AssuredPartners NL COMPLIANCE OBSERVER

4th Quarter 2016

Is Your Wellness Program Compliant?

As we reported in our May 18, 2016 Compliance Observer Alert the final Americans with Disabilities Act ("ADA") rules require employers who offer wellness programs that include disability-related inquiries or medical examinations to provide a written notice to employees and spouses (if participating in the program). The required notice must inform the employee of what information will be collected, how the information will be used, who will receive the information and what will be done to keep the information confidential. At the time of our Alert, the EEOC had indicated it would be publishing a sample notice that satisfied the necessary requirements but that sample notice was not yet available.

To assist employers with this new requirement, the EEOC has published a sample notice that employers may use to comply with the ADA rules, along with a Q&A which provides guidance on using and distributing the notice.

Although the ADA final rule, including the notice requirement, applies as of the first day of the plan year beginning on or after Jan. 1, 2017, the notice must be furnished to employees and spouses (if applicable) ***prior to*** their providing any health information, such as through a health risk assessment (HRA), or undergoing any form of biometric screenings or testing. The notice may be provided in any format that will be effective in reaching the relevant employees.

Along with the new ADA notice requirement, under the new GINA rules for wellness programs employers are only permitted to request information about the current or past health status of an employee's spouse if they have obtained ***prior, knowing, written, and voluntary authorization*** from the spouse ***before*** the spouse completes an HRA.

If you have questions about whether your wellness program is in compliance with current requirements, do not hesitate to contact us.

New Overtime Rule Blocked

Thanksgiving blessing? In a last minute ruling just days before the effective date of December 1, 2016, a federal judge halted the Department of Labor's (DOL) new overtime rule.

The fate of the new overtime rule is still unknown. Although on hold for now, an appeal has already been filed by the U.S. Department of Justice, on behalf of the U.S. Department of Labor. Until we have a ruling or additional guidance, employers must continue to follow the existing Fair Labor Standards Act (FLSA) overtime rule. Several factors will come into play before a final decision is made; however, once it is, employers should be prepared to act quickly if the new rule is passed.

Employers that have not yet made changes to their employees' compensation or classifications may want to consider postponing the effective date of those changes. If you are an employer that has already implemented changes, we recommend holding off on reversing those changes until a final decision is reached on whether the new regulations will still take effect.

We will continue to monitor these developments and provide updates as additional information is released.

ACA Reporting for 2016

The IRS has once again extended the deadline for the distribution of Forms 1095B and 1095C to individuals. As announced in Notice 2016-70, Applicable Large Employers (ALEs), self-insured group health plans, and health insurance carriers now have until **March 2, 2017** to distribute the forms, which provide information on the health care coverage individuals were offered and in which they enrolled during 2016.

Filers are not required to submit a request or other documentation to take advantage of the extension. Because this extended furnishing deadline applies automatically to all reporting entities, the IRS will not grant any additional extensions of time to furnish Forms 1095-B and 1095-C. As a result, the IRS will not formally respond to any requests that have already been submitted for 30-day extensions of time to furnish statements for 2016.

IMPORTANT! - The deadline to submit the required forms to the IRS has not been extended. The deadline for filing forms with the IRS remains February 28, 2017 (March 31, 2017 if filing electronically).

In addition to the deadline extension for providing forms, the IRS has also extended good faith transition relief from penalties for providing incorrect or incomplete information on the 2016 forms (for those provided to individuals as well those filed with the IRS). Relief will only be provided for reporting entities that can show they have made good-faith efforts to comply with the reporting requirements. Relief will not apply to entities that fail to file an information return or furnish a statement by the due dates (as extended).

Final 2016 Forms and Instructions can be found at the links below:

Forms 1094-B and 1095-B and final instructions
Forms 1094-C and 1095-C and final instructions

Employers Face New W-2 Filing Deadline

A new federal law, aimed at making it easier for the IRS to detect and prevent tax refund fraud, will accelerate the W-2 filing deadline for employers to January 31st.

The Protecting Americans from Tax Hikes (PATH) Act, enacted last December, includes a new requirement for employers. ***Employers are now required to file their copies of Form W-2, submitted to the Social Security Administration, by January 31st***. The new deadline also applies to certain Forms 1099-MISC reporting non-employee compensation such as payments to independent contractors.

In the past, employers typically had until the end of February, if filing on paper, or the end of March, if filing electronically, to submit their copies of these forms. In addition, there are changes in requesting an extension to file the Form W-2. Only one 30-day extension to file Form W-2 is available and this extension is not automatic. If an extension is necessary, a Form 8809 Application for Extension of Time to File Information Returns must be completed as soon as you know an extension is necessary, but by January 31. Please carefully review the instructions for Form 8809 for more information.

The new accelerated deadline will help the IRS improve its efforts to spot errors on returns filed by taxpayers. Having these W-2s and 1099s earlier will make it easier for the IRS to verify the legitimacy of tax returns and properly issue refunds to taxpayers eligible to receive them. In many instances, this will enable the IRS to release tax refunds more quickly than in the past.

The January 31 deadline long applied to employers furnishing copies of these forms to their employees remains unchanged.

Source: IRS

REMINDER!

The Affordable Care Act (ACA) requires employers to report the aggregate cost of employer-sponsored group health plan coverage on their employees' Forms W-2. The purpose of the reporting requirement is to provide information to employees regarding how much their health coverage costs. The reporting does not mean that the cost of the coverage is taxable to employees.

Violations of the ACA's W-2 reporting requirements are subject to existing rules and penalties for filing Forms W-2.

This reporting requirement continues to be **optional for small employers *(those that file fewer than 250 Forms W-2***). For employers who crossed over the 250 threshold for the 2016 tax year, this will be a new requirement for you. Contact your AssuredPartners benefits team for more information on this requirement.

Soliciting SSNs/TINs for Form 1095-C

Applicable large employers (ALEs) who are required to file IRS Form 1095-C are subject to penalties for failure to provide correct information on returns and for failure to furnish correct statements to individuals in a timely manner. This includes an ALE's obligation to report correct Social Security numbers (SSN) or other Taxpayer Identification Numbers (TIN) of covered employees and their spouses and dependents in Part III of Form 1095-C.

The IRS may waive penalties if an employer can show that the failure was due to reasonable cause and not willful neglect. To establish reasonable cause, the employer must demonstrate that it "acted in a responsible manner and that the failure was due to significant mitigating factors or events beyond the reporting entity's control."

On Aug. 2, 2016, the IRS issued proposed regulations clarifying the process ALEs must follow when soliciting SSNs/TINs. To show a reasonable effort to obtain the SSN/TIN, the employer must make:

- An initial solicitation on the date the employer receives a substantially complete application for new coverage or to add an individual to existing coverage. However, the employer is not required to make this initial solicitation if it already has the employee's SSN/TIN and uses that number for all relationships with the employee.
- If the employer does not receive the SSN or TIN, the first annual solicitation is required to be made no later than 75 days after the date on which the ALE received the substantially complete application for coverage (or, if coverage is retroactive, no later than the 75th day after the determination of retroactive coverage is made).
- Generally, if the SSN or TIN is still not provided, a second solicitation is required by December 31st of the following year.

The proposed regulations do not change the solicitation process for *incorrect* TINs.

Paid Sick Leave for Contract Workers

The U.S. Department of Labor (DOL) has issued a final rule to implement Executive Order 13706, requiring federal contractors and subcontractors (contractors) to offer paid sick leave to their employees. The final rule is substantially similar to the proposed regulations the DOL issued on Feb. 25, 2016.

Contractors can lose eligibility for future government contracts or be subject to civil lawsuits if they do not comply with the paid sick leave requirements.

The order applies to new contracts and replacements for expiring contracts with the federal government that result from solicitations issued on or after January 1, 2017 (or that are awarded outside the solicitation process on or after January 1, 2017).

Key Highlights:

- Contractors will have to provide one hour of paid sick leave for every 30 hours of covered work.
- Paid sick leave must be provided "free and clear" with no deductions, rebates or kickbacks.
- Employees can use paid sick leave for the following reasons:
  - ✓ a physical or mental illness, injury or medical condition
  - ✓ when obtaining diagnosis, care or preventive care from a healthcare provider
  - ✓ when caring for a child, parent, spouse, domestic partner, who has need for diagnosis, care, or preventive care
  - ✓ for domestic violence, sexual assault or stalking situations

The final rules apply to 4 major categories of contractual agreements:

1. Procurement contracts for construction covered by the Davis-Bacon Act (DBA);
2. Service contracts covered by the McNamara-O'Hara Service Contract Act (SCA);
3. A contract for concessions, including any concessions contract excluded from coverage under the SCA; and
4. Contracts in connection with federal property or lands and related to offering services for federal employees, their dependents, or the general public.

Note: Any subcontract of a covered contract that (like the upper-tier contract) falls into one of the 4 categories above is subject to the paid sick leave requirements.

The order applies to any person engaged in performing work on or in connection with a contract covered by the order whose wages under such contract are governed by the SCA, DBA, or federal Fair Labor Standards Act (FLSA), including employees who qualify for an exemption from the FLSA's minimum wage and overtime provisions.

Sick Leave Accrual

Contractors are required to provide their employees with at least one hour of paid sick leave for every 30 hours of work performed on, or in connection with, a covered contract. Accrual is calculated at the end of each pay period or each month, whichever interval is shorter. A contractor has the option to provide an employee with at least 56 hours of paid sick leave at the beginning of each accrual year, rather than allowing the employee to accrue leave based on hours worked.

Contractors must reinstate an employee's accrued-but-unused paid sick leave if the employee is rehired by that same contractor within 12 months after a job separation, unless the contractor pays employees for accrued, unused paid sick leave upon separation (not required).

Notice & Recordkeeping
The final rule includes many complex notice and recordkeeping requirements. Among them, a contractor must:

- ✓ Post a notice for all employees who perform work on, or in connection with, a covered contract regarding their right for paid sick leave. This notice must be displayed in a prominent and accessible place at the employees' worksite.
- ✓ Notify employees, in writing, of any amount of accrued but unused paid sick leave. This notice must be provided at least once every pay period or monthly (whichever interval is shorter). Notification requirements also apply upon separation and reinstatement of employment.
- ✓ Maintain records the DOL can use to verify that contractors are in compliance with paid sick leave laws. Contractors must keep these records for at least three years. These records must be made available for DOL inspection upon request. These recordkeeping obligations are in addition to any obligations contractors have under other federal and state laws.

Interaction with Other Laws and Paid Time Off (PTO) Policies
The final rules explain how the paid sick leave requirements interact with contractors' obligations under other laws (e.g., the SCA, DBA, federal Family and Medical Leave Act, and state and local paid sick time laws). The rules also explain that a contractor's existing PTO policy can fulfill the paid sick leave requirements of the order as long as it provides employees with at least the same rights and benefits as the final rules require.

The information provided in this article is only a brief summary of the new regulation. More information, including details on certification, use of leave, and additional contractor requirements, is available in the final rules. Fact sheets, FAQs, and other resources are also available HERE.

Adjusted PCORI Fee

Notice 2016-64 provides that the adjusted applicable dollar amount that applies for determining the PCORI fee for policy years and plan years ending on or after October 1, 2016 and before October 1, 2017 is equal to **$2.26**.

REVISED EEO-1 REPORTING

The U.S. Equal Employment Opportunity Commission (EEOC) has announced that, starting in March 2018, it will collect summary employee pay data from certain employers. The summary pay data will be added to the annual Employer Information Report (EEO-1).

Background
The EEO-1 is an annual survey that requires all private employers with 100 or more employees, and federal government contractors or first-tier subcontractors with 50 or more employees and a contract/subcontract of $50,000 or more, to file a report. The report currently provides employment data by race/ethnicity, gender, and job categories.

Starting with the 2017 report

- ✓ Private employers with 100 or more employees (including federal contractors and subcontractors with a contract/subcontract of $50,000 or more) will submit summary pay (and hours-worked) data.

- ✓ Federal contractors and subcontractors with 50-99 employees (and a contract/subcontract of $50,000 or more) will not report summary pay data, but they will tally employees by job category and then by sex and ethnicity/race (as they did previously).
- ✓ Federal contractors and subcontractors with fewer than 50 employees, as well as employers with 1-99 employees (that are not federal contractors or subcontractors) will not file EEO-1 reports at all.

The EEO-1 deadline for the 2017 report is **March 31, 2018**. The EEO-1 will be due every March 31st in subsequent years. (The 2016 EEO-1 deadline was September 30, 2016.)

Revised EEO-1 Report

The revised EEO-1 report has two new elements:

1. **Summary pay data**. Employers report the total number of full and part-time employees they employed during that year in each of 12 pay bands listed for each EEO-1 job category. Employers do not report individual pay or salaries.
2. **Aggregate hours-worked data**. Employers tally and report the number of hours worked that year by all of the employees accounted for in each pay band.

Counting Employees for Purposes of Revised EEO-1 Report

Employers will count their employees during the "workforce snapshot period." For reporting years 2016 and prior, the workforce snapshot period was July 1 to September 30. However, starting with the 2017 EEO-1, the workforce snapshot period for the EEO-1 will be a pay period of the employer's choice between October 1st and December 31st.

Additional information, including a new sample form, fact sheet, and Q&As, is available HERE.

Source: HR360

2017 EMPLOYEE BENEFIT PLAN LIMITS

	2017	2016
Elective Deferrals (401(k), 457(b) and 403(b); not including adjustments and catch-ups)	18,000	18,000
Catch-up Limit (age 50 and older, if plan permits)	6,000	6,000
Defined Contribution Limit	54,000	53,000
Defined Benefit Limit	215,000	210,000
401(a)(17) Annual Compensation Limit	270,000	265,000
408(p)(2)(A) SIMPLE Limit	12,500	12,500
Highly Compensated Employee (HCE) Compensation Threshold	120,000	120,000
Key Employee Compensation Threshold	175,000	170,000
Flexible Spending Account (FSA) Contribution Limit	2,600	2,550
ACA Out-of-Pocket Maximum		
-Single	7,150	6,850
-Family	14,300	13,700
Health Savings Account (HSA) Contribution Limit		
-Single	3,400	3,350
-Family	6,750	6,750
- Catch-up (age 55 and older, if plan permits)	1,000	1,000
HSA Annual Deductible Minimum		
-Single	1,300	1,300
-Family	2,600	2,600
HSA Out-of-Pocket Maximum		
-Single	6,550	6,550
-Family	13,100	13,100

21ST CENTURY CURES ACT ALLOWS STAND-ALONE HRA OPTION FOR SMALL EMPLOYERS

Signed into law by President Obama on Tuesday, December 13, 2016, the 21st Century Cures Act (the "Cures Act") provides, among other things, the ability for certain employers to create a "qualified small employer health reimbursement arrangement" or "QSEHRA".

Prior to the Cures Act, the IRS had prohibited stand-alone HRAs because as group health plans they, by design, failed to comply with the ACA's group market reforms. Specifically, these plans could not comply with the ACA's annual limit prohibition and preventive care requirements. The Cures Act effectively removes QSEHRAs from the definition of "group health plan" and allows small employers, as defined in the Act, the ability to offer a QSEHRA to its employees. This QSEHRA may be used by employees to purchase health insurance coverage in the individual market.

Numerous rules apply to these new QSEHRAs, including but not limited to:

- Only "small employers" are permitted to offer these arrangements. "Small employers" are defined as those that (i) are not considered Applicable Large Employers under the ACA's "employer mandate", and (ii) do not offer a group health plan to any of their employees..
- The QSEHRA can be funded only by employer contributions, no salary deferrals are permitted.
- The QSEHRA provides for payment or reimbursement for medical care expenses, with a maximum annual reimbursement limit of $4,950 for individuals ($10,000 if arrangement covers a family).
- The QSEHRA must generally be offered to all eligible employees, although some exceptions are allowed.
- The QSEHRA must be provided on the same terms to all eligible employees of the employer. However, variations due to age and number of eligible family members are permitted.
- Reimbursements are excluded from taxable income if the individual has minimum essential coverage and provides proof to the employer.
- Employers must provide a new annual notice to eligible employees no later than 90 days before the beginning of the year. The notice must meet certain content requirements. Penalties may apply if the notice is not provided.

QSEHRAs may be offered by small employers beginning **on or after January 1, 2017**; however, it is possible that efforts by President-elect Trump to repeal and replace the ACA may later impact these provisions. Until then, these new provisions provide certain small employers with a welcome healthcare option for their employees not previously available under IRS and ACA rules.

AssuredPartners continues to monitor all compliance matters in order to keep you abreast of the latest news and regulatory changes. In addition to this newsletter, our Compliance Observer Alerts will provide you with the most relevant and up-to-date information and guidance. If you have questions or need assistance with any of these or other compliance matters, please contact your AssuredPartners Benefit Team.