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legislative update

Year-End Wrap Up

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This issue of Legislative Update focuses on year-end activities for your health and welfare benefit plans:

- Benefit Limits
- Wrapping Up 2009
- Year-End Reminders for Employees
- New Benefit Requirements

BENEFIT LIMITS

Federal provisions set dollar limits each year on various items that impact certain health and welfare benefit plans. Below are the 2009 and 2010 annual limits for the most common items.

| Item | 2010 | 2009 |
|--|-----------|-----------|
| PAYROLL TAXES: | | |
| Social Security OASDI: | | |
| Payroll tax rate, employee share | 6.20% | 6.20% |
| Wage base | \$106,800 | \$106,800 |
| Medicare (Part A, hospitalization): | | |
| Payroll tax rate, employee share | 1.45% | 1.45% |
| Wage base | Unlimited | Unlimited |
| Adoption Exclusion and Credit: | | |
| Maximum for Exclusion & Credit, per child | \$12,170 | \$12,150 |
| Phase-Out Begins for Credit | \$182,520 | \$182,180 |
| Dependent Care Assistance Plans: | | |
| Annual Maximum | \$5,000 | \$5,000 |
| Qualified Transportation Benefits: | | |
| Parking | \$230 | \$230 |
| Transit Pass/Commuter Vehicle | \$230 | \$230 |

Note: Effective 2/17/09

| Item | 2010 | | 2009 | |
|---------------------------------|---------------|---------------|---------------|---------------|
| HEALTH SAVINGS ACCOUNTS: | | | | |
| Annual Limits: | Single | Family | Single | Family |
| Maximum Contributions | \$3,050 | \$6,150 | \$3,000 | \$5,950 |
| Minimum Deductible | \$1,200 | \$2,400 | \$1,150 | \$2,300 |
| Maximum Out-of-Pocket | \$5,950 | \$11,900 | \$5,800 | \$11,600 |

WRAPPING UP 2009

W-2 Reporting

Do you contribute to the cost of health coverage for domestic partners or same-sex spouses? The value of employer-paid health coverage for domestic partners and same-sex spouses generally is taxable for federal tax purposes. For tax purposes (including FICA), the dollar value of such coverage must be reported as imputed income and included in W-2 earnings. (Exceptions exist if Internal Revenue Code (IRC) §152 definition of dependent or qualifying relative applies; this is infrequent.) The imputed income also may be subject to state taxes; exceptions apply in several states such as for registered domestic partnerships in California. Establish procedures for employees to notify you if an exception applies for federal and/or state purposes. Confirm that your payroll administrator has processes to calculate and report imputed income.

Do you offer health coverage for dependent children over age 18 (or over age 23 if full-time students)? Health coverage for unmarried dependent children generally is tax-free as long as the child qualifies as a “qualifying child” or “qualifying relative” under IRC §152. (“Qualifying child” lives with the employee more than half the year, is under 19 (or under 24 if full-time student), and does not provide over half of his (the child’s) own support. “Qualifying Relative” is a relative, including a child *regardless of age*, who receives at least half his support from the employee.) Require employees to report any covered non-qualified children to you. Establish processes to report the value of employer-paid health coverage for non-qualified children as the employee’s imputed income for tax purposes.

Do you provide employer-paid life insurance over \$50,000? Confirm that your payroll administrator has processes in place to report imputed income on the value of coverage that exceeds \$50,000. Imputed income must be included in W-2 earnings and is subject to FICA. (Certain types of employee-pay-all plans, or plans discriminating in favor of key employees, also result in imputed income; such plans are not common.)

Do you contribute to the cost of short-term or long-term disability coverage for employees? All or a portion of benefits (claims) paid to employees may be subject to W-2 reporting requirements and FICA. Coordinate with your disability insurance carrier(s) regarding W-2 preparation and FICA.

Dependent Care FSAs

Do you offer a Dependent Care Assistance Plan such as a Dependent Care Flexible Spending Account (FSA)? Check payroll records to verify that the employee’s contributions do not exceed the lesser of the plan’s maximum annual contribution or the IRC maximum of \$5,000. Also, perform testing to ensure that FSA contributions from highly-compensated employees meet IRC requirements for non-discriminatory benefits.

San Francisco Ordinances

Do any employees, including part-timers, work in San Francisco? San Francisco requires employers to meet certain minimum standards for workers’ health coverage, paid sick leave and commuter benefits. The ordinances can be complex. In addition to cost issues, employers must comply with various recordkeeping requirements.

YEAR-END REMINDERS FOR EMPLOYEES:

- *Is your address information up to date?* Your employer will prepare 2009 Forms W-2 using your address on file.
- *Is your beneficiary information up to date?* Make sure your beneficiary designation(s) reflect your current wishes. Check your policies and plans at work, and also check any individual insurance policies that you may have purchased.
- *Did you participate in a Flexible Spending Account (FSA) for 2009?* Avoid forfeitures. Review the plan’s “use it or lose it” provisions. Pay careful attention to the plan’s deadlines for incurring expenses and filing claims. Contact the plan administrator for your current account status.

NEW BENEFIT REQUIREMENTS: A BRIEF SUMMARY

| Issue | General Requirements |
|--|---|
| <p>Children’s Health Insurance Program Reauthorization Act (CHIPRA)</p> <p>Special enrollment rules took effect April 1, 2009.</p> | <p>CHIPRA expands the State Children’s Health Insurance Program (SCHIP) allowing states to subsidize premium cost of group health coverage in certain family cases.</p> <p>Implement special enrollment rules allowing employees to join group health plan within 60 days of (a) becoming eligible for premium subsidy from state or (b) losing Medicaid or SCHIP.</p> <p>Update plan documents, SPDs and enrollment materials, as needed.</p> |
| <p>“COBRA Subsidy”</p> <p>American Recovery and Reinvestment Act (ARRA)</p> <p>ARRA’s “COBRA Subsidy” provisions took effect March 1, 2009 for most plans; “look back” feature applied from September 1, 2008.</p> | <p>ARRA provides for premium subsidies to assist COBRA beneficiaries in paying for up to nine months of continuation coverage if the loss of group coverage was due to involuntary termination of employment between 9/1/2008 and 12/31/2009. Eligibility is limited by income.</p> <p>NOTE: At press time, Congress is considering bills to extend COBRA Subsidy provisions. If enacted, the new provisions may be similar but not identical to ARRA.</p> |
| <p>Genetic Information Non-Discrimination Act (GINA)</p> <p>Effective: Various effective dates. Provision typically impacting group health plans is effective January 1, 2010 for calendar year plans.</p> | <p>Bans the use of genetic information for health coverage and employment purposes.</p> <p>This complex legislation has broad scope. The provision that most often will impact typical group health plans is the prohibition on collecting genetic information for any enrollment or cost purposes. “Genetic information” includes information regarding family members’ diseases or disorders.</p> <p>For example, wellness programs and/or health risk assessments (HRAs) may run afoul of GINA if they (a) solicit any family history information and (b) offer incentives. Examples of “incentives” may include (a) reduced health plan contributions, deductibles or copays, (b) payments, rewards or discounts, or (c) additional benefits.</p> |
| <p>Heroes Earnings Assistance and Relief Tax Act (HEART)</p> | <p>Employer may distribute unused Health Care FSA amounts to a participant who is a military reservist ordered or called to active military duty for at least 180 days.</p> <p><i>This provision is NOT required.</i> For 2009 Health Care FSAs, employers that choose to adopt this provision must amend plan document by December 31, 2009.</p> |
| <p>“HIPAA Privacy and Security”</p> <p>The American Recovery and Reinvestment Act (ARRA)</p> | <p>ARRA expanded the privacy and security rules under HIPAA regarding “protected health information” in 2009, including increased penalties. Plan sponsors are required to provide specific notices in the event that there is a breach in the security of any protected information. Additional requirements will take effect in 2010.</p> <p>HIPAA Privacy and Security is a complex topic, particularly for non-insured health plans. Employers, plan sponsors, and business associates should work with appropriate legal counsel in reviewing their practices and procedures, including the use of any electronic media (e.g., email).</p> |

Issue

General Requirements

Mental Health Parity and Addiction Equity Act (MHPAEA)

Effective: First day of plan year starting after October 3, 2009.

Applies To: Group health plans that cover both medical/surgical and mental health needs.

Exceptions:

- Groups under 50 employees.
- Plans that can prove that parity would increase total costs by 2% or more (first year).

Establish full parity between the plan's mental health/substance abuse (MH/SA) benefits and the plan's medical/surgical benefits:

- Provider network requirements
- Coverage requirements (e.g., medical necessity, treatment exceptions)
- Cost sharing (e.g., copays, deductibles, coinsurance)
- Financial limits (e.g., lifetime and/or annual maximums -- whether days, visits or dollars)

Note: MHPAEA does not require the group health plan to cover MH/SA. But if MH and/or SA is covered, then full parity must exist between MH/SA and medical/surgical.

Amend plans as needed. Ensure that SPDs and communications describe any criteria used to determine medical necessity.

Michelle's Law

Effective: First day of plan year starting after October 8, 2009.

Applies to: All group health plans.

Continue health coverage for a child during a medically-necessary leave of absence from full-time college for up to one year (unless coverage ends earlier due to age, etc.).

Amend plan documents and SPDs. Revise forms and notices (e.g., "student certificates") as needed.

NOTE: For plans subject to **collective bargaining agreements**, certain effective dates may be delayed based on expiration date of bargaining agreement.