SOBEL AFFILIATES
A BROWN & BROWN COMPANY
Insurance since 1904

HR News Alert

Brought to you by:
Brown & Brown of Garden City Inc.

July 2013 Issue

Supreme Court Strikes Down Key Part of Defense of Marriage Act

The U.S. Supreme Court has ruled that the federal Defense of Marriage Act (DOMA) violates the constitutional guarantee of equal protection. Specifically, the decision invalidates the section of DOMA which defines marriage as a legal union between one man and one woman for purposes of all federal laws and agency regulations.

DOMA impacts over 1,000 federal statutes and numerous regulations, including laws pertaining to government healthcare benefits, Social Security, and taxes. As a result of the ruling, legally married same-sex couples are entitled to full federal benefits in states where same-sex marriage is recognized.

Further guidance is expected to help clarify the impact of this decision, including how the ruling may apply to legally married same-sex couples living in states that do not recognize their marriage. Updates will be posted in our Employee Benefits section as more information becomes available.

In this Issue

Delay Finalized for Employee Choice of Health Plans in SHOP Exchanges

A final rule confirms that SHOPs (Small Business Health Options Programs) will not be required to provide employers the option of offering employees a choice of qualified health plans, **until plan years beginning on or after January 1, 2015**.

SHOPs are expected to begin operating in 2014 as an option for qualified small employers to purchase employee health coverage. The federal government will run SHOPs in states that do not elect to establish the program. Under the law, employers would be able to choose a level of coverage to offer (bronze, silver, gold, or platinum), select a premium contribution amount, and then offer employees choices of multiple insurers and plans.

As a result of the delay, for plan years beginning in calendar year 2014, **federally-facilitated SHOPs will only permit employers to select a single qualified health plan from the choices available in the SHOP to offer qualified employees**. State-based SHOPs have the option of allowing employers to offer qualified employees a choice of qualified health plans at a single level of coverage.

Our Summary by Year features additional upcoming changes under Health Care Reform.

First PCORI Fees Due by July 31st for Employers Sponsoring HRAs and Other Self-Insured Plans

The IRS has revised Form 720, *Quarterly Federal Excise Tax Return*, for employers sponsoring certain self-insured health plans to report and pay new fees imposed under Health Care Reform to fund the Patient-Centered Outcomes Research Institute (PCORI).

Affected Employers
PCORI fees are imposed on plan sponsors of applicable self-insured health plans for each plan year ending on or after October 1, 2012, and before October 1, 2019. Applicable self-insured health plans generally include health reimbursement arrangements (HRAs) and health flexible spending arrangements (FSAs) that are not treated as excepted benefits.

Calculating the Fee
The fee for an employer sponsoring an applicable self-insured plan is two dollars (one dollar for plan years ending before October 1, 2013) multiplied by the average number of lives covered under the plan. For plan years ending on or after October 1, 2014, the fee will increase based on increases in the projected per capita amount of National Health Expenditures.

How to Report and Pay the Fee
Form 720 must be filed annually to report and pay the fee no later than July 31st of the calendar year immediately following the last day of the plan year to which the fee applies. Note that the regulations do not permit or include rules for third-party reporting or payment of the PCORI fee.

According to a recent IRS memo, employers may deduct PCORI fees as ordinary and necessary business expenses for federal tax purposes.

Review our Health Care Reform Checklist for information on other requirements impacting employers and group health plans this year.

---

5 Guidelines for Protecting Employees from Heat Stress

Did you know that heat is the number one weather-related killer in the United States? With temperatures rising across much of the country, it is critical that employers recognize the hazards of working in hot environments and take steps to reduce the risk to workers. Consider the following actions that can help protect employees:

1. **Provide heat stress training**. Topics you may wish to address include worker risk, prevention, symptoms (including the importance of workers monitoring themselves and coworkers), treatment, and personal protective equipment.
2. **Schedule hot jobs for the cooler part of the day**. The best way to prevent heat illness is to make the work environment cooler. Monitor weather reports daily and reschedule jobs with high heat exposure to cooler times of the day. When possible, routine maintenance and repair projects should be scheduled for the cooler seasons of the year.
3. **Provide rest periods with water breaks**. Provide workers with plenty of cool water in convenient, visible locations in shade or air conditioning that are close to the work area. Avoid alcohol and drinks with large amounts of caffeine or sugar.
4. **Monitor workers who are at risk of heat stress**. Workers are at an increased risk of heat stress from personal protective equipment, when the outside temperature exceeds 70°F, or while working at high energy levels. Workers should be monitored by establishing a routine to periodically check them for signs and symptoms of overexposure.
5. **Acclimatize workers by exposing them for progressively longer periods to hot work environments**. Allow workers to get used to hot environments by gradually increasing exposure over a 5-day work period. OSHA suggests beginning with 50% of the normal workload and time spent in the hot environment and then gradually building up to 100% by the fifth day.

Resources for Employers and Workers
OSHA's Heat Illness Website provides information and resources on heat illness for workers and employers, including how to prevent it, what to do in case of an emergency, educational materials and a curriculum to be used for workplace training. The Centers for Disease Control and Prevention also has a page dedicated to providing information on heat stress (including symptoms and first aid), along with fact sheets and other resources for protecting employees.

Our section on Safety & Wellness includes more tips for maintaining a safe and healthy workplace.

Changes to Wellness Programs Coming in 2014

Final rules outline the amended criteria for wellness programs offered in connection with group health plans to comply with the federal Health Insurance Portability and Accountability Act (HIPAA). Highlights of the final rules, which are effective for **plan years beginning on or after January 1, 2014**, include:

- Increasing the maximum permissible reward under a health-contingent wellness program, **from 20% to 30% of the cost of coverage**;
- Further increasing the maximum permissible reward for wellness programs designed to prevent or reduce tobacco use, **from 20% to 50% of the cost of coverage**; and
- Clarifications regarding the reasonable design of health-contingent wellness programs and the reasonable alternatives they must offer in order to avoid prohibited discrimination.

A health-contingent wellness program requires an individual to satisfy a standard related to a health factor in order to obtain a reward. Examples include programs that reward those who achieve a health-related goal (such as a specified cholesterol level, weight, or body mass index), as well as those who fail to meet such goals but take certain other healthy actions. Health-contingent wellness programs must meet special requirements to comply with HIPAA.

In contrast, a participatory wellness program does not include any conditions for obtaining a reward that are based on an individual satisfying a standard related to a health factor--for example, programs that reimburse the cost of a fitness membership or that reward employees for participating in a smoking cessation program (without regard to whether the employee quits smoking). Participatory wellness programs generally do not violate HIPAA if they are made available to all similarly situated individuals.

Keep in mind that wellness programs may be subject to additional requirements under federal and state laws, including nondiscrimination laws other than HIPAA. Be sure to check with a knowledgeable attorney to ensure full compliance. You can access valuable information, guidelines and resources for planning a healthier workplace in our section on Health and Wellness.

Newsletter provided by:

Kenneth Weinstein CEBS - Vice President
Brown & Brown of Garden City, Inc.
595 Stewart Avenue, 6th Floor, Garden City NY 11530
516-745-1111