

LEGAL & COMPLIANCE

IRS: GUIDANCE ON EXTENDING TAX-FREE HEALTH COVERAGE FOR ADULT CHILDREN

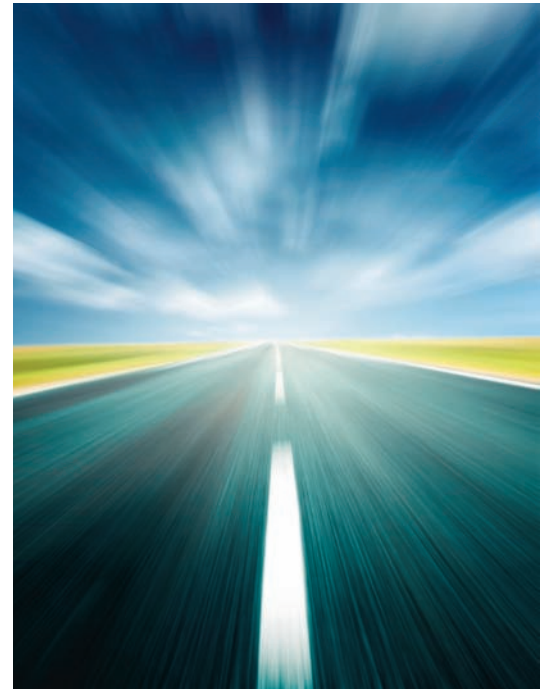
The new health care reform law includes a provision requiring employer-sponsored group health plans that provide coverage for employees' children to make that coverage available until age 26, regardless of an adult child's marital or student status. (For details of this mandate, see **Willis' Human Capital Practice Alert**, Vol. 3, No. 3, "First Things First: Health Care Reform in 2010 and 2011.")

The health care reform law also includes a provision making health coverage provided to an employee's child nontaxable until the end of the year in which the child turns 26. The new guidance – IRS Notice 2010-38 – addresses this tax exclusion and makes it clear that the tax exclusion applies more broadly than the federal mandate does. An employee's adult children who have coverage under an employer's health plan will have nontaxable coverage so long as they have not attained age 27 by the end of the year, even if that coverage is not required by the federal health care reform mandate.

Highlights from the guidance include:

- The IRS confirmed that the tax exclusion is effective March 30, 2010. This is in contrast to the mandate, which is effective for plan years starting on or after September 23, 2010.
- The new provision applies only to health benefits – it does not change the tax code's definition of dependent for any other purpose.
- Cafeteria plans may allow employees to pay for qualifying adult children's coverage on a pre-tax basis and to obtain reimbursement for their qualifying expenses from a health FSA.

Willis' National Legal & Research Group is reviewing the new guidance and offers detailed analysis in a publication available by [clicking here](#).



LEGAL & COMPLIANCE

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HHS PUBLISHES EARLY RETIREE REINSURANCE REGULATIONS

The new health care reform law includes a provision for federal funding of an early retiree reinsurance program (ERRP) that is intended to offer reimbursement to participating employment-based plans for a portion of the cost of health benefits for early retirees.

The EERP rules define early retirees as age 55 and older but are not eligible for coverage under Medicare (e.g., individuals that have not attained age 65) and not active employees of an employer maintaining, or currently contributing to, the employment-based plan or of any employer that has made substantial contributions to fund such a plan. The regulations clarify that spouses, surviving spouses and dependents, regardless of age, are also included in the definition of early retiree. Under the new program, HHS will reimburse plans up to 80% of certain claims between \$15,000 and \$90,000. (These amounts will be indexed for plan years starting on or after October 1, 2011). Congress has appropriated \$5 billion in funding for this temporary program that is scheduled to end on January 1, 2014.

The EERP regulations include specific requirements for eligibility and the application process. The regulations also clarify that program reimbursements may be used by a plan sponsor to reduce the *sponsor's* health benefits premiums or health benefits costs and to reduce benefits premium contributions, co-payments, deductible, co-insurance or other out-of-pocket cost, or combination of these costs, for plan participants. These interim final regulations are scheduled to be effective on June 1, 2010.

Early retiree reinsurance program tools and resources:

- The regulations are available by [clicking here](#).
- The White House has issued its own fact sheet summarizing the program, which is available by [clicking here](#).
- For additional general details about this program, see **Willis' Human Capital Practice Alert**, Vol. 3, No. 3, "First Things First: Health Care Reform in 2010 and 2011."

DOD PUBLISHES FINAL TRICARE SECONDARY PAYER RULE

Back in 2007, in a series of cost-saving moves, Congress significantly amended the TRICARE program through the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364). (TRICARE is the primary government program for health coverage for military personnel.) The law included a provision that TRICARE should be treated in the same manner with respect to employer group health plans as Medicare is treated under the Medicare Secondary Payer (MSP) law. (For details please see the August, 2007 edition of **FOCUS on Benefits**.)

The MSP law and regulations generally prohibit covered employers from offering incentives (overt or covert, financial or otherwise) to Medicare beneficiaries not to enroll or to terminate enrollment in a group health plan that would be primary to Medicare. (For details about the operation of MSP rules, please see chapter six of the Willis online *Compliance Manual*.) In similar fashion, under the TRICARE rule, employers are prohibited from offering incentives to

TRICARE beneficiaries not to enroll, or to terminate enrollment in a group health plan that would be primary to TRICARE. For example, as the MSP rules would prohibit an employer from paying for a worker's Medicare supplement plan, the TRICARE rules would forbid an employer from paying for an employee's TRICARE supplement insurance product.

The Department of Defense (DOD) has now published a final rule that implements the law described above. As expected, among other things, the rule clarifies that benefits offered through a §125 plan (e.g. cafeteria plans) will be permissible as long as the plan treats all similarly situated employees eligible for benefits the same and does not illegally take TRICARE eligibility into account.

These new rules finalize the DOD's earlier proposed regulations and become effective June 18, 2010.

ISSUE SPOTLIGHT: WILL EMPLOYERS KEEP PROVIDING MEDICAL BENEFITS?

As employer organizations are now beginning to collect the first pieces of health care reform regulatory guidance, it's an opportune moment to consider broader philosophical and policy reasons for employer-provided benefits. Understandably, many employers have asked: Why should we bother to sponsor medical benefits programs once the pay-or-play mandates take effect in 2014?

The simplest answer is: For the same reasons you offered medical benefits before. And that reason encompasses a lot of other very good reasons. Employers don't typically offer benefits out of a purely financial calculation. They do so to demonstrate how important their workers are, to be competitive with other firms, to allow employees to focus on work – free from wondering about how/if their medical needs are taken care of – because they want their employees to be healthy and, therefore, productive, and because employers know that they can provide a better product through their analysis than employees can individually.

It is the last point that seems to be questioned most – if the new government insurance “exchanges” operate as expected, and individuals can get their own coverage that meets certain parameters – why would employers still offer coverage? Although the other rationales remain valid, there is a big difference that appears to have gotten lost in the rhetoric of the debate – employer-provided medical benefits currently, and will continue to, come with a tax break that is not generally available with individual coverage. *That alone makes employer-provided benefits more attractive than straight cash compensation.*

For example, if we use the current top bracket of 35% (ignoring the higher rates at lower incomes caused by the phase-out of deductions and exclusions) and a state bracket of 5% (relatively in the middle of the pack), we can see that for an individual in the top bracket to be able to purchase his or her own health insurance that might cost \$8,000, that person would have to earn approximately \$13,333 to pay for that benefit on an after-tax basis. So, employers are able to deliver over \$13,000 in benefits for \$8,000.

That is still a good deal and one that employers may not want to abandon. Since many economists and other commentators are expecting tax rates to rise (indeed, just the expiration of the Bush tax cuts will result in a top bracket of 39.6%, plus the additional tax hikes in the PPACA, e.g., 0.9% Medicare tax and the 3.8% tax on unearned income) the federal tax rate will easily exceed 40% on its own making the provision of employer-provided benefits even more tax-efficient. Since tax rates are likely to go even higher as the country struggles with the deficit, the stated calculus becomes even more powerful.

These tax issues are especially compelling for some organizations. For example, despite the high general unemployment rate, there are employers facing acute worker shortages in specialized areas of expertise. Inside such competitive environments, many employees must maximize their ability to compensate employees, and the tax benefits will permit them to be more generous than they could be with cash payments alone.

Some observers fear that the tax benefits might change. In fact, since the PPACA includes a mandate requiring the reporting of the value of benefits on the W-2, that fear is rational. For the time being, however, the benefits are an attractive, tax-efficient portion of compensation that many employees would prefer to keep as tax free. Notably, the discussion about dependent mandates (and the tangential domestic partner issue) spotlights just how valuable that benefit is, since employees who find themselves with imputed income on the value of the benefit are often surprised at the tax impact.

HR CORNER

INTERNS: MUST THEY BE PAID? DEPARTMENT OF LABOR OFFERS GUIDANCE

The Department of Labor has published guidance to help employers determine whether they must pay interns. The department's fact sheet covers interns who provide services to for-profit employers in the private sector.

PAID INTERNSHIPS OR UNPAID INTERNSHIPS?

In the fact sheet, the department notes that internships will most often be viewed as employment (and therefore subject to the minimum wage and overtime provisions of the FLSA), unless a test is met. The department will look at the following 6 criteria when applying the test:

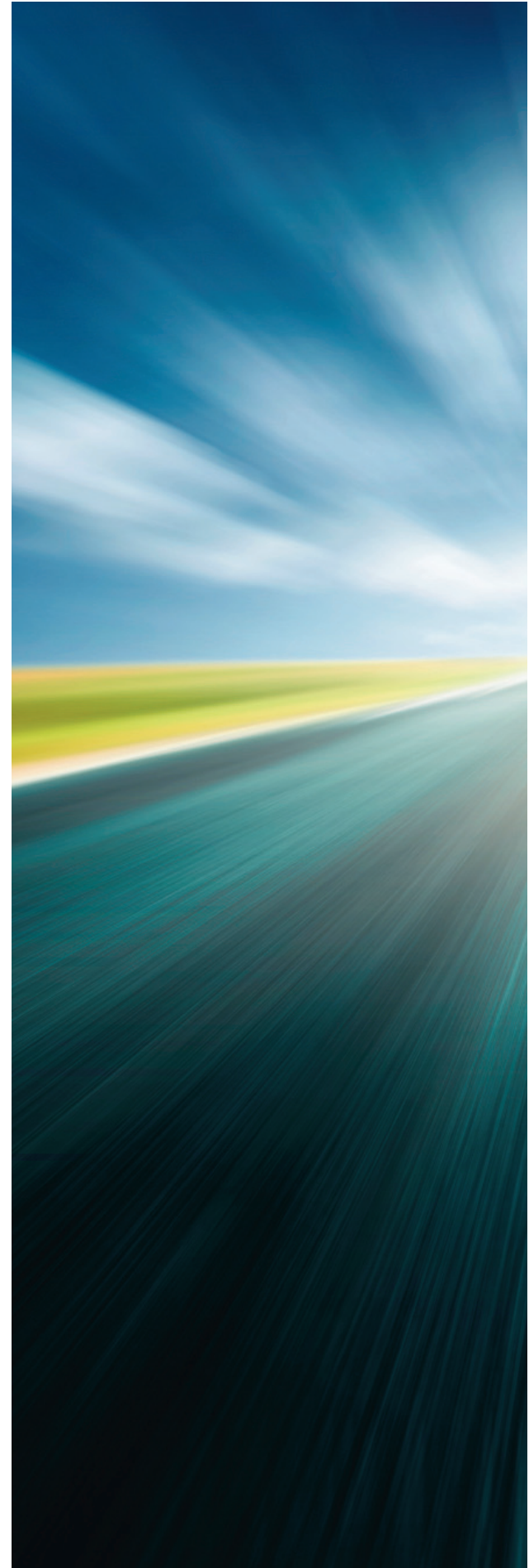
1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; *and*
6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

If all of the factors listed above are met, an employment relationship does not exist under the FLSA, and the act's minimum wage and overtime provisions do not apply to the intern. This exclusion from the definition of employment is necessarily quite narrow because the FLSA's definition of "employ" is very broad, the department says.

The fact sheet, ***Internship Programs Under the Fair Labor Standards Act***, goes on to look at other commonly discussed factors of internships, including:

- Similar to an education environment and the primary beneficiary of the activity
- Displacement and supervision issues
- Job entitlement

This article provided by BLR.



WELLNESS

HELPING EMPLOYEES QUIT FOR LIFE

Warnings against smoking abound, not to mention the high cost of tobacco products. Yet, people still smoke. How can you encourage your employees who smoke to quit? Like most health-related behaviors, tobacco use is a personal and complex behavior for employers to target. However, an employer can be influential by establishing a tobacco-free worksite, removing designated smoking areas and promoting effective cessation methods, such as counseling and the use of nicotine replacement products.

Most smokers recognize that smoking is an unhealthy habit and have already heard the reasons why they should quit from family, friends and health care professionals. They may have tried to quit many times, but they can't seem to do so permanently. It is important to let your employees know that you understand the chemical and psychological addiction that is smoking. Focus your efforts on promoting and rewarding cessation attempts, not punishing employees for their unhealthy behaviors. Smoking at work may even have some unintentional rewards associated with it in some workplaces. Who doesn't want a few breaks throughout the day away from their desks to socialize with fellow employees outside?

Maybe it's time to offer your employees something different. One of the most effective resources for tobacco cessation is the Free & Clear Quit for Life Program. This program is unique because it treats tobacco use as an addiction, not just a bad habit. With the help of the Quit for Life program, a person's chances of quitting are **eight times** better than trying to quit on their own. Why is this particular program so successful? Because it helps people quit in their own way as the program finds out what has worked in the past and what hasn't. Then it helps create a personalized "quit plan" that includes:

- Access to Web Coach™, a private, online community where participants can complete activities, watch videos, track progress and join in discussions with others in the program.
- Quit Guides, their easy-to-use printed workbooks, that participants can reference in any situation to help them stick with their quit plan.
- Recommendations on type, dose and duration of nicotine replacement therapies or medication if appropriate (including patch, gum, bupropion or Chantix).
- Nicotine replacement therapy (patch/gum) mailed directly to their home if appropriate.
- Unlimited toll-free access to Quit coaches, who offer as much support as a participant needs. Quit for Life coaches are true experts in tobacco cessation who have had 240 hours of specialized training in tobacco addiction and behavior change.

If you want to have fewer tobacco users, then make it easier for them to quit. Take some time to review your worksite policies related to tobacco use and the opportunities on your worksite campuses to limit or eliminate tobacco use. Review your benefits plan design to determine if tobacco cessation medications are a part of your pharmacy benefit. Send positive, supportive and frequent messages about the resources available to employees to help them quit. Encourage employees who have succeeded in quitting to share their stories or mentor other smokers. To learn more about the Free & Clear Quit for Life program or creating a supportive cessation environment in your worksite, contact your Willis service team.

WEBCASTS

LEGISLATIVE AND REGULATORY UPDATES

**June 15, 2010
2:00 PM EASTERN TIME**

**Presented by NLRG Co-Practice Leaders
Frances Horn, JD, PHR and 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 topics that employers need to know to keep their plans compliant. Topics we will cover include:

- Health care reform
- New regulations on cafeteria plans
- Mental health parity
- The methodology of computing COBRA premiums
- Michelle's Law

PARTICIPANT ACCESS

Advance reservations are required to participate. [Click here](#) to RSVP for this call.

KEY CONTACTS

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