February 2012, Issue II

ADP National Account Services
Outsourcing for HR, Benefits and Payroll

Tech Flex

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ESSENTIALS

SUMMARY OF BENEFITS AND COVERAGE FINAL REGULATIONS RELEASED

On February 9, 2012, the United States Treasury Department, Department of Labor (DOL) and Department of Health and Human Services (HHS) issued final regulations regarding the Summary of Benefits and Coverage (SBC) and uniform glossary requirements under the Patient Protection and Affordable Care Act (PPACA). In addition, various other documents including a model SBC template, instructions, uniform glossary are now available.

By way of background, PPACA requires that the plan administrator in the case of a self-insured plan, or the insurer in the case of a fully-insured plan, must prepare and distribute a summary of benefits and coverage describing the benefits and coverage under the plan. The SBC must generally be provided to participants prior to enrollment, including on the first day of each open enrollment period. This notification requirement applies to both grandfathered and non-grandfathered plans. Finally, the plan or issuer must notify plan participants of material changes to the coverage reflected in the most recent summary provided no less than 60 days in **advance** of the effective date of the change. Although church and governmental plans are exempt from providing a summary plan description (SPD) under ERISA, such plans are NOT exempt from providing the SBC.

The final regulations require (as did the proposed regulations released in August of 2011) that the SBC must contain the following elements:

- Uniform definitions of standard insurance terms and medical terms so that consumers may compare health coverage and understand the terms of their coverage.
- A description of the coverage, including cost sharing, for each category of benefits.
- The exceptions, reductions, and limitations of the coverage.
- The cost-sharing provisions of the coverage, including deductible, coinsurance, and copayment obligations.
- The renewability and continuation of coverage provisions.
- With respect to coverage beginning on or after January 1, 2014, a statement about whether the plan or coverage provides minimum essential coverage as defined and whether the plan's or coverage's share of the total allowed costs of benefits provided under the plan or coverage meets applicable requirements.

- A statement that the SBC is only a summary and that the plan document, policy, certificate, or contract of insurance should be consulted to determine the governing contractual provisions of the coverage.

- Contact information for questions and obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance (such as a telephone number for customer service and an Internet address for obtaining a copy of the plan document or the insurance policy, certificate, or contract of insurance.

- For plans and issuers that maintain one or more network of providers, an Internet address (or similar contact information) for obtaining a list of network providers.

- For plans and issuers that use a formulary in providing prescription drug coverage, an Internet address (or similar contact information) for obtaining information on prescription drug coverage.

- An Internet address for obtaining the uniform glossary as well as a contact phone number to obtain a paper copy of the uniform glossary, and a disclosure that paper copies are available.

- The SBC must be presented in a uniform format, use terminology understandable by the average plan enrollee (or, in the case of individual market coverage, the average individual covered under a health insurance policy), not exceed four double-sided pages in length, and not include print smaller than12-point font.

The final regulations did contain a few modifications from the proposed regulations including the following.

Coverage Examples: Under the final regulations, the SBC must contain two coverage examples that illustrate benefits provided under the plan or coverage for common benefits scenarios: (1) normal pregnancy and delivery; and (2) managing type two diabetes (routine maintenance of a well-controlled condition). The proposed regulations required coverage examples to also include breast cancer and diabetes generally.

Electronic Disclosure: Under the final regulations, current enrollees are eligible to receive the SBC electronically under the same Employee Retirement Income Security Act (ERISA) rules that currently apply. For those eligible for coverage but not yet enrolled, a postcard may be sent either electronically or via regular mail alerting individuals to the website where the SBC materials may be provided.

Premium Information Not Required. The SBC is not required to provide specific premium or cost-of-coverage information eliminating the need to provide multiple versions of the SBC for each benefit option.

Elimination of Stand-Alone Requirement: The final regulations eliminate the requirement that the SBC be provided solely as a stand-alone document for group health plans. The proposed guidance had stipulated that the SBC was to be provided in addition to the SPD required under ERISA. Under the final rule, the SBC may be provided as part of the SPD "if the SBC information is intact and prominently displayed at the beginning of the materials (such as immediately after the Table of Contents in an SPD) and in accordance with the timing requirements for providing an SBC." For health insurance coverage offered in the individual market, the SBC must be provided as a stand-alone document, but can be included in the same mailing as other plan materials.

Effective Date

Under the final regulations the requirements to provide an SBC, notice of modification, and uniform glossary apply for disclosures to participants and beneficiaries who enroll or re-enroll in group health coverage through an open enrollment period (including re-enrollees and late enrollees) beginning on the first day of the first open enrollment period that begins on or after September 23, 2012. For disclosures to participants and beneficiaries who enroll in group health plan coverage other than through an open enrollment period (including individuals who are newly eligible for coverage and special enrollees), the requirements apply beginning on the first day of the first plan year that begins on or after September 23, 2012. For disclosures to plans, and to individuals and dependents in the individual market, these requirements are applicable to health insurance issuers beginning on September 23, 2012.

For a copy of the final regulations, uniform glossary, model SBC template and instructions, please click on the link provided below.

http://www.dol.gov/ebsa/healthreform/

IRS RELEASES ADDITIONAL PPACA GUIDANCE

On February 9, 2012, the Internal Revenue Service (IRS) issued Notice 2012-17 to address questions regarding the following Patient Protection and Affordable Care Act (PPACA) provisions: (1) automatic enrollment; (2) employer shared responsibility; and (3) 90 day limitation on waiting periods.

Automatic Enrollment:

Under PPACA, employers with more than 200 full -time employees who offer at least one health plan option are required to automatically enroll new full -time employees in a benefit option and continue the enrollment of current employees in a health benefit offered by the employer. An employee is considered full - time if he/she is employed on average for at least 30 hours of service per week. Any automatic enrollment program must include adequate notice and the opportunity for an employee to opt out of any coverage the individual or employee was automatically enrolled in.

Notice 2012-17 Q/A 1 explains that the Department of Labor does not anticipate having automatic enrollment guidance in time for a 2014 effective date. Notice 2012-17 provides in part:

"In view of the need for coordinated guidance and a smooth implementation process, including an applicability date that gives employers sufficient time to comply, the Department of Labor has concluded that its automatic enrollment guidance will not be ready to take effect by 2014. It remains the Department of Labor's view that, until final regulations under FLSA section 18A are issued and become applicable, employers are not required to comply with FLSA section 18A."

Employer Shared Responsibility

Under PPACA, employers who employ 50 or more full -time employees (i.e. those working 30 or more hours a week) who fail to offer any full -time employees either health coverage or affordable health coverage must pay a penalty with respect to each full -time employee in any month in which any employee receives a subsidy for the Exchange. However, under current guidance, the employer is not required to pay the penalty in relation to the first 30 employees. The penalty is determined on a monthly basis and is the product of the total number of full -time employees of the employer minus 30 for that month and 1/12 of $2,000 ($166.67 in 2014). For example, an employer with 60 employees that does not offer coverage to its employees is subject to the penalty equal to 30 times 1/12 (or $166.67) of $2,000 per month qualified coverage is not provided.

Notice 2012-17 Q/As 2 through 5 provides the following guidance in relation to employer shared responsibility:

- Treasury and the IRS intend to issue proposed regulations or other guidance permitting employers to use an employee's Form W-2 wages (as reported in Box 1) as a safe harbor in determining the affordability of employer coverage.

- It is anticipated that proposed regulations or other guidance will be issued under Code section 4980H (which imposes shared responsibility on large employers with respect to coverage of full-time employees). That guidance is expected to address the intersection of the Code section 4980H rules and the PHS Act section 2708 rules applicable to the 90-day waiting period limitation. The upcoming guidance is expected to provide that, at least for the first three months following an employee's date of hire, an employer that sponsors a group health plan will not, by reason of failing to offer coverage to the employee under its plan during that three-month period, be subject to the employer responsibility payment under Code section 4980H.

- Proposed regulations or other guidance are intended to be provided that would allow employers to use a "look-back/stability period safe harbor" method based on the approach outlined in the Notice for purposes of determining whether an employee (other than a newly-hired employee) is a full-time employee. Accordingly, it is anticipated that the guidance will allow look-back and stability periods not exceeding 12 months.

- Treasury and the IRS also intend to issue proposed regulations or other guidance that will address how to determine whether a newly-hired employee is a full-time employee for purposes of Code section 4980H. The upcoming guidance is expected to provide that, at least for the first three months following an employee's date of hire, an employer that sponsors a group health plan will not, by reason of failing to offer coverage to the employee under its plan during that three-month period, be subject to the employer responsibility payment under Code section 4980H. The guidance is also expected to provide that, in certain circumstances, employers have six months to determine whether a newly-hired employee is a full-time employee for purposes of section 4980H and will not be subject to a section 4980H payment during that six-month period with respect to that employee.

90-Day Limitation on Waiting Periods

PPACA mandates that effective for plan years beginning on or after January 1, 2014, self insured and fully insured group health plans may not impose eligibility waiting periods in excess of 90 days.

Notice 2012-17 Q/As 6 and 7 clarify the following.

- PPACA does not require the employer to offer coverage to any particular employee or class of employees, including part-time employees. It merely prohibits requiring an otherwise eligible employee to wait more than 90 days before coverage is effective.

- It is intended that the term "waiting period" will be defined consistent with the Health Insurance Portability and Accountability Act (HIPAA) which generally measures eligibility from date of hire. However, the final regulations will allow eligibility conditions not designed to avoid the 90-day waiting-period limit. For example, employers will be able to limit eligibility to employers in certain job categories or working a minimum number of hours in a specified period.

For a copy of Notice 2012-17 please click on the link provide below.

http://www.irs.gov/pub/irs-drop/n-12-17.pdf

IRS ISSUES PUBLICATION 969 FOR USE WITH 2011 TAX RETURNS

The Internal Revenue Service (IRS) has issued an updated Publication 969 (Health Savings Accounts and Other Tax-Favored Health Plans) helpful in completing 2011 tax returns. The Publication discusses several tax-advantaged plans including health flexible spending accounts (FSAs); health reimbursement arrangements (HRAs); medical savings accounts (MSAs); and health savings accounts (HSAs) and reviews the tax qualifications for these plans.

The 2011 version has been updated to reflect two changes that apply beginning in 2011. Specifically, (1) the prescription requirement for over-the-counter (OTC) drugs (other than insulin) purchased on or after January 1, 2010, and (2) the increase (to 20%) in the additional tax on HSA and MSA distributions not used for qualified medical expenses. In addition, the MSA sections have been revised to reflect changes in the deductible requirements and out-of-pocket maximums for 2011.

For a copy of Publication 969 (Health Savings Accounts and Other Tax-Favored Health Plans (for 2011 Tax Returns), please click on the link provided below:

http://www.irs.gov/publications/p969/index.html

PAYROLL TAX CUT EXTENDED THROUGH 2012

On February 22, 2012, President Obama signed into law, the Middle Class Tax Relief and Job Creation Act of 2012 (Tax Relief Act of 2012). Previously the United States House of Representatives and Senate had passed the legislation by a vote of 293 to 142 and 60 to 36 respectively.

The Tax Relief Act of 2012 extends until the end of 2012 the reduction in the social security tax rate paid by employees from 6.2% to 4.2% that was first implemented for wages paid between January 1 and December 31, 2011. Previous to the enactment of Tax Relief Act of 2012, the Temporary Payroll Tax Cut Continuation Act of 2011 was signed into law on December 23, 2011, temporarily extending the reduced rate for another two months through the end of February 2012.

The Tax Relief Act of 2012 also repeals the 2% "recapture tax" that would have required individuals who are paid more than $18,350 in January and February 2012 to pay an additional 2% tax so they would not gain more of a benefit from the temporary payroll tax cut than employees who were not paid more than that amount during those two months. This amount would have been collected on the employee's individual income tax return for 2012.

For a copy of the Tax Relief Act of 2012, please click on the link provided below.

http://www.gpo.gov/fdsys/pkg/BILLS-112hr3630enr/pdf/BILLS-112hr3630enr.pdf

GEORGIA GARNISHMENT REFORM BILL ENACTED INTO LAW

On February 7, 2012, Governor Nathan Deal signed into law Georgia House Bill 683 (HB 683) providing "that the filing of certain answers on behalf of certain garnishees may be done by authorized officers or employees and shall not constitute the practice of law." Consequently, the requirement that an attorney licensed in Georgia must sign and submit court ordered garnishment documents is now void. Instead an authorized officer or an employee of the garnishee may sign and submit garnishment orders on behalf of the garnishee. The effective date of the change takes effect immediately.

The summary of Georgia House Bill 683 is as follows**:**

Summary

"To amend Chapter 4 of Title 18 of the Official Code of Georgia Annotated, relating to garnishment proceedings, so as to provide that the filing of certain answers on behalf of

certain garnishees may be done by authorized officers or employees and shall not constitute the practice of law; to provide for definitions; to provide that delivery to the court of money or property that is subject to garnishment may likewise be accomplished by certain officers or employees of an entity; to conform the terminology of the chapter to reflect defined terms; to change provisions relating to service of garnishment actions; to increase the amount of attorney's fees a garnishee may deduct from the sums paid into court; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes."

Upon signing the bill, Governor Deal released a press release stating in part the following:

"I'm committed to working with the Legislature to reduce unnecessary regulation on businesses, large and small," Deal said. "This law will take effect immediately and remove a mandate that could pose a costly burden on job creators. Reducing the amount of unnecessary legal fees is just one step in making Georgia the No. 1 place to do business, and there is no need for its delay."

Historically, human resources or payroll employees have processed garnishments for employees. Under a 2011 court decision, the state Supreme Court held that this routine task must be performed by lawyers. This legislation prevents an undue administrative burden on small businesses by eliminating the employment of lawyers to process garnishments and allowing them to be performed by authorized personnel instead."

For a copy of the Governor's full press release regarding HB 683, please click on the link provided below.

http://gov.georgia.gov/00/press/detail/0,2668,165937316_165937374_181264016,00.html

For a copy of HB 683, please click on the link provided below:

http://www.legis.ga.gov/legislation/en-US/Display/20112012/HB/683

CALIFORNIA UPDATES WAGE THEFT PREVENTION ACT GUIDANCE

As reported in the November 2011 Tech Flex, California Governor Edmund G. Brown Jr. enacted legislation (Chapter 655 (A.B. 469), L. 2011) titled the "Wage Theft Protection Act of 2011" (Act). As of January 1, 2012, the Act requires an employer to provide each employee with a written notice at time of hire that contains the following information:

(1) The rate or rates of pay, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(2) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
(3) The employer's regularly scheduled payday.

(4) The name of the employer, including any "doing business as" names used.

(5) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(6) The employer's telephone number.

(7) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(8) Any other information the Labor Commissioner deems material and necessary.

The notice must be written using language the employer normally uses to communicate employment-related information to the employee.

On December 30, 2011, the California Division of Labor Standards Enforcement ("DLSE") posted 15 frequently asked questions (FAQ) about the California Wage Theft Prevention Act (Act) Notice template.

Subsequently on January 23, 2012, the DLSE updated the frequently asked questions to modify certain questions and add new questions.

An example of a question modified is as follows:

2. Who is covered by the law?

A: All private sector employers are covered unless there is a specified exception. The notice is not required for an employee: directly employed by the state or any political subdivision, including any city, county, city and county, or special district; an employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission; or for an employee who is covered by a valid collective bargaining agreement if it meets specified conditions. It is important to note that charter schools, private schools, and not-for-profit corporations are covered, as they are not public entities. Subject to the foregoing exceptions, as of January 1, 2012, employers are required to provide the written notice to each employee "[a]t the time of hiring." The notice requirement was intended to apprise employees of basic information material to their employment relationship, and to ensure employees are given up-to-date employment information through notice of any changes to that information; as such, it would be a best practice for employers not only to provide the notice to new hires, but also to current employees. (Underlined portion added 1/23/12)

Examples of questions added on January 23, 2012 are as follows:

24. When providing information regarding the regular pay day, can an employer simply state "bimonthly, bi-weekly," etc., rather than a specific date?

An employer need not provide a specific date (month, day, and year) for each pay day, but the information provided should be sufficient for an employee to understand when she will be paid. Thus, the regular day(s) of the month when wages will be paid should be specified in addition to the measure of time between pay days (e.g., semi-monthly, monthly, bi-weekly, weekly, etc.). Examples include: 1st and 15th of every month; 1st and 2nd Friday of every month, each Friday of every month.

25. Is there a requirement that a notice is required to be given annually to employees as in New York's wage theft law?

A: No. Unlike New York's law, annual notices to employees are not required under California's wage theft protection law. California requires that changes to information initially provided in the notice shall be accomplished by issuing a new notice containing all changes within 7 calendar days after the change or in the manner described in Labor Code 2810.5(b)(1)-(2).

For a copy of the FAQs updated on January 23, 2012, please click on the link provided below.

http://www.dir.ca.gov/dlse/FAQs-NoticeToEmployee.html

For more information on the California Wage Theft Prevention Act (Act) of 2011, please see the November 2011 and January 2012 editions of Tech Flex (links provide below).

November 2011 Tech Flex

http://westnsc.adp.com/fsa_cobra/tf/Tech_Flex_Newsletter_November_2011.pdf

January 2012 Tech Flex

http://westnsc.adp.com/fsa_cobra/tf/Tech_Flex_Newsletter_January_2012.pdf

PENNSYLVANIA ACT 32 MANUAL RELEASED

The Pennsylvania Department of Community and Economic Development (DCED) has now released a 118-page policy and procedure manual addressing the Pennsylvania Act 32 (Act 32) which was effective January 1, 2012. The purpose of Act 32 was to modify the Pennsylvania earned income tax (EIT) collection system.

By way of background, Pennsylvania Act 32 of 2008 provided for the restructuring of the Earned Income Tax Collection System for local governments and school districts covered by the Local Tax Enabling Act. As of January 1, 2012, the Earned Income Tax Collection System was restructured into 69 Tax Collection Districts (TCD), predominately based on county boundaries. The collection of taxes for each TCD will be handled by a "certified" tax collector designated by Pennsylvania's Department of Community and Economic Development (DCED). Employers were required to fully implement the changes contained in Act 32 beginning on January 1, 2012 and are obligated to withhold and report local income taxes for all employees, whether resident or non-resident, working in their Pennsylvania business location. The withholding tax rate will be determined for each employee by comparing the highest rate between their non-resident worksite and residence location rates. The employer should withhold and remit the higher of the two tax rates to the Certified Tax Collector for each of its Pennsylvania employment locations.

For a copy of the Act 32 of 2008 Policy and Procedure Manual, please click on the link provided below.

http://www.newpa.com/webfm_send/2029

DOL ISSUES NOTICE OF PROPOSED RULEMAKING TO AMEND FMLA

The United States Department of Labor (DOL) on January 30, 2012 issued a notice of proposed rulemaking to implement new statutory amendments to the Family and Medical Leave Act (FMLA) that would expand military family leave provisions and incorporate a special eligibility provision for airline flight crew employees.

The proposed language would extend the entitlement of military caregiver leave to family members of veterans for up to five years after leaving the military. At this time, the current regulations only cover family members of "currently serving" service members. Additionally, the proposal expands the military family leave provisions of the FMLA by extending qualifying exigency leave to employees whose family members serve in the regular armed forces. The current regulations only cover families of National Guard members and reservists.

In addition, the proposed revision makes the benefits of the FMLA more accessible for airline flight crew employees by adding special hours of service eligibility requirements for these individuals and specific provisions for calculating the amount of FMLA leave used that better take into account the hours worked by crew members.

Highlights of the proposed rule include:

- the extension of military caregiver leave to eligible family members of recent veterans with a serious injury or illness incurred in the line of duty;
- a flexible, three-part definition for serious injury or illness of a veteran;
- the extension of military caregiver leave to cover serious injuries or illnesses for both current servicemembers and veterans that result from the aggravation during military service of a preexisting condition;
- the extension of qualifying exigency leave to eligible employees with covered family members serving in the Regular Armed Forces;
- inclusion of a foreign deployment requirement for qualifying exigency leave for the deployment of all servicemembers (National Guard, Reserves, Regular Armed Forces);
- the addition of a special hours of service eligibility requirement for airline flight crew employees; and

- the addition of specific provisions for calculating the amount of FMLA leave used by airline flight crew employees.

For a copy of the DOL proposed rulemaking, please click on the link provided below:

http://www.dol.gov/whd/fmla/NPRM/FMLA_NPRM_2012.pdf

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