



Health Care Reform: New Guidance on "Pay or Play," Annual Limit Rules, and More

A new wave of final rules and FAQs provides guidance for employers and group health plans on a number of upcoming requirements under Health Care Reform. The following are key highlights:

Determining Minimum Value for Employer "Pay or Play"

Beginning in 2014, certain large employers (generally those with at least 50 full-time employees and full-time equivalents) may be required to [pay a penalty](#) if they do not offer full-time employees affordable health coverage that provides "minimum value."

A [final rule](#) outlines acceptable methods for plans to determine minimum value, including a [Minimum Value Calculator](#) (now available for informal external testing) for use by employer-sponsored group health plans that are not in the individual or small group market.

As an alternative to using the calculator, an employer-sponsored plan will be able to use a number of safe harbor checklists (not yet available) to determine whether the plan provides minimum value without the need to perform any calculations.

Guidance on Integrated vs. Stand-Alone HRAs for Compliance with Annual Limit Rules

A [new set of FAQs](#) provides guidance regarding the distinction between integrated and stand-alone HRAs for purposes of compliance with the upcoming prohibition on [annual dollar limits](#) with respect to coverage of "essential health benefits." In general, HRAs that are "integrated" with other coverage as part of a group health plan that itself has no annual limits will be deemed to comply with the requirement to eliminate annual limits, while **"stand-alone" HRAs will violate the rules.**

The FAQs clarify that:

- An HRA is not considered integrated with primary health coverage offered by the employer unless the HRA is available only to employees who are covered by primary group health plan coverage provided by the employer and meeting the annual limit requirements.
- An employer-sponsored HRA cannot be integrated with individual market coverage or with an employer plan that provides coverage through individual policies.
- An employer-sponsored HRA may be treated as integrated with other coverage only if the employee receiving the HRA is actually enrolled in that coverage.
- Future guidance is expected to provide that unused amounts credited before January 1, 2014, consisting of amounts credited before January 1, 2013 and amounts credited in 2013 under the terms of an HRA as in effect on January 1, 2013, generally may be used after December 31, 2013 to reimburse medical expenses in accordance with those terms without causing the HRA to fail to comply with the annual limit rules.

Standards for Essential Health Benefits and Limits on Cost-Sharing

Also beginning in 2014, non-grandfathered health plans offered in the individual and small group markets will be required to cover "essential health benefits" and meet certain actuarial values (the percentage of total average costs for covered benefits a plan will cover), detailed in the [final rule](#).

In addition, non-grandfathered group health plans will need to ensure that cost-sharing under the plan for such coverage does not exceed certain limitations, including limits on both **out-of-pocket maximums** and **deductibles**. Under the final rule and [FAQs](#):

- The annual limitation on out-of-pocket expenses applies generally to all non-grandfathered group health plans, and is tied to the enrollee out-of-pocket limit for high deductible health plans in connection with health savings accounts (HSAs): and

In this Issue

[Health Care Reform: New Guidance on "Pay or Play," Annual Limit Rules, and More](#)

[New FMLA Poster and Final Rules on Military Family Leave Amendments](#)

[4 Common Workplace Poster Mistakes and How to Correct Them](#)

[Small Business Tax Tools and Resources Online](#)

- Non-grandfathered plans in the small group market must comply with the annual limitation on deductibles, which may not exceed \$2,000 (for self-only coverage) or \$4,000 (for non-self-only coverage) for plan years beginning in calendar year 2014. Contributions to flexible spending arrangements (FSAs) are not taken into account when determining the deductible maximum.

Guidance on Coverage of Preventive Services

A [new set of FAQs](#) addresses a number of issues related to the requirement that non-grandfathered group plans cover recommended preventive services without cost-sharing, including clarification regarding coverage of over-the-counter recommended items and services and preventive services for women.

Guaranteed Availability of Coverage and Limits on Premium Variations

A [final rule](#) has been issued regarding the requirements related to guaranteed availability of coverage and fair premiums for issuers offering non-grandfathered health insurance coverage in the individual or small group market.

- For plan years beginning on or after January 1, 2014, issuers are required to accept every individual and employer in the state that applies for coverage, subject to certain exceptions.
- In addition, issuers will be allowed to vary premiums only based on **age** (within a 3:1 ratio for adults), **tobacco use** (within a 1.5:1 ratio for adults and subject to wellness program requirements in the small group market), **family size**, and **geography**.

Visit our section on [Health Care Reform](#) for more information regarding these updates and to stay on top of changes.

New FMLA Poster and Final Rules on Military Family Leave Amendments

A [new poster](#) reflecting changes to the federal Family and Medical Leave Act (FMLA) related to military family leave is **now available and must be posted no later than March 8th**. Employers with 50 or more employees are generally required to display the FMLA poster where both employees and applicants can see it.

Military Family Leave Provisions

The FMLA includes two special military family leave entitlements for [eligible employees](#):

- **Military caregiver leave** allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness to take up to 26 workweeks of FMLA leave during a single 12-month period to care for the servicemember.
- Under the **qualifying exigency leave** provisions, an eligible employee whose spouse, son, daughter, or parent is a military member on covered active duty is allowed to take up to 12 workweeks of leave to address certain special issues (called "qualifying exigencies") arising out of the military member's active duty or call to active duty in support of a contingency operation. Qualifying exigencies include activities such as attending military sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.

Final Rules Implement Changes to FMLA

The new FMLA poster accompanies [final rules](#) which implement previous amendments to the military family leave provisions. Highlights of the final rules include:

- **Expansion of the definition of a covered servicemember to include certain veterans.** The final rules expand the 26-workweek military caregiver leave provision to include leave to

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement
 FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:
 • To care for the employee's spouse, parent, son or daughter, or next of kin who has a serious health condition.
 • To care for the employee's spouse, son or daughter, or parent, who has a serious health condition, or
 • To care for the employee's spouse, son or daughter, or parent, who has a serious health condition that makes the employee unable to perform the employer's job.

Military Family Leave Entitlements
 FMLA also includes special leave entitlements that permit eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserve, who has a serious injury or illness that results in the loss of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in a hospital status, or is in the temporary disability status.

Benefits and Protections
 During FMLA leave, the employer must maintain the employee's health benefits under any "group health plan" on the same basis as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original position with equivalent pay, benefits, and other employment terms.

Eligibility Requirements
 Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least one employee is employed by the employer within 75 miles.

Definition of Serious Health Condition
 A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an inability to perform the major functions of the employee's job, or the absence of the employee from the employer's job, or the absence of the qualified family member from participating in school or other daily activities.

Qualifying Exigency Leave
 Subject to certain conditions, the continuing treatment requirement may be waived for a serious health condition if the employee is a health care provider or a covered employer's regular or recurring business, or necessary due to pregnancy, or necessary due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of FMLA Leave
 FMLA leave cannot be used in the case of any employment benefit that would accrue to the employee's benefit.

Unlawful Acts by Employers
 FMLA makes it unlawful for any employer to:
 • Interfere with, restrain, or deny the exercise of any right provided under FMLA.
 • Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for participating in any proceeding under or relating to FMLA.

Enforcement
 The employer may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.
 FMLA does not affect any Federal or State law prohibiting discrimination, or remedies under State or local law or collective bargaining agreement which provide greater family or medical leave rights.

For additional information:
 1-866-487-9424 (T) 866-607-7222 (T) 1-475-489-6227
 WWW.WAGEHOUR.DOL.GOV
 U.S. Department of Labor | Wage and Hour Division | WHD
 U.S. Wage and Hour Division | WHD

care for covered veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred or aggravated in the line of duty on active duty and that manifested before or after the veteran left active duty.

- **Inclusion of pre-existing injuries or illnesses aggravated in the line of duty on active duty.** The final rules expand military caregiver leave to cover current servicemembers with serious injuries or illnesses that existed before the servicemember's active duty but were aggravated by service in the line of duty.
- **Expansion of qualifying exigency leave for employees with family members in the Regular Armed Forces.** The final rules expand the qualifying exigency leave entitlement to employees whose spouse, son, daughter, or parent serves in the Regular Armed Forces, and incorporates the statutory requirement that the military member, whether in the Regular Armed Forces or the Reserve components, must be deployed to a foreign country.
- **Certain changes to the categories of qualifying exigency leave,** including a new qualifying exigency category that allows an eligible employee to take FMLA leave for certain activities related to the care of the military member's parent who is incapable of self-care where those activities arise from the military member's deployment or impending deployment.

The final rules also implement amendments clarifying the application of the FMLA to airline flight crew employees.

Additional information regarding these changes, including a military leave guide, fact sheets, and FAQs, is [available from the U.S. Department of Labor](#). You can learn more about the Family and Medical Leave Act in our section on the [FMLA](#).

4 Common Workplace Poster Mistakes & How to Correct Them

Even if your company has only a few employees, a number of federal and state laws require you to display labor posters in your workplace which include information about relevant employment laws. Are you making any of the following mistakes when it comes to your poster wall?

Mistake #1: Posting the Wrong Posters

A good place to start your poster inspection is with the U.S. Department of Labor's (DOL) online [Poster Advisor](#), an interactive tool which can be used to determine the poster requirements of several federal laws administered by the DOL. Be sure to check with your [state labor office](#) for state-specific poster requirements as well as any industry-specific requirements that may apply to your business.

Mistake #2: Posting Outdated Posters

Workplace posters are updated from time to time--for example, to reflect changes in the law--so make it a regular practice to check whether the posters displayed in your workplace are the most recent versions available.

Mistake #3: Posting the Wrong Size Poster

A workplace poster isn't useful unless it can be easily read by your employees. Many of the agency links to the posters your workplace is required to display contain specific information regarding a poster's size. If you have any questions regarding the required size of a poster, contact the [DOL](#) or your [state labor office](#).

Mistake #4: Hanging Posters in the Wrong Place

Workplace posters must generally be displayed in a prominent location where all employees can see them, but some posters may have special location requirements. For example, covered employers must post the federal [Family and Medical Leave Act](#) poster in a conspicuous place where both employees and **applicants** for employment can see it. Check for specific requirements for the posters you are required to display and choose each poster's placement carefully.

Need a Federal or State Poster?

Did you know that you can download required labor law posters right from your online HR library? Information regarding the federal requirements and links to downloadable posters are featured in the [Federal Poster Requirements](#) section. For state-specific posters, visit our [State Laws](#) section, select

your state and click on 'Posters' in the left-hand navigation.

Small Business Tax Tools and Resources Online

With tax season underway, now is a great time to check out the [IRS Small Business and Self-Employed Tax Center](#), a convenient way for small employers to find answers to tax questions, educational materials and other tools to help run their businesses.

Among the information and resources available on the website are:

- Small business forms and publications;
- Online applications for an employer identification number (EIN);
- Employment tax information--including federal income tax, Social Security and Medicare taxes, FUTA and self-employment tax;
- Tax-related news that could affect small businesses;
- Small business educational events;
- IRS videos for small businesses; and
- The A-Z Index for Business.

Other resources available on the IRS website include a virtual small business tax workshop for learning about federal tax obligations, and a [12-month tax calendar for small business taxpayers](#) with information on general business taxes, electronic filing and paying options, retirement plans, business publications and forms, and common tax filing dates.

To take advantage of these free tools from the IRS, access the [Small Business and Self-Employed Tax Center](#). Our section on [Employer Tax Laws](#) provides additional information on an employer's tax responsibilities.

Newsletter provided by:

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

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