HUMAN CAPITAL PRACTICE

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LEGAL & COMPLIANCE

UPDATED FORM 8928 RELEASED

The Internal Revenue Service (IRS) recently released an updated version of Form 8928 ("Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code") and its accompanying instructions. Form 8928 is used to report excise taxes for various compliance failures under the Internal Revenue Code (IRC). Specifically, Form 8928 must be filed in connection with:

- Code § 4980B continuation coverage (COBRA) requirements. The form must be filed by employers, group health plans, plan administrators, or plan sponsors liable for the tax under Code § 4980B for the failure to provide continuation coverage (or to provide the required level of pediatric vaccine coverage) to a qualified beneficiary.

- Code § 4980D group health plan requirements. The form must be filed by employers or group health plans liable for the tax under Code § 4980D for the failure to meet the portability, access, renewability and market reform requirements for group health plans. This includes limitations on preexisting condition exclusions, certifications of creditable coverage, special enrollments, nondiscrimination in eligibility to enroll and premium contributions, 48-hour and 96-hour hospital stay requirements in connection with childbirth for mothers and newborns, parity in mental health and substance use disorder benefits. It also includes more recently enacted changes under the Patient Protection and Affordable Act (PPACA), which include the prohibition against lifetime and annual limits, the prohibition on rescissions and the extension of dependent coverage to age 26.

- Code § 4980G HSA requirements. The form must be filed by employers liable for the tax under Code § 4980G for the failure to make comparable health savings account (HSA) contributions for all participating employees.

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- Code § 4890E Archer MSA requirements. The form must be filed by employers liable for the tax under Code § 4980E for the failure to make comparable Archer medical savings account (MSA) contributions for all participating employees.

Generally, the updated form and instructions are unchanged from the prior versions. However, the instructions' list of failures that may result in excise taxes has been revised to expressly reference failures to comply with Michelle's Law and requirements under PPACA.

IRS INDEXED FIGURES FOR 2012

Every year, about this time, the Internal Revenue Service and the Social Security Administration announce increases in the benefits and contribution limits governing a wide variety of tax-qualified employee benefits plans. The following table shows the changes for 2012 to the limits that most concern Willis clients.

IRS INDEXED FIGURES FOR 2012

Employee Benefits	2012	2011
Pre-Tax Dollar Limits (Retirement Plans)		
401(k) Deferral Limit	$17,000	$16,500
403(b) Contributions	$17,000	$16,500
457 Contributions	$17,000	$16,500
401(k), 403(b), 457 Catch-up Contributions**	$5,500	$5,500
SIMPLE Plans	$11,500	$11,500
SIMPLE Catch-Up**	$2,500	$2,500
Highly Compensated Employee (Retirement Plans)		
Annual Compensation	$115,000	$110,000
Key Employee (Retirement Plans)		
Officer Annual Compensation	$165,000	$160,000
Compensation Limit (Retirement Plans)		
	$250,000	$245,000
Qualified Transportation		
Parking (monthly)	$240	$230
Mass Transit Passes (monthly)	$125	$230
Bicycle Commuting (monthly)	$20	$20
FICA		
Taxable Wage Base		
Social Security	$110,100	$106,800
Medicare	Unlimited	Unlimited
Tax Rate		
Social Security	6.20%	6.20% (4.20% for employees in 2011)
Medicare	1.45%	1.45%
Health Savings Account		
Annual Contribution Limit (Self-Only)	$3,100	$3,050
Annual Contribution Limit (Family)	$6,250	$6,150
Catch-up Contribution	$1,000	$1,000
HDHP Minimum Annual Deductible (Self-Only)	$1,200	$1,200
HDHP Minimum Annual Deductible (Family)	$2,400	$2,400
HDHP Maximum Out-of-Pocket Limit (Self-Only)	$6,050	$5,950
HDHP Maximum Out-of-Pocket Limit (Family)	$12,100	$11,900

**Contributions made on a "catch-up" basis are contingent on satisfying eligibility rules.

Note: Employers often inquire about inflation adjustments to the Internal Revenue Code Section 79 Table I rates. The Table I rates, however, are not adjusted annually for inflation.

TEMPORARY INCREASE IN MASS TRANSIT PASS LIMIT EXPIRES

While the 2012 monthly limit for parking increased from $230 to $240, the monthly limit for mass transit passes decreased from $230 to $125. This decrease is due to the expiration of a temporary measure that set the monthly limit on transit passes at the same level as the limit on parking.

Before March 2009, the monthly limit for transit passes was $120 per month, meaning that an employer could provide up to $120 worth of transit passes to an employee tax-free (or could allow the employee to purchase up to $120 in transit passes with pre-tax amounts). On February 17, 2009 Congress passed a measure that temporarily increased the $120 limit to $230 (to match the monthly limit for parking).

In 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the Tax Relief Act) was signed into law. The primary objective of the Tax Relief Act was to prevent the so-called Bush era tax cuts from expiring as they were scheduled to do at the end of 2010. The Tax Relief Act continued a temporary increase in the monthly limit on tax-favored employer-provided transit passes. Without Congressional action, the monthly limit for transit passes would have reverted to the lower amount (subject to adjustment for inflation) starting January 1, 2011. The Tax Relief Act extended the "parity-with-parking provision" through the end of 2011.

Congressional action is again required to extend the provision past 2011, and at this time no such action has been taken. This is why the 2012 limit for transit passes is set at $125. Willis will provide updates should this limit change.

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EMPLOYMENT PRACTICES LIABILITY INSURANCE: IS A CLAIM REALLY A CLAIM?

In the business world today, having Employment Practices Liability Insurance (EPLI) is considered a "best business practice." EPLI protects a company's interest in the event it is sued for various types of employment claims, such as discrimination, harassment or retaliation.

It is important for business owners to realize that EPLI policies do not cover all employment-related claims. EPLI generally excludes coverage for:

- Occupational Safety and Health Act (OHSA) violations
- Fair Labor Standards Act (FLSA) violations
- State employment law violations
- Consolidated Omnibus Budget Reconciliation Act (COBRA) violations
- Employee Retirement Income Security Act (ERISA) violations
- Retaliation against a whistle blower violation
- Punitive damages

Thus, if an employer has misclassified an employee as to exempt/nonexempt status, failed to provide the proper COBRA notices, or did not meet its ERISA reporting and disclosure requirements, it would not be covered under an EPLI policy. However, if a policy does include state employment law violations, the policy should be tailored to every state where the business operates, including possible additional endorsements for those states with strong employee protection laws.

EPLI policies are not uniform and contain different provisions concerning, among other things, who is an insured, how a claim is defined and reporting requirements. Recently, the definition of an EPLI claim was at issue before a federal court in Tennessee.

Ten employees of Cracker Barrel Old Country Store filed charges of race and/or sex discrimination with the Equal Employment Opportunity Commission (EEOC) (*Cracker Barrel Old Country Store, Inc. v. Cincinnati Ins. Co.,* No. 3:07-cv-00303 [M.D. Tenn. Sept. 16, 2011]). The EEOC sued Cracker Barrel under Title VII of the Civil Rights Act. The suit settled for $2.7 million, of which $700,000 was for incurred defense costs. Although Cracker Barrel had given timely notice to its EPLI insurance carrier regarding the EEOC suit, the carrier denied the claim, and so Cracker Barrel sought relief against the carrier in federal court.

The insurance carrier's defense was that the lawsuit was not a "claim" under the EPLI policy. First, it was argued that according to the language of the policy, only lawsuits brought by employees, not lawsuits brought on behalf of employees, were covered. Next, the policy in question defined a "claim" as "a civil administrative or arbitration proceeding commenced by the service of a complaint or charge, which is brought by any past, present or prospective employee(s) of the insured entity."

Thus, the court held that, based on the *terms of and in the policy,* and since the suit against Cracker Barrel was brought by the EEOC, *on behalf of and not by the employees,* the lawsuit was not a covered claim under the EPLI policy at issue.

The ruling of this court serves as a reminder that the terms of an EPLI policy should be carefully reviewed to ensure that the protection an employer desires against an employment claim is provided, regardless of whether an employee or federal agency brings the claim.

SINCE YOU ASKED:

WHAT IS THE EFFECTIVE DATE OF THE COMPARATIVE EFFECTIVENESS RESEARCH FEE?

The National Legal & Research Group (NLRG) recently received a question regarding the effective date of the new comparative effectiveness research (CER) fee.

BACKGROUND

The Patient Protection and Affordable Care Act of 2010 (PPACA) added new Internal Revenue Code Sections 4375 (insured plans) and 4376 (self-insured plans). Those code sections impose a fee on group health plans designed to fund research to determine the effectiveness of various forms of medical treatment.

For insured health plans, the fee is paid by the insurance company. For self-insured health plans, the fee is to be paid by the plan sponsor. The fee will not be assessed in connection with benefits that are excepted benefits under the Health Insurance Portability and Accountability Act (HIPAA). For example, the fee would not apply to stand-alone dental or vision coverage that provides dental or vision benefits through a policy, certificate or contract of insurance separate from a major medical plan or is optional, with employees who elect the coverage being required to pay an additional amount. An explanation of excepted benefits can be found in Willis Human Capital Practice Alert, July 2011, **"Looking Ahead - Compliance After 2011."**

The fee for each policy year, or plan year, as appropriate, ending after September 30, 2012 but on or before September 30, 2013, is $1 multiplied by the average number of lives covered under the policy or plan. The fee increases to $2 for the policy/plan year that ends after September 30, 2013 but on or before September 30, 2014. The $2 fee is indexed based on national health expenditures for policy/plan years ending after September 2014. The additional fee sunsets and does not apply to policy/plan years ending after September 30, 2019.

For additional information about the CER fee, please see Willis Human Capital Practice Alert, May 2010, **"Beyond the Excise Tax: New Health Care Reform Taxes and Fees."**

EFFECTIVE DATE

In June 2011, the Internal Revenue Service (IRS) issued a request for information seeking public comments on how the CER fee should be determined and paid, and described potential guidance that the IRS expects to propose. IRS Notice 2011-35 explains that fees are payable in connection with "specified health insurance policies" and "applicable self-insured health plans" for policy/plan years ending after September 30, 2012, but stop applying for policy/plan years ending after September 30, 2019. For a calendar-year policy or plan, that means the fees would apply for calendar policy or plan years 2012 through 2018. For policies/plans that do not operate on a calendar-year basis, the fee would apply to the first policy/plan year that ends on or after October 1, 2012 (e.g., a plan year beginning on November 1, 2011 and ending on October 31, 2012). The fees do not apply to policy/plan years ending after September 30, 2019 (e.g., a plan year beginning on January 1, 2019 and ending on December 31, 2019). For insured plans, when the fee starts is based on the policy year. For self-insured plans, when the fee starts is based on the plan year. Where a client's policy year ends after September 30, 2012, a CER fee will be due from the insurance carrier based on average enrollment during the policy year. Similarly, if a client's plan year ends after September 30, 2012, the fee will be due from the plan sponsor based on average enrollment during the plan year.

Notice 2011-35 requests comments on reasonable methods to calculate the number of covered lives. It also asks for comments on whether the fees should be reported and paid on an annual basis rather than quarterly and whether the fees should be reported and paid on the same calendar date regardless of the applicable policy or plan year.

Other than the IRS request for information, the agencies have not yet released additional guidance regarding the CER fee.

HR CORNER

EMPLOYEE OR INDEPENDENT CONTRACTOR: ONE WAY OF THINKING IT THROUGH

Deciding whether an individual is an employee or independent contractor is becoming an ever more important question. Employers should carefully scrutinize each and every independent contractor relationship which exists within the business before the Labor Department, the IRS or a state agency does it for you.

While the issue is taking on a new importance in light of federal and state attention, the criteria for the determination of bona fide independent contractor status have not become clearer. Nor will this article provide a way for you to determine with legal certainty which is which. While we have no magic formula to answer every question, we do want to provide a "rule of thumb" or a "quick-scan" way of thinking about the subject that can help to raise questions about independent contractor relationships where they should be raised.

SHOW ME THE MONEY

One fact that is certain is that the price and penalties for misclassification of employees will get ever higher. As one example of the increasing danger to employers who utilize independent contractors, earlier this year the DOL and the IRS entered into a Memorandum of Agreement by which the two agencies as well as a number of participating states (Connecticut, Maryland, Massachusetts, Minnesota, Missouri, Utah, Washington, Hawaii, Illinois, Montana and New York) have agreed to share information about independent contractor relationships.

Much of the reason for the renewed interest in the distinction between employees and independent contractors has to do with state and federal revenues. Employers pay payroll and other taxes on wages they pay to employees – but not on payments to independent contractors.

This apparent benefit quickly becomes illusory in light of the penalties and back taxes which are levied when independent contractors are found to actually be employees. Another argument against a too-quick designation of independent contractor status is the presumption that everyone working for an employer is an employee. This presumption can be overcome by facts that establish a lack of employee status, but in case of doubt, the default position is inevitably in favor of employee status.

If it were easy to distinguish between employees and independent contractors, there would be no reason for this article. But as you may have guessed, it is actually quite complicated. The tests to determine whether an individual is a bona fide independent contractor are multi-tiered and subject to different interpretations. And if this weren't bad enough, the rules for determining an individual's status can differ, depending on which agency is asking the questions.

Rather than review each agency's tests for determining a legitimate independent contractor relationship, we can draw analogies to an indisputably independent contractor relationship –

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putting a new roof on a home. While this analogy only goes so far and is an oversimplification, it nonetheless illustrates a number of the tests used to distinguish between legitimate independent contractors and employees.

DEALING WITH A ROOFER

A typical homeowner in need of a roof will find one or more contractors in the business. After locating one or more, the homeowner reviews qualifications, discusses price and gets bids. After settling on details, such as when the job will be completed, a contractor is ultimately selected to install the roof.

From there, it's the contractor who hires the proper number of individuals to install the roof and who directs their work. The homeowner will not tell the contractor how the job is to be done (so long as it is done safely and the premises are not harmed). The contract between them will include agreement about the job's completion date and the required quality of the final installation. Typically also there would be agreement on a schedule of payments which would be tied to the progress of the job.

When the roof is finished to contract specifications, the contractor receives the final agreed upon payment and the homeowner and contractor go their separate ways, likely never to do business with each other again.

APPLYING THE ECONOMIC REALITIES TEST

The roof installation model is a simplistic illustration, but it reflects a number of factors used by government agencies and courts to scrutinize the legitimacy of a claimed independent contractor relationship. While this model doesn't include all of the relevant factors relied upon, it does provide a preliminary view into the examination which must be undertaken. It should be considered an initial screen, which, if not passed, at a minimum will be sufficient to alert employers that their use of independent contractors should be further analyzed before any federal or state authorities begin to consider the situation.

We will use the DOL set of criteria called the "economic realities test." Again we add that these are not the only criteria used by state and federal agencies, but they provide a reasonably comprehensive overview for the initial self-examination we are proposing for employers who use independent contractors in their businesses.

CONTROL OF THE WORK

In our example the homeowner imposed very little direction on the actual roof installation. The homeowner set the requirements as to what final results were expected, but the method of obtaining that final result was left to the contractor. In a business context, the more

control the business exerts over the manner in which the required work is accomplished, the more likely the relationship is that of employer and employee.

INVESTMENT BY THE CONTRACTOR

Our hypothetical roofing contractor provided all the tools and equipment he needed to install the roof on the home. On the other hand, the more a business provides the tools and equipment needed to perform the work, the more the relationship looks like that of employer and employee.

OPPORTUNITY FOR PROFIT

The roofing contractor was in charge of the ultimate amount charged for the work. He could have charged more or less for the job, depending on a number of factors exclusive to himself, such as how much profit he wanted to make on that particular job, the efficiency of his roofing crew, whether or not he was busy, etc. The less opportunity for profit, or the more an individual appears to be paid on an hourly basis, the less likely is a finding of independent contractor relationship. Payment on an hourly basis does not by itself negate a finding of independent contractor, but it is not helpful to that end.

USE OF INITIATIVE AND JUDGMENT

The more efficient the roofing contractor, the greater is his opportunity for profit. If he has a highly trained roofing crew, he can increase his competitive relationship to other contractors. If he has invested in more efficient roofing equipment, he may be able to finish jobs faster and thus have a competitive edge over other contractors he is competing against. If he has developed a more efficient system for the installation of a certain roofing product, he will lower his costs and improve resulting profit margins.

In contrast, an employee works for an agreed- upon wage and does not have the opportunity for profit or loss. Of course, there is the possibility for career advancement for an employee, but this would take place over a period of time, and an employee does not have the same opportunity for profit – or loss – as does the independent contractor.

PERMANENCY OF THE RELATIONSHIP

Our roofing contractor finished the job and moved on to the next job with another homeowner. When the roof was installed, the relationship was over. Shorter or clearly defined discrete projects with a beginning and ending point are more closely associated with the independent contractor relationship and longer engagements look more like employment relationships.

INTEGRATION WITH AN ORGANIZATION'S BUSINESS

In our example putting a roof on the house had no connection to the homeowner's primary employment or means of making a living. By the same token, the more central the work performed by the independent contractor is to the proper functioning of the business, the more the relationship looks like that of employer – employee. And certainly if the same work is done by employees and by independent contractors, that would be an extremely strong argument that the independent contractor is actually an employee.

Obviously each factor listed above does not always have one clear answer, and a state or federal agency or court will consider all of the above factors as well as others in reaching a final determination whether there is an employment relationship rather than one of independent contractor.

DON'T TRY THIS AT HOME

While not fail-safe, this cursory summary can help you to identify where problems may exist. If you find questionable situations after this cursory examination, it is much preferable to contact your employment counsel to get certainty rather than let the government answer the question for you. You can get some additional information by visiting our **website** or our **Wage and Hour Laws Blog.**

This article provided by BLR.

ADAAA REGS EFFECTIVE: WHAT EMPLOYERS NEED TO KNOW

Effective May 24, 2011, the final regulations issued by the Equal Employment Opportunity Commission (EEOC) implemented the ADA Amendments Act of 2008 (ADAAA) and reflect the ADAAA's broader definition of "disability."

As a result, of the ADAAA and final regulations, more individuals now have covered disabilities and qualify for protection under the ADA. For employers, this generally means shifting their 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 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."

HIGHLIGHTS OF THE FINAL REGULATIONS

Here are the highlights of the final ADA regulations:

- Expanded definition of "disability"
- Nine "rules of construction" to determine whether an impairment substantially limits a major life activity, and the term "substantially limits" will be interpreted broadly
- Some impairments will "virtually always" be a disability when analyzed under the nine rules of construction (e.g., deafness substantially limits hearing; cancer substantially limits normal cell growth; HIV infection substantially limits immunity function)
- The concepts of "condition, manner, or duration" may be useful in some cases to evaluate whether an individual is substantially limited in a major life activity
- Six-month definition of "transitory" applies only to "regarded as" disability

The major provisions of the revised regulations include the following:

DEFINITION OF DISABILITY (§1630.2(G))

There is a three-pronged definition of the term "disability" under ADA:

1. A physical or mental impairment that substantially limits a major life activity ("actual disability")
2. A record of such an impairment (a "record of" disability)
3. Being regarded as having an impairment (a "regarded as" disability)

IMPAIRMENT (§1630.2(H))

A physical impairment includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.

A mental impairment includes any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

PREGNANCY-RELATED IMPAIRMENTS. The interpretive guidance explains that pregnancy itself is not an impairment. However, a pregnancy-related impairment can be a disability if it is covered by one of the three prongs of the disability definition.

MAJOR LIFE ACTIVITIES (§ 1630.2(I))

Major life activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and the operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

"Interacting with others" was retained in the final regulations as a major life activity despite assertions that EEOC exceeded its authority by adding it as an activity.

The regulations expressly reject the standard established by the U.S. Supreme Court in *Toyota Motor Mfg., Ky., Inc. v. Williams,* 534 U.S. 184 (2002) that an activity must be of "central importance to most people's daily lives" to be a major life activity.

The regulations also state that the term "major" does not create a demanding standard for disability and should not be interpreted strictly.

SUBSTANTIALLY LIMITS (§1630.2(J)(1)): RULES OF CONSTRUCTION

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).

SUBSTANTIALLY LIMITS (§1630.2(J)(3))

Instead of the "per se" disabilities that were listed in the proposed regulations, the final regulations provide that some impairments, given their inherent nature, will virtually always be actual disabilities.

Although the individualized assessment required under the ADA may be used for analysis, these impairments should require only a "simple and straightforward" assessment to determine whether they are covered disabilities.

The regulations include examples of impairments that should easily qualify as "actual" or "record of" disabilities.

The rules of construction are intended to provide for more generous coverage and application of the ADA's prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and entities with rights and responsibilities under the ADA as amended.

CONDITION, MANNER, OR DURATION.
In determining whether an individual is substantially limited in a major life activity, it may be useful to consider, as compared to most people in the general population: the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity.

HAS A 'RECORD OF DISABILITY' (§1630.2(K))

Under the regulations, an individual has a "record of disability" if he or she has a history of a mental or physical impairment that substantially limits a major life activity, or has been misclassified as having such an impairment.

The rules of construction apply when analyzing whether an impairment substantially limited a major life activity.

REASONABLE ACCOMMODATION OF "RECORD OF DISABILITY." Employers are required to provide reasonable accommodation if needed and if related to the past disability.

The regulations provide the example of an employee with an impairment that previously limited, but no longer substantially limits, a major life activity who may need leave or a schedule change to permit him or her to attend follow-up or "monitoring" appointments with a healthcare provider.

REGARDED AS HAVING AN IMPAIRMENT (§1630.2(L))

Under the amended ADA, an applicant or employee who is subjected to an action prohibited by the ADA (e.g., failure to hire, denial of promotion, or termination) because of an actual or perceived impairment will meet the "regarded as" definition of disability, unless the impairment is both "transitory and minor."

EEOC commented that this prong should be "the primary means of establishing coverage in ADA cases that do not involve reasonable accommodation."

If an applicant or employee doesn't need an accommodation, this is the prong to use to evaluate whether discrimination has occurred.

An individual has a "regarded as disability" if he or she is subjected to a prohibited action because of an actual or perceived physical or mental impairment.

It doesn't matter whether the impairment substantially limits, or is perceived to substantially limit, a major life activity (i.e., it doesn't matter if the employer believes the person has an ADA disability).

Prohibited actions include but are not limited to refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment.

NO ACCOMMODATION REQUIRED. The regulations make clear that reasonable accommodation is not required for an individual who meets the definition of disability solely under the "regarded as" prong.
A 'Qualified' Individual (§1630.2(m))

An individual with a disability is qualified if he or she satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position.

STEPS EMPLOYERS SHOULD TAKE

If you have not done so already, the following are steps employers should take to address the changes brought about by the recent changes to the ADA:

- 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.
- Train supervisors and managers about complying with the amended ADA, in particular about the interactive process, requests for accommodation, and types of reasonable accommodation. Training supervisors not to retaliate in response to disability claims or requests for accommodation is also critical.
- Check recordkeeping processes to ensure adequate documentation of accommodation requests, steps in the interactive process, and reasons for granting/ denying an accommodation request.
- Check equal employment/ nondiscrimination policies to make sure they comply with the amended ADA and regulatory requirements.

This article provided by BLR.

WELLNESS

CAPITALIZE ON HEALTH IMPROVEMENT IN THE NEW YEAR

Ringing in the New Year is often joyfully done, and for many, accompanied by personal reflection, and yes, those pesky New Year's resolutions! While we may groan at the prospect of more resolutions made and then broken, the intentions are sincere and the interest in a change of behavior can be capitalized on by employers who want to support their employees' good resolve. How? By starting, expanding or reinvigorating a worksite wellness program.

Best practices dictate that building an effective, sustainable worksite wellness program begins with a needs assessment and review of all accessible data to determine what types of programs may be most relevant and beneficial. In this process, the planning team reviews both objective data (such as medical claims, pharmacy benefits and aggregate screening results if available) and subjective data (e.g., employee survey results, focus groups feedback, etc.) The goal of the process is simple: provide a wellness program that does the most good for employees, based on their needs and interests.

If the needs assessment and planning phase leaves your head spinning, or you just don't have the time but are still ready to get started, you cannot go wrong by offering programs based on the worksite wellness Big 5:

1. Nutrition education and weight management
2. Increased physical activity
3. Tobacco cessation
4. Stress management
5. Preventative health care

Weight loss is characteristically the focus for many people at the beginning of the year; taking advantage of this by starting off the New Year with information, tools and programs that support employees with weight management tools and ideas can yield remarkable results. Since March is National Nutrition Month, you may even consider devoting the entire quarter to healthy eating and nutrition education. Below you will find a few practical strategies that employers can implement to promote healthy eating in the workplace.

LOWER COST STRATEGIES

- Display motivational posters and signs to promote the benefits of healthful eating – consider posting signage at key decision-point areas, such as cafeterias, lunch rooms and vending machines.
- Share employee before-and-after weight-loss success stories to inspire others in making changes.
- Create an employee nutrition library or information exchange filled with credible nutrition information from the American Dietetic Association, American Heart Association and Centers for Disease Control and Prevention, etc.
- Invite people to bring in their used cookbooks or exercise videos/DVDs to create an informal library of resources people can borrow from to try something new.
- Provide access to free resources or distribute nutrition-specific materials to guide employees in making better choices or tracking food intake, such as:
  - Online Dietary and Physical Activity Tracker at **www.mypyramidtracker.gov**
  - Stop and Go Fast Food Nutrition or Grocery Guide at **www.maplemountainpress.com**
  - Calorie tracker and related apps at **www.sparkpeople.com** or **www.livestrong.com**
- Increase healthful foods available in vending machines, snack bars and onsite food service – add signage to help people looking for low calorie, high fiber, low fat or low sodium snacks find the options that suit their needs.
- Price food competitively if you offer onsite food service, making healthier food options more economical.
- Create company policies that showcase your support and provision of healthful food choices being offered at all company-sponsored meetings and events.
- When healthy options are provided at company-sponsored events – make sure to post your wellness program logo and indicate that the healthy choices are "sponsored by" your wellness program to help employees connect the cultural changes with your overall wellness program efforts.
- Post *Choose My Plate* information in the break room and cafeteria areas to show people how to build healthful and balanced meals.
- Promote a population-wide healthy eating challenge, such as "5-a-Day for Better Health," "Rethink Your Drink" or "Cut the Fat."

HIGHER COST STRATEGIES

- Offer a series of educational seminars on nutrition to support employees in making healthful eating decisions.
- Provide a company-sponsored onsite weight reduction program such as Weight Watchers™ at Work or a weight loss challenge with prizes for percentage of weight loss.
- Host an onsite, interactive cooking demonstration of healthful food preparation techniques.
- Provide interactive events, such as a grocery store tour or food sampling.
- Provide access to a farmer's market – either onsite or through a delivery service.
- Host a healthy recipe contest and create a cookbook of all the entries to share.
- Provide onsite or telephonic health coaching to support employees with weight loss or improving other behaviors for better health.

Since weight is a serious problem for many Americans – both adults and children – you may consider tailoring your program to include spouses and families, when appropriate, and by promoting participation in community events. A significant percent of the population is overweight and therefore more likely to develop health problems, including chronic diseases like heart disease, high blood pressure and diabetes. Promoting healthy families through good nutrition and maintaining a healthy body weight as part of your worksite wellness program can pay dividends for individuals, organizations and communities.

To learn more about wellness program planning or for additional information regarding healthy eating in the workplace, contact your local Willis Associate.

WEBCASTS

VOLUNTARY BENEFITS SOLUTIONS

DECEMBER 20, 2011
2:00 PM EASTERN

Presented by:
Richard Shaffer, Unum, Regional Voluntary Benefits Specialist

While health care reform began as debate about controlling cost, it quickly moved through the political process into a plan for increasing access to health insurance. Employers are left to figure out cost containment strategies alone and with their benefits advisers. This webcast will focus on the growing use of High Deductible Health Plans as a cost-control measure by employers. Join us as we review research showing the necessary levels of plan participation needed to achieve a bend in the cost-curve, and the barriers to employee migration into those plans. Voluntary worksite health benefits and the education/enrollment campaigns surrounding them can increase employee understanding and migration into high deductible health plan. The changing role of the benefits broker will also be discussed.

Participant Access
Advance reservations are required to participate. **Click here** here to register for this call.

FEDERAL AGENCIES ON THE PROWL: BEST PRACTICES FOR DEALING WITH INCREASED FEDERAL AUDIT ACTIVITY

JANUARY 17, 2012
2:00 PM EASTERN

Presented by:
Jay Kirschbaum, Willis National Legal & Research Group

The agencies with the responsibility to enforce the rules regarding benefits, tax and employment at the Department of Labor and Treasury have gotten approval and funding for more enforcement activity. This session will provide information, insight, tips and suggestions for employers to anticipate and be ready for the dreaded audit. Even if you are not prepared we will share best practices to follow and how to respond in the event the letter from the agency arrives before you're ready.

Participant Access
Advance reservations are required to participate. **Click here** to register for this call

KEY CONTACTS

U.S. HUMAN CAPITAL PRACTICE 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

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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

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Bethesda, MD
301 581 4261

Knoxville, TN
865 588 8101

Memphis, TN
901 248 3103

Nashville, TN
615 872 3716

Norfolk, VA
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Reston, VA
703 435 7078

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301 692 3025

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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

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813 289 7996

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