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HR News Alert

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October 1st Deadline for Employers to Provide Required Exchange Notices

As a reminder, employers are required under Health Care Reform to provide each employee a written notice with information about a Health Insurance Exchange (also known as a Marketplace). Below are three important points about the notice.

1. Notices must be provided to each current employee no later than October 1, 2013, and to each new employee at the time of hiring beginning October 1, 2013. In general, a notice will be considered provided "at the time of hiring" if it is provided within 14 days of an employee's start date. Employers may distribute the notice by first-class mail, or electronically if certain requirements are met.

2. The U.S. Department of Labor has provided two sample notices employers may use to comply with this requirement. The law requires that specific information be included in each notice. One model notice is available for employers that offer a health plan to some or all employees, and another model notice may be used by employers that do not offer a health plan.

3. Employers must provide the notice to each employee, regardless of plan enrollment status (if applicable) or of part-time or full-time status. Employers are not required to provide a separate notice to dependents or other individuals who are or may become eligible for coverage under the plan but who are not employees.

The notice requirement applies to all employers covered by the federal Fair Labor Standards Act. Be sure to visit our section on Health Care Reform for information on other notices required to be provided and to download additional model notices available for employers and group health plans.

Same-Sex Marriage Ruling Prompts Guidance from Federal Agencies

New agency guidance is beginning to emerge in the wake of the U.S. Supreme Court ruling that invalidated part of the Defense of Marriage Act (DOMA), which defined "spouse" as a person of the opposite sex who is a husband or wife for purposes of federal law.

All Legal Same-Sex Marriages Recognized for Federal Tax Purposes

Same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for all federal tax purposes (including employee benefits), according to an IRS Revenue Ruling. The ruling applies **regardless of whether the couple lives in a jurisdiction that recognizes same-sex marriage or a jurisdiction that does not recognize same-sex marriage**.

An employee who purchased same-sex spouse health coverage under his or her employer's plan on an after-tax basis may treat the amounts paid for that coverage as **pre-tax and excludable from income**, and may be able to claim a refund of income taxes paid on the premiums by filing an amended return. (Generally, a taxpayer may file a claim for a refund for 3 years from the date the

return was filed or 2 years from the date the tax was paid, whichever is later.)

The IRS intends to issue streamlined procedures for **employers who wish to file refund claims for payroll taxes paid on previously-taxed health insurance and fringe benefits provided to same-sex spouses**. The agency also intends to issue further guidance on cafeteria plans and on how qualified retirement plans and other tax-favored arrangements should treat same-sex spouses for periods before the Revenue Ruling becomes effective on September 16, 2013.

Taxpayers may rely on the terms of the ruling for earlier periods as long as the statute of limitations for the earlier period has not expired. The ruling does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law. Updated FAQs for same-sex spouses and FAQs for other same-sex couples are available from the IRS.

Updated FMLA Guidance Recognizes Benefits for Same-Sex Spouses

The U.S. Department of Labor (DOL) has revised its agency guidance to clarify the definition of "spouse," for purposes of the Family and Medical Leave Act (FMLA), to mean **a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage and same-sex marriage**. The revision is effective June 26, 2013.

According to the DOL's official blog, **the changes recognize that the Supreme Court's decision expands the number of employees who are eligible for FMLA benefits to include legally married, same-sex couples**. The DOL has not yet addressed in formal guidance how the DOMA ruling may apply to legally married same-sex spouses living in states that do not recognize same-sex marriage.

The FMLA entitles an eligible employee 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. Employers who employ **50 or more employees** for at least 20 workweeks in the current or preceding calendar year must comply with the FMLA.

Additional Information

To learn more about the eligibility requirements and qualifying reasons for FMLA leave, visit our section on the Family and Medical Leave Act. For guidance on same-sex marriage laws specific to your state, visit our State Laws section, click on your state, and select "Same-Sex Relationships" from the left-hand navigation menu.

Paying Employees: 3 Common Mistakes and How to Avoid Them

The federal Fair Labor Standards Act (FLSA) sets some basic rules when it comes to paying employees minimum wage and overtime, but certain common pay practices can violate the law without employers even knowing it. If any of the following sound familiar, it may be time for a compliance check.

1. "All Our Employees Are Exempt - They're Salaried"

Don't assume that just because you pay your employees a salary, they are considered exempt (not entitled to the FLSA minimum wage and overtime pay protections). Similarly, giving an employee a high-ranking job title such as "manager" does not, by itself, determine the employee's status. In order for an exemption to apply, you must ensure that an employee's specific job duties and salary meet all the requirements of the law for the specific exemption claimed.

2. "We Don't Need to Pay Overtime - Our Employees Volunteer to Work Late"

Non-exempt employees must be paid for all hours worked, including time spent doing work not requested by the employer but still allowed (otherwise known as working "off the clock"). Employees generally may not volunteer to perform work without the employer having to count the time as hours worked. It is the responsibility of management to exercise control and see that work is not performed if the employer does not want it to be performed.

3. "Overtime Doesn't Apply - We Use Contract Workers"

While it is true that independent contractors are not entitled to overtime pay because they are not

considered "employees" covered under the FLSA, the mere existence of a contract stating that a worker is an independent contractor is not sufficient to determine the worker's status. Analyze the underlying nature of each relationship in light of all relevant factors to ensure that each worker is properly classified.

Note that state wage and hour laws may also apply to employment subject to the FLSA. When both the FLSA and a state law apply, the law setting the higher standards must be observed. If you have any questions regarding permissible pay practices, please consult a knowledgeable employment law attorney. Our section on Employee Pay includes information on other issues related to employee compensation.

Provide Medicare Part D Creditable Coverage Notices by October 15th

In preparation for the Medicare fall open enrollment period, employers sponsoring group health plans that include prescription drug coverage are required to notify all Medicare-eligible individuals whether such coverage is creditable. Creditable coverage means that the coverage is expected to pay, on average, as much as the standard Medicare prescription drug coverage.

This written disclosure notice must be provided annually **prior to October 15th**, and at various other times as required under the law, to the following individuals:

- Medicare-eligible active working individuals and their dependents (including a Medicare-eligible individual when he or she joins the plan);
- Medicare-eligible COBRA individuals and their dependents;
- Medicare-eligible disabled individuals covered under an employer's prescription drug plan; and
- Any retirees and their dependents.

Model notices are available from the Centers for Medicare & Medicaid Services (CMS). Additionally, employers are required to complete an online disclosure to CMS to report the creditable coverage status of their prescription drug plans. This disclosure is also required annually, **no later than 60 days from the beginning of a plan year**, and at certain other times.

Visit our Medicare section for more information about how the law affects employer-provided group health plans.

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