

HR CORNER

'VOLUNTARY' BENEFITS IMPORTANT TO EMPLOYEES

A recent survey sponsored by Colonial Life & Accident Insurance and conducted by Harris Interactive points out how highly employees value such benefits as life insurance, disability insurance, and such less common insurances as those covering critical illness, accidents, and cancer.

Two factors are fueling these opinions for both employers and employees: the looming retirement of baby boomers and changes in costs and coverage expected to emerge from healthcare reform. Respondents were asked how important they feel these kinds of insurance coverage will be to them in five years. Three groups – employers, employees, and insurance brokers – were surveyed.

Very high percentages of employees said these types of insurance are and will continue to be important, very important, or extremely important to them: life (82%), disability (77%), critical illness (76%), accident (75%), cancer (61%). A different survey of employers found they misperceived the importance of these types of coverage to their employees, with only 44% to 54% rating them as valuable to workers.

On the one hand, insurers and employers anticipate huge price increases as a result of healthcare reform and are asking employees to shoulder greater portions of the cost, while insurers petition state insurance commissions for big increases. There has even been speculation that, with the advent of state-based, individual insurance exchanges, employers may begin to move away from providing healthcare coverage.

At the same time, employee respondents to this survey were less concerned that benefits will disappear than might be expected: 34% are concerned for the present, while 48% expect this to be a greater concern 5 years down the road.

OTHER KEY FINDINGS

Despite the 82% of employees who value life insurance, only 61% feel they currently have enough coverage. The disparity is starker for

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disability insurance, with 77% saying it's important, versus only 42% reporting they currently have this coverage through their employers or their spouses' employers. Further, nearly half of employees who plan to still be working in five years are extremely concerned about health problems they feel may be looming on the horizon for them and their families.

TIP

Colonial Life points out that such 'voluntary' benefits – sold at group rates directly by insurers to employees – can be offered in workplaces with little or no additional costs to employers. If such offerings can boost morale and loyalty, it would be prudent to adopt them. Further, their popularity seems currently to exceed that of such other voluntary benefits as pet, legal, or long-term care insurance.

This article provided by BLR.

FLSA CONTINUES TO CONFOUND HR PEOPLE

Many BLR readers firmly believe that the Family and Medical Leave Act is their biggest headache, but with the Department of Labor's new tough enforcement of the Fair Labor Standards Act, the ache of that may be worse. Here's the most recent set of questions BLR legal editors have fielded.

Q: One of our salaried exempt employees took a week of paid time off, but she had to work one day that week because of an emergency. She's now demanding not just a full week's salary but one additional day's salary. I would rather credit her PTO bank with 8 hours, as we would for nonexempt workers.

A: With limited exceptions, a salaried exempt employee must receive his or her full salary for any week in which he or she performs any work, without regard to the number of days or hours worked. But the DOL has stated that deductions from an exempt employee's leave bank will not affect his or her exempt status, as long as the employee's salary is not reduced. So your employee must be paid for the full week, but we are aware of no federal or state law that would require you to pay the employee for an additional day's

work instead of crediting her PTO bank with 8 hours.

Q: If we suspend a salaried exempt employee for 1, 2, or 3 days, are we obligated to pay the person during that suspension?

A: Deductions from the pay of exempt employees may only be made for unpaid disciplinary suspensions of 1 or more full days, imposed in good faith for infractions of a workplace code of conduct. The employer must have a written policy applicable to all employees in order to do this. Deducting from the pay of nonexempt personnel is permissible with fewer requirements.

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Q: We have asked an exempt employee to work on a Saturday during a special event. He refuses, saying that is not his normal schedule, and helping would take him over his usual 35-hour workweek. Can we mandate that he show up, and if we do, must we pay him extra for the time?

A: You may require the exempt employee to work on a Saturday. And, any exempt employee may be required to work more than 40 hours in a workweek without earning extra pay. Extra pay for working on weekends is generally a matter of agreement between employer and employee. But keep in mind that Saturday work may interfere with the religious observances of some employees.

Q: I understand that mortgage administrators are now to be classified as nonexempt. [The reader is referring to a recent Letter of Interpretation from DOL, changing this classification.] We have an originator who made \$107,000 in 2009 and is on track to make over \$100K this year. Doesn't he qualify for the highly compensated exemption?

A: An employee earning at least \$100,000 in a year is exempt without passing the full duties test if he or she (1) customarily performs any of the exempt duties of an executive, administrative, or professional employee; (2) primarily performs office or nonmanual work; (3) has compensation that includes commissions, and nondiscretionary payments – but not board, lodging, medical insurance payments, or the cost of other fringe benefits. Even if such an employee doesn't work for a full year, he or she may still qualify for the exemption if his or her pro rata earnings meet the salary requirement.

This article provided by BLR.

LEGAL & COMPLIANCE

IRS: W-2 REPORTING OF HEALTH COVERAGE IS OPTIONAL FOR 2011

IRS **Notice 2010-69** is short and simple. Here's the bottom line: W-2s issued for 2011 do not need to include the cost of health coverage provided by the employer during the year. Reporting those amounts is optional for coverage provided in 2011, and an employer "will not be subject to any penalties...merely because it does not report the aggregate cost of employer-sponsored coverage...on Forms W-2 issued for 2011."

The health care reform law included a requirement that employers report the value of the health coverage they provide to employees on the W-2s they issue to employees, and that requirement is set to become effective for W-2s reporting pay during 2011 (i.e., the W-2s that generally will be issued in January 2012). This requirement has been causing considerable confusion as employers begin programming payroll systems for 2011. Identifying exactly which coverage and exactly what amounts need to be reported has been difficult, and guidance on these points was anticipated last week. Instead, the notice explains that relief from the requirement for 2011 "is appropriate to provide employers with additional time to make any necessary changes to their payroll systems or procedures in preparation for

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compliance with the reporting requirement.” Even so, the regulators “anticipate issuing guidance on the reporting requirement...before the end of this year.”

A **draft Form W-2 for 2011** has also been released.

DOL: ADDITIONAL FAQS ON HEALTH CARE REFORM

The Department of Labor recently added some new **FAQs** regarding the health care reform law to its website. These new FAQs were prepared jointly by the Departments of Health and Human Services, Labor and Treasury, reflecting the views of all three agencies. While the new material primarily confirms answers that agency representatives have provided in other settings, the confirmation is helpful.

Highlights of the FAQs regarding grandfathered health plans include:

- For a plan that is continuing the same insurance policy, the six plan changes specified in the grandfather rule regulations are the only changes that will cause a plan to lose grandfathered status under the regulations. Those six changes are:
 - Elimination of all or substantially all benefits to diagnose or treat a particular condition.
 - Increase in a percentage cost-sharing requirement (e.g., raising an individual’s coinsurance requirement from 20% to 25%).
 - Increase in a deductible or out-of-pocket maximum by an amount that exceeds medical inflation since March 23, 2010 plus 15 percentage points.
 - Increase in a copayment by an amount that exceeds medical inflation since March 23, 2010 plus 15 percentage points (or, if greater, \$5 plus medical inflation since March 23, 2010).
 - Decrease in an employer’s contribution rate towards the cost of coverage by more than five percentage points.
 - Imposition of annual limits on the dollar value of all benefits below specified amounts.

Of course, the regulations also specify other ways to lose grandfathered plan status (e.g., failing to provide participants a required notice regarding grandfathered status or changing insurance policies).

- An employer that offers its employees a choice between PPO and HMO coverage has two separate benefits packages. The determination of grandfathered status is made on a benefits-package-by-benefits-package basis. Loss of grandfathered status by one benefits package does not affect the grandfathered status of any other benefits package.
- If a group health plan modifies the tiers of coverage it had on March 23, 2010 (for example, from self-only and family to a multi-tiered structure of self-only, self-plus-one, self-plus-two, and self-plus-three-or-more), the employer contribution for any new tier would be tested by comparison to the contribution rate for the corresponding tier on March 23, 2010. In this example, if the employer contribution rate for family coverage was 50% on March 23, 2010, the employer contribution rate for any new tier of coverage other than self-only (i.e., self-plus-one, self-plus-two, self-plus-three or more) must be within five percentage points of 50% (i.e., at least 45%).

One of the new FAQs addressed the health care reform law’s rescission prohibition and how it affects normal terminations of

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health plan coverage (e.g., when an employee terminates employment or divorces). An example in the regulations on rescissions explains that mistakenly covering an employee for several months after the employee becomes ineligible does not allow for retroactive termination (i.e., rescission) of the employee's coverage unless there was some fraud or intentional misrepresentation by the employee. In contrast, if the employer's normal administrative practices (e.g., monthly reconciliation of enrollment records) result in coverage continuing for a few days or weeks after an individual becomes ineligible, and no premiums are paid for those periods, retroactive elimination of coverage back to the date the individual became ineligible is not considered rescission of coverage. In addition, if a former spouse remains covered under the plan because the plan was not notified of the divorce, termination of the former spouse's coverage retroactive to the date of the divorce is not considered rescission of coverage if neither the employee nor the spouse paid the full COBRA premium for the period since the divorce.

CONCLUSION

Similar to the **FAQs** that the Departments released in September, the new FAQs help to answer employers' questions regarding compliance with the Patient Protection and Affordable Care Act (PPACA).

It is expected that until final regulations are released (final regulations are expected to be published beginning next year), the Departments will continue to issue responses to questions and other guidance related to the implementation of PPACA.

SOCIAL SECURITY COLA REMAINS THE SAME FOR 2011

The Social Security Administration **announced** on October 15, 2010 that there will be no increase in Social Security benefits in 2011 to reflect cost-of-living adjustments (COLAs). Social Security COLAs are tied to the consumer price index for urban wage earners and clerical workers (CPI-W). Because there was no increase in the CPI-W in the third quarter of 2010, as determined by the Bureau of Labor Statistics, Social Security benefits will not increase for 2011, the agency said in a statement. There was no COLA for Social Security benefits in 2010 either.

The tax rate for wages paid in 2011 is set by statute at 6.2% each for employees and employers, SSA said. Thus, for employees, 6.2% of wages are withheld and the employer deposits the withholding, along with its 6.2% matching contribution, with the government for the Social Security programs. The lack of COLA means that the maximum amount of earnings subject to Social Security tax will remain the same at \$106,800 in 2011. An individual with wages equal to or larger than \$106,800 would contribute \$6,621.60 in 2011, and his or her employer would contribute the same amount.

In addition, 1.45% of an employee's wages is withheld and the employer makes a matching 1.45% contribution to the Medicare program, making the total withholdings at 7.65% (6.2% OASDI and 1.45% Medicare). However, all wages are subject to the Medicare tax; there is no ceiling.

The tax rate for self-employment income in 2011 is 12.4%.

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SAN FRANCISCO HCSO UPDATES

San Francisco's Health Care Security Ordinance (HCSO) requires that medium and large businesses make certain minimum contributions toward their San Francisco employees' health care. Under this provision, an employer may either contribute at least the minimum amount to a medical plan or other health benefits or pay that amount into the publicly available program established by the HCSO. (See Willis *Employee Benefits Alert*, Issue 112, for additional details on the HCSO's requirements.)

Effective January 1, 2011, the hourly health care expenditure rate that employers are required to make will be increasing. For an employer with 100 or more employees, the expenditure will be \$2.06 per hour paid; for those with 20-99 employees, the rate is \$1.37 per hour paid.

Under the HCSO, a manager, supervisor or confidential employee who earns at or above a certain annual salary is exempt from the expenditure mandate. The annual salary exemption for 2011 is \$81,450 (or \$39.16/hour).

VALUE OF DOMESTIC PARTNER HEALTH COVERAGE NOT FUTA WAGES IF TAX DEPENDENT

A recent Chief Counsel Advice (CCA) **memorandum** discusses whether the value of health coverage provided to an employee's domestic partner is FUTA (federal unemployment tax) wages when the domestic partner is the employee's tax dependent. The regulations for both FUTA and FICA (Social Security tax) provide that an employee's dependents "include the employee's husband or wife, children, and any other members of the employee's immediate family." According to the CCA, however, this language does not prevent a domestic partner who is an employee's tax dependent from also being an employee's dependent for purposes of the FUTA (and FICA) exclusions. Therefore, when a domestic partner is the employee's tax dependent, the value of the domestic partner's health coverage is not FUTA wages. CCAs are written advice issued by the IRS Office of Chief Counsel to field or service center employees. While they cannot be used as precedent, they are helpful in determining the IRS' position on a particular issue.


SINCE YOU ASKED: MICHELLE'S LAW AFTER HEALTH CARE REFORM

Willis' National Legal & Research Group (NLRG) has recently received several questions as to whether, given the new mandate under the health care reform law for group health plans to cover adult children to age 26, employers must still comply with Michelle's Law, particularly in regard to the law's notice requirements.

BACKGROUND

Under Michelle's Law, a group health plan cannot terminate a child's coverage for loss of full-time student status if the change in student status is due to a "medically necessary leave

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of absence.” Under the law’s notice requirement, whenever an employer provides a notice that certification of student status is required to maintain certain dependents’ eligibility under the plan, the notice must include a description of the continued coverage that is available under Michelle’s Law “in language that is understandable to the typical plan participant.”

Under the Patient Protection and Affordable Care Act (PPACA), any group health plans that cover dependent children are required to provide health coverage for such children until they reach age 26. Under the applicable regulations, plans cannot condition dependent child eligibility on anything other than age and the “relationship” between the participant and the child. This rule applies to children who are within the tax code’s definition of child (generally, a “son, daughter, step-child, adopted child, or eligible foster child”). PPACA does not allow employers to base an adult child’s eligibility on such factors as financial dependency on the participant, residency with the participant or student status. Use of non-relationship factors is permitted, however, for children who are not within the tax code’s definition of child. Note that nothing requires a plan to cover all children within the tax code’s definition of child, so that a plan may exclude all step-children from coverage, for example, but cannot allow coverage of some step-children and not others based on residence with the employee. For details on this mandate, see Willis Human Capital Practice *Alert*, Vol. 3, No. 8, **“Adult Children Health Coverage Extension: Regulations Published.”**

DISCUSSION

While nothing in the PPACA specifically revokes Michelle’s Law, in many ways practical application of Michelle’s law has been nullified. Specifically, if a plan does not condition dependent child eligibility on student status, then Michelle’s Law will not prevent any child from losing coverage. So if an employer decides that it will simply cover employees’ children to age 26 in order to comply with PPACA and does not apply a full-time student requirement to any enrollee, there would be no need for a Michelle’s Law provision in the plan. As discussed above, a Michelle’s Law notice must be included along with any notice regarding a requirement for certification of student status for coverage under the plan. However, if the plan does not have a

requirement regarding an adult child’s student status and does not request a certification of such status, the Michelle’s Law notice would not be required.

There could be circumstances, however, in which Michelle’s Law protections remain applicable. For example, if an employer allowed full-time students to remain enrolled until age 28, then the Michelle’s Law provision would be needed with respect to children over age 26. Michelle’s Law could also be a factor if the plan provides coverage to children who are not within the tax code’s definition of child (as discussed above). For example, the plan could provide coverage to an employee’s grandchildren or nieces and nephews. For these children, the plan could base eligibility on non-relationship factors, such as financial dependency and student status. Michelle’s Law also could be a factor for a dependent child covered under a plan with a student status requirement between now and when the employer implements the age 26 mandate (which is effective for plan years starting on or after September 23, 2010). Until the PPACA requirement is effective for a particular plan, the plan would need to comply with Michelle’s law. In addition, under the health care reform law, a grandfathered plan may exclude children under age 26 if they are eligible for other employment-based coverage (other than their parents’). If a grandfathered plan provided an exception to this exclusion for full-time students, compliance with Michelle’s Law would be required.

WELLNESS

WEIGHING IN ON WORKSITE WEIGHT MANAGEMENT PROGRAMS

Of U.S. adults, 65% are overweight and 30% are obese. Employee obesity places a heavy burden on the wellbeing and finances of your organization. To learn more about estimating the cost of obesity at your organization, [click here](#).

According to the Centers for Disease Control and Prevention, American society has become ‘obesogenic,’ characterized by environments that promote increased food intake, unhealthy foods and physical inactivity. Is your organizational environment obesogenic?

Below are some helpful tools and resources that can help you improve your worksite environment.

Learn what other employers are doing by [clicking here](#) to review “Employer-Sponsored Weight Management Programs” – “Health Enhancement Systems.”

1. Do your vending machines offer healthy choices? Use [this tool](#) to help evaluate your vending machine options.
 - Consider forming a vending machine committee, or create an employee survey to learn more about what types of vending machine options are most appealing to your employees.
2. Explore weight management toolkits for the workplace by [clicking here](#).
3. Consider offering a weight management program, such as Weight Watchers, at the worksite. For more information, [click here](#). Offer a subsidy or partial reimbursement to participants who attend the majority of sessions.
4. Consider offering telephonic health coaching or an on-site health coach, registered dietitian or exercise physiologists to encourage and support employees’ weight management efforts.

5. Create and measure walking routes inside and outside the building to encourage walk breaks.
6. Instead of celebrating birthdays or other events with treats, consider instituting a company policy of donating non-perishable foods to the local food pantry or collecting donations for a local charity to honor a team member.
7. Offer skill building workshops or educational information on reading food labels, packing healthy lunches, healthy snack options or recognizing “fad diets.”

In addition to employing the tools and resources referenced above, consider these additional resources:

- American Cancer Society’s Active for Life Program. An on-line physical activity program is available by [clicking here](#).
- American Heart Association’s Start! Program. An on-line program which encourages walking is available by [clicking here](#).
- SPARKPEOPLE – An on-line diet and healthy living community with free resources, tools, support and more is available by [clicking here](#).

To learn about other tools and resources, contact a member of your Willis Service Team.

WEBCASTS

SMALL EMPLOYER SOLUTIONS - VOLUNTARY BENEFITS

December 21, 2010
2:00 PM EASTERN TIME

Presented by
Jay Hutchins
Colonial Life, Vice President, Broker Marketing & Sales

Voluntary benefits play a key role in the workplace of the future. According to a recent white paper released by Colonial Life & Accident Insurance Company, American workers who are looking at their benefit needs five years into the future say many voluntary benefits will be important to them – but their employers may not be hearing the message.

Join us for an educational webcast focused on the small employer. We will explore:

- The importance of voluntary benefits
- Workplace dynamics
- How employers can combat employee demands
- Big picture approach to benefits
- Appropriate voluntary product offerings
- One-to-one benefits counseling
- Flexible technology
- Choosing a voluntary benefits partner

PARTICIPANT ACCESS

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

KEY CONTACTS

US BENEFITS OFFICE LOCATIONS

NEW ENGLAND

Auburn, ME
207 783 2211

Bangor, ME
207 942 4671

Boston, MA
617 437 6900

Burlington, VT
802 264 9536

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

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
407 562 2493

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
312 288 7700
312 621 4843
312 348 7678

Cleveland, OH
216 357 5921

Columbus, OH
614 326 4722

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

Minneapolis, MN

763 302 7131

763 302 7209

Moline, IL

309 764 9666

Pittsburgh, PA

412 645 8537

412 586 3524

Schaumburg, IL

847 517 3469

SOUTH CENTRAL**Amarillo, TX**

806 376 4761

Austin, TX

512 651 1660

Dallas, TX

972 715 2194

972 715 6272

Denver, CO

303 765 1564

303 773 1373

Houston, TX

713 625 1017

713 625 1082

McAllen, TX

956 682 9423

Mills, WY

307 266 6568

New Orleans, LA

504 581 6151

Oklahoma City, OK

405 232 0651

Overland Park, KS

913 339 0800

San Antonio, TX

210 979 7470

Wichita, KS

316 263 3211

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559 256 6212

Irvine, CA

949 885 1200

Las Vegas, NV

602 787 6235

602 787 6078

Los Angeles, CA

213 607 6300

Novato, CA

415 493 5210

Phoenix, AZ

602 787 6235

602 787 6078

Portland, OR

503 274 6224

Rancho/Irvine, CA

562 435 2259

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858 678 2000

858 678 2132

San Francisco, CA

415 291 1567

San Jose, CA

408 436 7000

Seattle, WA

800 456 1415

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