right amount of FMLA leave an employee is entitled to, and can help employers detect patterns that may suggest misuse.
Require completed medical certifications

FMLA permits employers to require employees to provide completed medical certifications within 15 days of the employer’s request, barring special circumstances. It’s important for employers to ensure certifications are complete and provide sufficient information to understand the employee’s leave requirements.

If the certification isn’t complete or doesn’t provide sufficient information, employers can have the employee obtain any missing information or obtain clarification of vague or confusing responses. If the employee fails to comply, someone other than the employee’s direct supervisor can reach out to the employee’s health care provider to obtain the information needed.

Ask for re-certifications

Employers may request recertification to determine whether FMLA leave should be extended or if a significant change in an employee’s leave usage is the result of a supported change in a medical condition. However, there are parameters for doing so.

An employee’s recertification cannot be requested more often than every 30 days. If the initial medical certification indicates that the duration of the condition will last longer than 30 days, an employer must wait until that duration expires before requesting a recertification. However, employers are allowed to request a recertification every six months, regardless of the stated duration. An employer also can request a recertification in less than 30 days if one of the following applies:

- The employee requested their leave be extended
- Circumstances have changed significantly (for instance, if absences increased from two days per month to 10 days per month)
- You learn of information that casts doubt on the employee’s reason for the leave

Consider obtaining a second (or third) opinion

If an employer doubts the validity of a certification, the employer can request a second opinion at the employer’s expense. If the second provider doesn’t agree with the initial certification, then an employer may require a third opinion. The employer and employee must mutually agree on a third provider, who will render the tie-breaker opinion that will be final and binding.

Following these six best practices for proper management of intermittent leave can help your clients avoid the risk of fines, audits or legal action resulting from improperly managed leave.

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Annual SHRM Survey Reveals Employee Job Satisfaction Highest in 10 Years

CCH, Incorporated

More U.S. workers are satisfied with their jobs than at any time since 2005, the Society for Human Resource Management (SHRM) announced April 18. In the annual Employee Job Satisfaction and Engagement Survey conducted in late 2015, SHRM found that 88 percent of employees said they were satisfied overall with their job (37 percent reported being very satisfied, and 51 percent somewhat satisfied).
“What a difference a few years — and an improved economy — make in how workers view their jobs,” said Evren Esen, director of SHRM’s survey programs, who noted that the percentage of satisfied employees has been trending up since 2013. “As the economy stabilized after the recession, employers began to focus again on factors that impact retention and employees found flexibility to seek out more compatible positions if they were ready to move on to new challenges. The result: workers are happy with their jobs.”

For the second year, the most important contributor to employee job satisfaction was “respectful treatment of all employees at all levels” (cited by 67 percent of respondents). Said Esen, “Employees consider culture and connection to be of utmost importance. Feeling appreciated for their time and efforts creates a bond between employees, management and their organization.”

Other top contributors were: compensation/pay, overall benefits, job security, opportunities to use skills and abilities, and trust between employees and senior management. Compensation has increased in importance. Sixty-three percent of respondents cited it as a contributor to satisfaction, the highest level since 2006.

Workers’ priorities and levels of satisfaction were similar across generations. Eighty-six percent of Millennials indicated being satisfied, and similar percentages were reported for Generation X (88 percent) and Baby Boomers (90 percent). In an accompanying analysis, “Millennials: Misunderstood in the Workplace?,” SHRM researcher Christina Lee wrote, “Stop the stereotypes. … Although Millennials may have slightly different mindsets, on the whole, they tend to place significance on several of the same aspects of job satisfaction that Generation Xers and Baby Boomers do.” Her advice to employers: “When designing training and development programs or benefits strategies, keep in mind other elements such as career level and life stage — not just age — to build an approach that is appropriate for various groups of employees.”

Employee engagement. The annual survey also examined the connection and commitment employees have to their work and organization. Findings show employees were moderately engaged with their jobs, similar to previous years, although workers in lower-level jobs appeared to be less engaged. Among engagement findings:

- 77 percent of respondents were satisfied with their relationships with co-workers and opportunities to use skills and abilities.
- 89 percent were confident they could meet their work goals.
- 70 percent felt encouraged to take action when they saw a problem or opportunity in their organization.


Retirement

Retirement Confidence Stable, But Preparations Still Lag

Employee Benefit Research Institute

WASHINGTON, DC - While overall confidence about being able to afford a comfortable retirement has plateaued among American workers, preparations to save for retirement are still lagging, according to the 2016 Retirement Confidence Survey (RCS) by the nonpartisan Employee Benefit Research Institute (EBRI) and Greenwald and Associates.

The 2016 RCS, the 26th annual survey and the longest-running study of its kind, finds that the recovery in
retirement confidence from the post-2008 economic recession is continuing to hold. Specifically, the percentage of workers very confident about having enough money for a comfortable retirement, at record lows between 2009 and 2013, increased from 13 percent in 2013 to 22 percent in 2015, and has leveled off at 21 percent in 2016. Also, those somewhat confident increased from 36 percent in 2015 to 42 percent in 2016, while the percentage not at all confident decreased from 24 percent in 2015 to 19 percent in 2016, the RCS found.

Workers reporting they or their spouse have money in a defined contribution (DC) plan or individual retirement account (IRA) or have benefits in a defined benefit (DB) plan from a current or previous employer are more than twice as likely as those without any of these plans to be very confident (26 percent with a plan vs. 10 percent without a plan). Additionally, workers without a plan are more than three times as likely to say they are not at all confident about their financial security in retirement (11 percent with a plan vs. 38 percent without a plan).

“Among those who are confident about retirement, it’s overwhelmingly among those who have a retirement plan,” said Jack VanDerhei, EBRI research director and co-author of the 2016 RCS. “Even if you control for discrepancies in age and income, the likelihood that a respondent is either somewhat or very confident that they will have enough money to live comfortably throughout their retirement years is 22 percentage points higher for those who have an IRA, DC plan, and/or DB plan than their counterparts without a retirement plan.”

How are those who aren’t saving enough planning to cope with the shortfall? By either saving more later or working longer, they say—even though many retirees say they were unable to work longer because they were forced to leave the workforce earlier than planned (such as health problems or disability).

Among Americans who know they are saving less than they need for retirement, about 20 percent say they will have to save more later, while 15 percent say they will have to work in retirement and 14 percent say they will have to retire later.

Among the major findings of the 2016 RCS:

Workers

- Assets: A sizable percentage of workers say they have no or very little money in savings and investments. These workers without savings are concentrated among those without a retirement plan. Among RCS workers providing this type of information and not having a retirement plan, 83 percent report that the total value of their household’s savings and investments, excluding the value of their primary home and any DB plans, is less than $10,000. In contrast, 35 percent of workers with a retirement plan say their value of these assets is $100,000 or more.

- Saving: The RCS finds that the percentage of workers who reported they and/or their spouse had saved for retirement peaked in 2009 (to 75 percent), but declined to the mid- to high-60 percent level thereafter and remains at that level (69 percent in 2016).

- Debt: The presence of debt has a significant impact on workers’ confidence. In 2016, just 9 percent of workers who describe their debt as a major problem say they are very confident about having enough money to live comfortably throughout retirement, compared with 32 percent of workers who indicate debt is not a problem. On the other hand, half of workers with a major debt problem are not at all confident about having enough money for a financially secure retirement, compared with 12 percent of workers without a debt problem.
Retirement planning: Workers’ confidence that they are doing a good job of preparing financially for retirement continues to rebound from the low in 2013. While less than one-third (28 percent) indicate they lack confidence in their financial preparations for retirement and more than two-thirds indicate they are confident (28 percent very confident and 43 percent somewhat confident), less than half (48 percent) of workers report they and/or their spouse have ever tried to calculate how much money they will need to have saved so that they can live comfortably in retirement. More than a third of all workers (39 percent) simply guess at how much they will need to accumulate, rather than doing a systematic retirement needs calculation.

Retirees

Confidence: Retiree confidence in having enough money for a comfortable retirement, which historically tends to exceed worker confidence levels, continued to increase in 2016, reaching 39 percent who are very confident (up from 18 percent in 2013). The percentage not at all confident was 12 percent (statistically unchanged from 14 percent in 2013).

Debt: Retirees are more likely than workers to describe their level of debt as not a problem. Sixty-seven percent of retirees and 44 percent of workers indicate they do not have a problem with their level of debt.

Leaving the workforce: As before, the RCS finds a considerable gap exists between workers’ expectations and retirees’ experience about leaving the workforce. The percentage of workers who expect to retire after age 65 has increased, from 11 percent in 1991 to 37 percent in 2016; however, only 15 percent of retirees in 2016 said they actually retired after age 65 and many report they left the workforce for reasons beyond their control, such as health or changes at their company.

Full results of the latest RCS are published in the March 2016 EBRI Issue Brief, “The 2016 Retirement Confidence Survey: Worker Confidence Stable, Retiree Confidence Continues to Increase,” along with six RCS Fact Sheets, at online at www.ebri.org

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 work of EBRI is made possible by funding from its members and sponsors, which include a broad range of public, private, for-profit and nonprofit organizations. For more information go to www.ebri.org or www.asec.org


State Law Review

California Enacts Law Requiring “Embedded” Deductible, Out-of-Pocket Limits

Arthur J. Gallagher & Co

Late last year, California enacted AB 1305, requiring so-called “embedded” deductibles and out-of-pocket maximums in insurance policies issued, amended, or renewed in California. The act prohibits insurers from imposing a higher deductible and out-of-pocket limit on an individual simply because the individual is covered as a member of a family.
Small Group Market

For a non-grandfathered insurance policy that is issued, amended, or renewed on or after January 1, 2016* in the small group market, any individual covered under family coverage cannot have an out-of-pocket limit that is greater than the out-of-pocket limit for individual coverage under that policy.

**Example**: ABC Company offers a PPO plan with an OOP limit of $3,000 for self-only coverage and $6,000 for family coverage. Covered expenses are paid at 100% after the OOP limit is met.

**Conclusion**: As required by AB 1305, the plan must “embed” a $3,000 OOP limit for each individual covered under family coverage. Covered expenses would then be paid at 100% for an individual after the OOP limit is met by that individual.

In addition, if the family coverage includes a deductible, any individual within a family cannot have a deductible that is greater than the deductible limit for individual coverage under that policy.

**Example**: ABC Company offers a PPO plan with a deductible of $1,000 for self-only coverage and $2,000 for family coverage.

**Conclusion**: As required by AB 1305, the plan must “embed” a $1,000 deductible limit for each individual covered under family coverage.

If the coverage is a high deductible health plan with an HSA, and it includes a deductible for family coverage, the deductible for each individual covered under the family coverage will be the greater of:

- The minimum annual family deductible for a qualified high deductible health plan ($2,600 for 2016); or
- The deductible for individual coverage under the insurance policy.

**Example**: ABC Company offers a HDHP/HSA plan with a deductible of $2,000 for self-only coverage and $4,000 for family coverage.

**Conclusion**: As required by AB 1305, the plan must “embed” a $2,600 deductible limit (i.e., the greater of the $2,000 self-only deductible, or $2,600 which is the minimum annual family deductible for 2016 under an HSA-qualified HDHP) for each individual covered under family coverage.

Large Group Market

For a non-grandfathered insurance policy that is issued, amended, or renewed on or after January 1, 2016* in the large group market, any individual covered under family coverage cannot have an out-of-pocket limit that is greater than the out-of-pocket limit for individual coverage under that policy.

If a policy for family coverage that is issued, amended, or renewed on or after January 1, 2017 in the large group market includes a deductible, any individual within a family cannot have deductible that is more than the deductible for individual coverage under that policy.

For policies issued, amended, or renewed on or after January 1, 2017, if the coverage is considered a qualified high deductible health plan for HSA purposes, and it includes a deductible for family coverage, the deductible for each individual covered under the family coverage will be the greater of:

- The minimum annual family deductible for a qualified high deductible health plan ($2,600 for 2016); or
- The deductible for individual coverage under the insurance policy.
Potential Problem for HSA-Compatible High Deductible Health Plans

For employers with insured plans in California that want to offer an HDHP/HSA option, AB 1305’s out-of-pocket limit mandate for individuals with family coverage presents a dilemma for certain plan designs.

In order to comply with SB 1305, any individual covered under family coverage cannot have an out-of-pocket limit that is greater than the out-of-pocket limit for individual coverage under that policy. But if the out-of-pocket limit for individual coverage is lower than the minimum annual deductible required for family coverage under an HDHP ($2,600 for 2016), then the plan will fail to qualify as an HSA-compatible HDHP.

Example: ABC Company offers a high deductible health plan with an HSA. The HDHP has a $2,500 deductible and OOP limit for self-only coverage and a $5,000 deductible and OOP limit for family coverage. Covered expenses are paid at 100% after the deductible is met. As required by AB 1305, if the plan embeds the $2,500 self-only OOP limit for individuals covered under family coverage, that $2,500 limit will be less than the minimum annual HDHP deductible of $2,600 for 2016.

Conclusion: If benefits are paid after the $2,500 OOP maximum is met, but before the minimum annual deductible of $2,600 is met, the plan will not be a qualified HDHP for employees with family coverage and those employees will not be eligible to establish or contribute to an HSA.

In order to qualify as HSA-compatible family coverage, the employer in the example above would have to raise its self-only deductible/OOP limit to at least $2,600 for 2016.

*Because SB 1305 was enacted near the end of 2015, insurers were allowed to request a delay in the effective date of these changes until January 1, 2017 if they could demonstrate that compliance would be difficult to achieve for January 1, 2016.

New York State Requires Employers to Provide Paid Family Leave

Arthur J. Gallagher & Co.

On April 4, 2016, New York joined California, New Jersey, and Rhode Island as the fourth state to require employers to provide paid family leave to eligible employees. The law, which is touted as the most comprehensive of state paid family leave laws, was included as part of New York’s 2016-2017 state budget bill.

When does the law take effect?

The law will be phased in beginning January 1, 2018, with full implementation in 2021.

How much time can employees take?

Beginning January 1, 2018, employees will be entitled to up to eight weeks of paid family leave within a 52-week period. The maximum duration increases to 10 weeks as of January 1, 2019 and through calendar year 2020, and then to 12 weeks beginning January 1, 2021. Employers may require that paid leave under the New York program run concurrently with unpaid FMLA leave.

How much pay will employees receive?

Maximum benefit amounts will also increase incrementally, with the weekly maximum benefit payable being a percentage of the employee’s average weekly wage, up to the same percentage of the state average weekly wage. Those percentages are 50% (2018), 55% (2019), 60% (2020), and 67% (2021).
Which employers must comply?

While similar to FMLA, there are notable differences between the two laws. The New York paid family leave law applies to all private employers in New York who are subject to the state’s workers’ compensation law, regardless of size. The New York law applies regardless of whether the employer has 50 more employees within a 75-mile radius. The law does not require public employers to provide paid family leave, though such employers may opt in to the program.

Which employees are eligible?

All full-time and part-time employees who have worked for a covered employer for at least six months will be eligible for paid family leave, regardless of the number of hours worked.

When can employees use paid family leave?

Eligible employees will be permitted to use paid family leave for the following reasons:

a) to participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member; or

b) (b) to bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of the child for adoption or foster care with the employee; or

c) (c) because of any qualifying exigency as interpreted under the family and medical leave act, 29 U.S.C.S § 2612(a)(1)(e) and 29 C.F.R. S.825.126(a)(1)-(8), arising out of the fact that the spouse, domestic partner, child, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the armed forces of the United States.

“Family member” is defined by the law as a child, parent, grandparent, grandchild, spouse, or domestic partner. The law does not apply to an employee’s own serious health condition, as this is covered by the state’s existing disability law, or for military caregiver leave. Also of note, the definition of “serious health condition” under the New York paid family leave law differs from the current definition under the federal FMLA. Additionally, there is no waiting period under the New York law; family leave benefits will payable upon the first day of an employee’s qualifying reason. Employees will be entitled to take paid family leave intermittently, but any such intermittent schedule can be limited to full day increments payable at the rate of one-fifth of the employee’s weekly benefit.

Does an employer have to maintain health benefits and employment?

Employers are required to maintain the employee’s existing health benefits during a period of paid family leave from the date he or she commenced family leave until the date he or she returns to employment. Additionally, the rules concerning an employee’s job protection during leave and reinstatement of employment following a period of paid family leave largely mirror the existing continued employment and reinstatement rules under the FMLA.

Who funds the paid family leave benefits?

Employers are not required to contribute to paid family leave. The program will be fully funded by employee contributions, at a rate of up to 45 cents per week in the first year and subject to adjustments in subsequent years. While employers will not contribute, they are required to facilitate the deduction of employee contributions and remit those contributions to the state. However, if an employer already sponsors a comparable paid family leave plan, they may be relieved of their obligation to deduct and remit employee contributions.
while the plan is in effect. An employer may not collect more in employee contributions for the private family leave plan than is permitted for the state family leave program.

**What are the next steps?**

Employers will want to begin reviewing their leave policies to determine what amendments, if any, must be made to comply with the New York law. They will want to consider how the New York paid family leave program will be integrated with FMLA leave (e.g., will leave under both laws run concurrently?). Employers will want to ensure that benefit plan eligibility terms provide for the continuation of health coverage during the full duration of New York paid family leave (this is also a requirement of FMLA). They will want to work with their payroll staff or vendors to prepare to deduct the required employee contributions for the paid family leave program. If an employer sponsors a private paid family leave plan, they will need to determine whether the plan’s provisions meet New York’s requirements. Employers should be on the lookout for more guidance from New York relating to the paid family leave program.

The full text of the New York paid family leave law can be found in Part SS (beginning on page 90) of the full 2016 New York budget bill [here](#).

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**San Francisco Enacts Paid Family Leave Ordinance**

*Arthur J. Gallagher & Co.*

The city of San Francisco has passed an ordinance that requires employers to provide partial wage replacement to employees who work in San Francisco that take leave to bond with a new child under the California Paid Family Leave ("PFL") program. The ordinance requires employers with 20 or more employees that employ at least one employee in San Francisco to provide the remaining 45% portion of the employee's normal gross weekly wage during the six-week PFL period so that employees on PFL will receive 100% of their normal wages (subject to a maximum weekly benefit).

**Covered Employers**

Employers with 50 or more employees (regardless of location) and at least one employee who works in San Francisco will be required to provide the partial wage replacement to employees taking leave on or after January 1, 2017 to bond with a new child under the California Paid Family Leave program. On July 1, 2017, the ordinance's partial wage replacement requirement would expand to employers with 35 or more employees, and on January 1, 2018, to employers with 20 or more employees.

The ordinance does not apply to federal, state or municipal government entities, including the City and County of San Francisco.

**Covered Employees**

A “Covered Employee” is defined as an employee who:

1. commenced employment with the Covered Employer at least 180 days prior to the start of the leave period,
2. performs at least eight hours of work per week for the employer within the geographic boundaries of San Francisco where at least 40% of whose total weekly hours worked for the employer are within the geographic boundaries of San Francisco, and
3. is eligible to receive paid family leave compensation under the California Paid Family Leave law for the purpose of bonding with a new child.

To be eligible to receive the partial wage replacement, an employee must agree to allow the employer (if the employer so chooses) to use up to two weeks of the employee's unused, accrued vacation leave to help satisfy the employer's obligation to pay the compensation during the leave period.

If the employer terminates an employee during the leave period, the employer would be required to pay the partial wage replacement for the remainder of the leave period.

**Maximum Weekly Benefit Limitation**

The California Paid Family Leave program places a cap on the weekly benefit amount for higher-earning workers. As of January 1, 2016, the State’s “maximum weekly benefit amount” is $1,129.00.

An employer’s obligation under the San Francisco ordinance would be proportionally capped by reference to the State maximum weekly benefit amount. Using the 2016 State rates, an employer’s maximum weekly Supplemental Compensation amount under the ordinance would be $924 per week. The State’s maximum weekly benefit amount ($1,129) is 55% of $2,053; 45% of $2,053 is $924.

**Note:** California Governor Jerry Brown signed legislation on April 11, 2016 that will increase the benefits paid by the California Paid Leave Program for paid leaves beginning on or after January 1, 2018 to 60% or in some cases 70% of the employee’s weekly wages. The San Francisco ordinance will automatically adjust in accordance with these PFL changes.

**Administrative Requirements**

In addition to providing the partial wage replacement during parental leave, the ordinance includes the following administrative provisions:

- **Workplace Notice:** Employers would be required to post a notice in the workplace informing employees of their rights under the ordinance.

- **Employer Records:** Employers would be required to retain records pertaining to the payment of Supplemental Compensation for a period of three years and make records available to the Office of Labor Standards Enforcement (“OLSE”) on request.

- **Anti-Retaliation:** Employers would be prohibited from retaliating against employees for exercising their rights under the ordinance.

- **Penalties:** After a due process hearing, OLSE may order any appropriate relief including payment of Supplemental Compensation and monetary penalties.

Employers subject to this ordinance should work with their labor/employment law counsel to update their leave of absence policies.

For more information, please see the City and County of San Francisco’s website at [http://sfgov.org/olse/paid-parental-leave-ordinance](http://sfgov.org/olse/paid-parental-leave-ordinance).
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.

Alabama Right to Work

The Alabama Legislature has approved a ballot question for inclusion in the upcoming November 2016 General Election that will ask voters if Alabama should be a right to work state.

Although existing law in the state covers right to work issues, House Bill 37 proposes an amendment to the Constitution of Alabama to declare that it is the public policy of the state that the right of persons to work may not be denied or abridged on account of membership or nonmembership in a labor union or labor organization; to prohibit an agreement to deny the right to work, or place conditions on prospective employment, on account of membership or nonmembership in a labor union or labor organization; to prohibit an employer from requiring its employees to abstain from union membership as a condition of employment; and to provide that an employer may not require a person, as a condition of employment or continuation of employment, to pay dues, fees, or other charges of any kind to any labor union or labor organization.

The amendment would not apply to any lawful contract in force on or before the date of ratification, but would apply to contracts entered into on or after that date, as well as to any renewal or extension of an existing contract (House Bill 37, L. 2016, adopted March 17, 2016, and delivered to the Secretary of State on March 17, 2016, http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2016RS/PrintFiles/HB37-enr.pdf).

Arizona Background Checks

The state’s background checks law has been amended with respect to fingerprint clearance cards (H. 2514, L. 2016).

Arizona Genetic Testing

The law relating to informed consent prior to genetic testing has been amended (Ch. 37 (H. 2144), L. 2016).

Arizona Violence in the Workplace

The state has amended its stalking laws (H. 2419, L. 2016).

California Minimum Wage

The California minimum wage is scheduled to gradually increase to $15 per hour, by 2022 for large employers with 26 or more employees and by 2023 for smaller employers with 25 or fewer employees, under legislation signed by Governor Edmund G. Brown Jr. on April 4. The legislation also provides that a scheduled increase could be suspended if negative economic or budgetary conditions emerge.

The scheduled wage increases, if no increases are paused, would be as follows: $10.50 per hour on January 1, 2017, for large businesses (26 employees or more) and on January 1, 2018, for smaller employers (with 25 employees or less); $11 per hour on January 1, 2018, for large businesses and on January 1, 2019, for smaller employers; $12 per hour on January 1, 2019, for large businesses and on January 1, 2020, for smaller employers; $13 per hour on January 1, 2020, for large businesses and on January 1, 2021, for smaller employers; $14 per hour on January 1, 2021, for large businesses and on January 1, 2022, for smaller employers; $15 per hour on January 1, 2022, for large businesses and on January 1, 2023, for smaller employers.
Once the minimum wage reaches $15 per hour for all businesses, wages could then be increased each year up to 3.5 percent (rounded to the nearest 10 cents) for inflation as measured by the national Consumer Price Index (Ch. 4 (S. 3), L. 2016, effective January 1, 2017).

**November General Election Ballot Measure.** Prior to enactment of S. 3, California Secretary of State Alex Padilla announced on March 22, 2016, that an initiative proposing to raise the state minimum wage was eligible for the November 8, 2016, General Election ballot. The ballot measure also calls for the minimum wage to gradually increase to $15, but by 2021. Currently the minimum wage is $10 per hour.

This ballot measure proposes to increase the minimum wage to $11 per hour, effective January 1, 2017, and then by $1 each of the next four years, to reach $15.00 per hour on January 1, 2021. After that, the minimum wage would be adjusted annually based on the rate of inflation for the previous year, using the California Consumer Price Index for Urban Wage Earners and Clerical Workers. The ballot initiative needed at least 402,468 projected valid signatures to qualify by random sampling, and it exceeded that threshold on March 22, 2016. On June 30, 2016, the Secretary of State will certify the initiative as qualified for the November 8, 2016, General Election ballot, unless the proponents withdraw the initiative prior to that date pursuant to Elections Code section 9604(b) (California Secretary of State Alex Padilla, News Releases and Advisories, AP16:049, March 22, 2016, [http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-advisories/new-measure-eligible-californias-november-2016-ballot/](http://www.sos.ca.gov/administration/news-releases-and-advisories/2016-news-releases-and-advisories/new-measure-eligible-californias-november-2016-ballot/)).

**Pasadena Minimum Wage.** The City Council of Pasadena on March 14, 2016, adopted a Minimum Wage Ordinance to require payment of a city-wide minimum wage. The approved Ordinance requires a minimum wage of $10.50 per hour beginning July 1, 2016. The minimum wage would then increase to $12.00 per hour on July 1, 2017, and $13.25 per hour on July 1, 2018. Employers with 25 or fewer employees will be required to pay a minimum wage of $10.50 per hour on July 1, 2017, and $12.00 per hour on July 1, 2018 (City of Pasadena, City Council Agenda, March 14, 2016, [http://ww2.cityofpasadena.net/councilagendas/2016%20Agendas/Mar_14_16/agendarecap.asp](http://ww2.cityofpasadena.net/councilagendas/2016%20Agendas/Mar_14_16/agendarecap.asp); Pasadena Municipal Code, Title 5, Article 1, Chapter 5.02, [http://ww2.cityofpasadena.net/councilagendas/2016%20Agendas/Mar_14_16/AR%202022%20ORDINANCE.pdf](http://ww2.cityofpasadena.net/councilagendas/2016%20Agendas/Mar_14_16/AR%202022%20ORDINANCE.pdf)).

**California Paid Sick Leave**

Governor Edmund G. Brown Jr. has signed landmark legislation that makes California the first state in the nation to commit to raising the minimum wage to $15 per hour statewide. The new law also phases in paid sick leave for in-home supportive services workers with eight hours or one day paid sick leave beginning on July 1, 2018. Thereafter, sick days would be increased as minimum wage increases are phased in for employers with 26 or more employees to 16 hours or two days when the minimum wage is $13; and to 24 hours or three days when the minimum wage is $15. Paid sick days would be earned at the rate of one hour for every 30 hours worked (Ch. 4 (S. 3), L. 2015, enacted April 4, 2016).

**California Working Conditions**

Offering much-needed guidance to employers as well as to the Ninth Circuit (per its request), the California Supreme Court finally grappled with the meaning of California’s “suitable seating” requirement, which mandates that employees be given seating at work if their duties can be performed sitting down. Eschewing the “holistic” approach encouraged by the employer, the state high court unanimously concluded that “the nature of the work,” for purposes of the wage order in question, means the specific tasks performed at the given location for which a seat is desired. Also, whether that work “reasonably permits” an employee to be seated depends on the totality of the circumstances. Finally, if the nature of an employee’s work does, in fact, allow for seating, the employer bears the burden of showing that no suitable seating is available (Kilby v. CVS Pharmacy, Inc., April
Florida Background Checks

The state has amended its background checks law with respect to certain child care workers (Ch. 2016-98 (H. 1125), L. 2016, effective July 1, 2016).

Florida Religious Discrimination

Effective July 1, 2016, an individual employed by a church or religious organization while acting in the scope of that employment may not be required to solemnize any marriage or provide services, accommodations, facilities, goods, or privileges for a purpose related to the solemnization, formation, or celebration of any marriage if such action would cause the individual or entity to violate a sincerely held religious belief (Ch. 2016-50 (H. 43), L. 2016).

Florida Veterans’ Preference

The state’s public employment veterans’ preference law has been amended with respect to recruitment plans (Ch. 2016-102 (H. 1219), L. 2016, effective October 1, 2016).

Idaho Minimum Wage

Idaho’s minimum wage law has been amended to prohibit political subdivisions from establishing, by ordinance or other action, minimum wages higher than the state minimum wage. A “political subdivision” is defined to mean any county, city, municipal corporation, health district, school district, irrigation district, an operating agent of irrigation districts whose board consists of directors of its member districts, special improvement or taxing district, or any other political subdivision or public corporation (Ch. 145 (H. 463), L. 2016, enacted March 23, 2016, without the governor’s signature, and effective July 1, 2016).

Illinois Unemployment Insurance

The state has amended its unemployment insurance law with respect to weekly benefit amount, maximum benefit amounts, and the adjusted state experience factor, among other topics.

Maine Plant Closings

Maine law relating to business closings and mass layoffs has been amended to conform to federal requirements and to strengthen employee severance pay protections.

With specified exceptions, employers who close or engage in a mass layoff at a covered establishment that employs or has employed at any time in the preceding 12-month period 100 or more persons are liable to such employees for severance pay at the rate of one week’s pay for each year, and partial pay for any partial year, from the last full month of employment by the employee at that establishment. Severance pay is in addition to any final wage payment and must be made within one regular pay period after the employee’s last full day of work.

A “covered establishment” is any industrial or commercial facility employing 100 or more persons in the preceding 12-month period.

A “mass layoff” is a reduction in force, not the result of a closing, that results in employment loss for at least six months of at least: (1) 33% of the employees and at least 50 employees; or (2) 500 employees (Ch. 417 (S. 515; L.D. 1389), L. 2015, enacted March 29, 2016, and effective 90 days after adjournment of the state legislature).
Mississippi Religious Discrimination Law

Governor Phil Bryant has signed into law HB 1523, the Protecting Freedom of Conscience from Government Discrimination Act. The state is the latest to pass legislation that would insulate from liability religious organizations and persons not inclined to accept same-sex marriage as legitimate even in the wake of the U.S. Supreme Court’s ruling in Obergefell v. Hodges that states may not “bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.” But this measure, HB 1523 as amended, goes further to ostensibly protect from “discriminatory action” by the government religious organizations and individuals who refuse to solemnize, celebrate, recognize, accommodate, or provide goods or services for a same-sex marriage or to same-sex oriented individuals because of a sincerely held religious belief, or moral conviction, that marriage, as well as sexual relations, should be limited to man-woman couples. Many are concerned that the measure is a not-so-transparent way to permit discrimination against LGBT individuals (H. 1523, L. 2016, effective July 1, 2016).

Nebraska Equal Pay

Nebraska’s equal pay law, which prohibits discrimination in the payment of wages based on sex, has been amended to apply the law to employers with two or more employees. Currently, the law applies to employers with 15 or more employees working each day in 20 or more calendar weeks in the current or preceding year, as well as to any agent of such employer. The law also applies to any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, and includes the state of Nebraska, its government agencies, and political subdivisions, regardless of the number of employees (L.B. 83, L. 2015, enacted March 30, 2016, and effective three months after adjournment of the state legislature).

New Jersey Paid Sick Leave

The City of Plainfield has enacted a paid sick leave law. The law will take effect June 14, 2016.

New York Disability Law

The state has amended its Social Services Law in relation to authorizing service animals or therapy dogs to accompany victims of domestic violence at residential programs as long as there is no undue burden (Ch. 7 (S. 6386), L. 2015, enacted March 11, 2016).

New York Family Leave

Governor Andrew M. Cuomo signed legislation on April 4 enacting a 12-week paid family leave policy. The legislation was passed as part of the 2016-17 state budget (see also “New York Minimum Wage” just below).

The state budget includes the most comprehensive paid family leave program in the nation. When fully phased-in, employees will be eligible for 12 weeks of paid family leave when caring for an infant, a family member with a serious health condition or to relieve family pressures when someone is called to active military service. Benefits will be phased in beginning in 2018 at 50 percent of an employee’s average weekly wage, capped to 50 percent of the statewide average weekly wage, and fully implemented in 2021 at 67 percent of their average weekly wage, capped to 67 percent of the statewide average weekly wage. This program will be funded entirely through a nominal payroll deduction on employees so it costs businesses—both big and small—nothing. Employees are eligible to participate after having worked for their employer for six months.

Statewide paid family leave will particularly benefit low-income workers who often lack benefits or job security, and for whom access to any leave, even unpaid, is often not available or cost prohibitive. Paid family leave also has the potential to serve as a great equalizer for women. In many instances, women who leave the workforce to care for a newborn not only forfeit their existing salaries in the short-term, but also suffer
New York Minimum Wage

Governor Andrew M. Cuomo signed legislation on April 4 to gradually increase the state minimum wage to eventually reach $15 per hour for all workers in the state. The increases vary by geographical area, with the minimum wage for employees of large employers in New York City (11 or more employees) reaching $15 per hour by 2018 (with the first increase set at $11 on December 31, 2016); the minimum wage for employees of small employers in New York City (10 or less) reaching $15 by 2019 (starting with an increase at $10.50 on December 31, 2016); and workers in Nassau, Suffolk and Westchester counties reaching $15 by 2021 (starting with an increase to $10 on December 31, 2016). For workers in the rest of the state, the minimum wage would reach $12.50 by 2020, and then be increased to eventually reach $15 per hour on an indexed schedule by the Division of Budget in consultation with the Department of Labor (with the first increase scheduled at $9.70 per hour on December 31, 2016). The bill provides a safety net of a temporary suspension in the scheduled increases, based on economics, if determined necessary.

For food service workers receiving tips, such employees are to receive a cash wage of at least two-thirds of the minimum wage rate, rounded to the nearest five cents, or $7.50, whichever is higher, provided that such tips, when added to the cash wage, are equal to or exceed the minimum wage in effect and no other cash wash is established (under Section 653). Meal and lodging allowances for such workers would increase not more than two-thirds as applied to state wage orders in effect.

The minimum wage increases are part of the 2016 budget bill (see also “New York Family Leave” just above) (Ch. 54 (S. 6406), L. 2015, enacted April 4, 2016 (2016 Budget, Part K), http://assembly.state.ny.us/leg/?default_fld=&bn=S06406&Term=2015&Actions=Y&Text=Y).

New York Posters

The Syracuse living wage poster has been updated to reflect 2016 rates.

North Carolina LGBT Discrimination

On March 23, 2016, North Carolina enacted a law that will bar and negate any state or local law extending antidiscrimination protections in employment and public accommodations to transgender individuals. The law makes the regulation of discriminatory practices in places of public accommodations an issue of general statewide concern and supersedes and preempts local ordinances and regulations pertaining to the regulation of discriminatory practices of employers in a place of public accommodation. Moreover, the law, which takes immediate effect, specifically requires that local boards of education and public agencies designate and require the use of single-sex multiple occupancy bathrooms and changing facilities based on an individual’s biological sex as stated on that person’s birth certificate. The bill goes further to limit employment discrimination protections currently based on “sex” to expressly mean “biological sex” (Session Law 2016-3 (H. 2), L. 2015, enacted and effective March 23, 2016).

Note: In response to backlash over passage of H. 2, North Carolina Governor Pat McCrory issued Executive Order 93 on April 12 to clarify existing law and provide new protections on privacy and equality. Executive Order 93: (1) maintains common sense gender-specific restroom and locker room facilities in government buildings and schools; (2) affirms the private sector’s right to establish its own restroom and locker room policies; (3) affirms the private sector and local governments’ right to establish non-discrimination employment

North Carolina Minimum Wage

The North Carolina Wage and Hour Act has been amended to preempt and supersede any ordinance, regulation, resolution, or policy adopted or imposed by any unit of local government or other political subdivision of the state that regulates or imposes any requirement upon an employer pertaining to compensation of employees, such as wage levels of employees, hours of labor, payment of earned wages, benefits, leave, or well-being of minors in the workforce. This would not apply to: (1) a local government regulating, compensating, or controlling its own employees; (2) economic development incentives; (3) a requirement of federal community development block grants; or (4) community development programs (Session Law 2016-3 (H. 2), enacted March 23, 2016).

Also, a city or county may not require a public contractor to abide by regulations or controls on the contractor’s employment practices or mandate or prohibit the provision of goods, services, or accommodations by any member of the public as a condition of bidding on a contract or a qualification-based selection, except as otherwise provided by state law (Session Law 2016-3 (H. 2), effective March 23, 2016).

Oregon Access to Personnel Files

Oregon law relating to employee access to personnel records has been amended to provide that, effective January 1, 2017, within 45 days after receipt of an employee’s request, the employer is to provide the employee reasonable opportunity to inspect his or her personnel records used to determine the employee’s qualification for employment, promotion, additional compensation, employment termination or disciplinary action and time and pay records of the employee for the period required by the federal Fair Labor Standards Act (29 U.S.C. 211(c)), and accompanying regulations. The employer is to furnish the employee with a certified copy of the records within 45 days after receipt of the employee’s request (Ch. 115 (S. 1587), L. 2016).

Oregon Prevailing Wages

Effective January 1, 2017, contractors and subcontractors, as well as their agents, may not (1) intentionally fail to pay employees the prevailing rate of wages; (2) reduce the rate of wages they would ordinarily receive to recoup wages the contractor, subcontractor or agent paid; (3) unlawfully withhold, deduct or divert wages; (4) enter into an agreement with the employee to pay less than the prevailing rate of wage; (5) or otherwise deprive an employee of wages due in an amount that equals or exceeds 25% of the wages due or $1,000 in a single pay period, whichever is greater. Violation of the law is a Class C felony (Ch. 115 (S. 1587), L. 2016).

Oregon Wage Payment

Employer wage statement requirements have been amended, to provide that, effective January 1, 2017, employers must provide employees with a written, itemized wage statement on regular paydays, and at other times payment of wages, salary or commission is made, that shows the following information: date of payment; dates of work covered by the payment; the name of the employee; the name and business registry number or business identification number; the employer’s address and telephone number; the rate or rates of pay; whether the employee is paid by the hour, shift, day or week or on a salary, piece or commission basis; gross wages; net wages; the amount and purpose of each deduction made; allowances, if any, claimed as part of the minimum wage; unless the employee is paid on a salary basis and exempt from overtime rates of pay, the number of regular hours worked and pay for those hours, and the number of overtime hours worked and pay for those
hours; and if the employee is paid on a piece rate basis, the applicable piece rate or rates of pay, the number of pieces completed at each piece rate and the total pay for each rate.

An employer may provide such statements to employees in electronic format, provided that the statement contains the above information; the employee expressly agrees to receive the statement in electronic form, and the employee has the ability to print or store the statement at the time of receipt (Ch. 115 (S. 1587), L. 2016).

Pennsylvania LGBT Discrimination

Pennsylvania Governor Tom Wolf signed two executive orders on April 7, 2016, that expand protections from discrimination based on sexual orientation, gender expression or identity for state employees and also for employees of contractors doing business with the Commonwealth. Governor Wolf issued the orders as the Pennsylvania Fairness Act, which would apply these protections to all Pennsylvania workers, stalled in the General Assembly.

The purpose of these executive orders is to establish policy, procedures and responsibilities for the prohibition of discrimination and affirmation of equal employment opportunity in the commonwealth. Agencies under the Governor’s jurisdiction, employees and applicants for employment in those agencies, and vendors are affected by these Executive Orders.

The first executive order—Executive Order 2016-04, Equal Opportunity (https://www.governor.pa.gov/wp-content/uploads/2016/04/2016_04.pdf)—says that no agency under the Governor’s jurisdiction shall discriminate against any employee or applicant for employment on the basis of race, color, religious creed, ancestry, union membership, age, gender, sexual orientation, gender expression or identity, national origin, AIDS or HIV status, or disability. Executive Order 2003-10 will be rescinded and replaced by this executive order. Each agency under the Governor’s jurisdiction will ensure fair and equal employment opportunities exist at every level of government.

The second executive order—Executive Order 2016-05, Contract Compliance (https://www.governor.pa.gov/wp-content/uploads/2016/04/2016_05.pdf)—will ensure that all contracting processes of commonwealth agencies will be nondiscriminatory and that all businesses contracting with the commonwealth as well as all grantees should use nondiscriminatory practices in subcontracting, hiring, promoting, and other labor matters. Executive Order 2006-02 will be rescinded and replaced by the executive order (Commonwealth of Pennsylvania, Office of the Governor, Press Release, April 7, 2016; https://governor.pa.gov/with-legislation-stalled-governor-wolf-expands-non-discrimination-protections-for-state-workers-contractors/).

South Dakota Unemployment Insurance

The state has increased its monetary penalties for failure to pay contributions or failure to submit required reports in a timely manner (S. 43, L. 2016).

Tennessee Background Checks

The state has amended its Equal Access to Intrastate Commerce Act as follows. Except as otherwise provided by state or federal law, a local government shall not, as a condition of doing business within the jurisdictional boundaries of the local government or contracting with the local government, prohibit an employer from requesting any information on an application for employment or during the process of hiring a new employee (S. 2103, L. 2015, enacted and effective March 17, 2016).
Utah Alternative Dispute Resolution

The Utah Alternative Dispute Resolution Act, which was scheduled for repeal on July 1, 2016, has been extended to remain in effect until July 1, 2026. The Act outlines procedures for implementing alternative dispute resolution, which includes arbitration, mediation and other means of dispute resolution instead of court trial (H. 57, L. 2016).

Utah Breastfeeding Rights

Utah law requires public employers to accommodate nursing mothers in the workplace, including requiring public employers to provide access to a clean and well-maintained refrigerator or freezer for the temporary storage of the public employee’s breast milk. This law has been amended, effective May 10, 2016, to provide that where the public employee does not working in an office building, the employer may, in the alternative, provide a nonelectric insulated container for such storage of the public employee's breast milk (S. 59, L. 2016, effective May 10, 2016).

Also, antidiscrimination provisions have been amended to provide that an employer—state and local government employers and private employers with 15 or more employees—may not refuse to provide reasonable accommodations for an employee related to pregnancy, childbirth, breastfeeding or related conditions if requested by the employee, unless the employer is able to demonstrate that such accommodation would create an undue hardship on the employer’s operations. Also, employers must include in an employee handbook, or post in a conspicuous place in the employer’s place of business, written notice on an employee’s right to reasonable accommodation for such conditions (S. 59, L. 2016, effective May 10, 2016).

Utah Employment Verification

The implementation date of the Guestworker Program has been extended, to provide that the program is to be implemented the sooner of (1) 120 days after the date on which the governor finds that the state has the one or more federal waivers, exemptions or authorizations needed to implement the program or (2) July 1, 2027.

The implementation date of the Utah Pilot Sponsored Resident Immigrant Program has been extended to provide that the program is to be implemented by the governor no later than July 1, 2027, and end operation of the program on June 30, 2032 (S. 237, L. 2016).

Utah Fair Employment Practices

The state’s antidiscrimination law has been amended to provide that a person who is subject to discrimination in matters of compensation may receive a remedy in an additional amount equal to the back pay amount already available (S. 185, L. 2016).

Utah Garnishment

Effective May 10, 2016, disability benefits and veterans’ benefits may be garnished on behalf of a child victim if the person receiving the benefits has been convicted of a felony sex offense against a child and ordered by the convicting court to pay restitution to the victim. The exemption from execution under this section shall be reinstated upon payment of the restitution in full (H. 165, L. 2016).

Utah Noncompete Agreements

In addition to any requirements imposed under common law, for a post-employment restrictive covenant entered into on or after May 10, 2016, an employer and an employee may not enter into a post-employment restrictive covenant for a period of more than one year from the day on which the employee is no longer employed by the employer. A post-employment restrictive covenant that violates this provision is void.
The new law defines “post-employment restrictive covenant,” also known as a “covenant not to compete” or “noncompete agreement,” as an agreement, written or oral, between an employer and employee under which the employee agrees that he or she, either alone or as an employee of another person, will not compete with the employer in providing products, processes, or services that are similar to the employer’s products, processes, or services.

Exceptions to the law may be allowed for severance agreements and the sale of a business (H. 251, L. 2016, enacted March 22, 2016).

**Utah Posting Requirements**

State and local government employers and private employers with 15 or more employees must include in an employee handbook, or post in a conspicuous place in the employer’s place of business, written notice on an employee’s right to reasonable accommodation for pregnancy, childbirth, breastfeeding, or related conditions (S. 59, L. 2016, effective May 10, 2016).

**Virginia Background Checks**

The state has amended its background checks law with respect to children’s residential facilities (H. 920, L. 2016).

**Virginia Military Leave**

The Commonwealth has extended its military leave, reemployment rights and related discrimination protections to employees who are members of the National Guard of another state (H. 111, L. 2016).

**Virginia Overtime**

Overtime compensation requirements relating to “fire protection employees” have been amended to clarify the definition of such employee to mean any person, other than an employee who is exempt from the overtime provisions of the Fair Labor Standards Act, who is employed by an employer as a paid firefighter, emergency medical services provider, or hazardous materials worker who is (i) trained in fire suppression and has the legal authority and responsibility to engage in fire suppression and is employed by a fire department of an employer or (ii) engaged in the prevention, control, or extinguishment of fires or response to emergency situations where life, property, or the environment is at risk (S. 704, L. 2016, effective July 1, 2016).

**Virginia Unemployment Insurance**

For 2016, the fund balance factor is 55%. There is also a pool cost charge of 0.07%, but there is no fund building charge this year. For 2016, rates range from 0.17% to 6.27%, including the pool cost charge. The new employer rate is 2.57%. In 2016, foreign contractors and delinquent and nonrated employers pay 6.27%.

**West Virginia Garnishment**

West Virginia’s garnishment law covering consumer credit transactions has been amended.

The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale or consumer loan may not exceed the lesser of: (a) 20% of his or her disposable earnings for that week, or (b) the amount by which his or her disposable earnings for that week exceed 50 times the federal minimum hourly wage in effect at the time the earnings are payable. In the case of earnings for a pay period other than a week, the commissioner is to prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subdivision (b) above (H. 4417, L. 2016, passed March 9, 2016, and effective June 7, 2016).
West Virginia Social Media Privacy

The state has enacted a law prohibiting an employer from requesting or requiring that an employee or applicant disclose any user name, password, or other means for accessing a personal social media account or service (H. 4364, L. 2016).

Wisconsin Garnishment

The law relating to garnishment of earnings has been amended with regard to fees and extensions.

An employer is entitled to $15 as a garnishee fee from the creditor for each garnishment or extension of an earnings garnishment. In addition to the $15 fee, the garnishee shall receive a $3 fee for each payment delivered to the creditor under Section 812.39 after the first payment. The additional fee is to be deducted from the money delivered to the creditor.

At any time while an earnings garnishment is in effect, the debtor and creditor may stipulate in writing to an extension of the garnishment for additional pay periods. The extension may commence on the first day after the earnings garnishment ends and ends within 13 weeks after the last day of the last pay period affected by the earnings garnishment. The garnishee shall be bound by the extension if a copy of the stipulation is delivered or mailed to the garnishee, together with the additional $15 garnishee fee, before the last day of the last pay period affected by the earnings garnishment or any prior stipulated extension of the earnings garnishment. A stipulated extension is void and the fee shall be refunded if, prior to the last day of the last pay period affected by the earnings garnishment, the garnishee is served under section 812.35(3) by a creditor seeking to satisfy a different judgment against the debtor (Act 337 (A. 872), L. 2015, effective April 1, 2016).

Wyoming Veterans’ Preference

The state has enacted a law allowing a private employer to grant preference to a veteran in hiring and promotion, effective July 1, 2016 (S. 3, L. 2016).

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 June, July, and August 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.

Note: The IRS issued Notice 2016-4 on December 28, 2015 delaying the due dates for filing Forms 1094-B, 1095-B, 1094-C and 1095-C for the 2015 calendar year. The chart below reflects the new deadlines.
Deadlines for June, July, and August

- **June 30, 2016** - (due to extension in Notice 2016-4) due date for electronic filing Forms 1095-B or 1095-C for 2015 with the IRS.

- **July 28, 2016** – 210 days after the end of the plan year to provide the Summary of Material Modification (“SMM”) for changes made in the 2015 plan year (does not include material reductions which must be reported within 60 days after the date of adoption).

- **July 31, 2016** - last day to pay PCORI fees for all plans. The PCORI fee for calendar year plans is $2.17 per covered life for 2015. Same date for all plans.

- **July 31, 2016** – last day to file Form 5500 (or Form 5558 for 2 ½ month extension to file Form 5500) for the 2015 plan year.

- **July 31, 2016** - Medical Loss Ratio notices must be provided by insurance carriers to HHS for policyholders that will receive a rebate for 2015. Rebates must be paid by September 30. Same date for all policies.

- **August 1, 2016** – due date for quarterly payment of the Michigan Health Insurance Claims Assessment (an assessment based on health claims paid in Michigan with a limit of $10,000 per individual). [Note: the U.S. Supreme Court ordered the U.S. Court of Appeals for the Sixth Circuit to reconsider whether ERISA pre-empts this fee based on the decision in Gobeille v. Liberty Mutual Insurance Company. Despite being under review, this fee remains in effect and should be paid pending the Sixth Circuit’s reconsideration.]

2017 Medicare and HSA Values

2017 values for Medicare Parts A and B were released in November 2016. Updated 2017 values for Medicare Part D and HSAs were released in April.

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.

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. © 2016 Arthur J. Gallagher & Co.