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ADP National Account Services
Outsourcing for HR, Benefits and Payroll

Tech Flex

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ESSENTIALS

HCTC PROVISIONS EXTENDED THROUGH DECEMBER 2013

On October 21, 2011, President Obama signed into law the Trade Adjustment Assistance Extension Act of 2011 (HR 2832). HR 2832 extends the Health Coverage Tax Credit (HCTC) through December 2013 and **retroactively increases this credit for trade-displaced workers from 65% to 72.5% "for coverage months beginning prior to February 13, 2011."**

By way of background, the provisions of the American Recovery and Reinvestment Act of 2009 (ARRA), enacted into law on February 17, 2009, included changes to the Health Care Coverage Tax Credit (HCTC) as contained in the Trade Adjustment Act of 2002 (TAA). Specifically, the ARRA changed the TAA and HCTC to include an increased tax credit amount, an expanded definition of eligible individual and qualified health insurance and also extended the length of coverage under COBRA for certain HCTC eligible individuals through 2010. Effective May 1, 2009, through the end of 2010, the HCTC premium subsidy to purchase qualified health insurance increased from 65% to 80%. In December of 2010, legislation was enacted to extend the 80% HCTC subsidy through February 12, 2011. However, the credit reverted back to 65% as of February 13, 2011.

In addition to the increased amount of HCTC subsidy, HR 2832 reinstates a requirement giving eligible trade-displaced workers a second opportunity to elect COBRA continuation coverage if they failed to do so during their first 60-day election period. Under the reinstated COBRA provisions, Trade Adjustment Assistance (TAA) eligible individuals may keep COBRA until TAA eligibility is lost, and Pension Benefit Guaranty Corporation (PBGC) eligible individuals may keep COBRA coverage for life. However, the HR 2832 COBRA duration requirements will expire at the end of 2013 if not extended by future legislative action. If no extension is provided, TAA and PBGC eligible individuals will be subject to the normal limits on coverage periods effective January 1, 2014.

For a copy of HR 2832, please click on the link provided below.

http://www.gpo.gov/fdsys/pkg/BILLS-112hr2832enr/pdf/BILLS-112hr2832enr.pdf

For more information on the HCTC, please click the IRS HCTC website link below.

http://www.irs.gov/individuals/article/0,,id=109960,00.html

IMPLEMENTATION OF CLASS ACT SUSPENDED

On Friday, October 14, 2011, the United States Department of Health and Human Services (HHS) announced an indefinite delay in the implementation of the Community Living Assistance Services and Supports Act (CLASS Act).

Originally passed as part of the Patient Protection and Affordable Care Act (PPACA or ACA), this plan would have paid between $50 and $100 per day to those utilizing long-term care resources. Long-term care resources are not medical in nature. Instead, they are comprised of costs incurred because of an inability to perform daily living functions (e.g. eating, bathing, dressing, cleaning, etc.). The program was required to be self-sustaining for 75 years and funded through voluntary contributions from employees. Under the statute, HHS was required to release regulations "not later than October 1, 2012" to address the specifics of the long-term care insurance program including premium rates, enrollment procedures and the employer and employee roles.

Under the CLASS Act provision, no tax dollars were to be used to support this program.

Kathy Greenlee, CLASS Administrator, identified uncertainty surrounding the programs self-sustainability as the reason for the indefinite delay. In her memorandum to HHS Secretary Kathleen Sebelius, Ms. Greenlee outlines the uncertainties related to the program. Two main uncertainties exist:

1. The accuracy of the actuarial predictions concerning solvency of program.

2. Impact on those individuals who have paid into the program if the program later becomes insolvent.

In addition, the report noted that the benefits offered under the statute are less than those offered in the private market with a cost ranging from $235 to $3,000 per month depending on the health of those who participate. Because the law requires that health factors not be considered in order to participate, there is a high risk of adverse selection, Greenlee noted. Adverse selection occurs when healthier individuals choose not to participate in a program because less expensive options are available to the healthy leaving only the less healthy individuals to participate in the program. This causes costs for the program to be higher.

For a copy of Secretary Sebelius' letter to Congress regarding the CLASS Act, please click on the link provided below.

http://www.hhs.gov/secretary/letter10142011.html

IRS ANNOUNCES 2012 TRANSIT AND PARKING BENEFIT LIMITS

On October 20, 2011, the Internal Revenue Service (IRS) issued Revenue Procedure 2011-52 announcing the 2012 limits for transportation benefits. **The combined transit pass/vanpooling limit in 2012 will be $125 per month. The qualified parking limit in 2012 will be $240 month.**

In its announcement, the IRS stated:

"The monthly limit on the value of qualified transportation benefits exclusion for qualified parking provided by an employer to its employees for 2012 rises to $240, up $10 from the limit in 2011. However, the temporary increase in the monthly limit on the value of the qualified transportation benefits exclusion for transportation in a commuter highway vehicle and transit pass provided by an employer to its employees expires and reverts to $125 for 2012."

For a copy of Revenue Procedure 2011-52 please click on the link below:

http://www.irs.gov/pub/irs-drop/rp-11-52.pdf

PENSION PLAN LIMITATIONS FOR 2012 ANNOUNCED

On October 20, 2011, the Internal Revenue Service (IRS) announced cost of living adjustments applicable to dollar limitations for pension plans and other items for tax year 2012.

Per the IRS Release:

"The Internal Revenue Service today announced cost of living adjustments affecting dollar limitations for pension plans and other retirement-related items for Tax Year 2012. In general, many of the pension plan limitations will change for 2012 because the increase in the cost-of-living index met the statutory thresholds that trigger their adjustment. However, other limitations will remain unchanged."

A summary of the 2012 pension limitations is provided below.

Plan Maximum Contribution Limits	2011	2012
Section 401(k) Plan or SAR-SEP	$16,500	$17,000
Section 403(b) Plan	$16,500	$17,000
Section 408(p)(2)(A) SIMPLE Plan Contributions	$11,500	$11,500
Section 457(e)(15) Limit	$16,500	$17,000
Section 415 Limit for: Defined Contribution Plans Defined Benefit Plans	 $49,000 $195,000	 $50,000 $200,000
Highly Compensated Employees: Section 414(q)	 $110,000	 $115,000
Key Employee Section 416(i)(1)(A)(i)	 $160,000	 $165,000
Control Employee Compensation: Section 1.61-21(f)(5)(i) fringe benefit Section 1.61-21(f)(5)(iii)	 $95,000 $195,000	 $100,000 $205,000
Includible Compensation – Sec. 401(a)(17) SEP Compensation SEP Earnings Threshold	$245,000 $245,000 $550	$250,000 $250,000 $550
Limited Governmental Plans (pre 7/1/93)	$360,000	$375,000
Employee Stock Ownership Plan - Sec. 409 Max. to lengthen 5-year distribution	$985,000 $195,000	$1,015,000 $200,000

The dollar limitation under Section 414(v)(2)(B)(i) for catch-up contributions to an applicable employer plan other than a plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over remains unchanged at $5,500. The dollar limitation under Section 414(v)(2)(B)(ii) for catch-up contributions to an applicable employer plan described in Section 401(k)(11) or Section 408(p) for individuals aged 50 or over remains unchanged at $2,500.

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

http://www.irs.gov/newsroom/article/0,,id=248482,00.html

IRS RELEASES 2011 FORM 2441

The Internal Revenue Service (IRS) has released Form 2441 (Child and Dependent Care Expenses) and its accompanying instructions for the 2011 tax year. Form 2441 is used by taxpayers for two purposes. Taxpayers file it with Form 1040 to determine the amount of their available dependent care tax credit (DCTC). In addition, Section 125 cafeteria plan dependent care spending account (DCSA) participants must file the form with Form 1040 to support the income exclusion they receive in relation to DCSA reimbursements.

The expenses that can be used to calculate the DCTC for the 2011 tax year are limited to $3,000 for one qualifying individual and $6,000 for two or more. However, these limits are reduced by the amount of any DCSA reimbursements for the year. Employees who exclude $5,000 of DCSA reimbursements for 2011 (the maximum exclusion for married taxpayers filing jointly) can still take a partial DCTC based on up to $1,000 of their 2011 dependent care expenses that exceed $5,000 if they have two or more qualifying individuals and meet other DCTC requirements.

The 2011 Form 2441 and its instructions are substantially similar to the 2010 versions. However, a few minor changes have been made to the 2011 instructions. For example, further clarification has been added regarding the circumstances under which a married person filing separately can claim the DCTC. There is also a reminder that DCSA participants who are also claiming the DCTC must complete lines 27–31 of Form 2441.

For a copy of the 2011 Form 2441 and Instructions, please click on the links provided below.

Form 2441

http://www.irs.gov/pub/irs-pdf/f2441.pdf

Form 2441 Instructions

http://www.irs.gov/pub/irs-pdf/i2441.pdf

IRS ANNOUNCES 2012 SOCIAL SECURITY WAGE BASE

The Social Security Administration (SSA) announced on October 19, 2011, that the **2012 social security wage base will be $110,100.** This is an increase of $3,300 from the wage base of $106,800 that has been in effect for the past three years. As in prior years, there is no limit to the wages subject to the Medicare tax; therefore all covered wages are still subject to the 1.45% tax.

NOTE: For 2011, the Federal Insurance Contributions Act (FICA) tax rate was 6.2% for employers and as a result of the Tax Relief Act of 2010, 4.2% for employees. The employee rate reduction was provided through the end of 2011. The employee rate is scheduled to revert back to 6.2% in 2012. There are various proposals currently under consideration in Congress that would reduce the FICA rate for 2012 below the 6.2% for both employers and employees. However, should Congress take no action, the 2012 FICA rate will be 6.2% for both employees and employers.

For a copy of the SSA Announcement, please click on the link provided below:

http://www.ssa.gov/OACT/COLA/cbb.html

RECENTLY ENACTED HCTC PROVISIONS IMPACT NEW HIRE REPORTING

As noted in the article titled “HCTC Provisions Extended through December 2013”, the health care tax credit (HCTC) under the Trade Assistance Act (TAA) was extended and the amount of the subsidy increased to 72.5%.

HR 2832 also impacts the reporting of rehired employees to the Directory of New Hires. Specifically, effective April 21, 2012, the definition of a “newly hired” employee was clarified to include an employee who was previously employed by the employer “but has been separated from such prior employment for at least 60 consecutive days.”

By way of background, starting in 1997, employers have been required to report information in relation to newly hired and rehired employees to state new hire directories. The state agency in turn provides the information to the National Directory of New Hires who utilizes the data to facilitate the collection of child support and/or to uncover fraud and abuse in unemployment compensation, worker’s compensation, and public assistance programs.

WISCONSIN CONFORMS TO AMENDED INTERNAL REVENUE CODE

On November 4, 2011 Governor Scott Walker signed into law Wisconsin Senate Bill 203 (SB 203) that federalizes the Wisconsin income tax treatment of employer-provided health insurance benefits for non-dependent adult children who have not attained the age of 27 by the end of the calendar year (December 31). The law is retroactive for Wisconsin to January 1, 2011.

The Wisconsin Department of Revenue stated the following in a press release regarding the enactment of SB 203.

> "Today, the Governor signed legislation to simplify Wisconsin's state income tax law. This change is retroactive to January 1, 2011. Employers no longer need to add the fair market value for the health insurance benefit to an employee's income, and parents will not need to report the additional income on their state income tax return. To receive this income tax benefit, the child must be younger than age 27 on December 31st.

For a copy of the entire press release on the signing, please click on the link provided below.

http://www.revenue.wi.gov/news/20111107_01.pdf

For a copy of Wisconsin Senate Bill 203 as enacted, please click on the link provided below.

https://docs.legis.wisconsin.gov/2011/related/enrolled/sb203

CALIFORNIA ENACTS WAGE THEFT PROTECTION ACT

California Governor Edmund G. Brown Jr. recently signed 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.

Employers are required to notify employees in writing of any changes to the information within seven calendar days after the time of the changes, unless the changes are reflected on a timely wage statement or notice of the changes is made in another writing required by law within seven days of the changes.

It is important to note that no notice is required for an employee who is employed by the state or any of its subdivisions, exempt from the payment of overtime, or covered by a collective bargaining agreement containing specified information.

The California Labor Commissioner is required to create and make available to employers a template that complies with the requirements of the notice and it is anticipated that the template along with additional employer guidance (e.g. frequently asked questions) will be available by mid-December of 2011.

The measure also adds new law requiring minimum penalties for failure to comply with wage-related statutes and regulations.

In addition to these changes, the Act requires employers who pay employees less than the minimum wages to pay affected employees restitution of wages in addition to any civil penalties owed. It will also be a misdemeanor if an employer willfully violates specified wage statutes or orders, or willfully fails to pay a final court judgment or final order of the Labor Commissioner for wages due.

For a copy of the California Wage Theft Prevention Act, please click on the link provide below.

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0451-0500/ab_469_bill_20111009_chaptered.pdf.)

INDIANA MODIFIES TAX CODE

The General Assembly of the State of Indiana enacted House Enrolled Act No. 1001 to modify the definition of "adjusted gross income", as defined in the Internal Revenue Code (IRC), for individuals subject to Indiana State Income Tax (SIT), **retroactive to January 1, 2011.**

IRC Section 127 excludes a specified amount of employer provided Education Assistance expenses from employee federal taxable wages. House Enrolled Act No. 1001 disallows this exclusion for Indiana SIT. Consequently, the current annual Federal Income Tax (FIT) exclusion amount of $5,250 is considered taxable income in the State of Indiana.

House Enrolled Act No. 1001 also disallows a portion of the federal exclusion for employees' monthly transportation expenses. Currently, the IRC permits an exclusion of $230 per month **(reduced to $125 in 2012)** for combined commuter highway vehicle transportation and transit passes. Per House Enrolled Act No. 1001, transportation expenses in excess of $100 are now considered taxable income for purposes of SIT.

Transportation expenses are defined as: "Transportation in a commuter highway vehicle if such transportation is in connection with travel between the employee's residence and place of employment and any transit pass."

NOTE: The modification to Indiana adjusted gross income does NOT pertain to parking or bicycling commuter benefits. The $100 monthly exclusion limit applies

to both employer contributions AND employee salary reduction amounts for the purchase of transportation benefits.

As a result of the enactment of House Enrolled Act No. 1001, IC 6-3-1-3.5 is amended to read in part as follows:

"[EFFECTIVE JANUARY 1, 2011 (RETROACTIVE)]: Sec. 3.5. When used in this article, the term "adjusted gross income" shall mean the following:

39) Add the amount excluded from gross income under Section 127 of the Internal Revenue Code as annual employer provided education expenses.

(41) Add the monthly amount excluded from gross income under Section 132(f)(1)(A) and 132(f)(1)(B) that exceeds one hundred dollars ($100) a month for a qualified transportation fringe.

For a copy House Enrolled Act No. 1001, please click on the link proved below.

http://www.in.gov/legislative/bills/2011/HE/HE1001.1.html

CALIFORNIA AMENDS OVERTIME EXEMPTIONS

In accordance with the provisions of the California Labor Code, the California Department of Labor has adjusted the computer software employees' and licensed physicians and surgeons employee's minimum hourly rate of pay overtime exemption.

Computer Software Employees:

Effective January 1, 2012, the computer software employee's minimum hourly rate of pay exemption has been adjusted from $37.94 to $38.89. The minimum monthly salary exemption has been modified from $6,587.50 to $6,752.19 and the minimum annual salary exemption has been adjusted from $79,050.00 to $81,026.25. Labor Code Section 515.5 provides that certain computer software employees are exempt from the overtime requirements stipulated in California Labor Code Section 510 if certain criteria are met. One of the criteria is that the employee's hourly rate of pay is not less than the statutorily specified rate.

The computer software employee's memorandum from the California Department of Labor can be found by clicking on the link provided below.

http://www.dir.ca.gov/dlsr/ComputerSoftware.pdf

Licensed Physicians and Surgeons Employees

Effective January 1, 2012, California has adjusted the licensed physicians and surgeons employee's minimum hourly rate of pay exemption from $69.13 to $70.86. California Labor Code Section 515.6 provides that certain licensed physicians and surgeons are exempt form the overtime requirements stipulated in Labor Code Section 510 if certain criteria are met. One of the criteria is that the employee's hourly rate of pay is not less than $55.00, effective January 1, 2002, adjusted annually for inflation. California last adjusted the rate effective January 1, 2009.

The licensed physicians and surgeons employee's memorandum from the California Department of Labor can be found by clicking on the link provided below.

http://www.dir.ca.gov/dlsr/Physicians.pdf

VARIOUS STATES INCREASE MINIMUM WAGE

The states of Arizona, Florida and Vermont have announced an increase to their respective minimum wages effective January 1, 2012.

Arizona:

Effective January 1, 2012, the Arizona minimum wage will be changing from $7.35 per hour to $7.65 per hour.

The tipped employee minimum hourly rate will be changing from $4.35 per hour to $4.65 per hour in direct (cash) wages. Therefore, the maximum tip credit will remain at $3.00 per hour. ($4.65 + $3.00 = $7.65).

Florida:

The Florida minimum wage rate, effective January 1, 2012, will be changing from $7.31 per hour to $7.67 per hour.

The tipped employee minimum hourly rate will be changing from $4.29 per hour to $4.65 per hour. Therefore, the maximum tip credit will remain at $3.02 per hour. ($3.02 + $4.65 = $7.67).

The training/youth Wage will remain at $4.25 per hour.

Vermont:

Effective January 1, 2012, the Vermont minimum wage will be changing from $8.15 per hour to $8.46 per hour.

The tipped employee minimum hourly rate will be changing from $3.95 per hour to $4.10 per hour in direct (cash) wages. Therefore, the maximum tip credit will be changing from $4.20 per hour to $4.36 per hour. ($4.10 + $4.36 = $8.46).

FEDERAL DOMESTIC VIOLENCE LEAVE ACT INTRODUCED

Representative Lynn Woolsey (D-CA) introduced the Domestic Violence Leave Act (H.R. 3151), legislation that would allow employees to take leave under the Family and Medical Leave Act (FMLA) to address acts of domestic violence, sexual assault and stalking aimed at themselves, a spouse (including domestic partner and same-sex spouse), parent or child.

Under HR 3151, FMLA would be expanded to permit an employee to use leave to seek medical attention for injuries; obtain legal assistance or remedies; participate in a legal proceeding; attend support groups or therapy; and participate in safety planning, among other related activities held during work hours. An employee would be able to substitute paid leave for the leave provided under this bill. An employer would be entitled to seek certification that the employee is legitimately taking FMLA leave for the reasons outlined in the measure, but would be required to keep such information confidential. In lieu of such written documentation as police reports or witness statements, an employee would be able to satisfy the certification requirement by providing a written statement describing the reason for taking leave.

For a copy of HR 3151, please click on the link provided below.

http://www.govtrack.us/congress/bill.xpd?bill=h112-3151

CALIFORNIA EXPANDS PREGNANCY DISABILITY LEAVE LAW

October 6, 2011, Governor Jerry Brown signed into law Senate Bill 299 (SB 299) expanding the protections under Section 12945 of California Government Code in relation to pregnancy or childbirth leave.

Prior to the enactment of SB 299, it was unlawful for an employer to discrimination based on sex or disability and prohibits an employer from refusing to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take a leave for a reasonable time of up to 4 months before returning to work. The newly enacted legislation now makes it unlawful for an employer to refuse to maintain and pay for coverage under a group health plan for an employee who takes pregnancy or childbirth leave.

Specifically, effective January 1, 2012, the new law mandates that employers continue health care coverage for up to four months to disabled pregnant employees on the same basis as prior to the employee taking disability leave. SB 299 requires all employers with five or more employees to continue to maintain and pay for health coverage under a group health plan for an eligible female employee who takes Pregnancy Disability Leave (PDL) up to a maximum of four months in a 12-month period. The benefits are at the same level and under the same conditions as if the employee had continued working during the leave period.

Under current law, employers were only required to provide benefits for pregnancy leave to the same extent and for the same length of time as they would for other employees on temporary disability leave. If the employer was covered by the federal Family and Medical Leave Act, it had to provide continuing coverage during the twelve weeks of FMLA leave.

The new law requires group health insurance continuation coverage for all employers with five or more employees regardless of how they treat other temporary disability leaves and regardless of FMLA coverage.

For a copy of SB 299, please click on the link provided below.

http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0251-0300/sb_299_bill_20111006_chaptered.pdf

PHILADELPHIA SICK LEAVE BILL BECOMES LAW

Following a “non action” response from Mayor Michael Nutter, the Philadelphia “21st Century Minimum Wage and Benefits Standard Ordinance” (Bill Number 110557) was enacted and requires certain entities who contract with Philadelphia and whose works are located in Philadelphia to provide full-time employees with paid sick leave. Bill Number 110557, which will take effect July 1, 2012, requires employers to provide full-time employees a minimum of one hour of paid sick time for every 40 hours worked in the city.

Under Bill 110557, the following employers are considered "covered employers" that must comply with the new sick leave provisions:

1. The City of Philadelphia, including all of its agencies, departments and offices.

2. For-profit service contractors, which receive or are subcontractors on contract(s) for $10,000 or more from the city in a 12-month period, with annual gross receipts of more than $1 million.

3. Nonprofit service contractors, which receive or are subcontractors on contract(s) from the city of more than $100,000 in a 12-month period.

4. Recipients of city leases, concessions or franchises, or subcontractors thereof, which employ more than 25 employees.

5. City financial aid recipients, for which compliance shall be required for a period of five years following receipt of aid.

6. Public agencies that receive contract(s) for $10,000 or more from the city in a 12-month period.

Employees working for city-contracting entity with more than five but fewer than 11 employees may earn up to 32 hours of paid sick time per calendar year, but employees of larger businesses can earn up to 56 hours of paid sick time per calendar year.

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