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TABLE OF CONTENTS

COMPLIANCE AND LEGISLATION

Federal Minimum Wage Laws....3
IRS Provides Transition Relief for 2020 ACA Reporting 5
ERISA Compliance FAQs: Enforcement....6
Pay or Play Penalty—IRS Examples for Determining Full-time Status 7

HR RESOURCES

HR Toolkit - Interviewing 8
Common and Costly Employee Benefits & HR Mistakes....11
Employee Handbook with Linked Table of Contents....12

EMPLOYER EDUCATION

Effective Benefit Plan Communication....19
Benefits Buzz Monthly Newsletter 20

EMPLOYEE COMMUNICATION

Know Your Options - HRA....21
Why Are Health Care Costs Rising? Infographic 22
Health Care Employee Resource Guide 23

COMPLIANCE OVERVIEW

Provided by Tooher Ferraris Insurance Group

Federal Minimum Wage Laws

Most employers and employees in the United States are subject to the minimum wage provisions set out by the Fair Labor Standards Act (FLSA). However, the FLSA also provides various minimum wage exceptions under specific circumstances to:

- Workers with disabilities;
- Full-time students;
- Workers under age 20 (during their first 90 days of employment);
- Tipped employees; and
- Student learners.

In addition, special rules apply to state and local government agencies in fire protection and law enforcement activities, volunteer services, and compensatory time off (instead of cash overtime pay). Employers are required to keep records on wages, hours and other items which are generally maintained as an ordinary business practice.

LINKS AND RESOURCES

The Wage and Hour Division (WHD) of the Department of Labor (DOL) enforces the FLSA's minimum wage provisions and investigates violation claims.

- DOL minimum wage website
- FLSA elaws Advisor

HIGHLIGHTS

MINIMUM WAGE

- The current minimum wage rate is $7.25 per hour.
- Subminimum wage rates are possible for workers with disabilities, full-time students, workers under 20 years of age (during their first 90 days of employment), tipped employees and student learners.

COMMON EXEMPTIONS

- Bona fide executive, administrative and professional employees
- Casual babysitters and companions for the elderly
- Computer system analysts, programmers, engineers and similarly skilled workers

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MINIMUM WAGE RATE

The current federal minimum wage rate is **$7.25 per hour**. To calculate an employee's wage rate, an employer must include all forms of compensation given to or paid on behalf of the employee, except for:

- Additional compensation for overtime hours, holiday hours or work that falls outside of a schedule set by an employment contract or collective bargaining agreement;
- Compensation for paid time off (such as vacation, illness, holidays and production downtimes);
- Gifts and monetary awards that are not measured by hours worked, productivity or efficiency;
- Irrevocable employee benefit contributions (such as life insurance, health benefits and retirement accounts);
- Value or income derived from an employer-provided grant; and
- Value or income from stock option rights or stock appreciation and bona fide stock purchase programs.

SUBMINIMUM WAGE RATES

The FLSA allows employers to hire students, student-learners, apprentices, messengers and disabled individuals at rates below the minimum wage rate. The FLSA also includes a special provision for tipped employee wages.

Learners, Apprentices and Messengers

Employers can pay **learners, apprentices and messengers** a wage rate below the federal minimum wage rate when they obtain a special certificate from the DOL. When issuing the certificates, the DOL will consider the number of workers an employer wants to cover under the special certificate, the number of hours worked by these employees and the employees' length of service with the employer.

- **Learners** are individuals receiving training for the occupation for which they were hired. Individuals qualify as learners until they acquire the necessary skills and attain the judgment level they need to perform their job responsibilities efficiently (generally up to 240 hours of vocational training with the same employer in a three-year period). Individuals may be learners in only two qualifying occupations. Learners can receive wages as low as **95 percent (75 percent for student-learners)** of the minimum wage rate.
- **Apprentices** are individuals (at least 16 years old) employed to learn a skilled trade through a registered apprenticeship program. The DOL establishes the wage rate for apprentices, along with other employment terms and conditions, in accordance with apprenticeship program guidelines.

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4

ACA COMPLIANCE BULLETIN

IRS Provides Transition Relief for 2020 ACA Reporting

On Oct. 2, 2020, the Internal Revenue Service (IRS) issued Notice 2020-76 to:

- Extend the due date for furnishing forms under Sections 6055 and 6056 for 2020 from Feb. 1, 2021, to **March 2, 2021**; and
- **Provide a final extension of good-faith transition relief from penalties** related to 2020 information reporting under Sections 6055 and 6056; and
- **Provide additional penalty relief related to furnishing 2020 forms to individuals under Section 6055.** Under this relief, employers will only have to provide Form 1095-B to covered individuals upon request.

The due date for filing forms with the IRS for 2020 remains **March 1, 2021** (since Feb. 28, 2021, is a Sunday), or **March 31, 2021**, if filing electronically.

Action Steps

The IRS is encouraging reporting entities to furnish 2020 statements as soon as they are able. No request or other documentation is required to take advantage of the extended deadline.

According to Notice 2020-76, **this is the last year that the IRS intends to provide good-faith relief from penalties**, since it was intended to be transitional relief only.

Highlights

- The deadline for furnishing individual statements under Sections 6055 and 6056 for 2020 has been extended for 30 days.
- Good-faith transition relief from penalties has also been extended for a final time for 2020 reporting.
- The due date for filing returns with the IRS for 2020 is not affected.

Important Dates

March 2, 2021
Deadline for furnishing 2020 Forms 1095-B and 1095-C to individuals

March 1, 2021
Deadline for 2020 filing with the IRS in paper form

March 31, 2021
Deadline for 2020 filing with the IRS electronically

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COMPLIANCE OVERVIEW

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ERISA Compliance FAQs: Enforcement

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for employee benefit plans maintained by private-sector employers. ERISA includes requirements for both retirement plans (for example, 401(k) plans) and welfare benefit plans (for example, group health plans). ERISA has been amended many times over the years, expanding the protections available to welfare benefit plan participants and beneficiaries.

The Department of Labor (DOL), through its Employee Benefits Security Administration (EBSA), enforces most of ERISA's provisions. Violating ERISA can have serious and costly consequences for employers that sponsor welfare benefit plans, either through DOL enforcement actions and penalty assessments or through participant lawsuits.

This Compliance Overview includes a set of frequently asked questions (FAQs) to help employers understand how ERISA's requirements for welfare benefit plans are enforced.

LINKS AND RESOURCES

Department of Labor resources:

- Web page on ERISA Enforcement
- 2016 fiscal year audit summary
- Voluntary Fiduciary Correction Program
- Delinquent Filer Voluntary Compliance Program

HIGHLIGHTS

HEALTH PLAN INVESTIGATIONS

- The DOL audits employee benefit plans for compliance with ERISA, the Affordable Care Act (ACA) and other federal laws.
- Participants may also sue their welfare benefit plans for violations.
- Noncompliance may result in civil penalties or criminal charges.

COMMON VIOLATIONS

- Failures to file complete/correct Form 5500
- Failures to respond to participant requests for information
- Breaches of fiduciary duties

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Pay or Play Penalty—IRS Examples for Determining Full-time Status

Under the Affordable Care Act (ACA), applicable large employers (ALEs) may be subject to a penalty if they do not offer health coverage to their full-time employees (and dependents), or if they offer coverage that is unaffordable or does not provide minimum value. This employer mandate is also known as the "employer shared responsibility" or "pay or play" rules.

Employers with 50 or more full-time employees, including full-time equivalents (FTEs), on business days during the preceding calendar year are considered ALEs.

To help explain the rules for identifying full-time employees using the look-back measurement method, the final regulations include numerous examples. The examples address the methods for ongoing employees and new variable hour, part-time and seasonal employees.

This ACA Overview includes the IRS' examples for determining full-time employees using the look-back measurement method.

LINKS AND RESOURCES

- On Feb. 12, 2014, the Internal Revenue Service (IRS) published final regulations on the employer shared responsibility rules.
- The IRS has also provided Questions and Answers for employers on the employer shared responsibility rules.

HIGHLIGHTS

FULL-TIME EMPLOYEES

- A full-time employee is an employee who was employed, on average, at least 30 hours of service per week (or 130 hours in a calendar month).
- The look-back measurement method allows employers to look at average hours of service over a longer period of time.

LOOK-BACK MEASUREMENT METHOD

The look-back measurement method involves:

- A measurement period;
- An optional administrative period; and
- A stability period.

This method provides more stability for some employers.

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HR TOOLKIT

Interviewing

Provided by Tooher Ferraris Insurance Group

Table of Contents

Introduction 4

Legal Considerations 5

- Federal and State Laws 5
- Bona Fide Occupational Qualifications (BFOQs) 7
- Protected Information and Classes 7
- Background Checks 8
- Other Legal Missteps 8

General Overview of the Interview Process 9

Interview Preparation 11

- Job Descriptions 11
- Communication 11

Interview Best Practices 13

- Before the Interview 13
- During the Interview 13
- After the Interview 14

Pre-employment Testing 15

Types of Interviews 16

- Screening Interviews 16
- Selection Interviews 17
  - Interview Channels 17
  - Interview Structure 18
  - Interview Format and Organization 18

Interview Questions....20

Types of Questions 20

Questionable Questions 21

Follow-up Questions....21

Questions from the Candidate 22

Evaluating and Making a Hiring Decision 24

Interview Checklist 25

Evaluation Checklist....26

Ready to Interview....26

Appendix A: Legal Resources 27

Appendix B: Legal and Illegal Questions 28

Appendix C: Sample Interview Questions....32

Appendix D: Interview Preparation Action Items 35

Appendix E: Job Description Checklist....36

Common and Costly Employee Benefits & HR Mistakes

Mistakes in employee benefits and human resources can be quite costly to employers—in the form of extra benefits, complaints, lawsuits, government-assessed fines and penalties, and attorney fees, to name a few. Don't learn the hard way what these mistakes are.

1. **Not timely depositing employee contributions into qualified retirement plans**. Employers sometimes wait too long to deposit salary deferrals into a qualified retirement plan. According to the Department of Labor (DOL), such deposits should be made as soon as the contributions can be reasonably segregated from the employer's general assets, but no later than the 15th business day of the following month. The 15th business day of the following month is an outside guideline, and deposits must be made sooner if possible. If deposits are not timely made, the DOL and Internal Revenue Service (IRS) may levy fines, penalties and retroactive earnings for late contributions. The deposit rule for salary deferrals applies to all types of employee contributions, including special deferrals (such as catch-up contributions), after-tax contributions and loan repayments.

   The DOL has established a safe harbor for employers with small plans (fewer than 100 participants at the beginning of the plan year) to timely deposit such employee contributions. Under the safe harbor, if the employer deposits the withheld amounts in the plan no later than the seventh business day following the date the employees would have received the contributions (payday), the employer automatically satisfies the requirement to timely deposit employee contributions.

   Solution: Deposit employee contributions as soon as reasonably possible following issuance of the paycheck from which the contribution was withheld. Employers with small plans should try to take advantage of the safe harbor's protection by depositing employee contributions within seven business days from the issuance of the paycheck. The DOL's Voluntary Fiduciary Correction Program (VFCP) offers a method to correct late deposits of employee contributions

2. **Not making matching and profit-sharing contributions on a timely basis.** Many employers make the mistake of not making these contributions on a timely basis. If your qualified retirement plan provides for matching and profit-sharing contributions, the deadline for making these contributions and depositing them into the plan's trust is determined first by looking to the plan document. The plan document may contain deadlines for these contributions. For example, the plan document may require matching contributions to be

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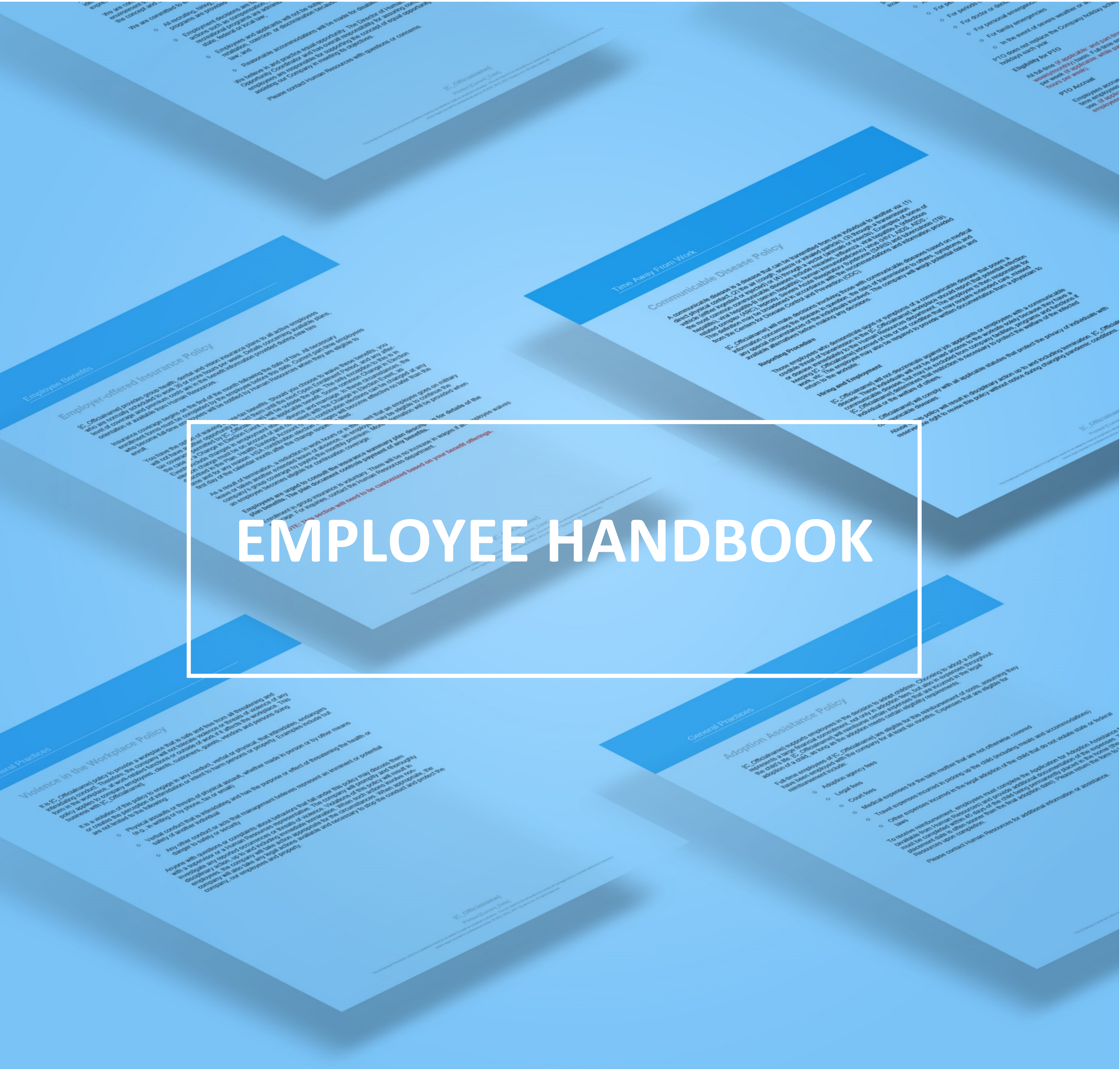

A Manual of Employee

Benefits & Personnel Policies

Provided by: ABC COMPANY

Table of Contents

Introduction 5

Welcome and Purpose 6
At-will Employment Statement 7
Mission Statement..8

Employment Policies 9

Americans with Disabilities Policy 10
Employment Termination Policy 11
Equal Employment Opportunity 12
Internal Transfer/Promotion Policy 13
I-9 Immigration Reform Policy 14

Workplace Conduct 15

Code of Ethics Policy 16
Complaint Policy..19
Disciplinary Action Policy..21
Drug-free Workplace Policy 22
Drug and Alcohol Testing Policy 23
Harassment Policy 28
Sexual Harassment Policy..30
Standards of Conduct Policy 31
Violence in the Workplace Policy 32
Weapons in the Workplace Policy 33
Workplace Bullying Policy 34
Diversity Policy..36

Employee Benefits..37

COBRA Benefits Policy 38
Employer-offered Insurance Policy 40
Domestic Partnership Policy 41
Adoption Assistance Policy..42
Employment Taxes & Voluntary Deductions Policy..43

Time Away from Work..44

Communicable Disease Policy..45
Contagious Illness Policy 46
Federal Family and Medical Leave Policy..47
Funeral Leave Policy 57
Jury Duty Policy..58
Lunch and Rest Periods Policy..59
Military Leave Policy..60
Non-FMLA Leave Policy 62
Nursing Mothers Policy 66
Paid Time Off Policy..67
Pandemic Flu Leave Policy 70
Parental/School Leave Policy 71
Personal Leave Policy 72
Religious Observances Policy 74
Sick Time Policy 75
Time Off to Vote Policy..76
Vacation Policy 77

Information & Office Security 78

Emergency Action Plan 79
Facility Access & Visitors Policy 82
General Computer Usage Policy 83
Recording Devices Prohibited Policy 84

General Practices 85

Anti-discrimination Policy 86
Attendance and Standard Working Hours Policy 87
Alternative Working Schedules Policy 88
Flextime Policy 89
Background Check Policy 90
Business Expense Reimbursement Policy 91
Company Car Policy 94
Company Credit Card Policy 96
Employer-provided Mobile Devices Policy 97
Confidential Information and Company Property Policy 98
Conflicts of Interest Policy 100
Customer Complaint Policy 101
Dress Code (General) 102
Dress Code (Summer) 104
Driving While on Company Business Policy 106
Educational Assistance Program Policy 108
Employee Classification Policy 110
Employee Fraternization Policy 111
Employee Discount Policy 112
Employee Referral Bonus Policy 113
Employment of Relatives Policy 114
Improper Payments and Gifts Policy 115
Injury & Illness Reporting Policy 116
Media Relations Policy 117
Online Social Networking Policy 118
Open Door Policy 120
Orientation Period Policy 121
Overtime Pay Policy 122
Salary Advance Policy 123
Pay Periods and Check Distribution Policy 124
Direct Deposit Policy 125
Performance Evaluation Policy 126
Personnel Records Policy 127
Phone Call Policy 128
Physical Examination Policy 129
Safety Policy 130
Severe Weather Policy 131
Smartphone Use Policy for Nonexempt Employees 132
Smoke-free Environment Policy 133
Smoke-free Incentive Policy 134
Social Functions Policy 135
Solicitations, Distributions & Use of Bulletin Boards Policy 136
Time Card Regulations Policy 137
Workers' Compensation Policy 138

Effective Benefit Plan Communication

The way that employers communicate benefits information to employees has a tremendous impact on how well the programs are understood, utilized and perceived by employees. Providing your employees with ample informative resources will help better convey your message.

Managers and supervisors can be effective in sharing important benefits information with employees, especially if it is scripted or “canned.” Since they are most likely to know what their employees understand, they might be better able to present benefits information. As an employee’s main point of contact, managers and supervisors also tend to be more approachable with questions. Opportunities to ask questions, express dissatisfaction and discuss problems regarding benefits information with supervisors and managers should be encouraged. Many employers use managers and supervisors to share benefits information, but this should be done with caution and help from the following tips.

Avoiding Verbal Communication Problems

Communicating inaccurate information to employees is always a major concern when using managers and supervisors to relate benefits information. Keep in mind that misinformation not only causes an employee relation problem, but has the possibility of causing litigation as well. Consider these tips to avoid problems:

- Consider allowing only specific Human Resources personnel to discuss benefits information with employees.
- Remind those who may be asked questions regarding benefits, such as supervisors and managers, to review their plan documents carefully. They should refer to the HR department any question they are at all unsure how to address.
- Whether formal or informal, do not make promises regarding any aspect of the benefits plan that the company will not be able to keep.
- State in the plan documents that plan amendments are to be made only in writing and approved by the corporate representative or plan administrator, if applicable.

Written Communication Cautions

Even if written material about benefits information is not an official plan document, informal written promises can still prevail in court. As a result, make sure even informal written communications about the plan is consistent with the official documents before distributing.

Employees often rely on summary plan descriptions to determine their rights under a specific plan. In the event of an issue due to discrepancies between plan documents and the summary plan document, the summary plan document can hold up in court. Because of this, it is crucial to make sure that the summary plan document is correct, current, clear and in agreement with the plan documents, handbooks and all other benefits information.

As a safety measure, be sure that the summary plan description, handbooks and other benefits communications state clearly that the plan document has absolute authority over them. This information should appear in a separate paragraph in a prominent position. Consider using larger, italic or boldfaced type, or by using a distinct border to make the information readily apparent.

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BENEFITS BUZZ

DECEMBER 2020

Final Rule on Health Care Transparency Issued

The Departments of Labor (DOL), Health and Human Services (HHS) and the Treasury (Departments) issued a final rule that imposes new transparency requirements on group health plans and health insurers in the individual and group markets.

Specifically, the final rule requires plans and issuers to disclose:

- Price and cost-sharing information to participants, beneficiaries and enrollees upon request:
  - A list of 500 shoppable services must be available via the internet for plan years beginning or after Jan. 1, 2023.
  - The remainder of all items and services is required to be available for plan years beginning on or after Jan. 1, 2024.
- In-network provider-negotiated rates and historical out-of-network allowed amounts on their website:
  - Detailed pricing information must be made public for plan years beginning on or after Jan. 1, 2022.

The final rule also allows issuers that share savings with consumers—resulting from consumers shopping for lower-cost, higher-value services—to take credit for those "shared savings" payments in their medical loss ratio calculations.

Contact us today to learn more.

Employee Benefits Plan Limits for 2021

Many employee benefits are subject to annual dollar limits that are periodically updated for inflation by the IRS.

The IRS typically announces the dollar limits that will apply for the next calendar year well in advance of the beginning of that year. This gives employers time to update their plan designs and make sure their plan administration will be consistent with the new limits. Although some of the limits will increase for 2021, most of the limits remain the same.

Increased Limits
For plan years beginning on or after Jan. 1, 2021, the following limits have increased:

- Health savings account contributions
  - Single coverage—$3,600 (up $50)
  - Family coverage—$7,200 (up $100)
- High deductible health plan (HDHP) out-of-pocket maximum limit:
  - Single coverage—$7,000 (up $100)
  - Family coverage—$14,000 (up $200)
- Tax exclusion for adoption assistance benefits—$14,440 (up $140)

Unchanged Limits
Certain limits will not change for 2021, including the flexible spending account salary reduction contribution limit, HDHP minimum deductible, 401(k) contribution limit and transportation fringe benefits monthly limits.

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Know Your Benefits

Know Your Options - HRAs

Everyone dislikes feeling cheated out of a better deal. More and more employers are offering consumer-driven health care options, but too often they aren't explaining them to employees. So few employees take advantage of the opportunities presented. This is most common (and perhaps most tragic) when it comes to health reimbursement accounts (HRAs).

With an HRA the company is, in essence, giving out free money. It doesn't count as taxable income. It doesn't count against a bonus. It doesn't count against vacation time. It is just "free" money that is available to use as needed for health-related expenses that qualify, especially preventive and wellness-related expenses. Qualified expenses vary by company, but may include things like an annual check-up, joining a gym, smoking cessation programs and more.

In many cases, the company offers the employee a health debit card in order for the employee to avoid the initial expense and then having to wait for its reimbursement. But the company is not giving this free money out of the goodness of their corporate heart. Instead, employers have discovered that it is less expensive to reimburse employees for wellness care than to pay for them to be sick. Also, they get more productivity this way. And, in most cases, it costs less to pay for actual services received than to pay the overhead of an insurance premium for all employees even if many of them do not use the coverage.

Here is an example of a typical workplace: There are two health plans offered. One plan is a traditional insurance program and the other is a high deductible health plan (HDHP) with an HRA. But the employees who are making this latter choice have very little to go on. Most often, it basically comes down to one piece of educational material with a single paragraph or so that indicates an HRA option is available. But it does not define the HRA, mention the lower premiums attached, or describe any of the benefits.

Unfortunately, this scenario is becoming more and more common, where a better option exists, but the employee and consumer are given very little information about it. And because it is so different from the "traditional" plan, most may not even know how to begin asking the questions.

Stick to the basics:

- How much is the premium?
- How much choice do I get in providers?
- What does the company pay and what do I pay?
- At what point do I get 100% coverage?
- Who decides what is covered?
- What is covered?
- Are there pre-tax ways to cover my expenses or reimbursement opportunities for preventative and wellness care?

Demand a consumer education. The whole nature of the health care system is changing and consumers will be left behind with yesterday's high prices if they aren't careful. An employee's primary responsibility when choosing a health care plan should be to ask the right questions.

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WHY ARE HEALTH CARE COSTS RISING?

Unfortunately, the trend of health costs rising faster than the rate of inflation is expected to continue. Several factors have contributed to climbing health care costs over the past decade, including the following:

- Expansion of health care providers
- New government regulations
- Increased utilization and consumer demand
- New medical technology
- Medical cost inflation
- Higher prescription drug costs

While you are unable to control the cost drivers mentioned above, you can control the health care cost drivers listed below.

1 UNHEALTHY LIFESTYLE

Treating chronic conditions accounts for 86 percent of the nation's health care costs. Although genetics may be a contributing factor, unhealthy habits like a lack of exercise, tobacco use and poor nutrition are oftentimes the main reasons for developing chronic health problems.

2 PRESCRIPTION DRUGS

Prescription drug costs continue to represent a large portion of health care expenditures. Make the most of your prescription drug plan by choosing generic drugs when they are available, following your doctor's and pharmacist's instructions carefully, and talking openly with your doctor.

3 LACK OF COST CONSIDERATION

When people have insurance that pays for the majority of health care costs, they don't think twice about using medical services. This can lead them to consume more care than needed, which in turn drives up prices.

4 INCORRECT CARE SETTING

Choosing the appropriate place of care will not only ensure prompt and adequate medical attention, but will also help reduce any unnecessary expenses. Remember, in the event of a life-threatening emergency go to the emergency room. Urgent care centers are equipped to address conditions where delaying treatment could cause serious problems or discomfort. If a condition is not serious or causing serious discomfort, call and schedule an appointment with your primary care physician.

5 INCORRECT HEALTH PLAN SELECTION

Selecting the right health insurance plan for your needs is critical. Lower deductible plans come with higher premiums, while higher deductible plans come with lower premiums. Carefully evaluating your options will help you get the best value for your health care dollars.

6 LACK OF END-OF-LIFE CARE PLANNING

Planning ahead for long-term or end-of-life care is critical to keeping health care costs down. It costs, on average, $6,235 per month for a semi-private room in a nursing home. Plan for these expenses to avoid incurring unexpected costs.

7 LOW HEALTH CARE LITERACY

Over 77 million Americans are considered to have inadequate health literacy, which means that they have difficulty with common health tasks like reading a prescription drug label or making a wise health care decision. Low health literacy often results in higher utilization of basic and expensive health services like emergency care and inpatient visits, which add up quickly.

For information on strategies to reduce your health care costs, contact your HR department.

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HEALTH CARE RESOURCE GUIDE

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Table of Contents

Introduction 3
Types of Insurance Plans 3
In-network vs. Out-of-network Care 5
The Basics 5
Billing and Claim Differences 5
Health Care and Health Insurance Terminology 6
Definitions 6
Acronyms 7
Health Spending Accounts 8
Shopping Tips 8
The Importance of Preventive Care 10
For More Information 10