December 2009, Issue XII

ADP National Account Services
Outsourcing for HR, Benefits and Payroll

Tech Flex

ESSENTIALS

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COBRA PREMIUM SUBSIDY EXTENSION ENACTED INTO LAW

On December 19, 2009, the Department of Defense Appropriations Act of 2010 (HR 3326) was signed into law by President Obama. As a result of the enactment of this legislation, the Consolidated Omnibus Budget and Reconciliation Act (COBRA) premium subsidy provided under the American Recovery and Reinvestment Act of 2009 (ARRA) has been extended. Previously HR 3326 had been passed by United States House of Representatives on December 16th and passed by the United States Senate on December 19th. For more information on the COBRA ARRA premium subsidy provisions, please see the February 2009 Tech Flex [LINK].

Department of Defense Appropriations Act for Fiscal Year 2010 (HR 3326)

Under the original provisions of ARRA, individuals who lost coverage as a result of an involuntary termination occurring anytime from September 1, 2008 through December 31, 2009 and whose first date of COBRA coverage occurred during that same time period were eligible for the COBRA premium subsidy.

The newly enacted provisions stipulate that individuals who lose coverage as a result of an involuntary termination occurring any time from September 1, 2008 through **February 28, 2010** and who have COBRA qualifying event dates during that same time period will now be eligible for the subsidy.

ARRA initially provided that an individual was eligible to receive the COBRA premium subsidy for a period of up to nine months. HR 3326 has now extended the maximum subsidy period another six months to a total of 15 months.

Also as a result of the newly enacted extension, individuals who are eligible for the subsidy at any time on or after October 31, 2009, or who experience a qualifying event due to termination of employment on or after that date must be provided information advising such individuals of the COBRA premium subsidy extensions. These notices must be provided within 60 days of the enactment of HR 3326.

In addition, HR 3326 requires “within the first 60 days of an individual’s transition period” notification to:

- any individual who exhausted his/her nine month COBRA premium subsidy period and who failed to pay the required premium for the following period of coverage (thus losing coverage) of the HR 3326 extension provisions and of the opportunity to retroactively pay premiums at the subsidized rate to reinstate coverage. Under the legislation, an individual described above has "60 days after the date of the enactment… or, if later, 30 days after the date of provision of the notification" to pay the back premiums.

- any individual who exhausted his/her nine month COBRA premium subsidy period and who paid a COBRA premium amount in excess of 35% to maintain coverage of the HR 3326 extension provisions and of the right to a credit or refund in relation to the premium amount paid in excess of 35%.

For a copy of the HR 3326 provisions, please click on the link provided below. The enacted COBRA premium subsidy extension provision is contained in Section 1010.

Department of Defense Appropriations Act for Fiscal Year 2010

Additional House Legislation:

The House has also approved a bill that would further extend the COBRA premium subsidy provisions. Under the "Jobs for Main Street Act" (HR 2847), the premium assistance eligibility period would be extended six months, rather than the two months afforded under HR 3326. Consequently, if enacted into law, individuals who lose coverage as a result of an involuntary termination occurring anytime from September 1, 2008 through **June 30, 2010** and who have COBRA qualifying event dates during that same time period will be eligible for the premium subsidy. **However, the Senate is not expected to consider the HR 2847 legislation until January 2010.**

Jobs for Main-Street Act (HR 2847)

Consistent with the HR 3326 provisions, the enactment of HR 2847 would result in the following:

- an increase in the number of months that an individual is eligible to receive the subsidy from nine to 15;

- a notice requirement to individuals who are eligible for the subsidy at any time on or after October 31, 2009, or who experience a qualifying event due to termination of employment on or after that date, of information relating to the COBRA premium subsidy extensions; and

- notification "within the first 60 days of an individual's transition period" to:

    - any individual who exhausted his/her nine month COBRA premium subsidy period and who failed to pay the required premium for the following period of coverage (thus losing coverage) of the HR 2847 extension provisions and of the opportunity to retroactively pay premiums at the subsidized rate to reinstate coverage. Under the legislation, an individual described above has "60 days after the date of the enactment… or, if later, 30 days after the date of provision of the notification" to pay the back premiums.

    - any individual who exhausted his/her nine month COBRA premium subsidy period and who paid a COBRA premium amount in excess of 35% to maintain coverage of the HR 2847 extension provisions and of the right to a credit or refund in relation to the premium amounts paid in excess of 35%.

In addition, HR 2847 would extend eligibility for the COBRA premium subsidy to those individuals who lose coverage due to a reduction in hours and who subsequently experience an involuntary termination. Neither the original ARRA provisions nor HR 3326 as enacted into law on December 19, 2009 contain such a provision and therefore

only individuals who lose coverage as a result of an involuntary termination are currently subsidy eligible.

For a copy of HR 2847, please click on the link provided below. The COBRA premium subsidy provision is contained in Section 3302.

Jobs for Main Street Act

SENATE HEALTH CARE REFORM UPDATE

On November 21, 2009, the Senate received the 60 votes necessary to merge elements of the health care reform bills previously released by the Senate Finance Committee and the Senate Health, Education, Labor and Pension Committee. As a result, a single bill titled the "Patient Protection and Affordable Care Act (HR 3590) is currently being debated in the Senate. **It is important to note that the information provided below was current as of December 21, 2009. The debate continues in the Senate and it is expected that many of the provisions now contained in HR 3590 may be modified. It has been widely reported that a final vote on HR 3590 will take place in the Senate on December 24, 2009.**

Some of the key provisions in HR 3590 that will, if enacted, impact employers, employees, group health plans, and third party administrators are as follows:

Health Insurance Market Reforms

These provisions, if enacted, will apply to both fully-insured and self insured group health plans and would generally be effective for plan years beginning on or after January 1, 2014.

- Preexisting condition and/or limitations eliminated.
- Waiting periods in excess of 90 days prohibited.
- Health status based discrimination not allowed.

- Deductibles may not exceed $2,000 for single and $4,000 family coverage as indexed for inflation.

Individual Responsibility

Effective January 1, 2014, individuals who do not enroll in qualifying coverage, including qualifying employer sponsored coverage, would be required to pay an excise tax based on the following schedule:

2014	$95.00
2015	$350.00
2016	$750.00
2017 and beyond	Amount indexed for inflation

Employer Responsibility

These provisions, if enacted, would mandate the employer meet the following requirements each month occurring on or after January 1, 2014.

- Large employers with 200 or more full-time employees that offer at least one health plan benefit option must automatically enroll all new employees in a benefit option and continue the enrollment of current employees in a health benefit plan offered by the employer.

- Upon hire, employers must notify each employee of the following:
    - The existence of the state exchange coverage option.
    - The employee may be eligible for a subsidy under the exchange if the employer's share of the total cost of benefits is less than 60%.
    - If the employee purchases a policy through the exchange, he/she will lose the employer contribution for any health benefits offered by the employer.

- Employers 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. The penalty is determined on monthly basis

and is the product of the total number of full-time employees of the employer for that month and 1/12 of $750.

- Employers who impose a waiting period of more than 30 days must pay a penalty for each full-time employee to whom the extended waiting period applies. The penalty is equal to $400 for waiting periods 31-60 days in duration and $600 if it exceeds 60 days. Waiting periods in excess of 90 days are not permitted.

Tax on High Cost Coverage

If enacted into law, HR 3590 would, as of January 1, 2013, impose a 40 percent excise tax on "coverage providers" in months where the aggregate value of employer-sponsored health coverage for the employee exceeds 1/12 of $8,500 for individual coverage and 1/12 of $23,000 for family coverage. These amounts would be indexed to inflation beginning in 2014 utilizing the Consumer Price Index plus one percent.

"Coverage providers" are defined to include the following:

- In the case of fully insured plans, the health insurer.

- In the case of health savings account contributions, the employer making the contributions.

The coverage subject to the "high cost tax" includes the following:

- All accident and health coverage provided to the employee by the employer, even if paid for with after-tax dollars by the employee EXCEPT:
    - accident and disability insurance
    - long term care
    - hospital indemnity or specified disease coverage paid with after tax dollars

- Both non-elective and pre-tax salary reduction contributions to a health flexible spending arrangement (Health FSA).

- Employer contributions (presumably including salary reductions) to a health savings account.

It is important to note that the value of the coverage would be determined by the combining the amounts that both the employer and the employee would contribute toward the purchase of the coverage.

Under the Senate proposal, the value of the employer provided coverage must be reported on each employee's Form W-2 for all tax years beginning on or after January 1, 2011.

Employer Group Health Plan Related Issues

- Health FSA salary reductions would be limited to $2,500 (indexed for inflation) each year under HR 3590. The limit, which is effective for tax years beginning on or after January 1, 2011, is not indexed for inflation.

- Effective for tax years beginning on or after January 1, 2011, over-the-counter (OTC) expenses for medicines or drugs would not be eligible for reimbursement under a Health FSA, health reimbursements arrangement (HRA) or health savings account, unless such medicines or drugs were prescribed by a physician.

Note: If HR 3590 passes the Senate, this legislation must be reconciled with the United States House of Representatives version of health care reform titled the "Affordable Health Care for America Act" (HR 3962) which passed the House on November 7, 2009. Once the House and the Senate negotiators reconcile HR 3962 and HR 3590, both chambers must pass the negotiated version. Only once these steps are completed may a bill be sent to the President for signature and enactment into law. ADP will continue to monitor the House and Senate actions in relation to health care reform and provide information in future editions of the Tech Flex.

For a copy of Senate HR 3590, please click on the link provided below:

http://democrats.senate.gov/reform/patient-protection-affordable-care-act.pdf

For additional information on the House version of health care reform, please see the November 2009 Tech Flex [LINK].

2010 MEDICAL MILEAGE RATE ANNOUNCED BY IRS

Transportation expenses, such as automobile mileage that qualify as tax deductible medical expenses under Internal Revenue Code Section 213 generally can be paid or reimbursed on a tax-free basis by a health flexible spending arrangement, health reimbursement arrangement, or health savings account if the expense is "primarily for, and essential to, medical care."

On December 3, 2009, the Internal Revenue Service via Revenue Procedure 2009-54 announced that the standard mileage rate for use of an automobile to obtain medical care is 16.5 cents per mile for 2010, effective January 1, 2010. This represents a decrease of seven and a half cents from the 2009 rate of 24 cents per mile.

For a copy of Revenue Procedure 2009-54 please clink on the link provided below:

http://www.irs.gov/pub/irs-drop/rp-09-54.pdf

TRANSPORTATION PLAN DEBIT CARD REQUIREMENTS DELAYED AGAIN

The Internal Revenue Service has released guidance via IRS Notice 2009-95 which delays the date by which the provisions of IRS Notice 2006-57 are required to be implemented. Based on this guidance, the latest date by which the provisions of Notice 2006-57 must be implemented is now January 1, 2011 rather than January 1, 2010. This is the third time that the effective date of the Notice 2006-57 mandates have been delayed from its original effective date of January 1, 2008. However, it is important to note that IRS Notice 2009-95 specifically allows that the rules of IRS Notice 2006-57 may be implemented prior to January 1, 2011.

For a copy of IRS Notice 2009-95, please click on the link provided below:

http://www.irs.gov/pub/irs-drop/n-09-95.pdf

For more detailed information including a link to IRS Revenue Ruling 2006-57, please see the December 2006 Tech Flex [LINK].

2010 PUBLICATION 15-B RELEASED BY IRS

The Internal Revenue Service (IRS) has released the 2010 version of Publication 15-B titled the "Employer's Tax Guide to Fringe Benefits." This publication contains information for employers on the employment tax treatment of various fringe benefits such as 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.

For a copy of the 2010 IRS Publication 15-B, please click on the link provided below:

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

IRS RELEASES 2010 AUTOMOBILE BUSINESS USE MILEAGE RATE

On December 3, 2009, the Internal Revenue Service issued via Revenue Procedure 2009-54 the 2010 optional standard mileage rates used to calculate the deductible costs of operating an automobile for business, charitable, and moving purposes. As of January 1, 2010, the standard mileage rates for the use of a car (including vans, pickups or panel trucks) will be:

- 50 cents per mile for business miles driven;
- 16.5 cents per mile driven for moving purposes; and
- 14 cents per mile driven in service to a charitable organization.

The new rate for business miles compares to a rate of 55 cents per mile for 2009, a decrease of 5 cents per mile. The new rate of 16.5 cents per mile for moving purposes compares to 24 cents in 2009, a decrease of 7.5 cents per mile.

The standard mileage rates for business and moving purposes are based on an annual study of the fixed and variable costs of operating an automobile. The mileage rate for charitable miles is set by statute and remains at 14 cents per mile.

For a copy of Revenue Procedure 2009-54 please clink on the link provided below:

http://www.irs.gov/pub/irs-drop/rp-09-54.pdf

IRS ISSUES PUBLICATION 502 FOR USE WITH 2009 TAX RETURNS

The Internal Revenue Service (IRS) has released the version of Publication 502 to be used in conjunction with itemizing medical expenses on their 2009 tax returns. Publication 502 describes what medical expenses are deductible by taxpayers on their federal income tax returns. Under the Internal Revenue Code 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. Changes from the previous version include the following:

Dental Treatment – The 2009 version states that medical expenses include amounts paid for the prevention and alleviation of dental disease and expenses deductible includes the services of a dental hygienist or dentist for procedures such as teeth cleaning, application of sealants, and fluoride treatments to prevent tooth decay.

COBRA Premium Subsidy – Language has been added relating to the Consolidated Omnibus Budget Reconciliation Act COBRA) 65 percent premium assistance subsidy made available for a period of up to nine months under the American Recovery and Reinvestment Act (ARRA) to certain individuals who involuntarily lost their jobs between September 1, 2008, and December 31, 2009.

For a copy of Publication 502 (Medical and Dental Expenses (for 2009 Returns), please click on the link provided below:

http://www.irs.gov/pub/irs-pdf/p502.pdf

COLORADO DECREASES MINIMUM WAGE EFFECTIVE JANUARY 1, 2010

Effective January 1, 2010, the minimum wage rate in Colorado will be changing from $7.28 per hour to $7.24 per hour. This represents a decrease of four cents per hour.

In addition, the tipped employee minimum hourly rate will be changing from $4.26 per hour to $4.22 per hour in cash wages. The maximum tip credit will be remaining at $3.02 per hour.

Finally, the Colorado training/youth wage rate will be changing from 85% of $7.28 ($6.188) per hour to 85% of $7.24 ($6.154) per hour.

As a way of background, the Colorado minimum wage is adjusted annually for inflation as measured by the Consumer Price Index (CPI) used for Colorado. This index decreased 0.6 percent from the first half of 2008 to the first half of 2009 resulting in the decrease to the minimum wage.

NEW YORK ISSUES EMPLOYER GUIDANCE ON EMPLOYEE NOTIFICATION REQUIREMENTS

As reported in the September 2009 Tech Flex, New York state employers, effective October 26, 2009 are required under Senate Bill 3357, to notify their employees of an employee's rate of pay (including the overtime rate) and regularly scheduled pay day. This notice must be in writing and must be provided at the time of the employee's hiring.

In addition, the employer must obtain a written acknowledgement from each employee that he/she has received the notification. The legislation also requires that the acknowledgment "must conform to any requirements published by the commissioner with regard to content and form."

The New York Department of Labor (NYDOL) has now issued notice forms and fact sheets related to this notification requirement. The documents include an official Notice

& Acknowledgement of Wage Rate and Designated Payday form that must be given to and signed by all new employees, along with 195 Fact Sheets for employees and employers. The NYDOL also issued separate materials for temporary help firms. These documents include a Notice & Acknowledgement of Wage Rate(s)/Temporary Help Firms and a Temporary Help Firm Guidelines. All of these documents can be obtained at:

http://www.labor.state.ny.us/workerprotection/laborstandards/workprot/lshmpg.shtm.

For a copy of Senate Bill 3357, please click on the link provided below:

http://assembly.state.ny.us/leg/?bn=S03357&sh=t

AIRLINE FLIGHT CREW TECHNICAL CORRECTIONS ACT PASSES SENATE AND HOUSE

On December 2, 2009, the "Airlines Flight Crew Technical Corrections Act" (Act) passed in the United States House of Representatives. The legislation had previously passed the United States Senate on November 10, 2009.

This legislation was proposed in order to mitigate the difficulties that airline pilots and flight attendants currently face in qualifying for leave under the Family Medical Leave Act (FMLA). These FMLA eligibility issues are caused by the fact that under the current FMLA rules, the non-flying hours of airline pilots and flight attendants are not counted toward the total hours of service worked. Under the FMLA, an employee must have worked for his/her employer a minimum of 1250 hours in the 12 month period preceding the leave in order to qualify for FMLA. Only hours actually worked accumulate toward the 1250 threshold. Consequently, non-working hours for which an employee is paid (sick time, vacation, on-call time) would not be counted toward the 1250 hours worked requirement.

If enacted into law, the Act would amend the FMLA to stipulate that airline pilots and flight attendants would be eligible for FMLA if these individuals worked or are paid for at

least 504 hours and 60 percent of their monthly minimum guaranteed hours in the preceding 12-month period.

The Act was sent to President Obama on December 9, 2009 for signature and it is widely expected that he will sign the legislation into law.

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

Airline Flight Crew Technical Corrections Act

Please contact ADP National Account Services for further information at:
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