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- ◆ Health Insurance Reform Outlook: Washington Update from National Association of Health Underwriters (NAHU)
- ◆ Retirement Plan Record Retention: What Should I Keep and How Should I Organize It?
- ◆ Benefits Compliance FAQ



HEALTH INSURANCE REFORM OUTLOOK: WASHINGTON UPDATE FROM NATIONAL ASSOCIATION OF HEALTH UNDERWRITERS (NAHU)

Health care reform has been a major priority of the current administration. According to the National Association of Health Underwriters (NAHU), such legislation could be the broadest and most expansive social reform since Medicare was enacted in 1965. Health care reform could directly impact every employer and employee, depending on the breadth of the reform.

There seems to be a general consensus that some sort of reform is needed. However, opinions vary wildly on what the focus and extent of the reform should be. Whatever your views may be, according to NAHU there are several questions that Americans should be asking of Congress before the passage of any reform, including:

- » What will the breadth of the program be and what goals will it accomplish?
- » What freedoms and flexibility in designing health plans to meet our

own needs would be either lost or compromised?

- » What impact would such a program have on our freedom to access quality care?
- » What will the cost be?
- » How will we pay for it?

There have been several proposed health reform bills to come out of both the House and the Senate. As of this writing, the Senate HELP Committee and three House committees have each marked up their proposed bills and passed them out of committee. The Senate Finance Committee is expected to ultimately drive what the final package will be.

The main components of health care reform that are currently being debated are: an individual mandate of insurance coverage; an employer mandate to provide health care coverage (which specifies benefit levels, funding requirements and those to be covered);

a government plan to compete with private plans; and the creation of a Health Insurance Exchange in which a variety of private plans would be offered to individuals and small employers.

While this is just a brief summary of the players and key issues in the health care reform debate, much more information is available to help you develop a deeper understanding of the issues and how reform could impact you and your employees. A webinar presented by NAHU that provides more details on each of the issues is available by contacting us. Additional information is also available on the NAHU website at <http://www.nahu.org/legislative/index.cfm>. The Kaiser Family Foundation, a nonprofit, non-partisan foundation focused on health care issues, also has many resources on health reform at <http://healthreform.kff.org>.

Source: Health Insurance Reform Outlook (webinar), National Association of Health Underwriters. Aug. 12, 2009.

RETIREMENT PLAN RECORD RETENTION: WHAT SHOULD I KEEP AND HOW SHOULD I ORGANIZE IT?

Retirement plan sponsors often ask their consultants, “What records should I keep?,” “How long should I keep them?” and “How should I organize my files?”. Remember these rules of thumb when it comes to record retention:

- » Plan documents should never be discarded. This includes basic plan documents, adoption agreements, Amendments and summary plan descriptions.
- » Annual filing reports should be maintained for at least six years. This includes 5500s, supporting materials for contributions, testing results, plan audits, summary annual reports, and distribution records.
- » Participant records should be retained during the participant’s employment and at least six years after the participant’s termination. This includes enrollment forms, beneficiary forms and distribution forms. Loan records should be maintained at least six years after the loan is paid off.

Whenever possible, use your plan vendor to maintain these items.

As for organizing your fiduciary file, we suggest a format that includes the following sections:

- » **Documents Section** – For all plan documents, amendments, tax filings, etc.
- » **Administrative Section** – For all audit results, contribution records, plan review executive summaries and participant complaints.
- » **Participant Communication Section** – Copies of enrollment materials, communication memos and meeting sign-in sheets.
- » **Investments Section** – Listing of fund menu with expenses and investment review executive summaries.

The key is twofold: keep the things you need, and store them so you can find them easily. Your goal should be to be able to quickly locate plan information requested by a participant, auditor, or Department of Labor (DOL) agent.

BENEFITS COMPLIANCE FAQ

Question: How long can a temporary employee be considered “temporary” for benefit purposes?

Answer: It is permissible to exclude temporary employees from benefits, as a temporary classification is a bona fide employment classification. However, there would be a risk to misclassifying an individual as temporary for an extended period of time if the goal was to exclude them from benefits.

In *Herman v. Time Warner Inc.*, 56 F. Supp. 2d 411, (S.D.N.Y. 1999), the DOL sued Time Warner. The complaint alleged that Time Warner and its subsidiaries misclassified workers as either “temporary employees” or “independent contractors” to prevent them from participating in certain employee benefits plans. It was considered a breach of fiduciary duty under ERISA. While there is no federal definition of a temporary employee, the DOL proved that there was intent to exclude the workers from benefits, which resulted in a settlement being reached for \$5.5 million.

Anytime an employer uses a temporary classification, it should be based upon the employer’s business needs and the work assigned to the individual. The classification should

never be used with the sole intention of excluding someone from benefits. Again, there is no specific number of months for which an employee can be classified as temporary. It would be determined on a case-by-case basis dependent upon the specific details of the situation. Typically, employers do not employ temporary employees for more than six months. In some extreme cases, they may be employed for one year.

Additionally, a 401(k) plan cannot exclude temporary, part-time or seasonal employees from the definition of eligible employees. However, the plan may exclude employees who do not satisfy minimum hours and service requirements (a maximum of 12 months and 1,000 hours in most situations), but this would be outlined in the eligibility section of the plan document.

Best practices indicate that a temporary classification should be defined by the employer and included in the employee handbook. When hiring a temporary employee, the employer should be able to prove that the job is expected to be temporary in nature and project-based. Also, any benefit plan documents should indicate whether or not that classification is eligible for benefits.

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