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HR News Alert

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July 2014 Issue

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

Fees to fund the Patient-Centered Outcomes Research Institute (PCORI) are due no later than July 31 from employers who sponsor certain self-insured health plans, including health reimbursement arrangements (HRAs) and health flexible spending arrangements (FSAs) that are not treated as excepted benefits.

How to Calculate 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**.

- Permissible methods for determining the average number of lives covered under a plan are explained in IRS guidance and the final rules (examples are included).
- An employer that does not establish or maintain an applicable self-insured health plan other than a health FSA or an HRA is generally permitted to treat each participant's health FSA or HRA as covering a single life.
- For a plan year beginning before July 11, 2012, and ending on or after October 1, 2012, a plan sponsor may determine the average number of lives covered under the plan for the plan year using any reasonable method.

How to Report and Pay the Fee
Plan sponsors of applicable self-insured health plans are required to report and pay the fee **no later than July 31 of the calendar year immediately following the last day of the plan year** to which the fee applies.

- The fee applies to plan years ending on or after October 1, 2012, and before October 1, 2019.
- Fees are reported and paid using IRS Form 720, *Quarterly Federal Excise Tax Return*.
- The final rules do not permit or include rules for third-party reporting or payment of the PCORI fee.
- Employers may deduct PCORI fees as ordinary and necessary business expenses for federal tax purposes.

Our section on PCORI Fees for Self-Insured Plans features additional information on reporting and paying the fee.

Employment-Based Orientation Periods Cannot Exceed One Month for Purposes of ACA 90-Day Waiting Period Limit

Under the Affordable Care Act (ACA), eligibility conditions for group health plan coverage that are based solely on the lapse of a time period are permissible for no more than 90 days. Other conditions for eligibility are generally allowed, including a requirement that employees successfully complete a reasonable and bona fide employment-based orientation period.

In this Issue

Rules for Orientation Periods
Consistent with prior guidance, final rules provide that **group health plans will be considered in compliance with the law if the employment-based orientation period does not exceed one month and the maximum 90-day waiting period begins on the first day after the orientation period**.

One month would be determined by adding one calendar month and subtracting one calendar day, measured from an employee's start date in a position that is otherwise eligible for coverage or, if there is not a corresponding date in the next calendar month, the last day of the next calendar month. (For example, if an employee's start date is May 3, the last permitted day of the orientation period is June 2; if the employee's start date is August 31, the last permitted day of the orientation period is September 30.)

Effect on "Pay or Play" Requirements
Employers subject to the ACA's "pay or play" requirements (generally those with at least 50 full-time employees, including full-time equivalent employees) should note that **compliance with the 90-day limit and maximum orientation period rules is not determinative of compliance with "pay or play."** Such employers may not be able to impose the full one-month orientation period and the full 90-day waiting period without potentially becoming subject to a "pay or play" penalty.

Information on other requirements related to Health Care Reform is available in our ACA Summary by Year and Company Size.

Proposed Rule Extends FMLA Protections to All Eligible Employees in Same-Sex Marriages

A new proposed rule would change the definition of "spouse" for purposes of the federal Family and Medical Leave Act (FMLA), so that an eligible employee in a legal same-sex marriage may take FMLA leave for his or her spouse or family member regardless of the state in which the employee resides.

FMLA Basics
The FMLA entitles an eligible employee of a covered employer (50 or more employees in at least 20 workweeks in the current or preceding calendar year) to take unpaid, job-protected leave for specified family and medical reasons, including to care for the employee's spouse who has a serious health condition. It also includes certain family military leave entitlements.

Changes to FMLA Eligibility for Same-Sex Spouses
In the wake of the U.S. Supreme Court decision invalidating part of the federal Defense of Marriage Act (DOMA), the U.S. Department of Labor previously revised its agency guidance to clarify that the FMLA's definition of "spouse" covers same-sex spouses residing in states that recognize such marriages.

The proposed rule **significantly changes the previous guidance by defining "spouse" based on the law of the place where the marriage was entered into**, sometimes referred to as the "place of celebration." This definitional change would mean that eligible employees, regardless of where they live, would be able to:

- Take FMLA leave to care for their same-sex spouse with a serious health condition;
- Take qualifying exigency leave due to their same-sex spouse's covered military service;
- Take military caregiver leave for their same-sex spouse; or
- Take FMLA leave to care for their stepchild or stepparent, even if certain in loco parentis requirements are not met.

A fact sheet and FAQs are available regarding the proposed changes. Our section on the Family and Medical Leave Act provides more information about eligibility requirements and qualifying reasons for FMLA leave.

3 Do's and Don'ts for Setting a Workplace Dress Code

The arrival of summer temperatures, along with a more relaxed feel around the office, can leave some employers unsure about how to set dress standards that are both in line with the company image and in compliance with the law. Consider the following do's and don'ts:

1. DO Make Sure Your Policies are Clearly Communicated
Your dress code will more likely be observed if it is communicated in a clear and unambiguous manner, including:

- Your company's philosophy about the image it wishes to present;
- A list of appropriate business attire for both men and women;
- Examples of acceptable and prohibited attire (e.g., are sandals or t-shirts permitted?); and
- How the policy will be enforced.

2. DON'T Single Out Specific Groups of Employees
Employers are generally permitted under federal law to establish dress codes which apply to all employees or to employees within certain job categories. Employers subject to laws enforced by the EEOC should keep the following guidelines in mind:

- A dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, but otherwise permits casual dress, would treat some employees less favorably because of their national origin.
- If an employee requests an accommodation to the dress code because of his or her disability or because the dress code conflicts with the employee's religious practices, the employer must modify the dress code or permit an exception, unless doing so would result in undue hardship.

3. DON'T Deduct for Uniforms Unless Net Wages Exceed Minimum Wage
Uniforms present unique challenges for employers. Generally, if an employer requires that employees wear a particular color, such clothing would not be a uniform. However, if a specific type and style of clothing is required or if clothing containing the employer's emblem or logo must be worn at work, such clothing would generally be considered a uniform.

The federal Fair Labor Standards Act (FLSA) does not allow uniforms to be included as wages. If you require your employees to bear the cost of their uniforms, their wages may not fall below the federal minimum wage of $7.25 per hour. In addition, the cost of the uniform may not cut into an employee's overtime compensation.

Additional Information
The U.S. Small Business Administration offers additional tips for employers related to dress code policies. Be sure to comply with any applicable state-specific laws and consult with an employment law attorney to identify issues that may be unique to your workplace, including the presence of hazards that may require the use of personal protective equipment such as safety glasses, hard hats, and safety shoes.

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