



## **FEBRUARY 2019 COMPLIANCE UPDATE**

As the government re-opens its doors, it appears it is making tax changes with a vengeance. Please take a minute to read this month's newsletter for some important changes that have come across Capitol Hill, along with other rulings that may affect you as an employer or employee.

### **Don't Use My Money!!**

A recent Federal court case prohibited United HealthCare from using money from one health plan to offset erroneous payments made to non-network providers for claims under another group health plan.

[Long Awaited "Cross-Plan Offsetting" Case Increases Risk](#)

[Recent Court Decision Encourages Employers to Review Health Plan](#)

Under this practice, United HealthCare as well as other Third Party Administrators would take the overpayment for claims under one plan and use it to offset the payment owed by another plan. The Federal court ruled in favor of the provider.

### **Medicare Part D Notices**

There are two notice requirements applicable to Medicare Part D (i.e. the prescription drug benefits). The first one is to the employee that has to be provided at least once in a 12 month cycle; for example, during each year's open enrollment. The second notice is to the government.

[Medicare Part D Disclosures due by March 1, 2019](#)

The notice to the government must be in electronic format and is due within sixty (60) days of the start of the plan year. This means, for plans maintained on a calendar year basis, the notice to the government is due March 1, 2019.

### **Qualified Transportation Benefits – Tax Free BUT Not Tax Deductible**

The cost of transportation to and from work varies greatly depending upon where you live and work. President Trump's tax bill (i.e. the Tax Cuts and Job Act) changed and complicated the rules governing employer provided transportation benefits.

#### [Qualified Transportation Fringe Benefits are No Longer Deductible](#)

#### [Updated: Determining Non-Deductible Business Parking Expenses](#)

The rules changed January 1, 2018, to say that the employer provided transportation benefits are tax free to the employees but are no longer tax deductible for the employer.

#### **New IRS Form for Paid Family Leave Credit**

President Trump signed the Family and Medical Leave Act into law some time ago. The law requires certain employers to offer **UNPAID** leave to particular employees. The Tax Cuts and Job Act provides a tax credit if the employer offers **PAID** leave under certain circumstances. The IRS has issued new forms each employer can use to claim the credit.

#### [IRS Issues New Credit Form for Paid Family/Medical Leave](#)

Note: the employer is not required to offer paid leave. The credit only applies if the employer elects to offer paid leave as opposed to the mandated unpaid leave. The credit availability ends December 31, 2019.

#### **Wellness Programs Remain Complicated**

Wellness programs are intended to promote healthier lifestyles which, in turn, should reduce health costs. Unfortunately, the rules governing wellness programs are pretty complex and are governed by several different statutes.

#### [Wellness Programs Continue to Face Compliance Challenges](#)

#### [Wellness Programs: An Update in Evolving Compliance](#)

#### [EEOC Vacates Incentive Sections of Wellness Regulations](#)

#### [Wellness Program - Where Are We Now?](#)

#### [Not All Wellness Compliance Is Eliminated This Year](#)

The Equal Employment Opportunity Commission ("EEOC") is one of the agencies overseeing wellness programs. The EEOC issued regulations that were recently struck down by the courts. As a result, some aspects of rules are unclear at this time.

#### **Pay Those Lawyers**

A lot of lawyers work on contingency fees under which they get paid only if they win the lawsuit. This happens often in personal injury cases. ERISA yields the court discretion when it comes to awarding legal fees.

### [ERISA and Awards of Attorney Fees](#)

In the example case listed, the court awarded the lawyer's fees even though this did not prevail on aspects of the lawsuit.

### **New HRA Rules' Impact on Individuals and Employees**

Beginning next year, employers will be able to offer HRAs that the employees can use to pay the premiums for individual health policies.

### [Proposed Rules to Expand HRAs Issues - Part.3](#)

This article talks about the impact those HRAs will have on the premium tax credit for individuals and on employers with respect to the employer mandate penalty.

### **Government Increases Penalties**

Providing health coverage to the employees and their families is a major commitment on the employer's part. Employers must comply with a number of rules when it comes to sponsoring a group health plan.

### [DOL Announces Increased Health Plan Violation Penalty](#)

Most employers devote a substantial amount of resource to their employees and failure to comply with the government issued rulings can potentially increase the expense. The government just updated the maximum penalties for non-compliance.

### **Telemedicine – Cure All?**

Telemedicine is becoming more popular and the states are starting to issue rules regarding the practice of medicine to help clarify the role of telemedicine.

### [Telemedicine: Managing Expectations of Savings](#)

This article talks about realistic expectations regarding the potential cost savings to the employers and how they should realize there are other factors to consider when offering telemedicine.

### **Group Term Life Insurance**

Most employers offer some level of group term life insurance. In fact, most often more employees participate in the group term life program than any other employer provided benefit.

### [Group Life Insurance: Communication Pitfalls](#)

#### [Employer Must Pay - Due to Failure to Provide Summary Plan Description](#)

In reality, it is pretty simple to determine if benefits are owed under the plan. That is, the group term life insurance pays when an employee dies. So it is easy to see why employers pay little attention to the program, and yet, there have been several relatively recent lawsuits involving employers who failed to properly communicate the terms of the plan.

### **Everything You Wanted to Know About the ACA Employer Mandate**

Obamacare requires large employers to offer quality/affordable health coverage to full time employees or face a potential penalty. These rules have been around for some time.

#### [ACA's Employer Shared Responsibility Provision \(ESRP\)](#)

This is a really in-depth government publication on those rules. The *individual* mandate is going away at the end of this year. However, it looks like the *employer* mandate is here to stay at least for the foreseeable future and the government is starting to get serious when it comes to assessing and collecting the penalty.

### **Self-Funding and Stop Loss Coverage**

Most employers sponsoring self-funded health plans have stop loss coverage to help pay for catastrophic claims. It is critical the health plan and the stop loss policy are in sync.

#### [Know the Specifics of Your Health and Welfare Stop-Loss Policy](#)

For example, the health plan may define an experimental procedure a particular way and yet the stop loss policy may have a different definition. As a result, the health plan may be required to pay for the procedure but the procedure is excluded from coverage under the stop loss policy. As a result, the employer may be on the “hook” for the entire amount.

### **IRS Forms 1094's and 1095's**

The deadline for distributing IRS Form 1095s to the employees has been extended to March 4, 2019 but the deadline for sending IRS Form 1094 and Form 1095 in *paper* format is still February 28, 2019. If filed with the IRS in *electronic* format, the deadline is April 1, 2019.

#### [2018 ACA Reports: Extensions, Forms, and Good Faith Compliance](#)

As you will recall, this requirement is part of the Affordable Care Act (aka Obamacare). The IRS uses the forms to determine (1) if individuals had health coverage and (2) if the employer offered quality/affordable coverage to the full time employees. The government has started taking the rules seriously and will assess penalties against employers that fail to comply with this reporting requirement.

### **COBRA Alive and Well**

With all the attention on health care reform, it is easy to forget about COBRA that has been around for years. Employers still need to be aware of and comply with COBRA rules.

#### [Case Serves as a Reminder About the Cost of COBRA Non-Compliance](#)

With this case, the employer was held responsible when they failed to satisfy the COBRA notice requirements when the method of paying the COBRA premiums changed.

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