



Ideas and Information for Human Resources Professionals



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Compliance

It's Official: Agencies Release Final Rules on SBC, GINA, 401(k) Fees

Final versions of benefits-related rules have been flying out of federal agencies in the early weeks of 2012, with more expected to come over the next few months.

One of the hottest compliance topics to emerge from health care reform -- the new summary of benefits and coverage (SBC) requirements -- received some much-desired guidance and a new deadline, according to a report by *SmartHR Manager*.

The Department of Health and Human Services (HHS), the Department of Labor (DOL), the Treasury Department and the IRS posted a final rule that clarifies that the SBC information can be incorporated into the summary plan description (SPD) as long as that information is correct and prominently displayed at the beginning of the SPD.

The final rule also pushed back the effective date. Originally, plans that started on or after March 23, 2012, were to be subject to these rules. That date has been moved to Sept. 23 of this year.

The Patient Protection and Affordable Care Act (PPACA) requires employers to provide workers with an easy-to-understand summary of benefits and coverage, a glossary of commonly used health care terms and general explanations of how the plan would handle certain medical conditions.

Other recent benefits-related decisions include:



Final GINA Rules

The Equal Employment Opportunity Commission (EEOC) has issued a final rule that defines record-retention requirements under the Genetic Information Nondiscrimination Act (GINA). This rule establishes the same requirements that apply under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act, according to a report by *Workforce* magazine.

The EEOC noted that the rule does not call for the creation of new documents or demand any additional reporting requirements. Employers must maintain all relevant records until any GINA charge is resolved, the EEOC added.

Final 401(k) Fee Disclosure Rules

The DOL finalized rules regarding fee disclosures for 401(k) plans, according to a *PLANSPONSOR* report. The final rules call for service providers to give plan fiduciaries information about any direct or indirect compensation or fees received by the service provider to maintain and manage the plans.

The rules also require providers to communicate any possible conflicts of interest. The DOL announced that any entities not in compliance by July 1 would be subject to penalties under the Internal Revenue Code.

Health Costs

Employers Can Weather High Costs with Smart Strategies

Like a groundhog in February, employers and HR managers can't poke their heads over a cubicle wall without seeing the long shadow of growing health care costs stretching from their workforce.

But unlike the famous, fair-weather rodent, employers can't hide in their offices for six weeks until spring (or a healthier workforce) rolls in. Employers must implement solid cost-control strategies if they want to keep their health care plans viable and valuable, experts say.

The challenges for employers are evident. Total premiums for family health coverage jumped 50 percent from 2003 to 2010, according to Commonwealth Fund research reported by *The New York Times*. While health care headlines often expose the big offenders such as obesity, chronic conditions and smoking, other lesser-known trends are having a hidden but significant impact on health care costs.



Health Screenings

Prevention and early detection of medical problems can stave off high costs in the long run, but many Americans aren't doing enough, according to a new Centers for Disease Control and Prevention (CDC) report. Screening rates for a number of cancers remain below the government's target levels, especially among some minority groups, according to the CDC analysis reported by WebMD. About 59 percent of men and women had colonoscopies or other colorectal cancer screens in 2010 -- well below the CDC's target of 70 percent. About 75 percent of women received mammograms, while about 80 percent had Pap tests to screen for cervical cancer. Targets for those screenings were 81 percent and 93 percent, respectively.

Induced Births

The practice of induced births to fit around a patient's (or doctor's) schedule has become a moneymaker for hospitals but a drain for insurers and employers, according to an *Employee Benefit News* report. Recent studies suggest that these early, scheduled births can lead to avoidable complications for both mother and baby, which can drive up costs.

Leah Binder, CEO of The Leapfrog Group, told *EBN* that plan design can go a long way in discouraging would-be mothers from moving up their delivery date for the sake of convenience. If the plan participant has to put up a larger out-of-pocket contribution for such births, she might be less likely to elect that procedure, Binder said.

Wellness Solutions

In addition to plan design and a push for preventive medical services, employers can control costs by supporting a robust wellness program that gets to the root of many health care problems, a new report by the Principal Financial Group suggests. The study found that 41 percent of employees enrolled in employer-sponsored wellness initiatives said the programs made them happier and more productive, according to a report on the research by *Business Insider*. About 35 percent of respondents said they took fewer sick days, and 52 percent reported increased energy.

FMLA

Leave Troubles Can Linger for Employers

The federal government continues to tweak the rules regarding the Family and Medical Leave Act (FMLA), giving employers another reason to carefully review their leave policies.

Most recently, the Department of Labor (DOL) issued a new proposed rule that would extend leave for family caregivers of U.S. veterans up to five years after the veterans leave the military, according to a DOL press release. Presently, the law only covers family members of service personnel who are currently serving.

The proposed rule also would make FMLA more accessible to airline flight crews by altering the eligibility requirements and changing how flight crews' hours are calculated when determining FMLA leave.

This proposal adds yet another wrinkle to FMLA compliance. According to Steve Peltin of Foster Pepper PLLC, leaves of absence often are the most complicated -- and frustrating -- aspects of HR administration.

FMLA provides workers with up to 12 workweeks of unpaid leave within a 12-month period. However, who is eligible -- and when -- depends on a myriad of factors, including employer size, how long the employee has worked for the company and where employees put in their time, Peltin noted in a recent online posting.

Military service can make compliance even more tricky. The law contains seven "qualifying military exigencies" that affect the FMLA calculation for military personnel, all of which depend on a variety of situations and military obligations, according to Peltin. Then, of course, there is leave for caregivers of servicemembers, which the proposed rule would expand.

On top of all that, other laws -- specifically the Americans with Disabilities Act (ADA) -- often overlap and affect leave policies. Peter Susser, writing for *SmartHR Manager*, notes that terminations that follow FMLA leave can run against ADA.

Susser provides this scenario: "An employee is granted FMLA leave to treat a serious health condition that poses long-term restrictions and limitations; 12 weeks pass; the employee fails to return to work; company terminates employee under a 'no-fault' absence policy." Because the employer provided 12 weeks, there's no problem, right?

Don't count on it, Susser writes. The employer could be violating ADA if the worker's "serious health condition" is considered a disability. If both laws apply, the company might have to grant more leave as



a reasonable accommodation or face serious consequences if it terminates the employee.

When grappling with FLMA and ADA questions, documentation is the best policy, according to Susser. "HR managers should document every telephone conversation, email exchange or letter sent to employees while they are on leave," he writes, adding that any terminations should be executed carefully, keeping in mind the intertwined nature of FMLA and ADA.

In Brief

CONTRACEPTION COMPROMISE

The Obama administration has proposed a compromise to quell the backlash about a new women's health services requirement from a number of religiously affiliated organizations. President Barack Obama announced that religiously affiliated universities and hospitals would not be forced to cover contraceptives for their workers. However, insurance carriers would be required to provide complete coverage for birth control at no charge for any woman at those institutions. This rule, which still excludes women employed by churches, will take effect for employers on Aug. 1. Religiously affiliated groups will have an additional year before the rule affects them.

MIXED REPORT

The latest LINE report by the Society for Human Resource Management projects an uptick in hiring in February, although the rate of job creation looks to remain stagnant. Forty percent of manufacturers polled in the survey said they expect to add jobs in February. Among service-sector companies, 21 percent said they expect to hire personnel. Compared with February 2011, however, both sectors expect to hire fewer workers (-2.5 percent for manufacturers and -12.3 percent for the service industry).

MOVE TO WORK

Many employers are willing to shell out cash to help new hires relocate, according to a new report by CareerBuilder. Among companies polled, 32 percent of employers said they'd be willing to pay to relocate new employees, while 44 percent of workers said they'd be willing to relocate for a job opportunity. Companies in the engineering and technology fields were the most likely to say they'd cover moving expenses for new hires, the report said.

IN THE CARDS

Prepaid credit cards and gift cards are among the most popular incentives doled out by companies, according to a new survey. Young America Corp.'s survey of 355 executives found that 46 percent use prepaid cards for their rewards programs, compared with 33 percent who use cash and 47 percent that cut company checks.

CALIFORNIA QUESTIONS

A new law that expands the California Insurance Equality Act may have an impact outside the state. The previous law barred insurance carriers from issuing policies that treat spouses and "registered domestic partners" differently, according to a press release by Corporate Synergies. However, the new law clarifies that an insurance policy cannot discriminate against domestic partners (including same-sex partners) of California-based companies, even if the employees don't work in the state. The law also applies to employees who work in the state for companies headquartered elsewhere. Experts suggest employers review their policies but seek professional advice before making any moves regarding their plans.

INDIAN HEALTH SERVICES

The IRS recently issued guidance clarifying whether patients who use Indian Health Services (IHS) facilities can also contribute to a health savings account (HSA). The IRS states that individuals who are eligible for IHS services can make tax-free contributions to an HSA as long as they have not used IHS services in the previous three months.

FITNESS FIRST

Discounts for fitness centers tops employees' favorite wellness perks, according to the Principal Financial Well-Being Index. One quarter of respondents picked gym discounts as the most valuable perk, followed by on-site preventive screenings (22 percent), access to nutritionists (21 percent) and on-site fitness facilities (19 percent). However, gym discounts figure as the third most popular wellness perk offered by employers, preceded by online

wellness information (19 percent) and educational tools (18 percent), and tied with printed wellness information (17 percent).

RETIREE BENEFITS

About 22 percent of U.S. employers offered supplemental health coverage for retirees in 2011, down slightly from nearly 23 percent in 2006, according to a report by Compdata. On average, employees had to work for 12 years under their employer to be eligible and had to pay about 65 percent of the premium.

HAPPY GRADS

The average starting salary for new college graduates with bachelor's degrees was \$41,701, up 2.3 percent compared with the class of 2010, according to a report by the National Association of Colleges and Employers. Graduates in the engineering and computer science fields fared the best in overall starting salaries, with computer science graduates enjoying the largest overall increase, the report said.

VEHICLE VALUES

The IRS has changed the vehicle value calculation for employers that own fleet vehicles. The maximum vehicle values for 2012 include:

- Cars (for which cents-per-mile valuation rule is applied): \$15,900 -- up from \$15,300 in 2011.
- Trucks or vans (for which cents-per-mile valuation rule is applied): \$16,700 -- up from \$16,200 in 2011.
- Cars (for which fleet valuation rule is applied): \$21,100 -- up from \$20,300 in 2011.
- Trucks or vans (for which fleet valuation rule is applied): \$21,900 - up from \$21,200 in 2011.

Webinar

W-2 Reporting of Employer Health Coverage

Tuesday, March 13

2 p.m. ET / 11 a.m. PT

Larger employers (those issuing more than 250 W-2s for 2011) must report the value of their employees' health coverage on the W-2s they issue for 2012 (in January of 2013). Given the complexities of this process, now is the time to start preparing for compliance with this reporting requirement. The IRS has issued two rounds of guidance on this requirement (most recently in Notice 2012-9), but that is likely to be all the guidance we have before the requirement takes effect.

In this webinar, attorneys from Spencer Fane Britt & Browne LLP will provide an overview of this new reporting requirement, summarize the IRS guidance issued to date and address a number of different factual scenarios that employers are likely to face.

For more information or to register for this webinar, please contact us.

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