

WELLNESS WORKS

START THE NEW YEAR ON A HEALTHY NOTE

Each new year is traditionally ushered in with great excitement and a feeling that a clean slate is before us. Many people embark on New Year’s resolutions, the most common of which by far involves a health- or fitness-related issue. Now that the hectic holiday season with its unending opportunities for unhealthy behaviors has passed, January is the perfect time to kick-start a wellness program and capitalize on employees’ personal resolutions to live a healthier life in 2010.

QUICK IDEAS THAT SUPPORT AND ENERGIZE YOUR WELLNESS PROGRAM

- This is a great time to implement a “Personal Health Goals” program. Ask your president or CEO to kick off the program by publicly stating their health improvement goals for 2010 and challenging all employees to join them in targeting behavioral changes for better health. Contact your Willis Client Advocate® for sample forms that can be used to support this initiative.
- Quitting smoking is a common New Year’s resolution. Be sure to communicate any resources available in your area to assist with smoking cessation. Check with your insurance carrier to see what may be offered free of charge for plan members. Investigate local hospitals as they may be offering programs or classes. Many states offer a free quit line and they often provide free promotional materials. The **American Cancer Society** has lots of tips and links to other resources and support groups.
- Weight loss is another challenge commonly addressed following the holiday season. Since most people add at least a couple of pounds between Halloween and New Year’s, you’ll likely have more participation for this activity now than at any other time of the year. Consider a Biggest Loser contest. This may be a good time to launch the Biggest Loser League social networking platform or promote discounted memberships to Jillian Michaels’ online personal coaching platform.



WELLNESS WORKS

Start the New Year on a Healthy Note 1

HR CORNER

Productivity Growth Revised Downward, but Still Fastest Since 2003 2

LEGAL & COMPLIANCE

We’re from the Federal Government and we’re here to help 3

EEOC Issues GINA Poster 4

SINCE YOU ASKED:

Impact of Michelle’s Law for Students Today 4

HEALTH CARE REFORM:

What to Look for During the Debate 5

WEBCASTS 9

CONTACTS 10

- Pick a theme and work with your on-site food service provider to highlight healthy menu choices weekly or daily if possible. Identify healthy choices in vending machines. Organize potluck-type salad bars where everyone brings in one healthy salad ingredient or low-fat dressing.
- Hire a motivational speaker. Inspiration and practical “how to” tips from someone who has faced the same challenges (or greater ones) and has successfully gone the distance can make employees’ own goals seem achievable and the rewards – better health, fitness, stamina, looks – worth the struggle and determination needed to win the often difficult battle.
- Begin a “Healthy Employee of the Month” program. Feature colleagues who have been successful with behavioral changes such as those mentioned above. This is a simple but very effective strategy that has worked well for many organizations. Realizing that the person who sits next to you has lost 15 pounds or not had a cigarette in two months can be a powerful incentive to persevere.
- The 2010 Olympic Games begin February 12 in Vancouver. Plan a fitness-based wellness challenge that ties to the Winter Games.

Wellness is a year-round project, but as with many things, getting started is often the hardest part. Seize the moment and make a corporate New Year’s resolution to help your employees start 2010 on the healthiest note possible.

HR CORNER

PRODUCTIVITY GROWTH REVISED DOWNWARD, BUT STILL FASTEST SINCE 2003

The U.S Bureau of Labor Statistics revised its report on productivity in the third quarter of 2009, down from 9.5 % to 8.1%. Still, the productivity increase was the largest since the same time in 2003. The 8.1% gain reflects a 2.9% increase in output and a 4.8% decline in hours worked. The revised productivity measures released were based on more recent and more complete data than were available for the preliminary report issued last month.

Labor productivity is calculated by dividing an index of real output by an index of the combined hours worked of all persons, including employees, proprietors and unpaid family workers.

In the third quarter of 2009, unit labor costs fell 2.5%, as productivity grew at a faster rate (8.1%) than hourly compensation (5.4%). Unit labor costs declined 1.4% over the last four quarters. The bureau defines unit labor costs as the ratio of hourly compensation to labor productivity; increases in hourly compensation tend to increase unit labor costs and increases in output per hour tend to reduce them.

Manufacturing sector productivity grew 13.4% in the third quarter of 2009, as output rose 8.4% and hours worked fell 4.4%. The third quarter gain in manufacturing productivity was the largest since the bureau began the survey in 1987.

This article provided by BLR.

LEGAL & COMPLIANCE

“WE’RE FROM THE FEDERAL GOVERNMENT AND WE’RE HERE TO HELP”

Back in the 1980s, President Ronald Reagan said that those words were the most terrifying in the English language. In a bit of surprising news, it now appears that the Department of Labor (DOL) is attempting to be both helpful and non-threatening.

The DOL has dramatically enhanced its website’s functionality. (Explore the [DOL site](#).)

For one thing, it improved an interactive tool to help employers determine whether they are complying with various federal health benefits laws that have been made part of ERISA. To use the tool, an employer selects the law that it wants to check. Some of the key laws covered:

- The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- The Newborns’ and Mothers’ Health Protection Act of 1996 (Newborns’ Act)
- The Mental Health Parity Act of 1996 (MHPA)
- The Women’s Health and Cancer Rights Act of 1998 (WHCRA)

For each law, successive screens provide several paragraphs describing an aspect of the law. At the bottom of each screen, the employer is asked to indicate whether they have complied with the requirements described. (The website promises that any voluntary responses to compliance questions will not generate DOL audit attention.)

After the employer works through the screens regarding a particular law, the tool generates a report stating whether the responses indicate compliance or non-compliance. Perhaps most conveniently, the tool then provides a listing of relevant on-line DOL resources.

This new tool also has a section for workers to help them determine their rights under various federal health benefit laws. The employee section is organized by life event and reviews various options that may be available to an employee at the time of each event. The events reviewed are:

- Marriage
- First Job/Re-Entering Workforce
- Legal Separation or Divorce
- Death of a Covered Employee
- Child’s Loss of Dependent Child Status
- Eligibility for Medicare
- Childbirth or Adoption
- Reduction in Hours
- Job Loss
- Changing Jobs
- Retirement
- Disability

The DOL’s numerous enhancements do not appear to break new ground about any open questions under the laws covered. Nonetheless, the website enhancement does indicate that the DOL is trying to provide support to employers that may feel overwhelmed by all of the regulations they have to meet just to offer health coverage to their employees.

EEOC ISSUES GINA POSTER

When Congress enacted the Genetic Information Nondiscrimination Act (GINA), both the DOL and EEOC were given enforcement and regulatory authority. DOL rules generally govern group health plans, while the EEOC generally enforces GINA from an employment perspective.

Under new EEOC rules, employers will have to post a notice that their workplaces do not discriminate on the basis of genetic information. That requirement is effective November 21, 2009. The Equal Employment Opportunity Commission website provides their **poster** that will fulfill the GINA requirement. Employers also have the option of downloading a **supplement** containing updated GINA

language and posting that alongside the current version of their required EEO Law poster.

Employers should take the appropriate steps to make sure their nondiscrimination policies generally incorporate genetic protections. Moreover, as noted above, GINA also applies to group medical plans and primarily affects health risk assessments. Please see our recent **Alert** for details.

SINCE YOU ASKED:

IMPACT OF MICHELLE'S LAW FOR STUDENTS TODAY

A number of *HR Focus* readers have asked about the application of Michelle's Law for dependents of employees who lose eligibility under the employer plan because they have a medically necessary leave of absence from a post-secondary educational program (or cut their hours to less than full-time) before January 1, 2010.

BACKGROUND

Michelle's Law was named after a college student who was diagnosed with cancer but continued school full-time in order to avoid losing health coverage under her parents' plan. The law is intended to permit seriously ill or injured college students who are covered dependents under group health plans to continue coverage for up to one year while on medically necessary leaves of absence.

Michelle's Law becomes effective for plan years beginning on or after October 9, 2009 (that is the 2010 plan year for most plans). The effective date applies to medically necessary leaves of absence beginning on or after the effective date. Michelle's law has no effect on the plan or eligibility before the effective date (even if the illness or injury would overlap that date).

HOW ABOUT MEDICALLY NECESSARY LEAVES OF ABSENCE NOW?

There has been quite a bit of publicity surrounding Michelle's Law and its application, so employees will likely be aware of the potential extension of eligibility available. Since that is the case, employers are being asked about extended eligibility for their employees'



dependents who have already begun medically necessary leaves of absence (or will lose coverage before January 1) since those leaves will overlap the effective date of Michelle's Law.

Since the law becomes effective for medically necessary leaves of absence (or losses of coverage as a result of the leave) that begin on or after the effective date, the law would not require the plan to provide extended coverage for the dependent. Note that if the leave commences in December and the loss of coverage (which is often the case) is not until January 1, then Michelle's Law would apply, and the mandate would require the plan to provide coverage.

CAN EMPLOYERS PERMIT ACCESS TO PLANS BEFORE THE EFFECTIVE DATE?

The fact that plans can enforce the eligibility provisions with respect to dependents who have just lost their eligibility because of a medically necessary leave of absence but will not permit access to the plan because the leave and attendant loss of coverage did not occur on or after January 1, 2010, seems like a harsh result to many employers. Why would a child who is sick now lose eligibility but one who gets sick in another month keeps it for an additional year? With that in mind we have been asked whether a plan can provide that, effective immediately, it will implement Michelle's Law. The answer is "yes" a plan sponsor can amend its plan to incorporate those provisions effective immediately. Employers who wish to take that step should:

1. Check with the insurer or stop-loss carrier to make certain the carrier is willing to provide the extended coverage under the policy that covers the plan; and (assuming the carrier is willing to accept that change)
2. Amend the plan documents and SPD to incorporate the extended eligibility provisions.

Before making that determination employers should also consider the cost ramifications and the fact that COBRA is available to those dependents in any case.



HEALTH CARE REFORM:

WHAT TO LOOK FOR DURING THE DEBATE

NOTE: *At the time this article was prepared the big news centered on a Senate Democratic compromise to move health care reform through Congress without the public plan option (or the Medicare "buy-in" at age-55). Although leading Senate Democrats have been working to find a substitute to the government-run "public" insurance option included in the Senate health care proposal, it appears that in order to pass a bill the public option provision will have to be jettisoned. Legislative observers note that the government-run plan has been one of the biggest hurdles for the health care overhaul, though numerous other aspects of the measure would raise objections from many employers.*

The health care proposal is scheduled to be sent to the Congressional Budget Office for further financial scoring. If a Senate proposal is approved, conference work between leaders of the House and Senate would likely begin in January to produce a final bill. There is talk of proceeding without going to conference, if the House accepts whatever the Senate passes. However, Democratic members of Congress have raised significant objections to the Senate version of health care reform. Consequently, unless the Democratic leadership can push its members into agreement, the January conference remains likely.

THE DEBATE: EARLY DECEMBER

The health care reform debate changes so quickly that writing about it is challenging. This article is intended to offer only a snapshot of the health care reform debate as it stands in early December.



Many employers have identified troubling provisions in the proposed legislation, some of which are highlighted below. An internet link follows at the close of this article should you wish to contact your state's Senators to let them know where you stand as a constituent employer.

EXCISE TAXES AND ADDITIONAL "FEES"

INDUSTRY FEES

The Senate's health care proposal is entitled "Patient Protection and Affordable Care Act" (PPACA). The PPACA adds to the myriad of new fees on health insurance plans and the health insurance industry. Those fees include new costs (to be paid starting in 2010) for insurers and TPAs, medical device manufacturers and pharmaceutical manufacturers.

Although it may take a year or two, those new assessments will inevitably find their way into the overall health care cost structure. Unfortunately, many in the Senate have thus far failed to acknowledge that such fees will ultimately be born by the end user (the employer and employees and the individually insured).

OTC PROHIBITION AND FSA LIMITS

The PPACA limits reimbursement from a medical FSA, health savings account (HSA), medical savings account (MSA) or health reimbursement arrangement (HRA) for over-the-counter medications. While the reimbursements for those types of medications were likely fairly low, this provision will result in fewer non-taxable distributions from these account-based plans, presumably resulting in additional taxable income for employees and additional FICA taxes for employers.

In addition, medical FSAs will be limited to \$2,500 per year (with no provisions for indexing – so medical FSAs will eventually disappear from meaningful use). Capping medical FSAs will reduce the non-taxable income employees can use to pay for other unreimbursed medical expenses and effectively reduce the savings in FICA for both employees and employers. For example, if an employer has even 100 employees who use the FSA for \$3,500 per year, that extra \$1,000 per year results in non-trivial tax savings. The employer would save 7.65% (Social Security and Medicare) or \$76.50 per employee or \$7,650 per year for all the employees. Similarly, the employees save both the same \$76.50 plus their income taxes on that amount. So, this is another limitation that results in a greater cost for the plans and employers.

40% EXCISE TAX

Perhaps the most significant concern facing Willis clients is the excise tax on so-called "high cost" plans. The excise tax is 40% of the excess over the aggregate cost of insured and self-insured group health coverage of \$8,500 for individual coverage and \$23,000 for more than individual coverage.

For retirees age 55 and older and employees in high-risk occupations (as set out in the Act), the thresholds would be \$9,850 for individuals and \$26,000 for more than individual coverage. Thresholds would be indexed each year by the CPI plus 1% starting in 2012, which is the first year the tax would be assessed.

Remember that the threshold includes major medical coverage, dental, vision and EAP. It includes both the employer and employee costs (whether pre- or post-tax). Finally, it also includes any employer and employee contributions to FSAs, HRAs, HSAs or MSAs. (The provision specifies that the calculations should be made using the COBRA calculation methods.)

EXCISE TAX EXAMPLE:

An organization with 500 employees whose group medical benefits for individuals are \$7,000/year + another \$1,000 for total dental, vision and EAP would slide in just under the threshold. However, if the same employer offers an FSA in addition to the other benefits, then the employees who participate in that plan would be limited to \$500 per year before the excise tax kicked in. If the employees averaged, say \$1,000 per year, that additional \$500/year would result in an excise tax of **\$100,000 per year** (40% X \$500 X 500 employees).

These limits are static until 2013; at which point they will be indexed, but only to the consumer price index plus 1%. The medical trend has been running at about double the underlying CPI trend, so it is inevitable that employers will hit those thresholds. See the chart below for some high level examples based on size of employer and excess benefits to give you an idea of how costly the excise tax might be.

NUMBER OF EMPLOYEES	BENEFITS OVER THE THRESHOLD	ANNUAL EXCISE TAX ASSESSMENT
50	\$250	\$5,000
50	\$500	\$10,000
50	\$1,000	\$20,000
100	\$250	\$10,000
100	\$500	\$20,000
100	\$1,000	\$40,000
500	\$250	\$50,000
500	\$500	\$100,000
500	\$1,000	\$200,000
1,000	\$250	\$100,000
1,000	\$500	\$200,000
1,000	\$1,000	\$400,000

Intuitively, most employers understand that the excise tax would be fairly expensive. But the numbers above demonstrate that even if the plan exceeds the threshold by relatively modest amounts, the excise tax would be extremely costly. Most employers will, no doubt, do whatever they can to avoid the imposition of such a punitive tax.

ADDITIONAL FEE TO FUND “COMPARATIVE EFFECTIVENESS RESEARCH”

All employer plans will be subject to an additional fee of \$2 per covered life under the plan from 2013 through 2019. That means that for employer plans with 500 covered lives (not just employees but employees and their covered dependents) there will be yet another \$1,000 per year in fees under the bill.

(*Note:* Comparative Effectiveness Research has been itself a lightning rod of controversy, as critics contend that such data will be used as a “rationing tool” to evaluate which patient treatment regimens the government will approve for payment based on percentage of successful outcomes.)

Additional W-2 reporting obligation – Starting in 2010 (for W-2s to be delivered in 2011 for the 2010 tax year), the PPACA would require employers to include the value of the benefits provided to the employees on their Forms W-2 for the year. Presumably that will get them used to seeing the value and being prepared for the time the value is effectively reduced as employers begin to restrict their benefits to avoid the excise tax.

OTHER ISSUES

POSSIBLE WYDEN AMENDMENT

Some legislative observers have expressed concern about a potential amendment that is the pet provision of Senator Ron Wyden (D-OR). That amendment would require employers to provide vouchers for employees who opt out of employer-sponsored health plans in order to obtain coverage in an insurance exchange using funds provided by the employer (via a voucher).

The American Benefits Council believes that Senator Wyden will offer an amendment to the PPACA to require that voucher program. Wyden’s provision would permit an employee who opts out of an employer plan based upon an affordability standard, to keep the amount

of the voucher that exceeds the cost of the coverage in the exchange and not be taxed on this excess amount.

The Wyden provision could be seriously problematic for employers. It will obviously be used by employees who are able to purchase insurance more cheaply elsewhere to do so and pocket the difference. Consequently, we anticipate that the younger and healthier employees who will be able to purchase cheaper insurance will leave the employer plan, leaving only those who are older and sicker (and more expensive) on the employer plan. The Wyden proposal would so seriously undermine any employer coverage that we have to wonder how anyone could actually propose it and yet believe that employers would continue to provide medical coverage.

Individual Mandate – Starting in 2014, individuals would be required to obtain “minimum essential coverage” or pay a penalty of up to \$95 in 2014, \$350 in 2015, \$750 in 2016 (and indexed annually in the following years). Also, young adults (under age 30) could enroll in a low-cost catastrophic insurance policy. These changes are coupled with the insurance market reforms that will have modified community rating, guaranteed issue, and no preexisting condition exclusions for all insurance plans.

Many commentators – and Willis is among them – believe that the penalties set out for individuals who do not otherwise have coverage are not enough of an incentive to entice them to obtain it. If the coverage costs several times more than the penalty, and there is no other negative impact to not having a policy (since policies will be available at the same cost and with no preexisting condition exclusion in any case), there would be little incentive to purchase a policy until it is actually needed. For the overall market to function properly, there must be sufficient incentive to prompt an insurance purchase or the individual will simply decline to do so.

CONCLUSION

The PPACA is in a state of flux. Amendments are being offered, debated and discussed. There are *innumerable* political issues associated with the health care reform bills that we do not address at all. This discussion only concerns some items that could potentially affect employer plans. If you have not done so – and even if you already have – we suggest that you contact your Senators and spell out for them how devastating the PPACA would be to employer-provided benefits. The **American Benefits Council link** makes it easy to contact your Senator.



WEBCASTS

LEGISLATIVE AND REGULATORY UPDATES

JANUARY 19, 2010
2:00PM EASTERN TIME

Presented by
NLRG Co-Practice Leader
Jay Kirschbaum JD, LL.M, FLMI

Join us for an informational webcast on the legislative and regulatory updates of interest to all Willis Human Capital Practice clients and prospects, as well as a discussion on current issues that employers need to know to keep their plans compliant. Topics we will cover include:

- Preparing to comply with several federal laws that become effective in 2010 (or sooner in a few cases)
- Health Care Reform Update – Review of new rules or update on the legislative process
- Extension of the COBRA Premium Subsidy under ARRA
- Parity Requirements for Mental Health and Substance Abuse Benefits
- Genetic Information Nondiscrimination Requirements
- Continued Eligibility for College Students on Medical Leaves
- Cafeteria Plan Regulations (anticipated)
- Leaves for Military Families Under the FMLA
- Determining what obligations employers have to comply with state and local benefit mandates

Participant Access

Advance reservations are required to participate. **Click here** to RSVP for this call.

HR STAFFING AND SERVICES 2009 SURVEY

FEBRUARY 16, 2010
2:00PM EASTERN TIME

Presented by
Jennifer Barton, SPHR, MBA, HR Partner
National Practice Leader and
Debbi Davidson, CCP, HR Partner Senior
Consultant

This webcast will cover the results of the 2009 HR Staffing and Services Survey conducted by our HR Partner team last fall. In this compelling hour we will uncover key themes from the survey surrounding HR department staffing, organizational activities and service delivery. Join us as we share vital information regarding:

- Specialist vs. generalist staffing levels
- Benchmarking data, such as HR staffing per FTE, turnover rates, HR labor expenses as a percent of revenue, and other metrics
- Allocation of HR department time on various functions and activities
- HR outsourcing trends
- Reporting relationships
- And much more...

HR practitioners won't want to miss this important opportunity as they plan for 2010. We look forward to your participation!

Participant Access

Advance reservations are required to participate. **Click here** to RSVP.



These programs have been approved for 1 (General) recertification credit hour toward PHR, SPHR and GPHR recertification through the HR Certification Institute. For more information about certification or recertification, please visit the HR Certification Institute website at www.hrci.org. The use of this seal is not an endorsement by the HR Certification Institute of the quality of the program. It means that this program has met the HR Certification Institute's criteria to be pre-approved for recertification credit.

KEY CONTACTS

US BENEFITS OFFICE LOCATIONS

NEW ENGLAND

Auburn, ME
207 783 2211

Bangor, ME
207 942 4671

Boston, MA
617 437 6900

Hartford, CT
860 756 7365

Manchester, NH
603 627 9583

Portland, ME
207 553 2131

Shelton, CT
203 924 2994

NORTHEAST

Buffalo, NY
716 856 1100

Cranford, NJ
908 931 3005

Florham Park, NJ
973 410 4622

Morristown, NJ
973 829 6374
973 829 6465

New York, NY
212 915 8802

Norwalk, CT
203 523 0501

Philadelphia, PA
610 260 4351

Radnor, PA
610 254 7289

Wilmington, DE
302 397 0171

ATLANTIC

Baltimore, MD
410 584 7528

Bethesda, MD
301 581 4261

Knoxville, TN
865 588 8101

Memphis, TN
901 248 3103

Nashville, TN
615 872 3716

Norfolk, VA
757 628 2303

Reston, VA
703 435 7078

Richmond, VA
804 527 2343

Rockville, MD
301 692 3025

SOUTHEAST

Atlanta, GA
404 224 5000

Birmingham, AL
205 871 3300

Charlotte, NC
704 344 4856

Gainesville, FL
352 378 2511

Greenville, SC
704 344 4856

Jacksonville, FL
904 355 4600

Marietta, GA
770 425 6700

Miami, FL
305 421 6208

Mobile, AL
251 544 0212

Orlando, FL
352 378 2511

Raleigh, NC
704 344 4856

Savannah, GA
912 239 9047

Tallahassee, FL
850 385 3636

Tampa, FL
813 490 6808
813 289 7996

Vero Beach, FL
772 469 2842

MIDWEST

Appleton, WI
414 259 8837

Chicago, IL
312 527 6482
312 621 4843
312 621 4704

Cleveland, OH
216 357 5921

Columbus, OH
614 326 4788

East Lansing, MI
517 349 3226

Grand Rapids, MI
248 735 7249

Green Bay, WI
414 259 8837

Milwaukee, WI
414 203 5248
414 259 8837

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763 302 7131
763 302 7209

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972 715 6272

Denver, CO
303 765 1564
303 773 1373

Houston, TX
281 584 1672
281 584 1676
713 625 1017

McAllen, TX
956 682 9423

Mills, WY
307 266 6568

New Orleans, LA
504 581 6151

Oklahoma City, OK
405 232 0651

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316 263 3211

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602 787 6078

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Novato, CA
415 493 5210

Phoenix, AZ
602 787 6235
602 787 6078

Portland, OR
503 274 6224

Rancho/Irvine, CA
562 435 2259

San Diego, CA
858 535 1800
858 678 2130

San Francisco, CA
415 291 1567

San Jose, CA
408 436 7000

Seattle, WA
800 456 1415

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