

# Tech Flex

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## UPDATED VERSION OF FORM 8928 AND INSTRUCTIONS RELEASED

In the September 2009 Tech Flex information was provided in relation to the final regulations released in the August 24, 2009 Federal Register, requiring entities responsible for providing or administering benefits under a group health plan to file and submit to the Internal Revenue Service (IRS) the excise penalties associated with failure to satisfy the continuation coverage requirements under the Consolidated Omnibus Budget and Reconciliation Act (COBRA). As part of the final regulations, a person liable for the excise tax under COBRA must file a return on **Form 8928** titled "Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code." For more information on the final regulations, please click on the following link to the September 2009 Tech Flex.

[http://westnsc.adp.com/fsa\\_cobra/tf/Tech\\_Flex\\_Newsletter\\_September\\_2009.pdf](http://westnsc.adp.com/fsa_cobra/tf/Tech_Flex_Newsletter_September_2009.pdf)

The IRS has now released a revised Form 8928 and instructions updating the versions released in January 2010. Generally the updated form and instructions remain unchanged from the previous versions. However, the list of COBRA failures that may result in excise taxes contained in the instructions has been modified to include failures to comply with "Michelle's Law" and other applicable health care reform notice requirements.

For a copy of the revised Form 8928 and Instructions, please click on the links provided below.

### **Form 8928**

<http://www.irs.gov/pub/irs-pdf/f8928.pdf>

### **Form 8928 Instructions**

<http://www.irs.gov/pub/irs-pdf/i8928.pdf>

## **CMS RELEASES UPDATED ALERT ON HRA MSP REPORTING**

On September 27, 2011, the Centers for Medicare and Medicaid Services (CMS) released an updated alert bulletin regarding the Medicare Secondary Payer (MSP) reporting requirements for Health Reimbursement Arrangements (HRAs). The new reporting requirements are a result of the Medicare Secondary Payer Mandatory Reporting Provisions in Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007.

According to the updated alert, the reporting threshold that must be met before information related to that HRA is to be reported to MSP for all new or renewing HRAs will increase to \$5,000 effective October 3, 2011. Previously, HRA coverage had to be reported if the annual benefit was \$1,000 or more. As a result of the change, no MSP reporting will be required for new or renewing HRA coverage if the annual benefit is less than \$5,000. However, the \$1,000 threshold is to be reported for existing HRA coverage until the employer's HRA benefit period is renewed.

The updated alert also reversed previous CMS guidance in relation to the exhaustion of HRA benefits. The new rule requires that a notice of termination must be submitted to the Coordination of Benefits Contractor (COBC) when an HRA participant's benefit is exhausted, but only if no additional HRA benefits will accrue through the end of the benefit period.

For a copy of the CMS HRA Alert, please click on the link provided below.

<https://www.cms.gov/MandatoryInsRep/Downloads/HRACoverage.pdf>

For additional information on the MSP reporting requirements, please click on the CMS link provided below.

[https://www.cms.gov/MandatoryInsRep/04\\_Whats\\_New.asp#TopOfPage](https://www.cms.gov/MandatoryInsRep/04_Whats_New.asp#TopOfPage)

## IRS PROPOSES SAFE HARBOR FOR DETERMINING HOUSEHOLD INCOME

The Internal Revenue Service (IRS) via Notice 2011-73 has proposed a safe harbor for determining whether coverage offered to employees is affordable under the Patient Protection and Affordability Care Act's (PPACA) employer shared-responsibility provision scheduled to take effect January 1, 2014.

### Background:

Effective January 1, 2014, employers who employ 50 or more full-time employees who fail to offer any full-time employees 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." An employee is considered full-time if he/she is employed, on average, at least 30 hours of service per week. An "Exchange" is a governmental agency or nonprofit entity that is established by the state for the purpose of making qualified health plans available to qualified individuals and qualified employers.

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. For example, an employer with 60 employees that does not offer coverage to its full-time employees is subject to the penalty equal to 30 times 1/12 of \$2,000.

Employers who offer coverage considered not affordable for any month to a full-time employee who is verified as enrolling in the Exchange and has received a premium tax credit or cost sharing reduction (tax subsidy) are subject to a penalty equal to the product of the total number of employees enrolled in the Exchange and receiving a tax credit and 1/12 of \$3,000 (400 percent of the applicable payment amount), which is \$750. In this instance, the penalty is limited to 1/12 of \$750 times the total number of full-time employees employed by the employer.

**An employee is only eligible for a tax subsidy where the employer's coverage offering is considered not affordable to the employee. Coverage is considered not affordable where the employee's required share of the coverage premium is in excess of 9.5 percent of the individual's household income or the employer pays less than 60 percent of the total cost of benefits provided under the plan.**

### Notice 2011-73

Under PPACA, and as noted above, the affordability of employer coverage and whether an individual is eligible for a tax subsidy to buy coverage through an Exchange is to be determined by measuring an employee's "household income." However, the IRS has

recognized that employers generally do not know the household income of its employees. In Notice 2011-73, the IRS proposed that coverage would be considered affordable if an employee's portion of the self-only contribution for the lowest-cost minimum plan is not in excess of 9.5% of the employee's current Form W-2 wages from the employer.

The IRS proposes in Notice 2011-73 that an employer will determine at the end of the calendar year whether each full-time employee received affordable coverage from the employer based on the employee's W-2 wages from the employer for the year. For example, an employer will meet the safe harbor for 2014 if each full-time employee's plan contributions do not exceed 9.5% of the employee's 2014 W-2 wages.

The IRS is seeking comments on the proposals contained in Notice 2011-73 and such comments are due no later than December 13, 2011.

For a copy of Notice 2011-73 please click on the link provided below.

<http://www.irs.gov/pub/irs-drop/n-11-73.pdf>

## **CALIFORNIA MODIFIES DEPENDENT LIFE INSURANCE RULES**

As a result of the enactment of California Senate Bill 220 (SB 220), California employers, as of January 1, 2012, may offer group dependent life insurance to the children of its employees up to the age of 26. An employer may offer coverage for a child 26 or older if the child is both incapable of self-sustaining employment due to a mental or physical handicap and is primarily dependent upon the employee for support.

The current California law provides that an employer may only provide dependent life insurance to an employee's spouse or registered domestic partner and unmarried child (including a domestic partner's child) to the age of 21, or 25 if a full-time student.

Additionally, SB 220 allows dependent life insurance to be provided to an employee's children regardless of the children's marital or student status.

For a copy of SB 220, please click on the link provided below.

[http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_0201-0250/sb\\_220\\_bill\\_20110726\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0201-0250/sb_220_bill_20110726_chaptered.pdf)

## **VARIOUS STATES INCREASE MINIMUM WAGE**

The states of Montana, Ohio, Oregon and Washington have announced an increase to their respective minimum wages to be effective January 1, 2012.

### **Montana:**

Effective January 1, 2012, the Montana minimum wage will be increasing from \$7.35 to \$7.65 per hour.

The State of Montana's wage and hour laws do not permit tip credit, meal credit or training wages.

### **Ohio:**

The Ohio minimum wage rate, effective January 1, 2012, will be changing from \$7.40 per hour to \$7.70 per hour.

The tipped employee minimum hourly rate will be changing from \$3.70 per hour to \$3.85 per hour. Therefore, the maximum tip credit will be changing from \$3.70 per hour to \$3.85 per hour ( $\$3.85 + \$3.85 = \$7.70$ ).

### **Oregon:**

The Oregon state minimum wage will rise to \$8.80 per hour effective January 1, 2012. The 30-cent increase mirrors a 3.77% increase in the Consumer Price Index since August 2010. Oregon's minimum wage rate is currently \$8.50 per hour.

### **Washington**

The Washington minimum wage will be changing from \$8.67 per hour to \$9.04 per hour effective January 1, 2012.

No tipped employee minimum hourly rate - tipped employees must be paid a direct (cash) wage of \$9.04 per hour as Washington does not recognize the tip credit.

As of January 1, 2012, the Training/Youth Wage Rate will be changing from \$7.3695 per hour to \$7.684 per hour (remains at 85% of minimum wage rate).

## SEATTLE ENACTS PAID SICK TIME ORDINANCE

On September 23, 2011, Seattle Mayor, Mike McGinn signed into law the Seattle Paid Sick Time and Paid Safe Time Ordinance (Ordinance). As a result, effective September 1, 2012, nearly all private sector employers must provide to employees who work in the City of Seattle specified amounts of accrued, job-protected paid time off for personal illness, family care and other purposes.

### Summary:

Every private sector employer that employs more than four employees is required to meet the requirements of the Ordinance if at least one of the employees performs work in within the city limits of Seattle. All employees who perform their work in Seattle are covered, including part-time, casual and temporary employees. Covered employees include those who do work in Seattle only occasionally, if they perform more than 240 hours of work within Seattle during a calendar year.

An eligible employee may begin to use accrued paid time commencing with the employee's 180th calendar day of employment (both inside and outside Seattle) with an employer subject to the Ordinance. It is important to note that the Ordinance does not require an employer to pay to employees as wages any unused paid time remaining at the time of an employee's separation of employment.

The Ordinance allows the paid time to be used for both "sick time" and "safe time" purposes. Sick time involves an employee's own illness or medical care, or time for the employee to care for a "family or household member" who is ill or requires medical care. Safe time involves an employee's absence due to a business closure caused by a public hazard, a school closure caused by a public hazard that affects the employee's child, or domestic violence affecting either the employee, or a family or household member of the employee."

The Ordinance defines "family or house member as follows:

spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have had dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

The minimum amount of leave accruals are determined by employer size and are based on an employee's hours worked. Employers may impose caps on an employee's usage

and year-end carry over of accrued paid time, which vary depending on the employer's size. The accrual rates and caps under the Ordinance are as follows:

	Number of Employees (Prior Calendar Year) (Regardless of Location)	Accrual Rate	Annual Caps (Usage and Carry Over)
Tier 3	250 or more FTEs	1 hour per 30 hours of work (about 9 days per year for full time)	72 hours (9 days); 108 hours (13.5 days) for PTO programs
Tier 2	50 or more FTEs	1 hour per 40 hours of work (about 7 days per year for full time)	56 hours (7 days)
Tier 1	More than 4 FTEs	1 hour per 40 hours of work (same as Tier 2)	40 hours (5 days)
Exempt	4 or fewer FTEs	Exempt	Exempt

For a copy of the Ordinance, please click on the link provided below.

<http://clerk.seattle.gov/~scripts/nph-brs.exe?d=ORDF&s1=117216.cbn.&Sect6=HITOFF&l=20&p=1&u=/~public/cbory.htm&r=1&f=G>

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**\*\*Please note that the information provided in this document is current as of the date it is originally published.\*\***