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Legislative Compliance

Compliance Monthly | April 2013 | Issue 4

IN THIS ISSUE

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CITY OF PORTLAND INCORPORATES MANDATORY SICK LEAVE LAW

Portland has become the fourth U.S. city to adopt a requirement for employers to provide sick leave. The city ordinance goes into effect on 01/01/2014.

SUMMARY

Which Employees are Covered

The ordinance applies to any employee:

- Who does work in the actual city of Portland, Oregon; and
- Who works more than 240 hours per year in Portland, Oregon

The ordinance, therefore, includes:

- Any employee who travels to Portland, Oregon to work; and
- Any employee who works in an office in Portland, Oregon

Employers who are Subject to the Ordinance

Employers with five or fewer employees are required to provide:

- One hour of unpaid leave for every 30 hours worked

Employers with six or more employees are required to provide:

- One hour of paid leave for every 30 hours worked

Accrual of Sick Leave

Employees may accrue up to:

- 40 hours of leave time a year

Employees may carry over the sick leave into the following year, but:

- The total number of hours of sick leave cannot exceed 40 hours in a calendar year

An employee must be allowed to carry leave time over to a new employer, if:

- The employee's previous employer was purchased by the new employer; **and**
- The employee continues to work in Portland

Current employees will begin to accrue benefits as of 01/01/2014 (so long as they have completed 240 hours of work).

- New employees hired after 01/01/2014 will begin accruing sick leave after 90 days of employment (after then completing 240 hours of work, new employees may use sick time)

Paid sick leave need not be paid upon an employee's termination of employment.

Employee Utilization of Sick Leave

Sick leave may be used for:

- Treatment of mental or physical illness, injury, or health condition (including pregnancy) of an employee or family member;
- Domestic violence, harassment, sexual assault or stalking under Oregon law;
- When an employer's business or an employee's child's school (or place of care), closes for a public health emergency;
- When a family member is determined to be a risk to the health of others, and requires assistance; and
- When state law requires an employer to exclude an employee from work for health reasons

Employer Notice Requirements

- An employer must create a policy by which an employee can reasonably notify the employer of the sick leave
- Employers must also post a notice of the ordinance and its requirements

Employee Notice Requirements

For unforeseen leave:

- The employee must notify the employer before the start of a shift, or as soon as possible
- An employee should also tell the employer how long the leave may last, if possible

For foreseeable leave:

- The employee should provide notice as soon as possible to the employer
- The employee should attempt to schedule leave that does not interrupt the daily operations of the employer

Employer Verification of Sick Leave

Under certain circumstances, employers may require verification of sick leave when:

- A pattern of the usage of unscheduled sick time occurs (e.g., every Friday sick leave is taken); or
- An employee is absent for more than three days

Employer Safe-Harbor

An employer is not subject to the ordinance, if:

- The employer already provides time-off benefits equivalent to the ordinance
- The unionized employer negotiated a waiver of right to sick leave, and the union provides paid time off that is equivalent to the ordinance

Note: Employers with employees in Portland, Oregon should prepare some protocol and procedures to implement the sick leave ordinance by 01/01/2014. For more information regarding this ordinance, please go to: http://www.portlandonline.com/auditor/index.cfm?c=28148

MEDICARE PART D CREDITABLE COVERAGE PARAMETERS RELEASED FOR 2014

The Center for Medicare & Medicaid Services (CMS) released the Medicare Part D creditable coverage parameters for 2014. Pursuant to Medicare Part D regulations, group health plan sponsors offering prescription drug coverage to Medicare-eligible individuals must:

- Disclose to the individuals and to CMS whether the plan's prescription drug coverage is creditable or non-creditable (creditable means the employer's coverage is at least as good as or better than what Medicare Part D would offer)

The parameters for 2014 are as follows, and have actually dropped since 2013 by approximately 4%:

- Deductible: $310 ($325 in 2013)
- Initial coverage limit: $2,850 ($2,970 in 2013)
- Out-of-pocket threshold: $4,550 ($4,750 in 2013)
- Total covered Part D spending at the out-of-pocket expense threshold for beneficiaries who are not eligible for the coverage gap discount program: $6,455 (a $278.75 decrease from 2013)
- Estimated total covered Part D spending at the out-of-pocket expense threshold for beneficiaries who are eligible for the coverage gap discount program: $6,690.77 (a $263.75 decrease from 2013)
- Minimum co-pays under the catastrophic coverage portion of the benefit: $2.55 for generic / preferred multi-source drugs ($2.65 in 2013), and $6.35 for all other drugs ($6.60 in 2013)

Note: Plan sponsors must report the creditable status of the prescription drug plan to their participants every year by October 15. Most employer plans do meet creditable status, with the exception of High Deductible Health Plans (HDHP) and Health Savings Accounts (HSA). Plan sponsors must also report the creditable status to CMS annually within 60 days of the beginning of the plan year (e.g., for calendar year plans by 03/01). For more details on reporting, see: www.cms.gov/creditablecoverage/. For complete details on the 2014 parameters, see: http://www.cms.gov/apps/media/press/release.asp?Counter=4568; and http://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/Announcement2014.pdf

QUESTION OF THE MONTH

Q: Our company will soon begin offering domestic partner coverage under our health plan. Will terminating employees be able to continue coverage under COBRA for their domestic partners?

A: A terminating employee who elects to continue health plan coverage under COBRA may also elect coverage for a domestic partner who was covered under the plan immediately before the employee's termination. The domestic partner will be entitled to coverage until the employee's COBRA coverage ends (e.g., for failure to pay required premiums or at the end of the maximum coverage period). This is because of the general principle that COBRA coverage must ordinarily be the same coverage that the qualified beneficiary had on the day before a qualifying event. (In addition, under general principles, a covered employee receiving COBRA coverage under a plan that provides domestic partner benefits would have a right to add an otherwise eligible domestic partner to his or her COBRA coverage at open enrollment if active employees are permitted to do the same.)

That being said, it is important to understand that domestic partners do not qualify as qualified beneficiaries under COBRA and, therefore, do not have independent COBRA election rights. This is because only covered employees, federally recognized spouses, and dependent children can be qualified beneficiaries with independent COBRA election rights. Due to the federal Defense of Marriage Act (DOMA), a domestic partner cannot qualify as a federally recognized spouse, even if the domestic partner is the employee's same-sex spouse under state law.

As a result, a domestic partner would not be entitled to elect COBRA on his or her own behalf. (While an increasing number of federal courts have ruled that it is unconstitutional for DOMA to limit federal recognition of marriage to opposite-sex spouses, the law will remain in effect until it is repealed or ruled unconstitutional by the United States Supreme Court.

Given the effect of DOMA, if you wish to provide equivalent continuation coverage rights for domestic partners, you must do so through plan design. Many employers choose to extend "COBRA-like" continuation coverage rights to domestic partners, including the right to make continuation coverage elections independent of the employee (e.g., upon the employee's termination of employment or upon termination of the domestic partnership). In general, sponsors of self-insured plans may have more flexibility in this area than sponsors of insured plans, who must obtain agreement from their insurers before they can provide fully equivalent continuation coverage rights. As you add domestic partner benefits to your plan, you will want to consult with your insurer, as applicable, and make

sure that your plan document, SPD, and SBC explicitly address the continuation coverage rights of domestic partners along with any notice requirements that will be imposed (e.g., to notify the plan within a specified period that the partnership has terminated).

IMPORTANT DATES

Plan Years on / after 08/01/2012 – **Health care reform's women's preventive services mandate** with no cost-sharing (for calendar year plans the effective date was 01/01/2013)

Plan Years Ending on / after 09/23/2012 – **Health care reform's annual dollar limits** for "essential health benefits" restricted to no less than $2 million, absent a waiver (for calendar year plans the effective date was 01/01/2013)

Plan Years on / after 09/23/2012 – **Summary of Benefits and Coverage** (SBC) must be provided to plan participants and prospective participants upon marketing, 30 days prior to renewal, upon demand within 7 days, and upon special enrollment election (for calendar year plans the effective date was 01/01/2013

Plan Years Ending on / after 10/01/2012 – **Comparative Effectiveness Fee** – Fully-insured carriers and self-funded plan sponsors will be subject to a fee in the amount of $1 per covered life. The Fee is due 07/31 of each year using Form 720 "Quarterly Federal Excise Tax Return"

Plan Years on / after 01/01/2013 – **Flexible Spending Accounts** limited to $2,500 for employee contributions

60 days after the beginning of the plan year – **Employer Creditable Coverage Reporting to CMS** due (e.g., if your plan effective date is 01/01, you must report by 03/01)

03/01/2013 – **Notice of Exchange** delayed pending further regulations (Expected effective date of Summer/Fall 2013)

10/1/2013 – Health care reform's **Exchange initial open enrollment** begins

10/15/2013 – **Medicare Part D creditable and/or non-creditable coverage notices** to plan participants due (if not previously provided earlier in the year as part of the Benefits Information Guide or at open enrollment)

11/14/2013 – Barney & Barney's Legislative Compliance 2014 Outlook Seminar in San Diego, CA

11/15/2013 – **Health care reform's reinsurance fee reporting due** for carriers and self-funded plans (including HRA plan sponsors where not integrated with a self-funded plan)

1/1/2014 – **Health care reform's employer mandate effective** for calendar plan years. For non-calendar plan years, the effective date is the first day of the plan year only if on December 27, 2012, the plan offered coverage to 1/3rd of employees or covered 1/4th of employees