

TECH FLEX

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ISSUE XI

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MENTAL HEALTH PARITY LEGISLATION ENACTED

On October 3, 2008, the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Act of 2008 (Act) was signed into law as a provision of the recently enacted Emergency Economic Stabilization Act. Generally the new legislation requires group health plans to treat mental health illness on an equal basis with physical illnesses, when plans and policies cover both types of illness. The provisions of the Act will apply to group health plan years commencing one year from the date of enactment or October 3, 2009. Consequently, the parity requirements will be effective January 1, 2010 for calendar year plans. The Act does not apply to employers with 50 or less employees.

Specifically, the Act amends the Employee Retirement Income Security Act (ERISA) and the Public Health Services Act (PHSA) by prohibiting group health plans, or the health insurance coverage offered by such plans, from imposing larger plan participant costs for the utilization of mental health or substance abuse treatment provided by the plan as compared to the participant costs for the use of medical or surgical benefits covered by the plan.

It is important to note that the Act does not require that a group health plan must offer mental health or substance abuse benefits or that if the plan offers mental health benefits that the plan must also offer substance abuse coverage, or vice versa. However, where a plan offers

physical medical and surgical benefits and also provides mental health or substance abuse treatment benefits, the plan must meet certain parity provisions.

Where a group health plan offers mental health or substance abuse benefits in addition to benefits for the treatment for physical illness, a plan may not do the following:

- impose more restrictive annual or lifetime limits in mental health substance abuse disorder benefits than those imposed on medical and surgical benefits;
- require additional or more restrictive financial requirements (deductibles, copayments, coinsurance and out-of-pocket expenses) on mental health or substance abuse benefits than those charged for the use of medical or surgical benefits; or
- impose additional or more restrictive “treatment limitations” on mental health or substance abuse treatment benefits as compared to those provided for medical and surgical treatment (treatment limitations include frequency of treatment, limits on the number of visits, limits on the days of coverage or other limits on the extent or length of treatment).

For a copy of the Mental Health Parity and Addiction Act of 2008, please click on the link below and proceed to Sections 511 and 512.

<http://financialservices.house.gov/ESSABill.pdf>

UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (“USERRA”) NOTICE POSTER UPDATED

On October 27, 2008, the federal Department of Labor’s Veterans Employment and Training Service (VETS) updated the “Notice of Your Rights Under USERRA” poster than an employer may use to meet its USERRA obligations. Previously two versions of the notice had been provided for use: one for use by private sector and state government employers (Text A), and the other for use by federal executive agency employers (Text B). These two versions have now been integrated into one version for use by all employers.

USERRA requires that employers notify employees of their rights and obligations under USERRA and the final regulations provided a USERRA Rights Notice to be used by employers in satisfying its obligation when notify its employees of their rights under USERRA as required.

The final regulations state:

Each employer shall provide to persons entitled to rights and benefits under USERRA a notice of the rights, benefits, and obligations of such persons and such employers under USERRA. The requirement for the provision of notice under this section may be met by the posting of one of the following notices where employers customarily place notices for employees. The following texts are provided by the Secretary of Labor to employers pursuant to 38 U.S.C. 4334(b). Text A is appropriate for use by employers in the private sector and for State government employers. Text B is appropriate for use by Federal Executive Agencies.

It is important to note that employers who currently have either the Text A or Text B version posted in areas that are customarily used for placing notices to employees are **not** required to

replace those versions with the new combined version. The federal register announcing the release of the revised notice version states:

However, posting one of the original USERRA rights notices published on December 19, 2005, will continue to comply with the USERRA notice requirement because the conditional language of the reference to the demonstration project does not affect the remaining substantive information in the Federal USERRA rights notice. The text of either the original or corrected Federal USERRA rights notice will meet the requirements of the law.

For a copy of the revised USERRA notice, please click on the link provided below:

http://www.dol.gov/vets/programs/userra/USERRA_Private.pdf

As a way of background, USERRA generally established specified reemployment and benefit rights for employees who are serving or have served in the United States military ("uniformed services") including the following:

- the right to continue coverage under the employer's group health plans while the employee is absent from work while serving;
- guaranteed reemployment following the completion of the employee's uniformed service; and
- reinstatement in group health plans if coverage was terminated as a result of military service and the employee is reemployed following the completion of the uniformed service.

For additional information on USERRA, please click on the January 2006 Tech Flex link below:

http://www.probusiness.com/fsa_cobra/tf/Tech_Flex_Newsletter_January_2006.pdf

NEWBORNS' AND MOTHERS' HEALTH PROTECTION ACT FINAL REGULATIONS RELEASED

On October 20, 2008, the Internal Revenue Service, Department of Labor and the Health and Human Services released the final regulations in relation to the Newborns' and Mothers' Health Protection Act (NMHPA).

In general, the final regulations do not modify the interim regulations released in 1998 regarding the hospital length-of-stay requirements for newborns and mothers that apply to group health plans and group health insurance issuers. Consequently, the requirements prohibiting plans and issuers from restricting mother's and newborns' benefits for a hospital length of stay in connection with childbirth to less than 48 hours following a vaginal delivery, or less than 96 hours following delivery via cesarean section remain in place. An exception to this rule may be made in cases where an "attending provider" authorizes an earlier discharge than the 48 or 96 hour period and the mother agrees.

Significantly, the final NMHPA regulations also provided clarification in relation to the definition of "attending provider" who under the final rules does not include "a plan, hospital, managed

care organization, or other issuer.” For a copy of the final NMHPA final regulations, please click on the link provided below:

<http://edocket.access.gpo.gov/2008/pdf/E8-24666.pdf>

IRS RELEASES 2009 TAXPAYER INFLATION ADJUSTMENTS

On October 16, 2008, the Internal Revenue Service (IRS) via IR-2008-117 released the 2009 income tax personal exemption and standard deductions dollar amounts. By the law, these amounts and a number of other tax provisions must be adjusted annually to keep pace with inflation.

For 2009 tax returns generally filed in early 2010, the personal exemption and standard deduction amounts are as follows:

- The value of each personal and dependency exemption will be increased to \$3,650 from the 2008 level of \$3,500.
- The standard deduction will be \$11,400 for married couples filing a joint return as compared to \$10,900 in 2008.
- The standard deduction for singles and married individuals filing separately will be \$5,700, an increase of \$250 from 2008 level of \$5,450.
- The head of household standard deduction will be increased from \$8,000 to \$8,350.

For a copy of IR-2008-117, please click on the link provided below.

<http://www.irs.gov/newsroom/article/0,,id=187825,00.html>

OREGON GARNISHMENT EXEMPT LIMITS INCREASED

As a result of the enactment of Oregon Senate Bill 303, the amount of an employee's income that will be considered exempt from withholding in relation to Oregon wage garnishment writs or notices delivered on or after January 1, 2009, is 75% of weekly disposable earnings OR the following if greater:

- \$196 (currently \$183) of disposable earnings per week
- \$392 (currently \$366) for any two-week period
- \$420 (currently \$420) for any half-month period
- \$840 (currently \$786) for any one-month period

For a copy of Oregon Senate Bill 303, please click on the link provided below.

<http://www.leg.state.or.us/07reg/measures/sb0300.dir/sb0303.en.html>

MISSOURI INCREASES MINIMUM WAGE

Effective January 1, 2009, the minimum wage rate in relation to Missouri state law will be changing from \$6.65 per hour to \$7.05 per hour. In addition, the Missouri tipped employee minimum hourly rate to be paid in cash wages will be changing from \$3.325 per hour to \$3.525 per hour. Finally, the training / youth rate minimum wage will be adjusted from \$5.75 per hour to \$6.15 per hour.

For additional information on the Missouri minimum wage, please click on the link provided below:

<http://www.dolir.mo.gov/LS/minimumwage/index.asp>

NEW JERSEY RELEASES PAID FAMILY LEAVE POSTER NOTIFICATION

As reported in the May 2008 Tech Flex [\[LINK\]](#) on May 2, 2008, New Jersey Governor Jon Corzine signed into law the New Jersey Family Leave provision that will entitle employees in the state as of July 1, 2009, to take up to six weeks of paid leave per year after the birth or adoption of a child or to take care of a seriously ill relative. For additional information, please click on the LINK provide above.

The New Jersey Department of Labor and Workforce Development has now issued a poster that employers must provide to employees advising them of their rights to this paid leave. Under the law, employers covered under the Family Leave Insurance Provisions of the New Jersey Temporary Disability Benefits Law are required by law to post notification detailing the program information and employee rights to the benefits.

Employers must conspicuously display the notification poster, no later than December 15, 2008 in each of their workplaces and in a place or places accessible to all employees.

Employers must **also** provide each employee with a written copy of the notification at the following times:

- no later than December 15, 2008;
- at the time of an employee's hiring;
- whenever an employee notifies you that he/she is taking time off to bond with a newborn or newly adopted child or to care for a seriously ill family member; and
- at any time, upon the first request of an employee.

It is important to note that the written notification may be electronically transmitted to employees.

For a copy of the poster notification (letter size), please click on the link below:

http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/fli_poster.pdf

For a copy of the poster notification (legal size), please click on the link below:

http://lwd.dol.state.nj.us/labor/forms_pdfs/tdi/fli_poster_legal.pdf

*Please contact ADP National Account Services for further information at:
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