



Ideas and Information for Human Resources Professionals



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**Compliance****ADA, W-2 Moves Will Impact Small Businesses**

The federal government recently released new guidance on two separate laws that will have a significant effect on small employers, both in the long and short term.

On March 24, the Equal Employment Opportunity Commission (EEOC) released long-awaited guidance on a law regarding the Americans with Disabilities Act (ADA). The guidance on the ADA Amendments Act of 2008 (ADAAA) retains the definition of the term "disability" as it appears in the original ADA as "a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. But the law made significant changes in how those terms are interpreted," according to a report in *PLANSPONSOR*.

The result is a change in the definition of disability that reverts back to the original intent of the ADA, experts say. The guidance broadens the types of conditions that fall under the "disabled" category and clarifies what is considered a "major life activity." These changes, experts say, may make it harder for employers to challenge discrimination claims.

Employers, however, likely will find that the rules will actually simplify some functions of ADA compliance, said Audra Hamilton, an attorney with Glass Wilkin.

"Under the old law, there was always a battle [over whether an individual] was disabled," Hamilton told *Human Resource Executive Online*. "Now, [HR no longer spends] a lot of time battling on whether they



are [disabled] or not. If they are able to establish impairment, guess what? They're disabled. Move on to what [they are] requiring you to do for them, and go from there."

The ADAAG guidance also will impact employers beyond discrimination claims, another attorney points out. Leave policies also might need to be revised, according to Steve Roppolo of Fisher & Phillips. While protection under the Family and Medical Leave Act expires after 12 weeks, the ADAAG requirements --including leave because of a disability -- can extend leave longer, Roppolo said in a report by the *Houston Chronicle*. Now, companies that would automatically terminate a worker who did not return to work after 12 weeks may need to change their policies to accommodate the ADAAG, Roppolo said.

### ***News on W-2s***

In a separate action on March 29, the IRS announced it would not require some small employers to report the cost of health care coverage on workers' W-2 forms for 2012. In the announcement, the IRS states that companies that hand out fewer than 250 W-2s in 2011 will not be required to include the cost of coverage on the 2012 W-2s (given to employees in January of 2013). "In other words, small employers will not have to report the cost of health care coverage on any forms required to be furnished to their employees before January of 2014, at the earliest," according to the law firm Spencer Fane Britt & Browne LLP. In previous guidance, the IRS had made reporting on 2011 W-2s optional for all employers.

### ***Compliance Roundup***

A few other recent actions regarding the Patient Protection and Affordable Care Act (PPACA):

- The Department of Labor (DOL) is giving employers until Jan. 1, 2012, to comply with a rule that calls for notices about internal and external claims appeals and review processes to be provided in a "culturally and linguistically appropriate manner." The DOL also pushed back until Jan. 1, 2012, a requirement that plan enrollees be notified of an urgent-care coverage decision within 24 hours.
- The DOL also released a new set of frequently asked questions (FAQs) on grandfathered plans under PPACA. The FAQs detail a number of scenarios that might cause an employer to lose grandfathered status. The FAQs can be viewed at: <http://www.dol.gov/ebsa/faqs/faq-aca6.html>.

## **HSA**

### **HSA or Not? The Answer Often Hinges on Behaviors**

As employers increasingly shift to high-deductible health plans with health savings accounts (HSAs), more U.S. workers are adjusting their consumption of health care and how they use these accounts.

A survey by Fidelity Investments found that 95 percent of account holders rolled over money from 2010 to 2011, but how much they saved and spent varied widely. The recent study, reported by the Society for Human Resource Management, found that about a third (36 percent) used more than 90 percent of their annual HSA contribution on medical care in 2010. Twenty-four percent were "savers," using less than 10 percent of their annual contribution and rolling over most of their funds.



The rest fell in between those saving patterns.

The Fidelity report found that, on average, HSA participants had a total of \$2,620 in contributions made to their accounts in 2010.

Whether they have HSAs or not, Americans are eager to become better health consumers, new research suggests. Nearly half (45 percent) of Americans said they've recently tried to find information online about health topics and treatments, according to a recent study by the Employee Benefit Research Institute (EBRI), published in *Human Resource Executive Online*.

As HSAs grow and employees become better health care shoppers, employers are reaping the rewards with savings to their health care costs. A new study by the RAND Corp. found that health costs for people in high-deductible health plans (HDHPs) grew more slowly compared with traditional health plans.

While HSAs and the HDHPs they accompany can be a boon for many employers, they are starting to show a dark side, as well, experts suggest. RAND found that people who shifted into an HDHP cut their health spending by 14 percent. Unfortunately, some of those savings came from a reduction in preventive services, such as immunizations, cancer screenings and routine diabetes tests.

"We discovered that costs go down dramatically during the first year people are enrolled in high-deductible health plans, as long as the deductible is at least \$1,000 per person," Amelia M. Haviland, a co-author of the study, told *Vaccine Weekly*. "But we also found concerning reductions in use of preventive care. This suggests people are cutting both necessary and unnecessary care."

The researchers found these results somewhat puzzling because HDHPs waive the deductible payment for preventive care.

Haviland warned that neglecting preventive care could have negative long-term effects. "These cutbacks could cause a spike in health care costs down the road if people end up sicker and need more-intensive treatment," she said.

## Prescription Drugs

### Experts: Savings Spring from Adherence, Smart Choices

When employers sit down and craft options to cut health care costs, they often include prescription drugs in the mix. As drug prices add to the overall pressure of rising health care costs, employers are doling out a dose of communication to keep workers on the right track.

Among all types of medical costs, drug prices are rising the fastest, according to new research by the Government Accountability Office detailed in a recent Reuters report. The study found that the price index for the top 100 commonly used drugs rose by an annual average of 6.6 percent from 2006 through the first three months of 2010. That compares with a 3.8 percent annual average increase in the consumer price index for all medical products and services.



A new study by Express Scripts notes that if all patients consistently used generic or low-cost brands, home delivery and followed doctor's orders, the nation could trim as much as \$403 billion a year in health care spending. The challenge, however, is actually getting people to follow through on these cost-saving methods.

The Express Scripts study highlights a significant gap between what employees intend and what they

actually do. For instance, 82 percent of those polled who took brand-name medications said they actually prefer generics. Also, 70 percent of those who use a brick-and-mortar pharmacy for medicines that treat chronic conditions said they'd rather use a mail-order option.

"The disparity in health care is not between what plan sponsors want and what patients want, but between what patients want and what they actually do," said Bob Nease of Express Scripts in a press release. "Optimal health care outcomes are possible only with an advanced understanding of behavior."

Employers have long had a vested interest in educating their workforce about proper prescription habits, and now they're finding a new ally in their fight -- pharmacists.

A number of brick-and-mortar pharmacies have taken a proactive role in helping patients manage chronic conditions and stick to a proper drug regimen. The Bay Street Pharmacy in Sebastian, Fla., recently started a "healthy heart program," which educates patients about good health habits. At a recent event, the pharmacy handed out free pedometers to encourage people to walk 10,000 steps per day. Also, Walgreens and CVS have initiated diabetes education programs.

"Retail pharmacists appear to be able to play a really substantial role in encouraging patients to use their medications better," William Shrank, an assistant professor of medicine at Brigham and Women's Hospital in Boston, told *The Wall Street Journal*. "They are an underutilized resource."

Many doctors welcome the extra help, as long as they're kept in the loop.

"Answering questions about prescription drugs is important," Roland Goertz, president of the American Academy of Family Physicians, told *Kaiser Health News*. "But with the time pressures physicians are under, they can only accomplish so much."

## In Brief

### **ELECTRONIC DISCLOSURES**

The Department of Labor (DOL) is seeking comments about a possible change to rules regarding the electronic distribution of employee benefit notices and information. Phyllis C. Borzi, an assistant secretary with the DOL's Employee Benefits Security Administration, said although some people lack access to the Internet or computer skills, some electronic communications might be just as effective as paper-based disclosure. Employers have until June 6 to comment. Find more information at:

<http://www.dol.gov/ebsa/>

### **FIDUCIARY FACTS**

The Employee Benefits Security Administration (EBSA) has submitted a new fact sheet that explains proposed rules that would expand the definition of "fiduciary" under ERISA plans. "EBSA believes it is time to re-examine the types of advisory relationships that give rise to fiduciary duties and to update the rigid 1975 regulation so that plan fiduciaries, participants and IRA holders receive the impartiality they expect when they rely on their adviser's expertise," the fact sheet states. More information can be found at:

<http://www.dol.gov/ebsa/>

### **NO MORE 1099 RULE**

Small businesses won a victory in March as the Senate approved a bill that kills a Form 1099 rule that required companies and landlords to file the form with the IRS for any purchases above \$600 per year. The rule, part of the federal health care reform law, was rescinded on a 87-12 vote. The House previously passed the bill, and President Barack Obama signed it into law on April 14.

### **SELF-FUNDING STUDY**

A new report by the Department of Health and Human Services finds that self-funded health care plans do not experience higher claim denial rates than fully insured plans. The report, mandated by the recent health care reform law, notes that employers with self-funded plans actually have an incentive to approve claims "because of their greater financial stake in the health and well-being of their employees."

#### **HIRING BRIGHTENS**

More than a quarter (28 percent) of employers hired permanent, full-time workers in the first quarter of 2011 - the highest figure in three years - according to a new CareerBuilder / USA TODAY study. The report expects second-quarter numbers will total about the same.

#### **ERRP TO END**

The Centers for Medicare and Medicaid Services has announced it will end the Early Retiree Reinsurance Program (ERRP) after May 5 because funds are running out. The popular program, which was created by the federal health care reform law, has paid about \$1.8 billion in reimbursements to about 1,300 plan sponsors as of March 17.

#### **UNHAPPY TIMES**

New research from MetLife suggests that the trend of "do more with less" during the recent economic downturn has had a severely negative impact on employee loyalty. Only 47 percent of employees say they feel strong loyalty to their company - a drop from 59 percent just three years ago. The study also revealed a disconnect between employers and workers. Fifty-one percent of employers said their employees had strong loyalty to them, but 36 percent of workers said they planned to hunt for a new job in the next 12 months.

#### **NOT SO FAST**

While the economy has shown stronger signs of life recently, many employers are proceeding with caution, at least with their 401(k) match. A new study by Grant Thornton finds that only 30 percent of polled employers said they plan to bring back eliminated or reduced company contributions to workers' 401(k) plans. Forty-two percent said they have no plans to touch the match this year.

#### **FIGHTING THE BAD FIGHT**

Settling worker disputes ranks as the top time consumer for managers, according to a survey by Accountemps. Polled managers said 18 percent of their time -- or more than seven hours a week -- is spent trying to settle arguments or issues between employees. The report notes that short-staffed companies may experience more staff friction because of the added stress and workload.

#### **WELLNESS WORKING**

A new industry survey finds that more employers are incorporating wellness initiatives as a key benefits strategy. MetLife's Study of Employee Benefits Trends found that 45 percent of employers offered a wellness program in 2010 --- a jump of 8 percent compared with 2009. Of those companies that offer wellness programs, 72 percent said the initiatives have cut their medical costs.

## **Webinars**

#### **EMPLOYER WEBINAR: ADA 2 p.m. May 10**

The Equal Employment Opportunity Commission (EEOC) has issued its long-awaited final regulations under the ADA Amendments Act (ADAAA), with an effective date of May 24. They will dramatically affect HR practices and how employers will need to handle ADA issues to minimize potential liability. At the same time, the EEOC is hiring hundreds of investigators to hold employers accountable, and these regulations will be part of the EEOC's arsenal. This webinar will provide an explanation of the final regulations, as well as practical compliance pointers to help employers prepare for increases in accommodation requests and disability discrimination claims.

For more information, please contact your employee benefit advisor.

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