

**Ideas and Information for Human Resources Professionals**

HR Elements
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Health Care Reform**Tweaked Rules, Court Ruling Cast More Doubt on Impact of PPACA**

The federal government continued to rework regulations stemming from the Patient Protection and Affordable Care Act (PPACA) in June amid a key court ruling and a wave of studies that tried to forecast how employers will cope with the long-term effects of the law.

The Department of Health and Human Services (HHS) tweaked a regulation concerning internal claims appeals and external review for health care claims in group and individual plans, trimming the time beneficiaries will have to prepare an appeal, from 120 to 60 days, according to a report in *Kaiser Health News*.

HHS also reduced the types of denials that can be challenged and the amount of information that insurance companies must provide when a claim is denied.

However, the agency left a few key features of the regulation stand, including the requirement that self-insured employer plans must use at least two independent review organizations when handling appeals to health care claims.

HHS also announced an end of waivers for limited, or "mini-med" health care plans after Sept. 22, according to *Business Insurance*. Many of the plans do not meet the requirements of minimum dollar coverage amounts created by PPACA. Companies that have already received waivers can still file for extensions, provided they apply by Sept. 22. The waivers will last through the end of 2013, as long as plan sponsors meet certain requirements and keep the government and their employees informed about the plan.

Meanwhile, the Department of Labor (DOL) made its own change to a PPACA regulation, reversing the



requirement that health care plans must notify urgent-care patients of coverage decisions within 24 hours. The DOL decided to keep that requirement at the current 72 hours after it reconsidered the "cost and benefits" of the 24-hour deadline.

While agencies were busy retooling these PPACA rules, a federal appellate court in Ohio handed the Obama administration a key victory by ruling that the health care reform law's requirement that all Americans purchase health insurance is not unconstitutional, according to a report in the *Los Angeles Times*.

While most experts think the Supreme Court will be the ultimate decider of PPACA's fate, the decision by the 6th Circuit Court of Appeals signaled a significant victory for the Obama administration because one of the judges who upheld the constitutionality of the law was a conservative and a former law clerk for Supreme Court Justice Antonin Scalia.

In the court of public opinion -- at least among employers -- the full fallout from PPACA remains a mystery, and several conflicting studies released in June do little to clear the air.

Research published in the *McKinsey Quarterly* indicated that 30 percent of employers say they are sure or likely to end their employer-sponsored health plans after the main provisions of PPACA take effect after 2014, according to a FoxNews.com report. That figure jumps to 50 percent among employers who are "very aware" of the law.

Reform supporters questioned the results, citing previous studies that showed a much smaller number of employers who expect to dump health care insurance. Also, a recent study by the Urban Institute suggested that PPACA might actually increase the number of small employers that offer coverage. The institute projects the law will generate a 10 percent increase in the number of employers with 100 or fewer employees that offer health care insurance because of tax incentives and stabilization of the health care market.

Illegal Hires

Agencies Target Businesses in Immigration Efforts

Federal and state governments are revving up the effort against illegal immigration and are increasingly putting businesses in the crosshairs.

U.S. Immigration and Customs Enforcement (ICE) recently sent notices to 1,000 employers nationwide alerting them that they aim to examine their records for hiring of undocumented workers, according to a CNNMoney.com report. An ICE official said the action, known as an I-9 audit, covers employers of various sizes in every state, with an emphasis on businesses that involve "critical infrastructure and key resources." ICE's action raises the total of I-9s to more than 2,300 this year, surpassing the 2010 total of 2,196.



Members of Congress also are aiming at businesses that hire illegal immigrants with a new House bill that would require employers to use an Internet-based system to check the legal status of new employees, according to *Human Resource Executive Online*.

Called E-Verify, the federal system currently is voluntary, except for a limited number of government contractors. Four states -- Arizona, Mississippi, South Carolina and Utah -- require employers to use it or face penalties.

The Legal Workforce Act of 2011, if enacted, would require governments and large employers in industries outside agriculture to use the system within six months and small employers to comply within two years, depending on workforce size.

Many business leaders and industry experts oppose the bill, saying that E-Verify is susceptible to fraud and that the six-month deadline and other requirements are unrealistic for most companies.

"This law is a bad idea; it puts a lot of burden on small employers who don't have the technology to keep up with E-Verify changes," Sarah Buffett, an attorney with Moore & Van Allen in Charlotte, N.C., told *HROE*.

Courts also are weighing in regarding illegal immigrants and labor laws. A Florida appeals court recently reaffirmed that an employer cannot deny workers' compensation benefits to an injured employee based on that worker's legal status. In *HDV Construction Systems Inc. and Gallagher Basset Services Inc. v. Luis E. Aragon*, the employer and the insurer denied benefits to Aragon after he was injured on the job because he was an undocumented worker. A workers' comp judge said the company could not use that defense because it knew or should have known that Aragon was an illegal immigrant. The state's 1st District Court of Appeal upheld that decision. It also struck down a decision by the lower court that would have limited the benefits after a period of time.

Productivity

Fairness, Age Can Play Major Roles in Employee Morale

After several years that saw pay freezes, layoffs and cuts to benefits, it's not surprising that employee morale has taken a serious hit.

While employers can't always control economic conditions and are sometimes forced to make these hard choices, they're not powerless when it comes to boosting workplace morale, even in tough times, experts say.

One of the keys to employee morale is creating an atmosphere of fairness in the workplace, said Ben Dattner, author of "The Blame Game." In a recent interview with *Human Resource Executive Online*, Dattner noted that feelings of inequity often stem from differences in pay and benefits.

"Research shows, interestingly . . . that employees may be satisfied with less money if they feel that the decision-making was fair," Dattner said.

The perception of fairness and good morale starts with employees' relationships with their direct supervisors, a new study by the International Association of Business Communicators (IABC) and Buck Consultants suggests. According to PLANSPONSOR.com, the research found that 44 percent of respondents said their direct boss had a very positive effect on employee engagement at their company, while 41 percent said their supervisor had a strongly negative impact on engagement.

Employers also need to take heed of the demographics of their workforce. A new Deloitte survey finds that baby boomers are more dissatisfied with their employers than employees in other generations, and that can hamper engagement efforts, according to another *HROE* report.

"Many of [the baby boomers] have seen their colleagues downsized or forced into early retirement," Susan Ruhl of OI Partners, a Tennessee-based consulting firm, told *HROE*. "They feel as if they've plateaued, career-wise, in a younger person's world, and they're not sure where to go next in their jobs."



HR can refuel morale by offering more training opportunities for all generations. For instance, Ruhl suggests having boomers serve as mentors to younger workers. Mentoring programs can break down age barriers and make boomers feel valued in their jobs, she said.

Whether through a mentoring program, better employee communications or more perks, employers that step up efforts to boost morale in today's economy will reap rewards later, according to Bob Carr of Buck Consultants.

"One of the key findings of [the IABC-Buck survey] is that enhancing the organization's culture and work environment has become the respondents' highest ranked goal for employee engagement," Carr told PLANSPONSOR.com. "Organizations are committing themselves more deeply to effectively engaging their employees, knowing that this is the key to meeting their productivity, retention and overarching business goals."

In Brief

NEW MILES

The IRS has changed the optional standard business mileage rate to 55.5 cents per mile for the last half of 2011 - an increase of 4.5 cents. The new six-month rate for figuring deductions for medical travel or moving expenses also increased by 4.5 cents to 23.5 cents. The IRS cited high gas prices as the reason for the increase.

CLASS ACTION

The Supreme Court recently handed employers a victory with a ruling in favor of Wal-Mart in the largest sex-discrimination lawsuit in U.S. history. The justices overturned a lower court ruling that would have allowed female employees to launch a class-action lawsuit against the retail chain. Observers say the ruling will make it harder for employees to start class-action lawsuits against their employers in the future.

DIABETES RECORD

The number of adults worldwide suffering from diabetes has more than doubled to nearly 350 million since 1980, according to researchers with The World Health Organization. The analysis found the rate of diabetes rose or at best remained stable in virtually all parts of the globe over the past 30 years.

DOL FEEDBACK

The Department of Labor has started a new website where employers can post their feedback on a variety of regulations. As part of an executive order, the DOL has created a plan to re-examine a number of labor-related regulations. This website allows employers to view those regulations and make comments. View the site at <http://dolregs.ideascale.com/>.

CROSS-TOWN COSTS

New research by the group Change:healthcare finds that the cost for medical scans can vary widely from facility to facility -- even in the same town. The group found that patients can pay as much as 683 percent more for an identical medical procedure, such as MRIs, CT scans, ultrasounds and PET scans. For instance, the study found that a pelvic CT scan in one Southwestern town would cost as little as \$230 or as much as \$1,800, depending on the facility.

E-ERRORS ...

Mistakes in electronic prescribing systems occur at about the same rate as manual systems, according to a report by HealthDay. In a four-week period, researchers discovered 452 of 3,850 computer-generated prescriptions (nearly 12 percent) contained a total of 466 errors. About one-third of those errors were estimated to be potentially harmful.

... AND MORE E-ERRORS

Research by the American Medical Association found that errors in electronic claims processing among commercial health insurers generate about \$17 billion annually in unnecessary administrative costs. Insurers had an average error rate in their electronic claims processing of 19.3 percent this year, a 2 percent increase from last year.

COBRA HELP?

The Obama administration announced its support for a boost in federal COBRA aid for workers who lose their jobs to foreign competition and older retirees in failed retirement plans. A 2002 law created a 65 percent tax credit for workers in these categories who lose their jobs or pensions. The economic stimulus law in 2009 bumped the subsidy to 80 percent, but that level expired in February, and it returned to the previous level of 65 percent. Now, the Obama administration is lobbying for a higher rate. Congress has examined several bills that would restore the 80 percent subsidy, but no action has been taken yet.

ELECTRONIC DISCLOSURE

Employers are awaiting a decision by the Department of Labor on the use of electronic benefit communications. The Department of Labor's Employee Benefit Security Administration took comments from the public through June 6. The use of electronic communications by employers has exploded over the past decade, and the DOL wants to review and modernize its policies.

NO RAISE? NO PROBLEM

A new OfficeTeam poll finds that a majority of workers (55 percent) said they would accept a promotion that doesn't include a raise in pay. The survey found that while most employers don't offer promotions without raises, 22 percent of respondents said the practice is at least somewhat common at their companies.

EEO-1 DEADLINE

Businesses that must file EEO-1 reports with the Equal Employment Opportunity Commission face a Sept. 30 deadline, the Welter Law Firm advises. Companies that have 100 or more employees or those with federal government contracts of \$50,000 or more and 50 or more workers must file the reports. For more, go to:

<http://www.eeoc.gov/employers/index.cfm>.

RETIREMENT GOALS

Sound retirement savings and long-term financial security rate as top goals for Americans, according to a Northwestern Mutual study. The poll found that 78 percent said maintaining a comfortable standard of living during retirement was a high financial goal, and 73 percent noted that maintaining their current standard of living was vital. Other popular financial goals included: the protection of income in the event of a disability (60 percent); providing a safety net in case the household's primary earner dies suddenly (55 percent); and building a sizeable investment portfolio (47 percent).

Employer Webinar

Medicare and Employer Plans

Tuesday, Aug. 9 - 2 p.m. ET / 11 a.m. PT

Although the federal Medicare program is entirely separate from the system of employer-sponsored health coverage, there is a remarkable level of interaction between the two. This employer-focused webinar, hosted by United Benefit Advisors and the law firm of Spencer Fane Britt & Browne LLP, will explore the Medicare Secondary Payer rules, creditable coverage status and other interactions between the Medicare program and employer health plans. Contact us to learn more about this webinar.

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