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NEW YORK CITY ADOPTS MANDATORY SICK LEAVE LAW

New York City, as of May 8, 2013, has adopted an ordinance for employers to provide sick leave. The city ordinance, termed the Earned Sick Time Act (The Act) is set to go into effect on April 1, 2014 (unless economic conditions do not allow, as explained below).

SUMMARY

The Act's Effective Date

The effective date of the Act is contingent upon the performance of New York City's economy:

- If, as of December 16, 2013, the economy in New York City is the same or better than it was on January of 2012, then:
 - The Act will go into effect April 1, 2014 (for employers with 20 or more employees)
 - The Act will go into effect October 1, 2015 (for employers with 15–19 employees)
- If, as of December 16, 2013, the economy in New York City is worse than it is on January of 2012, then:
 - The Act will be delayed, and will be implemented when the economy is performing better
 - When the economy does get better, the law will become effective on the following April 1 or October 1, whichever occurs sooner

Employers who are Subject to the Ordinance

Employers who fall under the Act include:

- For the first 18 months of the Act, only employers with 20 or more employees (full-time and part-time) must provide paid leave to employees
- After 18 months of the Act being implemented, employers with 15 or more employees (full-time and part-time) must provide paid leave to employees
 - For the 18 months preceding the above requirement, the Act still requires these employers to provide **unpaid** sick leave
- Employers with 14 or less employees must provide **unpaid** sick leave to their employees as of the effective date of the Act
- Any employer who has one or more domestic workers is required to provide paid sick leave to employees
 - A domestic worker is defined as “a person employed in a home or residence for the purpose of: caring for a child or elderly person, housekeeping, and any other domestic service purpose

New York City Adopts Mandatory Sick Leave Law (Continued)

Note: For purposes of counting employees, an employer only need to count the number of employees in New York City.

Employees who are Eligible for Sick Leave

Employees who are eligible for sick leave (paid or unpaid) include:

- Any person employed for hire within New York City for more than 80 hours in a calendar year
- Employees are not entitled to use sick leave until after 120 days (four months) following the later of their date of hire or the effective date of the Act

Employees not eligible for sick leave (paid or unpaid) include:

- Participants in a work-study program
- Independent contractors who do not meet the definition of common law employee of the employer
- Certain hourly professional employees who are licensed by the New York State Department of Education, who:
 - Call in for work assignments at will, and;
 - Are paid at a premium rate (400% of the federal minimum wage)

Employee Accumulation and Utilization of Sick Leave

- An employee begins accruing leave at the time of hire or the effective date of the Act, whichever is later
- An employee accumulates one hour of paid or unpaid (depending on employer size) sick leave for every 30 hours worked
- An employee may accumulate up to 40 hours of sick leave (paid or unpaid) per year
 - Employees may carry over all unused sick leave to following years
 - Employers may limit the use of sick leave to a total of 40 hours per calendar year

Action

Employers with employees in New York City should stay informed as to whether this leave ordinance becomes effective April 1, 2014.

For more information regarding this ordinance, please go to:

http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=655220&GUID=8FEF6526-0C00-45D5-BD0B-617353F90F06&Options=ID%7cText%7c&Search_=97-a

- Sick leave may be used for the employee (or for the care of a family member) for the following:
 - Medical diagnosis
 - Care or treatment for a mental or physical illness
 - An injury or health condition; or
 - Preventative medical care

Employer Notice Requirements

- Upon the first day of employment, employers must provide new employees written Notice that:
 - Describes the amount and terms of the sick leave
 - Employers may not retaliate against employees for taking sick leave
 - Is written in English, or the employee's primary language (if Chinese, Korean, Russian, Polish, Haitian-Creole, or Spanish)
- Employers do not need to notify current employees under the current statute (although it is recommended)
- Employers need to deliver the Notice either by first class mail or hand delivery
- Employers may (but are not required to) also post a notice of the Act, in addition to the hand/mail delivered Notice
- Employers are to retain records for a period of two years that:
 - Documents the number of hours worked by each employee; and
 - The amount of sick leave accrued and taken by each employee

Employer Verification of Sick Leave

Under certain circumstances, employers may require verification of sick leave when an employee is absent for three or more days.

- Proof shall be documentation from a licensed health care provider.
 - However, such documentation shall not include the specific condition causing the employee's absence

HEALTH SAVINGS ACCOUNT AND HIGH DEDUCTIBLE HEALTH PLAN LIMITS FOR 2014 RELEASED

The Internal Revenue Service (IRS) released the 2014 Cost-of-Living-Adjustments (COLA) for Health Savings Accounts (HSA) and High Deductible Health Plans (HDHP). Highlights are as follows:

Contribution and Out-of-Pocket Limits for Health Savings Accounts (HSA) and for High-Deductible Health Plans (HDHP)

	2013	2014	Change
HSA contribution limit (employer + employee)	Individual: \$3,250 Family: \$6,450	Individual: \$3,300 Family: \$6,550	Individual: +\$50 Family: +100
HSA catch-up contributions (age 55 or older) ⁽¹⁾	\$1,000	\$1,000	No change ⁽²⁾
HDHP minimum deductible amounts	Individual: \$1,250 Family: \$2,500	Individual: \$1,250 Family: \$2,500	Individual: +\$0 Family: +\$0
HDHP maximum out-of-pocket amounts (deductibles, copays and other amounts, but not premiums)	Individual: \$6,250 Family: \$12,500	Individual: \$6,350 Family: \$12,700	Individual: +\$100 Family: +\$200

⁽¹⁾ Catch-up contributions can be made any time during the year in which the HSA participant turns 55

⁽²⁾ Unlike other limits, the HSA catch-up contribution amount is not indexed; any increase would require statutory change

Action Required

Employers with HDHPs and HSAs should ensure use of the appropriate limits beginning January 1, 2014.

For complete details, see IRS Revenue Procedure Notice 2013-25 at:

<http://www.irs.gov/pub/irs-drop/rp-13-25.pdf>

COLORADO ADOPTS CIVIL UNION LEGISLATION AND DELAWARE, MINNESOTA AND RHODE ISLAND ADOPT SAME-SEX MARRIAGE LEGISLATION

COLORADO

Colorado adopted legislation to legalize Civil Unions. This legislation is termed the "Colorado Civil Union Act" (Act) and became effective as of May 1, 2013.

- The Act authorizes:
 - 2 unmarried adults, regardless of gender, to enter into a civil union
- The Act provides the same benefits, protections, and responsibilities to parties of a civil union as are currently granted for opposite sex-spouses
- Some of these benefits and protections include:
 - Dependent (which includes parties to civil unions) coverage under health insurance policies, for plan years beginning on or after January 1, 2013
 - Rights in the transfer of real or personal property
 - No discrimination based on spousal status
 - The ability to inherit real or personal property through probate
 - The ability to adopt a child of a party to a civil union
 - The ability to insure a party to a civil union under a state employee group policy

Action Required

Employers with employees in Colorado are required to offer benefits to parties in a civil union on the same terms as opposite-sex spouses effective as of May 1, 2013, generally.

For more information regarding the Act, please go to:

http://www.leg.state.co.us/clics/clics2012a/csl.nsf/fsbillcont3/F952C7C4927957FA87257981007CC33C?open&file=002_01.pdf

Colorado Adopts Civil Union Legislation and Delaware, Minnesota and Rhode Island Adopt Same-Sex Marriage Legislation (Continued)

DELAWARE

On May 7, 2013, Delaware passed legislation to legalize Same-Sex Marriage. This legislation is termed the Civil Marriage Equality and Religious Freedom Act of 2013.

- The Act authorizes two individuals, whether of the same or different genders, to marry if otherwise eligible (e.g., not related, not already married)
- This Act provides for the equal application of all laws of the State of Delaware relating to marriage, married spouses or their children to same-gender or different-gender married spouses and their children
- Additionally, legal unions in other jurisdictions will be legally recognized in Delaware
- When the Act becomes effective on July 1, 2013, no new civil unions will be formed in Delaware and effective July 1, 2014 all existing civil union relationships (void a pending proceeding for dissolution, annulment or legal separation) will automatically convert to marriage
- Parties to a civil union are allowed to convert existing civil union relationships to marriage after July 1, 2013 and prior to July 1, 2014 by application. The date of the original civil union shall be the date by which the parties would have been legally married (i.e., the date the spouses had legal rights and responsibilities to one another)

Action Required

Employers with employees in Delaware will be required to offer benefits to parties in a same-sex marriage on the same terms as opposite-sex spouses, beginning July 1, 2013.

For more information regarding the Act, please go to:

<http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/HB+75?OpenDocument>

MINNESOTA

On May 14, 2013, Minnesota passed legislation to legalize Same-Sex Marriage.

- The legislation authorizes civil marriage between two persons who are of legal consenting age and ability, to obtain a marriage license as provided by the law, effective August, 1, 2013
- The Act provides the same benefits, protections, and responsibilities to parties of same-sex marriage as afforded to opposite sex-spouses

Action Required

Employers with employees in Minnesota will be required to offer benefits to parties in a same-sex marriage on the same terms as opposite-sex spouses beginning August, 1, 2013.

For more information regarding the Act, go to:

https://www.revisor.mn.gov/bills/text.php?number=HF1054&session_year=2013&session_number=0&version=latest

Colorado Adopts Civil Union Legislation and Delaware, Minnesota and Rhode Island Adopt Same-Sex Marriage Legislation (Continued)

RHODE ISLAND

On May 2, 2013, Rhode Island passed legislation to legalize Same-Sex Marriage.

- The legislation allows any eligible person to marry any other eligible person regardless of gender
- A spouse in a same-gender marriage shall be given equal protection under the laws of Rhode Island as their opposite-sex spouse counterparts
- Additionally, legal unions formed in other jurisdictions shall be recognized within Rhode Island
- On or after August 1, 2013, two persons who are parties to an existing civil union may apply for and be issued a marriage license, provided they are eligible. The date of the recording of the marriage certificate shall be the operative date by which legal rights and responsibilities are determined

Action Required

Employers with employees in Rhode Island will be required to offer benefits to parties in a same-sex marriage on the same terms as opposite-sex spouses beginning August 1, 2013.

For more information regarding the Act, please go to:

<http://status.rilin.state.ri.us/>

EXCHANGE APPLICATION SHORTENS AND INCLUDES EMPLOYER COVERAGE TOOL

Health and Human Services released a simplified application for individuals and families looking to apply for Exchange coverage. Highlights include:

- A shortened form for single adults (without dependents) who are not eligible for employer coverage
- A separate form for individuals who do not wish to qualify for a subsidy
- Applications for families and individuals who are eligible for employer coverage will:
 - Be shorter, with a more user-friendly format
 - Include an Employer Coverage Tool
 - Request information on the premium an employee would pay with tobacco cessation discounts
 - Include information on whether a plan meets the minimum value standard
 - Request changes to the plan the employer plans to offer for the next plan year

Action Required

Employers should become familiar with the Employer Coverage Tool so that they are ready to provide this information to an employee upon request.

For the individual short form application, go to:

http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/AttachmentB_042913.pdf

For the individual without financial assistance application, go to:

http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/AttachmentD_042913.pdf

For the family application, go to:

http://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/AttachmentC_042913.pdf

BROKERS AND AGENTS IN THE EXCHANGES

The Department of Health and Human Services (HHS) recently issued a memo, describing the roles of brokers and agents inside of the Exchange. Following are highlights from the memo:

- Although brokers and agents may enroll individuals in Qualified Health Plans (QHPs), they may not determine whether those individuals are eligible for such plans
- Brokers and agents must register with the Exchange:
 - Carriers will appoint and verify licensure and registration of the agents and brokers
 - In Federally-Facilitated Exchanges (FFE) and State Partnership Exchanges (SPEs), all agents and brokers must register with HHS and complete an online training course (beginning summer 2013)
 - Brokers and agents dealing exclusively in the Federally- Facilitated SHOP (FF SHOP) program are encouraged (not required) to take the online training course
- Two pathways (or methods) for FFEs and SPEs will be used to facilitate enrollment:
 - First method: Carrier based pathway (facilitated through a carrier's website), redirecting to the Exchange website
 - Second method: Exchange based pathway that directly accesses an Exchange website
- Brokers and agents are subject to disclosure of business relationship with QHPs, and display of QHP requirements:
 - Agents and brokers in the FFE or SPE need not display all QHPs or facilitate enrollment in all QHPs
 - Agents and brokers within a State Based Exchange (SBE) may be required to display all QHPs or facilitate enrollment in all QHPs
 - Agents and brokers are expected to inform individuals of which QHPs they may have a business relationship with, but may direct individuals to the FFE site to see more QHPs
- Compensation for brokers and agents
 - SBEs may establish rules for compensation of brokers and agents, either through direct compensation from the Exchange or through the carrier
 - FFE and SPE brokers and agents may only receive compensation from carriers
 - FFE and SPE carriers must pay the same commissions inside of the Exchange as they do outside of the Exchange
 - Navigators (who play an educational role, and who may facilitate enrollment) cannot receive commissions
- Brokers and agents requirements when enrolling individuals through a website (web-based brokers)
 - State based Exchanges are permitted to work with web-based brokers
 - HHS is currently developing ways to integrate web based brokers into the FFE website
 - Certain guidelines also govern the way QHPs may be displayed on web based broker websites

Action Required

Employers should become familiar with the different options that may be offered by brokers and agents in the Exchange.

For more information regarding this memo, please go to:

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/agent-broker-5-1-2013.pdf>

QUESTION OF THE MONTH

Q: Our company plans to offer a health FSA next year. We will use a TPA to administer health FSA claims. We know that our company's fully insured major medical plan is subject to the HIPAA privacy and security rules, but we've taken a hands-off approach for PHI (receiving only summary health information and enrollment information from the insurer) to limit our privacy and security obligations. Can we take the same approach with the health FSA?

A: Not quite. The definition of a health plan under the HIPAA privacy and security rules is broad enough to include health FSAs, with only one very limited exception. If a health FSA has fewer than 50 participants and is administered by the employer, it is not subject to HIPAA's privacy or security rules. Because a TPA will administer claims under your company's health FSA, this exception is not available to you.

Note also that the HIPAA privacy and security rules use a broader definition of the term "health plan" than the HIPAA portability provisions use. As a result, even though most health FSAs are excepted benefits and are not subject to HIPAA's portability provisions, the privacy and security rules typically still apply to them.

Under the privacy rules, if the sponsor of a fully insured plan takes the hands-off approach for PHI, most of HIPAA's privacy requirements apply to the insurer but not to the health plan or the plan sponsor. Specifically, the plan and plan sponsor are subject only to the privacy prohibitions on retaliation and waiver. Because most health FSAs are not fully insured, this exception to the privacy rules does not apply to them. Therefore, the privacy rules will apply to your health FSA, and your company will be responsible for compliance.

The security rules do not draw a distinction between fully insured and self-insured plans, so all sponsors of group health plans must consider whether they have access to any electronic PHI and apply the HIPAA security rules accordingly. While it is common for sponsors of fully insured plans to have less PHI (because the insurer assumes greater responsibility for administering the plan), a hands-off exception is not available under the security rules.

Under both the privacy and security rules, you can ease your compliance burden by delegating many plan administrative functions to the TPA to minimize the amount of PHI used by or disclosed to your company. Because the TPA will be considered a HIPAA business associate of your health FSA, a business associate contract between the health FSA and the TPA must set forth the TPA's HIPAA compliance obligations before the TPA can use or disclose PHI. Even though many administrative functions may be delegated to a TPA, the sponsor of a health FSA inevitably will have greater privacy obligations than the hands-off sponsor of a fully insured health plan, and likely will have greater security obligations as well.

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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 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 when 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 a plan effective date is 01/01, reporting must be completed by 03/01)

OCTOBER 2013

- **10/01/2013 – Notice of Exchange.** Ongoing employees must receive notice before 10/01/2013; for each new employee, notice must be provided upon hire beginning 10/1/2013
- **10/01/2013 –Exchange Initial Open Enrollment** begins
- **10/15/2013 – Medicare Part D Creditable and/or Non-Creditable Coverage Notice** to plan participants due (if not previously provided earlier in the year as part of the Benefits Information Guide or at open enrollment)

NOVEMBER 2013

- **11/14/2013 – Barney & Barney's Legislative Compliance 2014 Outlook Seminar** in San Diego, CA
- **11/15/2013 – Reinsurance Fee** reporting due for carriers and self-funded plans (including HRA plan sponsors where not integrated with a self-funded plan)

JANUARY 2014

- **01/01/2014 –Employer Mandate** effective for calendar year plans. For non-calendar year plans, the effective date is the first day of the plan year only if on 12/27/2012, the plan offered coverage to 1/3rd of all employees (full-time and part-time) or covered 1/4th of employees (full-time and part-time)