Human Resource Update

Employment Law Highlights, Health Care Reform, Background Screening

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Summary of Topics

- FMLA Expansion
- SSN Randomization
- Employee Credit Privacy Act
- Affordable Care Act
  - W-2 Reporting
  - Grandfathering
- 2010 & 2011 Summary of Changes
FMLA Expansion - Expanding who is a parent under FMLA

- Effective June 22, 2010
- Clarification of the definition of “son or daughter” as it applies to an employee standing “in loco parentis” to a child.
- FMLA defines son or daughter as a “biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is — (a) under 18 years of age; or (b) 18 years of age or older and incapable of self-care because of a mental or physical disability.”
FMLA Expansion

Interpretation states that either day-to-day care or financial support may establish an in loco parentis relationship.

- An employee who provides day-to-day care for the child of an unmarried partner, with whom the employee has no biological or legal relationship.
- An employee who will share equally in the raising of a child adopted by a same-sex partner, but without a legal relationship to that child.
- An employee who is a stepparent who lacks a legal or biological relationship with a child, but who provides day-to-day care for the child or provides financial support for the child.
- An employee who cares for a grandchild or other relative and assumes ongoing responsibility for that grandchild or other relative because the child’s parents are incapable of providing care or are deceased, but who does not have a legal relationship with the child.
SSN Randomization — Changing the way Social Security Numbers are issued

- Effective June 25, 2011
- Establishing a new randomized assignment methodology and extend the longevity of the nine-digit SSN nationwide.
- Currently more than 425 million SSNs available for assignment and the nine-digit SSN will eventually be exhausted.
- Applies only to those receiving a SSN for the first time.
SSN Randomization

- The SSN has always consisted of the three-digit “Area number,” followed by the two-digit “Group number,” and ending with the four-digit “Serial number.” Since 1972, the Area number reflects the state of issuance as determined by the address of the applicant.
SSN Randomization

- SSN randomization will affect the SSN assignment process by:
  - Eliminating the geographical significance of the Area number of the SSN by no longer allocating the Area numbers to individuals in specific states.
  - Introducing previously unassigned Area number for assignment.
  - Eliminating the significance of the highest group number.
  - Using either the number “7” or “8” as the first number. The number “7” is currently reserved for members of the Railroad Retirement System and for people applying for SSNs from outside of the United States and the number “8” has never been used as the first number in an SSN.
Employee Credit Privacy Act

- Effective January 1, 2011
- Prohibits most employers from using credit information in employment decisions.
- Also prohibits employers from inquiring into an applicant’s or employee’s credit history or obtaining a credit report from a consumer reporting agency.

Exceptions:
- Governmental employers
- Banks
- Savings and loans
- Financial institutions
- Debt collectors
- Insurance companies
Employee Credit Privacy Act

- "Bona Fide Occupational Requirement":
  - The act provides limited exceptions that allow employers to use credit information where such information is related to a "bona fide occupational requirement" for a particular position or group of employees.
  - The bona fide occupational qualification applies generally to those positions involving money-handling or other confidential job duties.
  - Example: Employees whose duties require bonding by state or federal law, have unsupervised access to cash or certain assets valued at $2,500 or more, have signatory power of $100 or more per transaction, are in a managerial position which involves setting direction or control of the business, or involve access to confidential information, financial information, or trade secrets.
Affordable Care Act

2010 Timeline
- Eliminating Lifetime Limits
- Regulating Annual Limits
- Pre-existing Condition Exclusions
- Providing Free Preventive Care
- Extending Coverage for Young Adults
- Prohibits Insurance Companies from Rescinding Coverage
- Regulations on Grandfathered Health Plans
Affordable Care Act

2010 Timeline

- Providing Access to Insurance for Uninsured Americans with Pre-Existing Conditions
- Expanding Coverage for Early Retirees
- Holding Insurance Companies Accountable for Unreasonable Rate Hikes
- Patient’s Bill of Rights
- Establishes an Internal/External Appeals Process
- Online Consumer Information
Affordable Care Act

- **2011 Timeline**
  - HSA Distributions – 20% penalty
  - FSA & HSA Distributions - Over the counter medications are no longer an approved expense from FSA or HSA.
- **W-2 Reporting**
- **Bringing Down Health Care Premiums**
Affordable Care Act

- Grandfathering - The grandfather rule enables businesses and families to keep their plan while adding important new benefits for all Americans with private insurance. It allows plans that existed on March 23, 2010 to innovate and contain costs by allowing insurers and employers to make routine changes without losing grandfather status.
Grandfathered plans may opt out of the following:

- Coverage of Preventive Health Services
- Patient Protections
- Appeals Process
- Cost Sharing Limitations
- Transparency
Changes that will result in a loss of grandfathered status:

- Elimination of Benefits Covered
- Substantial Increase in Participant Premium Level
- Any Increase in Percentage for Cost-Sharing Requirement
- Certain increases in Fixed-Amount Copayments
- Adding or Lowering Annual or Lifetime Limits
- Certain Increases in Fixed-Amount Cost-Sharing Requirements
- New Policy, Certificate of Benefits or Contract of Insurance
Affordable Care Act

- **W-2 Reporting**
  - Requires employers to report the aggregate value of “applicable employer-sponsored coverage” on their employee’s Form W-2.
  - **What Must be Reported?** - Employers are required to report the total value of coverage. The value is the aggregate premium calculated under COBRA rules minus the two percent administrative charge permitted under COBRA. For example, if an employee is covered under a Medical Plan which includes Dental and Vision benefits, the employer is required to report the total value of the combination of all three benefits.
Affordable Care Act

- W-2 Reporting

Benefits included in reporting requirement:
- Medical Plans;
- Prescription Drug Plan;
- Dental and Vision Plans, unless they are “stand alone” Plans (i.e. an employee may elect only dental coverage or only vision coverage and is not required to also enroll in medical coverage);
- Executive physicals;
- On-site clinics if they provide more than “deminimus care”;
- Medicare supplemental policies; or
- Employee assistance programs.