HUMAN RESOURCES & ADMINISTRATION

NEWS & BEST PRACTICES

Marshall & Sterling GROUP BENEFITS

WEBINAR: NLRA for At-Will Employees

Thursday, March 12, 2015
2:00 p.m. - 3:00 p.m. EST

Click to learn more and register

Recent action by the National Labor Relations Board has created numerous concerns for “at will” employers. In many cases employers must make substantial revisions to long established policies to ensure continued compliance. Our one hour webinar will address current NLRB “hot buttons” as well as suggestions for policy changes.

Register now: https://attendee.gotowebinar.com/register/100000000065162585

WEBINAR: Sections 6055 and 6056: “MEC” and “ALE” Reporting to the IRS

Tuesday, March 24, 2015
2:00 p.m. - 3:00 p.m. EST

Click to learn more and register

Join us on March 24th for an overview of the ACA's new reporting requirements for employers and providers of health insurance coverage. The first reporting is due in the first quarter of 2016 reflecting the 2015 calendar year.

Register now: https://attendee.gotowebinar.com/register/6098031489953409793

Updated Model CHIP Notice for Employers

An updated model notice is now available for employers that provide group health coverage in states with premium assistance through Medicaid, or the Children's Health Insurance Program (CHIP), to inform employees of potential opportunities for assistance in obtaining coverage.

The employer CHIP notice **must be provided annually before the start of each plan year**. An employer may provide the notice applicable to the state in which an employee resides concurrent with the furnishing of:

- Materials notifying the employee of health plan eligibility;
- Materials provided to the employee in connection with an open season or election process conducted under the plan; or
- The summary plan description.

The updated model notice includes information on how employees can contact their state for additional information and how to apply for premium assistance, with information current as of January 31, 2015.

MARCH 2015

In This Issue…

WEBINARS:

NLRA For At-Will Employers

Section 6055 and 6056: “MEC” & “ALE” Reporting to the IRS

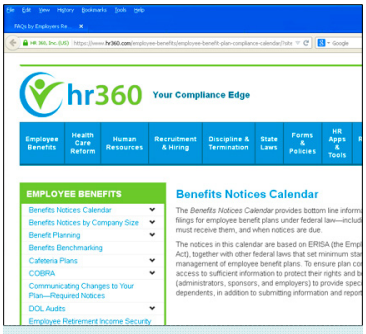
Updated Model CHIP Notice for Employers

IRS Penalties for Small Employers Reimbursing Individual Premiums Will Not Apply Until July 2015

Final Forms and Instructions for Employers to Report Health Coverage and ACA Compliance

FMLA Protections Extended to All Eligible Employees in Same-Sex Marriages

3 Things to Consider When Terminating an Employee



Check out our Benefits Notices Calendar to learn about other federal notice requirements and to download additional model notices available for employers and group health plans.

IRS Penalties for Small Employers Reimbursing Individual Premiums Will Not Apply Until July 2015

Please visit our section on Health Care Reform for more Affordable Care Act information and updates.

IRS Notice 2015-17 provides limited transition relief from the assessment of excise taxes for **small employers** who reimburse, or directly pay, the premium for an employee's individual health insurance policy.

Prohibited Plans

An "employer payment plan" is an arrangement under which an employer reimburses an employee for **some or all of the premium expenses** incurred for an individual health insurance policy, or an arrangement under which the employer uses its funds to **directly pay the premium** for an individual health insurance policy covering the employee. Pursuant to prior agency guidance, employer payment plans are generally considered group health plans that do not comply with certain market reforms of the Affordable Care Act (ACA), and therefore may be subject to a **$100 per day excise tax per applicable employee under the federal tax code**.

Note: An employer payment plan that has fewer than two participants who are current employees (for example, a **retiree-only plan**) on the first day of the plan year is **not** subject to the ACA market reforms.

Transition Relief

The transition relief applies to employer healthcare arrangements that constitute employer payment plans **if the plan is sponsored by a small employer** -- generally an employer with **fewer than 50 full-time employees**, including full-time equivalents, as determined in accordance with the "pay or play" rules.

An excise tax will not be asserted for any failure to satisfy the ACA's market reforms by employer payment plans sponsored by small employers that pay, or reimburse employees for individual health policy premiums:
For 2014, for employers that qualify as small employers for 2014; and
For January 1 through June 30, 2015, for employers that qualify as small employers for 2015.

After June 30, 2015, such employers may be liable for the excise tax. The relief does not extend to stand-alone HRAs or other arrangements to reimburse employees for medical expenses other than insurance premiums.

Additional Information

Notice 2015-17 also clarifies that employers can generally increase an employee's compensation to assist with payments of individual market coverage, **so long as the payment of additional compensation is not conditioned on the purchase of health coverage and the employer does not otherwise endorse a particular policy, form, or issuer**. Due to the potential for significant penalties and the complexity of the law in this area, **employers considering a cash (or payroll practice) option are strongly advised to consult knowledgeable benefits counsel to ensure full compliance with the law**.

For more on the Affordable Care Act, please visit our section on Health Care Reform.

Final Forms and Instructions for Employers to Report Health Coverage and ACA Compliance

The IRS has released finalized forms and instructions for employers subject to the new information reporting requirements under the Affordable Care Act (ACA):

- Forms 1094-C and 1095-C will be used by **large employers** (generally those with at least 50 full-time employees, including full-time equivalents) to report information to the IRS and to their employees about their compliance with "pay or play" and the health care coverage they have offered.
- Forms 1094-B and 1095-B will be used by **self-insuring employers** (regardless of size) and other parties that provide minimum essential health coverage to report information on this coverage to the IRS and to covered individuals.
- **Note**: Employers that are subject to **both** reporting provisions (generally large employers that sponsor self-insured group health plans) are permitted to satisfy their reporting obligations on Form 1095-C, which has separate sections for reporting.

Information reporting was voluntary for calendar year 2014. **Affected employers are required to report for the first time in early 2016 for calendar year 2015**.

Our new section on Information Reporting includes additional guidance on both types of reporting, including the content of information reports and returns, and how and when to report and furnish statements.

Employer Action Items for 2015

To help complete the new IRS forms for 2016, large employers need to track certain information for **each month in 2015**, including whether the employer offered full-time employees and their dependents (if any) minimum essential coverage that meets the ACA's minimum value requirements and is affordable. An employee is full-time for a calendar month if he or she averages at least 30 hours of service per week (or 130 hours per month). The "pay or play" regulations explain the detailed rules on determining who is a full-time employee. Self-insured employers need to track, among other things, the months for which **each individual** was enrolled in coverage and entitled to receive benefits.

FMLA Protections Extended to All Eligible Employees in Same-Sex Marriages

Effective March 27, 2015, a final rule from the U.S. Department of Labor (DOL) will extend the protections of the federal Family and Medical Leave Act (FMLA) to all eligible employees in legal same-sex marriages, regardless of where they live. Under the FMLA, an eligible employee of a covered employer (50 or more employees in at least 20 workweeks in the current or preceding calendar year) is entitled to take unpaid, job-protected leave for specified family and medical reasons. Consistent with previously issued proposed rules and agency guidance, the final rule makes the following major changes:

- The FMLA regulatory definition of "spouse" is **based on the law of the place where the marriage was entered into** (previously, the definition of "spouse" only applied to same-sex spouses residing in a state that recognizes same-sex marriage).
- The final rule's definition of "spouse" expressly includes individuals in lawfully recognized same-sex and common law marriages, as well as same-sex marriages entered into abroad that could have been entered into in at least one state.

This definitional change means that eligible employees, regardless of where they live, are entitled to:

- Take FMLA leave to care for their lawfully married same-sex spouse with a serious health condition;
- Take qualifying exigency leave due to their lawfully married same-sex spouse's covered military service;
- Take military caregiver leave for their lawfully married same-sex spouse; and
- Take FMLA leave to care for their stepchild (child of the employee's same-sex spouse) or stepparent who is a same-sex spouse of the employee's parent, even if certain in loco parentis requirements are not met.

More information is available on the DOL's FMLA Final Rule Website, which includes links to the DOL's fact sheet and frequently asked questions. For additional information about the eligibility requirements and qualifying reasons for FMLA leave, visit our section on the Family and Medical Leave Act.

3 Things to Consider When Terminating an Employee

Terminating an employee is never a pleasant task, but at times it is a necessary part of managing your workforce. Here are some steps you can take to protect your business against possible wrongful termination claims:

1. Understand the Employment At-Will Rule
Almost all states recognize employment at-will. This means that, absent a law or express agreement to the contrary (such as an employment contract), employers may generally terminate an employee for any reason and at any time. However, there are important exceptions to the at-will rule. For example, under both federal and state law, covered employers may not discriminate on the basis of certain protected characteristics (e.g., race, color, sex, age, national origin, or disability). Another common exception to employment at-will is violation of public policy, meaning an employer cannot terminate an employee for such actions as filing a workers' compensation claim, taking leave to which he or she is entitled, or reporting violations of law.

Exceptions vary by state, so employers should consult an employment law attorney who knows their state law in order to gain a full understanding of rights and responsibilities. Employers should also state that the employment relationship is "at-will" (to the extent permitted by law) in all employee communications, including employee handbooks.

2. Document Performance-Related Issues
Even when the traditional employment at-will doctrine applies, if the reason for an employee's termination seems unreasonable, there is a chance the reason may be deemed a pretext for discrimination or some other unlawful motive, should a lawsuit follow. Therefore, it is in the best interest of all employers to carefully document all instances of poor performance, including records of employee performance reviews and any previous disciplinary warnings or notices. Complete and accurate documentation offers evidence of what occurred, promotes consistency and objectivity, and is a necessary step for companies to support decisions regarding employee discipline and termination.

3. Follow Up on Post-Termination Responsibilities
Termination of an employee does not necessarily end the employer's relationship with, or obligations to, the employee. Post-termination responsibilities may include:

- Delivering the final paycheck, if not provided at the time of termination (be sure to check your state law for requirements related to timing of the final paycheck);
- Continuation of group health benefits under federal COBRA or state continuation laws;
- Unemployment insurance -- generally, employees who lose their jobs are entitled to unemployment compensation benefits (check your state law to determine specific notice requirements that may apply); and
- Benefits to be paid through a qualified retirement plan.

Terminating an employee is a very sensitive matter which requires careful communication and documentation to avoid potential lawsuits or other future problems. It is prudent to consult an employment law attorney before taking any specific steps should the need to terminate an employee arise. You can find additional guidance, forms, and checklists in our section on Discipline & Termination.

Marshall & Sterling Insurance will continue to provide you with updates and information regarding important issues. Should you have specific questions or need more information, please contact us.

Regina Murdock
Human Resources Services Specialist
914-962-1188, x2487
rmurdock@marshallsterling.com
