

Tech Flex

Topics Covered in this Issue:

Benefits:

- More Guidance on Cost of Coverage Reporting on Forms W-2 Released
- IRS Issues 2011 Version of Publication 502

Payroll:

- Social Security 4.2% Tax Rate Extended for Two Months
- IRS Releases 2012 Publication 15
- 2012 Version of Publication 15-B Issued
- 2012 Form W-2 and Instructions Released
- California Releases Wage Theft Prevention Act Guidance
- Colorado Increases Minimum Wage Effective January 1, 2012



MORE GUIDANCE ON COST OF COVERAGE REPORTING ON FORMS W-2 RELEASED

On January 3, 2012, the Internal Revenue Service (IRS) released Notice 2012-09 providing further guidance on employer requirements regarding the obligation to report the cost the coverage on Forms W-2.

By way of background, Section 9002 of the Patient Protection and Affordable Care Act (PPACA) requires employers to report the total cost of employer-provided health coverage excludable from gross income on an employee's Form W-2, effective for tax years beginning after December 31, 2010, e.g. on Form W-2 for tax years beginning on or after January 1, 2011 filed in 2012. The IRS previously issued guidance that generally provides that the cost of coverage will be determined by calculating the applicable premiums under the rules for Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage without regard to the 2% administration fee. This means that the amount reported will incorporate both the employer and employee share of the premium.

On October 12, 2010, the IRS announced via Notice 2010-69 that reporting the cost of coverage under an employer-sponsored group health plan on Forms W-2 will not be mandatory for Forms W-2 issued for 2011 stating that "this relief is appropriate to provide employers with additional time to make any necessary changes to their payroll systems or procedures in preparation for compliance with the reporting requirement. The Treasury Department and the IRS anticipate issuing guidance on the reporting requirement set forth in § 6051(a)(14) before the end of this year." Consequently, the reporting of the cost of employer provided coverage is generally required for tax years commencing on and after January 1, 2012. **Therefore, employers are not required to report the cost of health care coverage on any forms required to be furnished to employees prior to January 31, 2013.**

Notice 2012-09 restates and amends the interim guidance on informational (Form W-2) reporting to employees of the cost of their employer-sponsored group health plan coverage initially released on March 29, 2011 via Notice 2011-28. **Notice 2012-09 (as did Notice 2011-28) clarifies the following:**

"This reporting to employees is for their information only. The reporting is intended to inform them of the cost of their health coverage, and does not cause excludable employer-provided health care coverage to become taxable. Nothing in § 6051(a)(14), this notice, or the additional guidance that is contemplated under § 6051(a)(14), causes or will cause otherwise excludable employer-provided health care coverage to become taxable."

For more information on Notice 2011-28 please see the April 2011 Tech Flex by clicking on the link provided below and locating the article titled “IRS Releases Further Guidance on Cost of Coverage Form W-2 Reporting.”

http://westnsc.adp.com/fsa%5Fcobra/tf/Tech_Flex_Newsletter_April_2011.pdf

Notice 2012-09

Some of the highlights regarding the modifications made to Notice 2011-28 by Notice 2012-09 are as follows.

- Modifies Q&A-3 to clarify the application of the interim relief from the reporting requirement for employers filing fewer than 250 Forms W-2 for the preceding calendar year. In addition, until further guidance is issued, the reporting requirement will not apply to tribally chartered corporations wholly owned by Federally recognized Indian tribal governments.
- Modifies Q&A-7 to clarify the application of the reporting requirement to certain related employers not using a common paymaster. Specifically, “if the employers are related employers as defined under Code § 3121(s) but do not compensate an employee that is concurrently employed with a common paymaster, then with respect to that employee, the related employers may either report the entire aggregate reportable cost on one of the Forms W-2 provided to the employee, or allocate the aggregate reportable cost among the employers that concurrently employ the employee using any reasonable method of allocation.”
- Modifies Q&A-20 to clarify that the standard for determining whether coverage under a dental plan or vision plan is subject to the reporting requirement is based upon the same standard for determining whether the coverage is subject to the rules set forth in the regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- Q&A 32 provides that employers are not required to include the cost of coverage under an employee assistance program (EAP), wellness program, or on-site medical clinic in the reportable amount if the employer does not charge a premium with respect to that type of coverage provided under COBRA to a qualifying beneficiary.
- Q&A 35 clarifies how to calculate the reportable amount if an employer is provided notice after December 31 of a calendar year of events that occurred on or before December 31 of a calendar year that affect the prior year’s coverage, such as an employee providing an employer notice of a divorce or other change in family status that occurred during a prior calendar year.

- Q&A 36 clarifies how to calculate the reportable amount where coverage extends over the payroll period including December 31. The guidance provides three methods for reporting in situations where the coverage period includes December 31 but continues into the subsequent calendar year and stipulates that “whichever method the employer uses must be applied consistently to all employees.”

For a copy of Notice 2012-09, please click on the link provided below.

<http://www.irs.gov/pub/irs-drop/n-12-09.pdf>

IRS ISSUES 2011 VERSION OF PUBLICATION 502

The Internal Revenue Service (IRS) has released the latest version of Publication 502, which describes what medical expenses are deductible by taxpayers on their 2011 federal income tax returns. (Under Code Section 213(a), a taxpayer may claim a deduction for certain unreimbursed medical expenses to the extent they exceed 7.5% of the taxpayer's adjusted gross income.) Substantive changes in relation to health flexible spending accounts, health reimbursement arrangements and health savings accounts include the following:

Breast Reconstruction Surgery - This entry has been revised to clarify that breast prostheses following mastectomies for cancer can be included as medical expenses.

Guide Dogs/Service Animals - Publication 502 now provides that costs incurred in maintaining the service animal's "health and vitality" so that it may perform its duties (e.g., food, grooming, and veterinary care) are medical expenses.

Hearing Aids - This entry now notes that repairs and maintenance needed to operate a hearing aid can be included as medical expenses.

Nursing Services - An example has been added to this entry, showing how to allocate an attendant's fee between nursing and household services in determining what constitutes includible medical expenses.

Other Provisions - Provisions regarding health insurance costs for self-employed persons and the health coverage tax credit (HCTC) have been updated and clarified. Relevant dollar amounts (e.g., the standard mileage rate for use of an automobile to obtain medical care) have also been revised to reflect their 2011 inflation-adjusted values.

For a copy of Publication 502 (Medical and Dental Expenses (for 2011 Returns), please click on the link provided below:

<http://www.irs.gov/pub/irs-prior/p502--2011.pdf>

PLEASE NOTE: Publication 502 is used to figure personal income tax deductibility. It is used only as a guide in determining what may or may not be reimbursable under a Section 125 health FSA. Important differences exist. For example, insurance premiums may be tax deductible but they are not reimbursable under a health FSA. Conversely, over-the-counter medications may be reimbursable under a health FSA but are not tax deductible.

SOCIAL SECURITY 4.2% TAX RATE EXTENDED FOR TWO MONTHS

On December 23, 2011, President Obama signed into law, the Temporary Payroll Tax Cut Continuation Act of 2011 (H.R. 3765), extending the 2011 4.2% Social Security tax withholding rate for employees to wages paid after December 31, 2011 and before March 1, 2012. The rate had been scheduled to revert back to 6.2% for wages paid on or after January 1, 2012. The Internal Revenue Service (IRS) released the following communication addressing the extension via IR-2011-124.

IRS IR-2011-124 provides in part:

“Payroll Tax Cut Temporarily Extended into 2012

Employers should implement the new payroll tax rate as soon as possible in 2012 but not later than January 31, 2012. For any Social Security tax over-withheld during January, employers should make an offsetting adjustment in workers' pay as soon as possible but not later than March 31, 2012.

Under the terms negotiated by Congress, the law also includes a new “recapture” provision, which applies only to those employees who receive more than \$18,350 in wages during the two-month period (the Social Security wage base for 2012 is \$110,100, and \$18,350 represents two months of the full-year amount calculated by $\$110,100/12 = \$9,175 \times 2 = \$18,350$). This provision imposes an additional income tax on these higher-income employees in an amount equal to 2 percent of the amount of wages they receive during the two-month period in excess of \$18,350 (and not greater than \$110,100).

This additional recapture tax is an add-on to income tax liability that the employee would otherwise pay for 2012 and is not subject to reduction by credits or deductions. The recapture tax would be payable in 2013 when the employee files his or her income tax return for the 2012 tax year.

The IRS will issue additional guidance as needed to implement the provisions of this new two-month extension, including revised employment tax forms and instructions and information for employees who may be subject to the new “recapture” provision. For most employers, the quarterly employment tax return for the quarter ending March 31, 2012 is due April 30, 2012.”

For a copy of H.R. 3765, please click on the link provided below.

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr3765enr/pdf/BILLS-112hr3765enr.pdf>

For additional information on the extension, please see the ADP “Eye on Washington” by clicking on the link provided below:

<http://www.adp.com/tools-and-resources/legislative-updates.aspx>

IRS RELEASES 2012 PUBLICATION 15

The Internal Revenue Service has released the 2012 Publication 15 commonly known as Circular E - Employer's Tax Guide. Publication 15 explains the tax responsibilities of an employer in relation to withholding, depositing, reporting, paying and correcting employment taxes.

The 2012 version of Publication 15 has no major changes to that of the 2011 version; however, below are a few of the statements made in the 2012 “What’s New” Introduction.

Future developments - The IRS has created a page on IRS.gov for information about Publication 15 (Circular E), at www.irs.gov/pub15. Information about any future developments affecting Publication 15 (Circular E) (such as legislation enacted after we release it) will be posted on that page.

Social security and Medicare tax for 2012 - The employee tax rate for social security is 4.2% on wages paid and tips received before March 1, 2012. The employee tax rate for social security increases to 6.2% on wages paid and tips received after February 29, 2012. The employer tax rate for social security remains unchanged at 6.2%. The social security wage base limit is \$110,100. The Medicare tax rate is 1.45% each for the employee and employer, unchanged from 2011. There is no wage base limit for Medicare tax. Employers should implement the 4.2% employee social security tax rate as soon as possible, but not later than January 31, 2012. After implementing the 4.2% rate, employers should make an offsetting adjustment in a subsequent pay period to correct any overwithholding of social security tax as soon as possible, but not later than March 31, 2012. Social security and Medicare taxes apply to the wages of household

workers you pay \$1,800 or more in cash or an equivalent form of compensation. Social security and Medicare taxes apply to election workers who are paid \$1,500 or more in cash or an equivalent form of compensation.

At the time this publication was prepared for release, the rate for the employee's share of social security tax was 4.2% and scheduled to increase to 6.2% for wages paid after February 29, 2012. However, Congress was discussing an extension of the 4.2% employee tax rate for social security beyond February 29, 2012. Check for updates at www.irs.gov/pub15.

2012 withholding tables - This publication includes the 2012 Percentage Method Tables and Wage Bracket Tables for Income Tax Withholding.

VOW to Hire Heroes Act of 2011 - On November 21, 2011, the President signed into law the VOW to Hire Heroes Act of 2011. This new law provides an expanded work opportunity tax credit to businesses that hire eligible unemployed veterans and, for the first time, also makes part of the credit available to tax-exempt organizations. Businesses claim the credit as part of the general business credit and tax-exempt organizations claim it against their payroll tax liability. The credit is available for eligible unemployed veterans who begin work on or after November 22, 2011, and before January 1, 2013. More information about the credit against a tax-exempt organization's payroll tax liability will be available early in 2012 at www.irs.gov/form5884c.

FUTA tax rate - The FUTA tax rate is 6.0% for 2012.

For a copy of the 2012 Publication 15, please click on the link provided below:

<http://www.irs.gov/pub/irs-pdf/p15.pdf>

2012 VERSION OF PUBLICATION 15-B ISSUED

The 2012 version of Publication 15-B has been released by the Internal Revenue Service. This publication which is a supplement to Publication 15 discussed in the previous article is a useful reference for employers on the tax treatment of fringe benefits. Specifically, it contains information for employers on the employment tax treatment of various fringe benefits, including accident and health coverage, adoption assistance, company cars and other employer-provided vehicles, dependent care assistance, educational assistance, employee discount programs, group-term life insurance, moving expense reimbursements, health savings accounts (HSAs), and transportation benefits. It is important to note that Publication 15-B uses the term "employment taxes" to refer to federal income tax withholding as well as Social Security and Medicare (FICA) and federal unemployment (FUTA) taxes.

The 2012 version of Publication 15-B is substantially similar to the 2011 version. However, below are a few of the statements made in the 2012 “What’s New” Introduction.

Future developments -The IRS has created a page on IRS.gov for information about Publication 15-B, at www.irs.gov/pub15b. Information about any future developments affecting Publication 15-B (such as legislation enacted after we release it) will be posted on that page.

Employer-provided cell phones - The value of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee’s income as a working condition fringe benefit. Personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee’s income as a de minimis fringe benefit.

Cents-per-mile rule - The business mileage rate for 2012 is 55.5 cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle, and under certain conditions, you may use the rate under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee.

Qualified parking exclusion and commuter transportation benefit - For 2012, the monthly exclusion for qualified parking is \$240 and the monthly exclusion for commuter highway vehicle transportation and transit passes is \$125.

For a copy of the 2012 version of Publication 15-B, please click on the link provided below:

<http://www.irs.gov/pub/irs-pdf/p15b.pdf>

CALIFORNIA RELEASES 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). Effective 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.

California has now released a written notice template and frequently asked questions in relation to the notice template.

Written Notice Template

As part of the Act, the California Labor Commissioner was required to prepare and make available to employers a template that complies with the requirements of the notice. The California Wage Notice template has now been released and can be located on the link provided below.

http://www.dir.ca.gov/dlse/LC_2810.5_Notice.pdf

In addition, copies of Wage Notice template in Vietnamese, Chinese, Korean, Spanish and Tagalog may be located on the link found below.

http://www.dir.ca.gov/dlse/Governor_signs_Wage_Theft_Protection_Act_of_2011.html

Written Notice Template Frequently Asked Questions

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. Here is a sampling of the FAQs:

FAQ # 2 states:

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.

FAQ # 6 states:

6. Do I have to use the Labor Commissioner's template?

A: No, employers can develop their own notices so long as they contain all the information required by the law, including all the information requested on DLSE's template. The template includes all required information, including that which the Labor Commissioner deems material and necessary for purposes of the notice. Employers should keep a record of the notices provided to their employees.

FAQ # 10 states:

10. What if a worker refuses to sign the notice?

A: The employer should still give the notice to the worker and note the worker's refusal on its copy of the notice. A worker's signature on the notice merely constitutes acknowledgement of receipt. In accordance with an employer's general recordkeeping

requirements under the law, it is the employer's obligation to ensure that the employment and wage-related information provided on the notice is accurate and complete. Furthermore, a worker's signature acknowledging receipt of the notice does not constitute a voluntary written agreement between the employer and employee to credit any meals or lodging against the minimum wage. Any such voluntary written agreement (as required under the law) must be evidenced by a separate document.

A copy of all 15 FAQ's can be located by clicking 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 Tech Flex (link provide below).

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

COLORADO INCREASES MINIMUM WAGE EFFECTIVE JANUARY 1, 2012

Effective January 1, 2012, Colorado's minimum wage will increase to \$7.64 per hour, up from the 2011 rate of \$7.36 per hour. The tipped employee wage will rise to \$4.62 per hour, up from the current \$4.34 per hour.

The training/youth wage rate will rise to \$6.49 per hour; 85% of \$7.64 per hour (from \$6.26 per hour; 85% of \$7.36 per hour). However, the maximum tip credit remains at \$3.02 per hour. ($\$4.62 + \$3.02 = \7.64).

*Please contact ADP National Account Services for further information at:
20700 44th Ave. West Suite 600 Lynnwood, WA 98036
Phone: (425) 415-4800 Fax: (425) 482-4527*

ADP National Account Services does not make any representation or warranty that the information contained in this newsletter, when used in a specific and actual situation, meets applicable legal requirements. This newsletter is provided solely as a courtesy and should not be construed as legal advice. The information in this newsletter represents informational highlights and should not be considered a comprehensive review of legal and compliance activity. Your legal counsel should be consulted for updates on law and guidance that may have an impact on your organization and the specific facts related to your business.

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