

JANUARY-FEBRUARY 2010

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NEW LAWS AND REGULATIONS FOR 2010

As 2010 approaches, there are many changes that administrators of health and welfare plans should be aware of.

The Genetic Information Nondiscrimination Act (GINA)

GINA has three provisions that affect employers. First, under Title VII, an employer with 15 or more employees cannot discriminate against employees or applicants based on genetic information including family history information. Employers must post the revised "Equal Employment Opportunity is the Law" poster in a prominent place visible to employees and applicants. The poster is available at: http://www.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf

Next, group health plans cannot deny enrollment, impose pre-existing condition exclusions or charge a higher premium based on genetic information. Further, group health plans and health insurance issuers in both the group and individual markets cannot request or require genetic information for underwriting purposes or prior to and in connection with enrollment.

Finally, if a wellness program rewards participants for completing a health risk

assessment (HRA), the HRA must not request any information regarding family medical history because this information is considered genetic information. The HRA is permitted to request family medical history information if no reward is offered.

Michelle's Law

Michelle's Law is effective for plan years beginning on or after Oct. 9, 2009. Group health plans are prohibited from terminating the coverage of a dependent student while on a medically necessary leave of absence, for up to a year, or until the coverage would terminate under the regular terms of the plan. Plan documents should be revised to include the provision. Additionally, if a plan sends any notification to a participant requesting student status certification, the plan should also include a description of the extension available for dependent students on a medical leave of absence. The student must have been enrolled at a postsecondary educational institution immediately before the leave of absence. The participant must provide a written certification from the treating physician stating that the child is suffering from a serious illness or injury making the leave of absence medically necessary.

Form 5500

All pension and welfare plans and direct filing entities (DFEs) that are required to submit an ERISA annual return/report (Form 5500 or Form 5500-SF) must do so electronically for plan years beginning on or after Jan. 1, 2009. Beginning January 2010 an all-electronic system called EFAST2 will receive those electronic annual returns/reports. Once the EFAST2 electronic system is online and ready to receive filings, you must file the Form 5500 or Form 5500-SF electronically through EFAST2 for plan/reporting year 2009 and for subsequent plan/reporting years. Prior year delinquent or amended Form 5500 annual return/reports generally must be filed electronically through EFAST2.

Employers should also be aware of recent changes with HIPAA Special Enrollment Rights, Mental Health Parity, Section 111 Medicare Reporting, HIPAA Security, and the Family and Medical Leave Act (FMLA). Information on employer requirements under these laws has been provided in previous newsletters. If you would like additional information, please contact your adviser.

CAN YOUR 401(K) INVESTMENT COMMITTEE BE MORE EFFECTIVE?

Investment committees should pause periodically and evaluate their effectiveness. Your consultant typically offers a framework for this discussion, which may consist of the following ingredients:

Define Success

There are many approaches to defining success for an investment committee. Some definitions may be very specific and some may be more global, such as maximizing the retirement experience for plan participants. Either approach can work assuming reasonable efforts are made (and documented) toward the stated goal.

Statement of Investment Beliefs

Key investment-related assumptions should be documented. This is typically done within an investment policy statement which acts as the road map for investment decision-making. It may be appropriate to incorporate within this technical document a statement of investment philosophy as well. Here a committee might comment on core beliefs concerning risk tolerance or any characteristics specific to the needs of the plan participants as a whole.

Selecting Appropriate Committee Members

ERISA suggests that if expert decision-making credentials are not found among the committee personnel, experts should be retained in

areas needed. There is also the suggestion that committee personnel be capable of making value-added contributions to the process.

Define Committee Member Roles

Committee member roles should be defined through formal documentation establishing the committee, as in a Committee Charter. This document would identify committee members (typically by title) and delegate responsibilities of the committee. This document can limit the liability of the ultimate decision maker (e.g., the board of directors) and the committee members as well.

Set Procedural Standards

Identify frequency of committee meetings. For example: "Our investment menu will be reviewed quarterly/semiannually with respect to manager performance relative to industry accepted benchmarks."

The focus of the above is specific to an investment committee, but the same principles can be followed for an administrative committee or an all inclusive 401(k) "steering" committee as well. Please contact your plan consultant for additional assistance.

BENEFITS COMPLIANCE FAQ

Question: What changes were made by the recently enacted COBRA subsidy extension?

Answer: On December 21, 2009, President Obama signed the Department of Defense Appropriations Act, 2010 (DOD), H.R. 3326, into law. This extended the eligibility for the COBRA subsidy for employees involuntarily terminated through February 28, 2010, instead of December 31, 2009. Additionally, the time period to receive the subsidy has been extended from nine months to 15 months. Finally, the Act requires two new notifications.

- » The legislation provides the opportunity for COBRA beneficiaries, which includes the former employee and any dependents covered under COBRA, whose subsidy has already expired to receive retroactive coverage if they have not yet paid the full premium. For example, subsidy eligible workers who have been paying the reduced 35 percent premium since March 1, 2009 would have seen their COBRA premiums increase to the normal premium amount (typically 100-102 percent) on Nov. 30, 2009. If these beneficiaries did not pay the unsubsidized premium for December, the new legislation provides an extended opportunity to pay the 35 percent premium retroactively and reinstate coverage.

- » The legislation requires a notice to be sent to these individuals to notify them of the extended grace period. The grace period is extended to Feb. 17, 2010, or 30 days after the notice is sent to the assistance eligible individuals, whichever is later.
- » A second notice is required to be sent by Feb. 17, 2010 to all individuals who were assistance eligible individuals as of Oct. 31, 2009, or later. The purpose is to notify the individuals of all changes to their coverage, including another provision that extends the maximum subsidy period under ARRA from nine months to 15 months.
- » The legislation also states that employers can offset future COBRA premiums or issue refund checks for those who have overpaid the COBRA premium. This clarification is appropriate, since in some cases a beneficiary whose subsidy expired Nov. 30 may have paid the full premium in December and is now due a refund of the overpayment as a result of this legislation.

It is widely anticipated that both the Department of Labor (DOL) and the Treasury Department will quickly issue additional guidance. More details, including the release of any model notices, will be forthcoming.

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