

New COBRA Subsidy-Extension Notices Available

The COBRA subsidy, originally created by the American Recovery and Reinvestment Act of 2009 (ARRA) in early 2009, has been extended to provide the COBRA premium reduction for involuntary terminations through February 28, 2010 (extended from December 31, 2009) and to provide the subsidized premium right for a total of 15 months (extended from nine months).

Individuals who have reached the end of the original premium reduction period will have additional time to pay extension-related reduced premiums that were due prior to the plan providing a new notice. To continue their coverage, such individuals must pay the 35 percent of COBRA premium costs by the later of February 17, 2010 or 30 days after notice of the extension is provided by their plan administrator.

Plans should make arrangements to credit or reimburse individuals who paid the full 100 percent premium for December 2009 or January 2010.

The Department of Labor has finally posted its updated model notices for employers to use. The DOL provides three forms for use in notifying beneficiaries of the COBRA extension: a General Notice; Premium Assistance Extension Notice; and, an Updated Alternative Notice.

To access the forms:
<http://www.dol.gov/ebsa/COBRAmode notice.html>.

In addition to all beneficiaries (former employees and dependents) who are currently receiving the subsidy, had a qualifying event on or after October 31, 2009, and those who have a COBRA qualifying event through February 28, 2010, all

qualified beneficiaries whose subsidy expired November 30th or after should receive the Premium Assistance Extension Notice. These individuals, who reached the end of the original nine-month premium reduction period, have additional time to pay extension-related reduced premiums that were due prior to the plan providing the new notice. These individuals must pay the 35 % of COBRA premium by the later of February 17, 2010 or 30 days after the plan administrator provides the extension-notice. Notices should be sent as soon as convenient, but no later than February 17, 2010.

Even with Subsidy, COBRA Enrollments Lower Than Expected

According to a report by Ceridian Benefit Services, COBRA’s historically low usage rates were not greatly improved by the COBRA Subsidy program. Though lawmakers anticipated a huge spike in enrollment, COBRA enrollments since enactment of the ARRA increased to 17.7 percent of those eligible to enroll; up about 43 percent from pre-ARRA enrollment levels. According to the report, a 65 percent subsidy may not be incentive enough for those eligible beneficiaries on the lower end of the income scale.

Reminder on Upcoming Seminar Sessions

Date: Tuesday, March 9, 2010

Morning Session:

COBRA & State Continuation Law: Rights, Responsibilities and Mistakes

Afternoon Session:

Sexual Harassment Prevention

Contact us by email at jessenianarvaez@robertnoonan.com or by telephone for more information or if you would like to register to attend.

Employer's Beware:
Greater Enforcement & Penalties
for HIPAA Privacy Breaches on
the Horizon

Connecticut became the first state to sue for privacy breaches under the new powers given to states through the HITECH Act. Connecticut Attorney General Richard Blumenthal filed a lawsuit on January 13th against Health Net of Connecticut, Inc., over a security breach involving health information, social security numbers and account numbers of approximately 446,000 Health Net plan enrollees.

Health Net learned on or about May 14, 2009, Health Net discovered that a computer disk drive from its Shelton office was missing. The drive included 27.7 million scanned pages of more than 120 different types of documents, including insurance claim forms, membership forms, appeals and grievances, correspondence and medical records. Six months after the discovery of the security breach, Health Net posted a notice on its website and sent letters to consumers beginning Nov. 30, on a rolling basis.

The lawsuit alleges that Health Net violated state and federal law in failing to secure medical records, failing to promptly notify at-risk, and failed to effectively supervise its workforce.

The HITECH Act, Title XIII of the ARRA, imposes the first federally mandated data breach notification requirements, effective September 23, 2009. The HITECH Act also provides for stricter enforcement and harsher penalties on covered entities and their business associates for privacy breaches that violate HIPAA. Heightened civil penalties and breach notification measures go into effect on February 17, 2010.

The U.S. Department of Health and Human Services (HHS), through its Office for Civil Rights (OCR) will be authorized to access penalties ranging from \$100 to \$50,000 for each violation, and from \$25,000 to \$1.5 million for similar violations within a calendar year. Penalty levels are based on culpability, from no knowledge of violation to willful neglect.

This year promises to be an active one for legal changes in the areas of privacy and security. The HITECH Act obligates HHS to initiate compliance audits and HHS has been hiring staff aimed at preparing for these audits. We recommend that any employer who works in any capacity with protected health information take time now to review their security and safeguard procedures under HIPAA and the HITECH Act, as well as the consistency of their compliance with those procedures.

2010 Standard Mileage Rates Lower

The Internal Revenue Service has issued the standard-mileage-reimbursement rate for 2010, which have actually decreased to reflect the lower transportation costs compared to a year ago. Beginning on Jan. 1, 2010, the standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be:

- 50 cents per mile for business miles driven
- 16.5 cents per mile driven for medical or moving purposes
- 14 cents per mile driven in service of charitable organizations

Optional standard mileage rates are used to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes. These rates are slightly lower than those for 2009.

2nd Circuit Rules on Overtime Exemption: Look At Work Performed

Exempt versus non-exempt continues to be the source of legal problems for employers. The Second Circuit Court of Appeals (which includes Connecticut, New York and Vermont) recently applied a very narrow view of the “professional exemption” under the Fair Labor Standards Act (FLSA). The case provides another reminder for employers to give careful consideration to worker classification. Courts and the Department of Labor generally scrutinize the exempt classification by looking closely at the actual work performed – write ups, job descriptions, and written analysis will have little effect if the duties and customary advanced education aren’t present.

In *Young v. Cooper Cameron Corp.*, Young alleged that his employer willfully misclassified him as exempt employee and hired him into an exempt position while giving him the work of a non-exempt employee. Young is a high school graduate with 20 years work experience in engineering as a draftsman, detailer, and designer. Young first applied for work as a Mechanical Designer, a non-exempt hourly position that requires experience but no college degree. He was offered the job, but wanted higher pay.

The employer then hired him for a position that paid \$62,000 annually and required 12 years of engineering-type experience but no college degree. According to the employer, the salaried position fell under the “professional” exemption to the FLSA.

The court focused on the duties performed by the employee, not the position as reflected in the job description. The Court found that the intention of the law was to focus on highly educated professionals. The applicable regulation requires employees to perform duties primarily in “work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study...”

The Court concluded that “[i]f a job does not require knowledge customarily acquired by an advanced educational degree... then, regardless of the duties performed, the employee is not an exempt professional under the FLSA.” No one in Young’s same position “customarily” had an advanced degree and education.

Update on State Swine Flu Stats

The Swine Flu is still at large. Connecticut’s Department of Public Health has identified two waves of H1N1.

- In Wave 1, April 2009 to August 29, 2009, Connecticut had 1,996 laboratory-confirmed cases: median age 14; 47.1% male, 58.9% female; 144 hospitalizations; and 10 deaths.
- In Wave 2, August 30, 2009 to January 19, 2010, there were 3,346 laboratory-confirmed cases: median age 18; 43.6% male, 53.6% female; 589 hospitalizations; and 20 deaths.

Robert Noonan & Associates provides legal services to employers. The firm:

- Represents primarily employers in employment discrimination cases;
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- Advises employers on day-to-day workplace issues;
- Trains supervisors and managers in sexual harassment, interviewing, leave issues, performance appraisals and the law of the workplace.

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