

WELLNESS

A STRETCH IN TIME

Something as simple as a stretch may save a muscle and prevent a claim. Organizations that have implemented a stretching program as a regular part of their worksite wellness plan report benefits in employee health and productivity and in their bottom lines, as fewer injuries mean fewer claims.

According to the Centers for Disease Control and Prevention, overexertion is the most common work-related disability injury. In 2009, more than 3.2 million overexertion injuries were reported.¹

Overexertion is an injury resulting from using the body or one part of the body in excess causing damage to the muscle, tendon, ligament or nerves.

To prevent overexertion, the National Business Group on Health² suggests strategies for preventing overexertion injuries that include:

- Examining your organization’s medical claims and workers’ compensation data to identify what conditions are contributing to high-cost claims, looking specifically for back and neck injuries
- Making safety a priority in your organization
- Educating all employees about safe lifting techniques
- Providing work station ergonomics training to front-line managers
- Offering on-site stretching exercises and wellness programs

Repetitive movements, standing for an extended period of time or sitting at a desk can cause muscle pain, sprains, strains, tension and weakness in the neck, shoulders, arms, wrists, hands, back and legs. Some studies indicate the benefits of a stretching program include stress reduction, improved flexibility and reduced muscle discomfort.

The American College of Sports Medicine also provides guidelines for organizations that wish to offer an effective worksite stretching program.³



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- Commit work time and resources to the stretching program
- Trained instructors should teach lead individuals in the organization how to properly perform the stretches
- Monitor techniques and compliance
- Tailor exercises to job duties
- A typical stretching program is offered a minimum of 2-3 days with an emphasis on tight muscles

For employers with a high incidence of overexertion injuries or strains and sprains, implementing a stretching program at their worksite may be warranted. For example, P&H Mining Equipment implemented a stretching program in 2005 after many of their employees were experiencing frequent strains and sprains on the factory floor.⁴ They partnered with their local health care provider to develop a program designed around the physical demands of the work and the tools the employees used. The results of their program have been positive with an over 30% decline in strains and sprains and a decrease in recovery and return-to-work time after an injury. Leadership at this organization has seen an indirect benefit of the program through improved employee morale.

Willis client, Opportunities Inc., an industrial employment and training services organization, began a stretching program four years ago. According to Bonnie Krause, their Human Resource Specialist, the idea of implementing a stretching program came from a safety meeting.⁵ The thought was that stretching first thing in the morning would help “wake up” tired muscles and prevent injuries. Although no formal evaluation of the program was conducted, Opportunities Inc. has seen a reduction in muscle-related injuries. Like P&H, they also attribute improved employee morale to the stretching program, with employees looking forward to their turn in leading the daily stretches.

Complementing your health and productivity program with a stretching program may be a good way to reduce injuries and associated costs as well as improve employee morale. Consider utilizing the resources below as a starting point.

American College of Sports Medicine

<http://www.acsm.org/>

“Back Pain at work: Preventing Aches, Pains and Injuries,” The Mayo Clinic

<http://www.mayoclinic.com/>

“Ergonomics Idea Bank,” Washington State Department of Labor
Stretching flier from Eat Smart Move More™, North Carolina

<http://www.laxymca.org/phc/uploads/stretchches.pdf>

¹ <http://www.cdc.gov/ncipc/wisqars/nonfatal/definitions.htm>.

² The National Business Group on Health “Overexertion Injuries,” Fact Sheet, May 2011.

³ General Principles of Exercise Prescription. American College of Sports Medicine Guidelines for Exercise Testing and Prescription, 6th edition, 2000. B. Franklin, Ed. Lippincott Williams and Wilkins, Philadelphia, PA, pp.137-164.

⁴ “Employee Stretching Program Pays Off for P&H,” biztimes.com, February 2007,

<http://www.biztimes.com/news/2007/2/16/employee-stretching-program-pays-off-for-p-h>.

⁵ In correspondence with author 5/23/11.

HR CORNER

ADAAA EFFECTIVE MAY 24 - READY FOR ITS NINE RULES OF CONSTRUCTION?

The final regulations issued by the EEOC implement the ADA Amendments Act of 2008 (the ADAAA) were effective May 24. The new regs feature nine “Rules of Construction” to help employers determine whether an impairment substantially limits a major life activity.

The new rules reflect the ADAAA’s broader definition of “disability.” As a result, more individuals will have covered disabilities and would qualify for protection under the ADA.

For employers, this generally means shifting your approach from one that focuses on verifying that a person has an ADA disability, to one that uses the interactive process to see if there’s an effective accommodation that will allow an employee to perform the essential functions of his or her job.

According to the EEOC, the primary focus in ADA cases should be whether employers have complied with their obligations under the ADA and whether discrimination has occurred, not whether the individual meets the definition of disability. Determining whether an individual meets the definition of disability under the ADA “should not demand extensive analysis.”

RULES OF CONSTRUCTION

That said, the regulations provide nine “rules of construction” that must be applied to determine whether an impairment substantially limits a major life activity. The regulations clarify that this analysis is not relevant when determining coverage under the “regarded as” prong of the disability definition (an impairment isn’t required to substantially limit a major life activity to be covered as a “regarded as” disability).

RULE 1 The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. “Substantially limits” is not meant to be a demanding standard.

RULE 2 An impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

The EEOC noted that “substantially limits” is intended to be a lower threshold than “prevents” or “severely or significantly restricts” as prior Supreme Court decisions and EEOC regulations had defined the term.

RULE 3 The primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether an individual’s impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment “substantially limits” a major life activity should not demand extensive analysis.

RULE 4 The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term “substantially limits” must be interpreted and applied to require a degree of functional limitation that is lower than the standard for “substantially limits” applied prior to the ADAAA.

RULE 5 The comparison of an individual’s performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis. The regulations, however, do not prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate.

RULE 6 The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

Under the amended ADA, employers cannot consider the ameliorative effects of mitigating measures (i.e., medication or a device that improves an impairment) when determining whether an impairment is a disability. For example, an employer may not consider an individual’s use of insulin to control his diabetes when determining whether the diabetes substantially limits the major life activity of eating.

“Non-ameliorative effects.” According to the EEOC’s interpretive guidance, non-ameliorative effects may be considered in determining whether an impairment is substantially limiting. Non-ameliorative effects include negative side effects of medicine, burdens associated with following a particular treatment regimen, and complications that arise from surgery.

RULE 7 An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

RULE 8 An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment.

RULE 9 The six-month “transitory” part of the “transitory and minor” exception to “regarded as” coverage does not apply to the definition of “actual disability” or “record of

disability.” The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting.

(Under the “regarded as” prong of the ADA, the only type of impairment that can’t form the basis for a “regarded as” claim is one that is both transitory and minor. Rule 9 clarifies that this does not apply to “actual disability” or “record of disability” cases.)

STEPS EMPLOYERS SHOULD TAKE

- Train supervisors and managers about complying with the amended ADA, in particular about:
 - The interactive process
 - Requests for accommodation
 - Types of reasonable accommodation
 - No retaliation
- Check recordkeeping processes to ensure adequate documentation of:
 - Accommodation requests
 - Steps in the interactive process
 - Reasons for granting/denying an accommodation request.
- Check equal employment/nondiscrimination policies to make sure they comply with the amended ADA and regulatory requirements.
- Review job descriptions to ensure regulatory compliance—detailing the essential functions in a job description will help ensure that applicants and employees with disabilities are not discriminated against because they cannot perform marginal job duties.

This article provided by BLR.

DO YOUR JOB DESCRIPTIONS STILL FIT?

By **Tillman Coffey**, (Labor Letter, June 2011)

Almost everyone has clothes in their closet that no longer fit. Admit it; things change, whether it’s the fashion or you. In fact, some of those clothes probably never really fit, despite your alterations and efforts. Maybe you thought you would “grow” into them. Or maybe you thought you looked good enough. No problem.

Now picture your company's job descriptions. Do they still fit today? Did they ever really fit? Maybe the company got them off the rack and added an employee's name without regard to whether the job description actually "described" the job expected to be performed. Or maybe the job description was accurate when created but, as the job changed, the written description of the job did not. No matter how it happened, a bad fit is a bad fit. In the case of job descriptions, a bad fit is probably more serious than a fashion mistake.

IS IT EVEN NEEDED?

Why have job descriptions in the first place? What is their purpose? Generally, a job description sets forth the job duties in a general way and serves as the company's "official" job requirements. It is a menu of sorts. The problem is that many job descriptions don't describe the job presently being performed by an employee (if they ever did). Regardless of how the actual job duties and the job description parted ways, whenever a controversy arises the job duties performed will control. A job description rarely helps in a controversy and can often make matters worse. So, why is it important that the description and the job match? Consider the Americans with Disabilities Act (ADA). The ADA protects employees and applicants who can perform essential job functions with or without a reasonable accommodation. Often, the issue in an ADA case is determining what job duties are "essential." Employers who use job descriptions have the opportunity to set forth those essential job functions in writing before a controversy arises, and most job descriptions purport to do so. But for the job description to be of value it must accurately describe or list those essential job functions. Often they do not.

Let's say that Maria applies for a position that has a lifting restriction of 20 lbs. The job she seeks has a written description which clearly states that the ability to lift 25 lbs is an essential job function. Under these circumstances, the employer can safely deny the applicant the position, right? Not necessarily. What if the lifting restriction was left over from the Middle Ages and today no one in that position actually is required to lift 25 lbs due to new equipment? What if all those persons in the job would testify that they never lift more than 10 lbs? Based on these facts, could you lawfully deny employment to Maria on this basis without violating the ADA?

Conversely, what if the job as it currently exists has a 25 lb. lifting requirement but your written job description makes no mention of that requirement? Should you deny Maria

employment based on her inability to lift 25 lbs under these facts? Maybe you can, with the knowledge you have to prove later that the requirement really existed and that your job description simply was outdated. In both scenarios, the job description potentially can hurt the employer.

The same concern exists under wage and hour law (the Fair Labor Standards Act, or FLSA). Many employers determine exempt versus non-exempt status based on a job description. The danger in doing this is that, much like essential job functions, the primary job duty described in the job description may not be the job actually being performed by the person in the job position. If faced with a challenge as to exempt status, the job description likely will be irrelevant if the employee shows that his or her primary job duties are not as stated on the job description and those actually performed do not allow the employer to lawfully classify the position as exempt. Remember, when claiming an exemption under the FLSA (and typically under many state wage and hour laws), the employer has the burden of establishing exempt status. Exempt status is not determined by job descriptions any more than it is determined by job title.

OUR ADVICE

What should you do? Review your job descriptions. Do they still fit? Do they actually and accurately describe the job performed? To make this determination, solicit input from the supervisors, and the employees themselves, to ensure that the job description captures the actual job duties performed. If not, change the job duties or the job description. If the job description changes again, modify the job description along with it. At a minimum, consider reviewing job descriptions on a regular basis to ensure the right fit.

Additionally, ensure that the job description actually includes all essential job functions, including the often overlooked "mental" requirements. If your company considers attendance an essential job function, which should be obvious but is not to some, include

that in the job description. Likewise, if the ability to understand and follow instructions and the ability to concentrate are considered essential to job performance, those traits should be included. And if the ability to get along with others or to be part of a team is considered essential, list those qualifications as well.

While the value of job descriptions may be debated, there is no debate that a bad job description likely has negative value. So, go through your “closet” and look for those job descriptions that no longer “fit.” With a few alterations, you should be looking good.

This article provided by Fischer & Phillips.

LEGAL & COMPLIANCE

DELAWARE GOVERNOR SIGNS CIVIL UNION BILL

On May 11, 2011, Delaware Governor Jack Markell (D) legalized civil unions by signing the Civil Union and Equality Act of 2011 (Senate Bill 30). The law, effective January 1, 2012, grants civil union partners in Delaware the same rights, protections and benefits as are granted to married spouses. The state will also confer civil union status upon a legal union between two individuals of the same sex that was validly formed in another jurisdiction (provided that the legal union meets Delaware’s eligibility requirements and the legal union affords to and imposes on the parties substantially similar rights, benefits, protections, responsibilities and duties as those afforded to and imposed on parties to a civil union entered into in Delaware). A copy of the law can be found [here](#).

Under the new law, insurance policies regulated by Delaware will be required to extend benefits to civil union partners. This will affect those employers offering insured benefits plans to their employees; self-insured plans will not be affected.

NOTE: this law only extends to those rights and benefits granted by state law. The Defense of Marriage Act (DOMA) defines marriage, for federal law purposes, as a legal union between a man and a woman. Consequently, federal law will not recognize a marriage, civil union or other legal construction between two individuals of the same sex. Therefore, civil union partners will generally not be entitled to the rights and benefits afforded by federal law. These include various tax benefits, benefit continuation rights under COBRA, and leave of absence rights under FMLA. Unless the civil union partner qualifies as the employee’s tax dependent (for purposes of tax-free employer-sponsored benefits), any employer-sponsored benefits provided to the civil union partner will be subject to imputed income. In addition, benefits cannot be provided on a pre-tax basis through a §125 cafeteria plan. The National Legal & Research Group has written extensively on the amount of taxable income we believe employers are required to report (see [Willis Human Capital Practice Alert, Issue 63](#)). The Delaware law, however, will extend state tax benefits to civil union partners. Benefit contributions should be exempt from Delaware taxes just as similar benefits for spouses of different sexes would be.

DOL INTRODUCES OSHA WEB TOOL

The U.S. Department of Labor (DOL) recently announced a new web-based tool to help employers understand their responsibilities to report and record work-related injuries and illnesses under Occupational Safety and Health Administration (OSHA) regulations.

The OSHA Recordkeeping Advisor, which can be accessed by [clicking here](#), helps employers and others responsible for organizational safety and health quickly determine:

- Whether an injury or illness (or related event) is work-related
- Whether an event or exposure at home or in travel is work-related
- Whether an exception applies to the injury or illness
- Whether a work-related injury or illness needs to be recorded
- Which provisions of the regulations apply when recording a work-related case

To help employers in making these determinations, the OSHA Recordkeeping Advisor relies on their responses to a series of pre-set questions.

NEW MEDICARE PART D: NOTICES AND DEADLINES

The Centers for Medicare and Medicaid Services (CMS) recently posted new versions of the **Medicare Part D model notices**, which employers are required to distribute to Medicare Part D-eligible individuals. The revised notices state whether prescription drug coverage under the plan is creditable or non-creditable and were necessitated by a change to the Part D annual coordinated election period (Medicare Part D's version of an open enrollment period), moving it to October 15 – December 7 from November 15 – December 31. The change is effective for the 2011 election period (for coverage effective January 1, 2012), and this year's annual coordinated election period begins October 15, 2011. This change in the Part D annual coordinated election period probably means that employers will be obligated to provide Medicare Part D notices earlier this year than they have in the past.

BACKGROUND

Employment-based medical plans that cover prescription drugs are required to notify Part D-eligible individuals who are “enrolled or seeking to enroll” whether the plan provides “creditable coverage” of prescription drugs. CMS provides model notices for this purpose. The notices inform recipients whether the employer-sponsored prescription drug coverage is creditable (i.e., it is at least the actuarial equivalent of Medicare's prescription drug benefit) and explains the applicable enrollment penalty under Medicare Part D if an individual who does not enroll during his or her initial enrollment period has a gap in creditable prescription drug coverage of 63 days or more. Because an individual who fails to enroll during his or her initial enrollment period would enroll during the annual coordinated election period for Medicare Part D, the model notices refer to that period and the revised model notices show the new dates for the Part D annual coordinated election period (i.e., October 15 – December 7).

TIMING OF NOTICES

One aspect of employers' administration of their health plans is likely to be affected by the change in the Part D annual coordinated election period: the timing for provision of the Part D notices. Although the guidance still refers to an open enrollment period beginning November 15, the revision of the model notices is a good indication that the guidance on the notice obligation will eventually catch up with the change in the open enrollment period.

The change in the Part D annual coordinated election period affects the timing for distribution of the Part D notices because plans are required to provide the notices at several different times, including during the 12 months prior to the Part D annual coordinated election period. Determining exactly who is entitled to the notice and satisfying the timing requirements presents several difficulties, so most employers distribute the notice to all plan participants and prospective enrollees once each year,

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Most employers who distribute the notice annually do so by including it in open enrollment packets distributed for the employer-sponsored plans. If this distribution will occur before October 15, 2011, simply revising the notice (and making sure that newly eligible employees receive the revised notice) should suffice. If the employer's normal distribution of annual open enrollment materials will occur after October 15, 2011, the revised notice should be included in that distribution, but a separate distribution of the revised notice arguably should occur before October 15, 2011. As noted above, guidance regarding the notice requirement has not been revised to account for the change in the Part D annual coordinated election period, so it is not clear that distribution of the revised notice is required to occur before October 15, 2011.

PLAN CHANGES

It is unlikely that employers will need to amend plan documents for this change in the Part D Annual Coordinated Election Period. Employers that have incorporated the notice information into SPDs and other plan materials will need to revise any such references in those materials.

NO CHANGE TO CMS REPORTING

In addition to the disclosure requirements noted above, plan sponsors are required to report to CMS whether their plans provide creditable or non-creditable prescription drug coverage. It appears that the timing for

this reporting obligation is unchanged by the revisions to the Part D Annual Coordinated Election Period. The timeframes for required CMS reporting are:

1. Within 60 days after the first day of each plan year
2. Within 30 days after the termination of a prescription drug plan
3. Within 30 days after any change in the creditable coverage status of prescription drug coverage

Additional information about the Medicare Part D notice and reporting requirements can be found in Chapter 12 of the *Willis Online Compliance Manual*.

ILLINOIS DOI ADDRESSES CIVIL UNION LAW

Illinois Governor Pat Quinn (D) signed the Illinois Religious Freedom Protection and Civil Union Act (Senate Bill 1716) on January 31, 2011. The law, which was effective June 1, 2011, grants civil union partners in Illinois the "same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses."

The Illinois Department of Insurance (DOI) recently released a **bulletin** and **consumer fact sheet** that address the law's impact on insurance laws and benefits in Illinois. The guidance confirms that while the policy is not required to provide coverage to married spouses, "[f]or purposes of insurance laws, policies, eligibility, and benefits governed by Illinois law, a spouse in a civil union and a spouse in a marriage are to be treated identically." Insurance policies issued on or after June 1, 2011 must immediately comply with the law. In-force policies that are subject to the law, generally insurance policies issued in Illinois, are also amended to comply with the law as of June 1. The law allows employees to add coverage for civil union spouses during the plan's annual open enrollment period or during a 30-day "special enrollment period" after the civil union becomes effective, or after the civil union spouse loses other coverage.

Additional information about the Illinois civil union law can be found in Willis *HR Focus*, Issue 34, "**States Legalize Civil Unions.**"

IRS ANNOUNCES HSA INFLATION ADJUSTMENTS FOR 2012

The Internal Revenue Service (IRS) recently announced the 2012 inflation adjustments for Health Savings Accounts. This chart summarizes the changes.

	CALENDAR YEAR 2012		CALENDAR YEAR 2011	
	Self-only	Family	Self-only	Family
Annual Contribution Limit	\$3,100	\$6,250	\$3,050	\$6,150
HDHP Minimum Annual Deductible	\$1,200	\$2,400	\$1,200	\$2,400
HDHP Maximum Out-of-Pocket Limit	\$6,050	\$12,100	\$5,950	\$11,900
Catch-up Contribution	\$1,000		\$1,000	

The Annual Contribution Limit is the maximum amount of tax-favored contributions that can be made to an individual's HSA for a calendar year. Contributions from all sources are aggregated when determining if the limit is met. An individual may incur excise taxes on excess contributions. Catch-Up Contributions increase the Annual Contribution limit for individuals age 55 or older. The Catch-Up Contributions limit is not inflation-adjusted. When enacted, the limit was set at \$500 for 2004, with \$100 annual increases. In 2009, it reached the current \$1,000 maximum.

The HDHP Minimum Annual Deductible and Maximum Out-of-Pocket Limit refer to features that a health plan must have in order to qualify as a high-deductible health plan (HDHP). Coverage under an HDHP is one of the conditions that an individual must meet in order to be eligible for tax-favored HSA contributions. The limits on these items are also inflation-indexed, with the potential to change each year. Employers that maintain HDHPs need to know these adjustments so that they can make any changes needed for their plans to remain HDHPs.

The IRS announces the adjustments for HSAs much earlier in the year than it announces adjustments for other types of benefits programs. (Inflation adjustments for most plans usually are announced in October or November. A chart of those limits appears in the *Willis Health and Welfare Calendar*, available from your Willis representative.) The earlier timing of the announcement for HSAs is mandated by legislation that Congress passed at the end of 2006 (see *Willis Employee Benefits Alert, Issue 91, "Health Savings Account Legislation Makes HSAs More Flexible"*). The legislation revised the provisions governing HSAs so that the IRS now must publish the annual adjustments no later than June 1 for the following calendar year.

Additional information about HSAs can be found in Chapter 13 of the *Willis Online Compliance Manual*.

DOL TO EMPLOYEES: THERE'S AN APP FOR THAT

The U.S. Department of Labor (DOL) recently announced the launch of its first application for smartphones. The application is a timesheet to help employees independently track the hours they work and determine the wages they are owed. It allows users to track regular work hours, break time and any overtime hours for one or more employers. It also provides access to a glossary, contact information and materials about wage laws via links to the web pages of the DOL's Wage and Hour Division. It is available in both English and Spanish.

The application will also allow users to add comments on any information related to their work hours, view a summary of work hours in a daily, weekly and monthly format, and email the summary of work hours and gross pay as an attachment. According to the DOL's news release, "[t]his information could prove invaluable during a Wage and Hour Division investigation when an employer has failed to maintain accurate employment records."

The free app is currently compatible with the iPhone and iPod Touch. The DOL will explore updates that could enable similar versions for other smartphone platforms, such as Android and BlackBerry, and other pay features not currently provided for, such as tips, commissions, bonuses, deductions, holiday pay, weekend pay, shift differentials and pay for regular days of rest.

WORK HOURS CALENDAR

U.S. DEPARTMENT OF LABOR
U.S. WAGE AND HOUR DIVISION

EMPLOYEE: _____ DATE: _____
(Dates entered in this calendar, e.g., May-Aug. 2010)

EMPLOYER: _____

START OF WORKWEEK: _____ PAY: _____
(Sunday / Monday / Tuesday / etc.) (Hourly / Tips / Salary / Piece rate)

Minimum Wage
Generally, you must be paid at least the federal minimum wage for all the time that you work, whether you are paid by the hour, the day, or at a piece rate.

Overtime & Regular Rate
If you are not an exempt employee, you must receive time and one-half your regular rate of pay after 40 hours of work in a 7-day workweek. Regular rate includes most compensation, including non-discretionary bonuses and shift differentials.

Misclassification
Some employers misclassify workers who are employees under the law as something other than employees, sometimes calling them "independent contractors." When this happens, the workers do not receive certain workplace rights and benefits, such as the minimum wage and overtime pay, to which they are legally entitled.

Recordkeeping
Generally, you should know that your employer must keep records of all wages paid to you and of all hours you worked, no matter where the work is done. Similarly, it is recommended

For workers without a smartphone, the Wage and Hour Division has a printable work hours calendar in English and Spanish to track rate of pay, work start and stop times, and arrival and departure times. The calendar also includes easy-to-understand information about workers' rights and how to file a wage violation complaint. Both the application and the calendar can be downloaded from the Wage and Hour Division's website by [clicking here](#).

While employees may appreciate the availability of this new tool, it could negatively impact employers by increasing the number of wage and hour complaints filed (based on hours allegedly worked but not paid). It is imperative, in light of the DOL's comments about using the information in an investigation, that employers maintain complete and accurate employment records, particularly in regard to the time that employees work (and employers should be sure to pay for that work).

SINCE YOU ASKED:

QMCSOs: EMPLOYEE IS ELIGIBLE BUT NOT ENROLLED

The Willis National & Legal Research Group was recently asked about a court order a client had received requiring health coverage for an employee's child. However, the employee was not currently enrolled in the employer-sponsored health plan. The client's health plan, similar to many employer-sponsored plans, requires that the employee be enrolled in order to enroll the employee's children. The client was wondering whether it was permitted to enroll the employee in its health plan in order to comply with the court order.

WHAT IS A QMCSO AND WHO MUST COMPLY WITH IT?

Group health plans that are subject to the Employee Retirement Income Security Act (ERISA) are required to provide benefits in accordance with the requirements of a qualified medical child support order (QMCSO). QMCSOs are judgments, decrees or orders issued by a court or through a state administrative process, that require a group health plan to provide coverage to the child (known as an alternate recipient) of a participant in the group health plan.

A group health plan may also receive a National Medical Support Notice (NMSN). A NMSN is a special type of medical child support order used to obtain group health coverage for children. NMSNs are issued by state child support enforcement agencies (Issuing Agencies) and must be in a standard format. If appropriately completed, a NMSN is deemed to be a QMCSO and benefits must be provided in accordance with its terms. Group health plans that are subject to ERISA must comply with NMSNs, as must church plans and state or local governmental plans (that are not otherwise subject to ERISA).

MUST THE EMPLOYER ENROLL THE EMPLOYEE?

Most plans do not allow dependents to be covered unless the employee-parent is also enrolled in the plan. Although ERISA's QMCSO provisions don't contain language expressly requiring enrollment of employees who are eligible but aren't enrolled, DOL guidance provides that in such situations, the plan must enroll the employee if the employee's enrollment is necessary for the child to have coverage. The DOL's Compliance Guide, which can be accessed by [clicking here](#) includes the following Q&A on this topic:



Q1-13: In the case of an employee named in a medical child support order who is not enrolled, what is the plan's obligation?

The plan administrator must determine if the order is qualified and, if so, provide coverage to the child. If the employee is eligible to participate in the plan, the child must be covered. If, as a condition for covering his dependents, the employee must be enrolled, the plan must enroll both.

If the employee has not yet satisfied the plan's generally applicable waiting period, the DOL's Compliance Guide provides that the plan administrator should determine whether the order is a QMCSO and should have procedures in place so that the child will begin receiving benefits upon the employee's satisfaction of the waiting period. Coverage, however, need not be extended to a child whose parent is not eligible for group health plan benefits (e.g., because of the parent's status as a part-time employee).

Additional information about QMCSOs and NMSNs can be found in Chapter 7 of the *Willis Online Compliance Manual*.

WEBCASTS



HEALTH CARE REFORM: WHAT NOW AND WHAT'S COMING?

**JULY 19, 2011
2:00 PM EASTERN TIME**

Presented by:
JACK TOWARNICKY, JD, MBA, BBA, CEBS FELLOW
EMPLOYEE BENEFITS ATTORNEY
NATIONAL LEGAL AND RESEARCH GROUP

Please join the Willis Human Capital Practice for a review of 2011 legislative and regulatory changes as well as an examination of the pending changes through 2014.

We will start with a review of the Patient Protection and Affordable Care Act (PPACA) timeline – 2011 through 2014 – with updates for recent legislation and regulatory actions that removed certain provisions or delayed implementation of various features.

This webcast will also focus on opportunities where you may want to consider communications that go beyond simple reporting and disclosure when it comes to compliance with the W-2 informational mandate and the Uniform Explanation of Coverage mandate – options that may highlight the superior coverage value you may already offer your employees.

The presentation will end with an overview of distant but looming issues to consider in any health coverage strategy update, providing a heads-up for your CFO on the potential for new costs and challenges from the next wave of health reform:

- Massachusetts Health Reform as a precursor
- Higher cost from higher enrollment – migration due to the pay or play mandates, taxpayer-subsidized state-based exchanges and automatic enrollment
- Higher cost from new rounds of cost-shifting, provider response to increased Medicaid and exchange enrollment, new Medicare limits and/or new PPACA taxes
- Why delay may not be an effective strategy – the potential “death spiral” from the 2018 excise tax

PARTICIPANT ACCESS

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

COMMUNICATION ACTION PLANS

**AUGUST 16, 2011
2:00 PM EASTERN TIME**

Presented by:
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COMMUNICATIONS
HUMAN CAPITAL PRACTICE

HR and benefits professionals typically create action plans for tackling any and everything on their hit list. However, employee communication planning often gets put on the back burner until annual open enrollment dates are set. Creating and following an action plan for employee communication is a step organizations should take alongside other important initiatives. An effective communication strategy is an important step to promote your benefits and make sure they are understood, appreciated and used wisely. A clear timeline, project list and a healthy mix of creativity and educational content will keep employees engaged and educated.

This webcast will address:

- Planning for open enrollment communications
- Strategies for engaging employees year round
- Understanding communication as a process rather than an event

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