

# BENEFITS COMPLIANCE

## Ten Things Employers Should Know

### 1. FMLA

The Family and Medical Leave Act has been expanded to include leave for family members of active duty service members. Extended leave is available for an employee with a seriously ill or injured active duty family member.

### 2. HSA

Multi-state employers should be aware that employees who reside in Alabama, California, New Jersey, and Wisconsin would be subject to state taxation on any HSA contributions that are deducted from the employee's paycheck.

### 3. CHARGING EMPLOYEES DIFFERENT PREMIUMS

An employer may charge employees different premiums based on bona fide employment classifications or participation in a wellness activity or program. Having different premiums based on the satisfaction of a health standard (such as not smoking) is only permitted when it is part of a wellness program that satisfies the five criteria of the federal regulations.

### 4. HIPAA PRIVACY AND SECURITY

A self insured plan must: conduct a risk assessment, develop necessary policy and procedures (including naming a Privacy Official and Privacy Contact; Business Associate Agreements), conduct staff training for those in contact with protected health information, and distribute a Notice of Privacy Policy. A fully insured plan must: conduct a risk assessment, name a Privacy Official and Privacy Contact, develop two required policies, and adopt an Authorization Form needed to obtain protected health information.

### 5. HIPAA PRIVACY AND SECURITY

The keys to success for an employer is to treat protected health information confidentially, complete documentation requirements, and regularly review and revise existing documentation.

### 6. FORM 5500

All health and welfare plans must file a Form 5500 except: unfunded or fully insured plans with less than 100 participants, a plan maintained outside the U.S. for nonresident aliens, a governmental or church plan, a fringe benefit plan, or a plan maintained only to comply with workers compensation.

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### 7. FORM 5500

If a plan has been delinquent in filing past Form 5500s, reduced penalties are available by voluntarily filing through the Delinquent Filer Voluntary Compliance Program.

### 8. USERRA

The Uniformed Services Employment and Reemployment Rights Act provides a service member the opportunity to continue coverage during a military related leave. USERRA differs from COBRA in several ways including a worksite posting requirement and a maximum coverage period of 24 months. Additionally, USERRA applies to all employers regardless of size and with no exemption for governmental or church entities.

### 9. COBRA IN CONNECTION WITH A HEALTH FSA

If an employer offers health benefits that are not limited in scope (such as a major medical plan), the employer should also offer COBRA in connection with a health Flexible Spending Arrangement. If certain criteria are met, the maximum coverage period is until the end of the current plan year and there is no obligation to offer COBRA for overspent health FSA accounts.

### 10. COBRA IN CONNECTION WITH MEDICARE

A plan must offer COBRA to individuals who were entitled to Medicare prior to the COBRA qualifying event. It is permissible, but not required, for plans to terminate COBRA coverage for individuals who become entitled to Medicare after the COBRA qualifying event. Coverage may be terminated for the Medicare beneficiary, but the coverage for dependents would continue.

This information is provided as a summary of benefits compliance issues.

For specific details on any of these topics or other compliance matters, please contact your benefits advisor.

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