Employee Benefits Report

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Affordable Care Act/Compliance | May 2014 | Volume 12 • Number 5

COBRA and the Affordable Care Act

Administering COBRA has presented compliance challenges to employers since 1985. The Affordable Care Act promises to make health insurance available and affordable for all Americans. This eliminates employers' need to offer COBRA continuation coverage. Or does it?

The Patient Protection and Affordable Care Act (PPACA) did not eliminate COBRA or change the COBRA rules. In fact, the notice health plans subject to COBRA must provide to new enrollees specifically mentions the Health Insurance Marketplace created by the Affordable Care Act.

COBRA, the Consolidated Omnibus Budget Reconciliation Act of 1986, allows workers and family members who would otherwise lose their health insurance benefits to temporarily continue health coverage at group rates. If you had 20 or more employees in the prior year and offer a group health plan, COBRA applies to your organization. Here's what you need to know about COBRA's requirements.

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This Just In…

The IRS has issued guidance on the outcome of the *Windsor* ruling, saying the decision must apply to qualified retirement plans as of June 26, 2013. In the case *United States v. Windsor*, the Supreme Court found unconstitutional Section 3 of the Defense of Marriage Act (DOMA), which defined marriage for federal law purposes as a union between a man and a woman only. In the absence of Section 3 of DOMA, any retirement plan qualification rule that applies to opposite-sex spouses must also apply to same-sex spouses.

For plan sponsors, this generally means:

- **You do not need to make qualified retirement benefits available to employees with same-sex spouses retroactive before June 26, 2013. Employers can choose to do so; however, applying some**

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Employee count. Your employee count must include part-time employees; add part-timers' hours together to determine the number of full-time equivalents.

Qualified beneficiaries. Eligibility is limited to those covered by a group health plan on the day before a qualifying event (see below).

Qualifying events. Certain events will trigger the right to continue coverage under COBRA, including termination of employment (voluntary or involuntary, unless it is for gross misconduct) and reduction in hours worked (e.g., from full-time to part-time). An employee's death, divorce, legal separation or eligibility for Medicare are all considered qualifying events, as is a change in status of a covered dependent or spouse. Being called up for active military duty also triggers COBRA eligibility when an employer doesn't voluntarily maintain a reservist's health coverage.

Types of coverage. Employers must offer COBRA beneficiaries the same coverage as they do to non-COBRA beneficiaries — usually the same plan that was in place immediately before the qualifying event. Any benefit changes for active employees will also apply to COBRA beneficiaries, who are entitled to the same coverage choices as all other employees, such as during periods of open enrollment.

Length of coverage. COBRA provides for up to 18 months' coverage for qualifying events such as job termination or a reduced work schedule. Certain qualifying events, or a second qualifying event during the initial coverage period, may extend coverage to a maximum of 36 months. Employers may also provide coverage beyond COBRA maximums. Coverage begins on the date that benefits would otherwise have been lost because of a qualifying event. It may end earlier than the maximum period if the beneficiary does not pay premiums on time or if the employer stops offering any group health plan.

Coverage options. Health plans must provide COBRA beneficiaries the same plan and benefits as active employees. They can charge COBRA beneficiaries 100 percent of premium, plus a 2 percent administrative charge, for continuation coverage. Employers can choose to pay COBRA premiums, although few do so.

COBRA and Marketplace plans. Individuals and families who might qualify for health insurance tax credits might opt to buy coverage in the Health Insurance Marketplace instead. Being eligible for COBRA does not limit eligibility for coverage or a tax credit through the Marketplace.

COBRA-eligible employees and their dependents should be aware of changes the Affordable Care Act has made to insurance enrollment. Formerly, a person could buy individual market health coverage at any time. Now, individuals and families can buy coverage only during an open enrollment period.

If their COBRA coverage ends outside the open enrollment period, beneficiaries qualify for a *special enrollment period*. In the Marketplace, you generally qualify for a special enrollment period of 60 days following certain life events (for example, marriage or birth of a child) or loss of other health coverage. Job-based plans generally allow special enrollment periods of 30 days.

If beneficiaries decide to end their COBRA coverage early, they must wait until the next open enrollment before they can buy a Marketplace plan. Open enrollment for 2015 coverage begins November 15, 2014 and ends February 15, 2015.

For more information on complying with COBRA and other benefit rules and regulations, please contact us.

benefits retroactively can be complex.

- **If your plan's documents define a marital relationship by reference to Section 3 of DOMA or as opposite-sex spouses, you must amend your plan by the later of December 31, 2014 or the date established in Rev. Proc. 2005-66, 2005-2 C.B. 509, which established a system of cyclical remedial amendment periods for individually designed and pre-approved qualified plans.**

For more information on administering retirement benefits, please contact us.

COBRA Compliance Tip:

Check your organization's COBRA general notice. Your notice should contain a section stating that COBRA-eligible plan enrollees have the option to buy coverage in the Health Insurance Marketplace and discussing tax credits. If your notice doesn't contain this wording, you can download an updated model notice from the U.S. Department of Labor at this website page.

Disability Happens: Are Your Employees Prepared?

May is Disability Insurance Awareness Month, making it a good time to take stock of your organization's disability benefit needs and current offerings.

Studies show that just over 1 in 4 of today's 20-year-olds will become disabled before reaching age 67. Disability can have a profound effect on an individual's employability and income. U.S. Census figures show that only about a third (34.7 percent) of people with disabilities were employed, compared with 71.9 percent of people without a disability.

It might surprise you, but most disabilities among working-age people do not stem from accidents or injuries, but rather from illnesses such as cancer or heart disease. Chronic conditions, such as back pain and arthritis, which might not be work-related, also cause many disabilities. In these cases, your workers' compensation and accident insurance benefits will not apply, leaving employees who cannot work without a source of income.

How Disability Insurance Works

Disability insurance will pay a benefit to covered employees while they cannot work due to non-occupational disability. This helps them meet their daily expenses and focus on recuperation.

Short-term disability (STD) coverage is the most commonly found type of group disability insurance. STD plans typically have a waiting period of 0 to 14 days before a covered individual will receive benefits, and they provide benefits for a maximum of six months to one year.

Long-term disability (LTD) policies usually begin paying benefits 30 to 180 days after the disability occurs, once the covered individual has exhausted sick leave and short-term disability benefits. Better plans pay benefits until the disabled individual returns to gainful employment or reaches age 65 or Social Security Normal Retirement Age (SSNRA), whichever comes first. Many LTD plans also offer partial or residual disability benefits to help offset earnings lost while the employee transitions back to full-time work.

The most effective plan designs coordinate STD and LTD benefits, so that once the employee exhausts sick pay and STD benefits, LTD benefits begin immediately.

Usually, group plans have very streamlined or no underwriting requirements so employees do not have to answer a lot of health questions. Your less-than-healthy employees will find it easier to obtain coverage through the group market than through individual policies. In addition, group coverage usually costs less than an individual policy.

Limits on Coverage

Both STD and LTD policies replace only a portion of an insured's salary, typically 60 percent, up to the monthly maximum benefit. Most group policies have a maximum monthly benefit of $5,000, which does not include bonuses or dividends. In addition, most insurers will coordinate benefits from a group policy with benefits from any individual disability policies the employee might own, so he or she will not collect more than 80 percent of pre-disability pay.

Many group LTD policies use two different definitions of disability, depending on how long a claim lasts. These policies use a "modi-

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fied own occupation" definition of disability during the first two years. This definition considers an insured disabled when "... unable to perform the material and substantial duties of your occupation, and [you] are not engaged in any other occupation..."

After two years, the definition of disability becomes more restrictive. Exact definitions vary, but most require the insured to be unable to perform any of the material and substantial duties of any occupation for which he or she is "reasonably qualified" by education, training or experience. If a policy does not provide partial or residual disability benefits, insureds must navigate changing disability definitions, accepting no work other than their own occupation during the first two years, and then taking any job for which they are qualified after that.

Group disability benefits can also have tax consequences. Under employer-paid plans, benefits received will be taxable income to the employee. Benefits from voluntary (or employee-paid) plans will be tax-free.

In short, group disability income coverage provides good, basic coverage for rank-and-file employees at a reasonable cost. However, some employees, particularly those with higher incomes, might want to supplement group coverage with an individual policy. In most cases, an insured can obtain higher maximum benefits and more liberal definitions of disability with an individual policy.

For more information on disability income coverage, including voluntary (employee-paid) plans or nonqualified plans for high earners, please contact us.

Mandatory Sick Leave: Coming to Your Workplace?

In April 2014, New York City became the latest jurisdiction to require employers to provide paid sick leave, joining Washington, D.C., Milwaukee and the state of Connecticut. Is your city or state next?

No federal law requires employers to pay employees for time not worked — such as sick days, vacations and holidays. (The Family and Medical Leave Act, or FMLA, only requires certain employers to provide unpaid leave for qualifying employees.) Still, most employers recognize the importance of paid leave programs for employee health and performance. Effective leave policies also help companies retain top people. But are your leave policies effective?

Circadian, a workforce solutions provider, estimates that unscheduled absenteeism costs roughly $3,600 per year for hourly workers and $2,650 per year for salaried employees. In addition to paying the direct costs of wages for an employee who isn't producing and often costly replacement workers, employers also bear the indirect costs of lost productivity, additional supervisory time, safety problems due to less-trained employees filling in, lower-quality goods and services, and lower morale from workers who must fill in for absent workers.

Some employers with sick leave suffer from "leave abuse" due to ineffectively structured programs. Other organizations suffer

from the opposite problem—dubbed "presenteeism," where employees come to work when sick. A study by the Cornell University Institute for Health and Productivity Studies found that presenteeism might account for

between 18 and 60 percent of employers' health costs. Although its costs are difficult to determine, presenteeism causes lost productivity, the spread of contagious infections and possibly longer illnesses, since workers don't take the time to rest and recuperate. One study found that nearly 20 percent of 25,000 workers surveyed had a cold or flu during the study period.

To get the most of your company's sick leave programs, start by determining how employees use their leave. Is leave usage higher in one department or under a particular supervisor? Are workplace practices or policies causing presenteeism? Do children's illnesses lead to staff absenteeism? Finding the cause of problems allows you to address core issues. If absences stem from a personal problem, you can recommend counseling or refer the employee to your EAP (employee assistance program).

Consider whether the structure of your paid leave programs is working for your firm and its employees. Options include:

- Traditional plans. For years, employers have provided workers a set number of paid sick leave and vacation days per year. The amount varies by company and industry, but new employees get an average of 17 or 18 days off per year, allocated evenly between sick and vacation days. Professional, long-term employees may accrue 30 or more days off annually. To learn more about the norms in your industry, check with trade associations or chamber of commerce salary and benefits reports for your area.

  This type of leave plan is easy to institute and administer. Simply decide how many sick and vacation days to give employees per year, put it in writing — your employee manual is a good place to start — and let everyone know. While this system works well for many companies, alternatives can give your employees more respect and autonomy, without costing your company considerably more.
- Paid time off programs. Some companies combine different types of leave into one unified bank of "paid time off" (PTO) hours. A 2010 survey of employers with 100 or more employees found that 42 percent of respondents — up from 30 percent in 2000 — offered paid time off banks. Instead of ten vacation days and five sick days a year, these employers provide 120 hours of PTO for workers to use as they see fit — for vacation, personal time or illness. A "leave account" means employees won't feel cheated when they're not eligible for certain types of leave (for example, childless workers who can't take advantage of time off for a sick child). You can build in even more flexibility by allowing employees to redeem unused days off for cash or to accumulate unused sick days from year to year, or match it with a short-term disability program.

  PTO banks can reduce unscheduled absences by allowing employees to use paid time off, rather than sick leave, to take care of personal business.
- Attendance incentives. To encourage employees to use leave programs properly, many organizations structure attendance policies to reward rather than punish. Some give employees a half-day off for every quarter in which they have perfect attendance and let it accumulate. Employees who use two days or fewer of sick leave during the year may earn the equivalent of one day's pay. A note of caution: employers considering establishing an attendance incentive program should ensure that the program does not violate the Family and Medical Leave Act.

  Critics suggest that incentives indirectly punish employees who have legitimate reasons for absence. Parents of young children may resent the perceived inequity vis-à-vis childless co-workers who don't need to take time off to care for sick children.

  Some analysts say attendance incentives send the wrong message about taking leave, which has become increasingly important in today's high-stress work environment. If workers perceive that using leave is the wrong behavior, employers risk encouraging employees to overwork to the point of serious illness, which could result in increased health care costs in the long run.

The bottom line: Examine current policies, leave trends and your firm's management style, and then establish a program that meets your needs. For questions about leave policies that make sense for your employees and your business, please contact us.

IRS Clarifies Employer Reporting Requirements

In 2015, Affordable Care Act reporting requirements will begin to phase in for employers with 50 or more full-time equivalent employees. These employers must offer quality, affordable health insurance coverage to employees or make a "shared responsibility" payment. To enforce this requirement, the statute calls for employers, insurers and other reporting entities to report information to the IRS.

IRC Section 6055 applies to health insurers and employers that self-insure. They must provide information about the entity providing coverage, including contact information, and which individuals are enrolled in coverage, with identifying information and the months for which they were covered.

IRC Section 6056 applies to employers that must "play or pay" but that do not self-insure. They must provide information about the employer offering coverage, including contact information and the number of full-time employees. For each full-time employee, they must also provide information about the coverage (if any) offered to the employee, by month, including the lowest employee cost of self-only coverage offered.

In March, the IRS released final regulations on information reporting by those employers. The regulations will substantially streamline employer reporting requirements by providing for a single, consolidated form that employers will use to report to the IRS and employees under both sections 6055 and 6056, thereby simplifying the process and avoiding duplicative reporting.

- Self-insured employers will complete both sections of the form.
- Employers that do not self-insure will complete only the top section of the form (reporting for section 6056).
- Reporting requirements do not apply to employers with fewer than 50 full-time equivalent employees, who are exempt from the ACA's requirements.

If the Affordable Care Act's coverage requirements apply to your organization, will you be ready? 2015 will be here before you know it. Please contact us if you need assistance in finding or administering an employee health plan. ■

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