MARSH & McLENNAN AGENCY
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Marsh & McLennan Insurance Agency LLC

Employee Benefits Legislative Compliance
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IN THIS ISSUE

****Quick Transitional Reinsurance Fee Submission and Payment Reminder:**

1. File Transitional Reinsurance Fee Enrollment and Contributions Submission Form by November 15, 2016.

2. Pay 2nd installment of 2015 Transitional Reinsurance Fee by November 15, 2016 (if applicable).

For more information, see:
https://pay.gov/public/form/start/77704988

****Quick Section 1557 Notice Reminder:**
Provide nondiscrimination notice (with information about requesting accessibility or language assistance services) to plan participants by October 16, 2016.

IRS RELEASES FINAL VERSIONS OF FORMS 1094/1095 B & C AND INSTRUCTIONS FOR 2016

The Internal Revenue Service (IRS) released final versions of the 2016 informational reporting forms and instructions. Final versions of Forms 1094/1095-B (B Forms), which are provided to insureds, and corresponding Instructions (Form B Instructions) were released on September 26, 2016. Final versions of Forms 1094/1095-C (C Forms) and corresponding Instructions (Form C Instructions) were released soon after, on September 30, 2016.

Highlights of the changes and clarifications in the 2016 Forms 1094/1095 B & C and 2016 Instructions for Form B and Form C are outlined below.

Important Dates for 2017

Previously, the IRS extended the deadlines for furnishing and filing 2015 Forms 1094/1095 B & C (filed in 2016). However, for 2016 filings, entities should prepare to furnish and file by the standard filing deadlines, unless they obtain an extension through IRC Form 8809. The standard filing deadlines are as follows:

- January 31, 2017: Deadline to furnish to an employee their 2016 Form 1095-C (Applicable Large Employers) and Form 1095-B (insurance providers)
- February 28, 2017: Deadline to file Forms 1094/1095 B & C, if filing on paper
- March 31, 2017: Deadline to file 1094/1095 B & C, if filing electronically Entities filing 250 or more returns **must** file electronically

General Changes Applicable to Both B Forms and C Forms

Submitting Waivers from Electronic Filing

Previously, the 2015 Form B and Form C Instructions (collectively, 2015 Instructions) required entities requesting waivers from electronic filing submit Form 8508 at least 45 days before the due date of the returns. Currently, the Form C and Form B Instructions (collectively, 2016 Instructions) encourage entities requesting waivers from electronic filings to submit Form 8508 at least 45 days before the due date of the returns, but no later than the due date for the returns.

Adjusted/Increased Reporting Penalties

The 2016 Instructions **increase** the penalties for failures to file returns, failures to furnish statements, and improper filings to $260 per form (from $250 in 2015), with an annual maximum of $3,193,000 (from $3 Million in 2015). The penalty applies separately to original returns and corrected returns.

Waiver of Penalties

The Form C Instructions replace the 2015 “Relief from Penalties” section with a section entitled “Waiver of Penalties,” which states that penalties for failing to comply with the information reporting requirements may be waived if the failure was due **to reasonable cause and not willful neglect**.

The 2015 “good faith” relief from penalties for filing incorrect or incomplete statements seems to no longer apply for 2016 returns (filed in 2017).

IRS Releases Final Versions of Forms 1094/1095 B & C and Instructions for 2016 (Continued)

TIN v. SSN

For self-funded plans, the 2016 Instructions clarify that employers may report a Taxpayer Identification Number (TIN) instead of a Social Security Number (SSN) for any covered individuals (with the exception of employees listed in Form 1095-C, Part I).

Taxpayer Recordkeeping Instructions

For the 2016 B Forms and C Forms, the following directions were added, instructing recipients that they should keep the Forms for their own records, and should not submit the Forms with their returns, stating: "Do not attach to your tax return. Keep for your records."

Paper Copies of Corrected Forms

Filers of 250 or more Information Returns are required to file returns electronically. The 2016 Instructions include an additional example on this topic illustrating that if a filer was required to electronically file their Forms, and then had to file corrected Forms, the provider may file paper copies of those corrected Forms, so long as they are correcting fewer than 250 Forms.

The 2016 Instructions also include a reminder to filers that the directions relating to formatting are for preparing **paper** filings, and instructions for electronic filings can be found on the IRS website, along with Publications 5164 and 5165.

Changes in C Forms

Form 1094-C contains the following revisions:

- Line 22, Box B is now marked "Reserved." and should not be used. Previously, this box was used to indicate "Qualifying Offer Method Transition Relief," which is not applicable for 2016 filing.
- In Part III, Column (b), "Section 4980H" was added before "Full-Time Employee Count for ALE Member" to clarify that the Section 4980H definition of a full-time employee applies to this section (rather than the employer's internal definition of a full-time employee).

Form 1095-C contains the following revisions:

- Line 14: Changes to Code(s):
  - New Code 1J: used to report that minimum essential coverage (MEC) providing minimum value (MV) was offered to the employee, MEC was conditionally offered to the employee's spouse, and MEC was **not** offered to the employee's dependent children.
  - New Code 1K: used to report that MEC providing MV was offered to the employee, MEC was conditionally offered to the employee's spouse, and MEC was offered to the employee's dependent children.
  - Code 1I is no longer applicable, and has been reserved.
- Line 15: Title was revised to "Employee Required Contribution (see instructions)," previously "Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage." The revision is intended to clarify the amount that should be entered in the box, in a more condensed manner.
- Line 16: Changes to Code(s):
  - Code 2I is no longer applicable, and has been reserved.
- In Part III, the language was modified slightly to clarify that the information entered should be for all individuals enrolled in self-insured coverage, including the employee.

Changes in C Forms Instructions

The following changes were made to the Form C Instructions.

Transition Relief

The updated Form C Instructions only include information on transition relief available to qualifying non-calendar year plans for the 2016 calendar year. This clarifies that several forms of transitional relief previously available for 2015 calendar year plans, or the 2015 plan year, are no longer available for 2016.

Applicable Large Employer (ALE) Member Filing Obligations Clarified

The Form C Instructions clarify who must file informational returns. First, the phrase "employer" is replaced with "ALE Member". Next, the Form C Instructions define ALE Member, generally as each person or entity that is an ALE, or if applicable, each person or entity that is a member of an Aggregated ALE Group (i.e., an employer in a controlled group).

IRS Releases Final Versions of Forms 1094/1095 B & C and Instructions for 2016 (Continued)

Authoritative Transmittal

The Form C Instructions clarify that each ALE Member must file one or more Form 1094-C(s) (including a designated Authoritative Transmittal) and corresponding Form 1095-Cs for its own full-time employees, under its own separate employer identification number (EIN).

Multiemployer Plan Relief Extended for 2016

The Form C Instructions extend the existing interim relief for multiemployer plans for another year. An ALE Member that is required to contribute to a multiemployer plan on behalf of the employee for that month is treated as having offered coverage (provided the plan coverage is affordable, has minimum value, and offers dependent coverage), regardless of whether the employee was eligible for, or enrolled in coverage under the multiemployer plan. Identical to the 2015 Form 1095-C Instructions, qualifying ALE Members should enter Code 1H (no offer of coverage) on Line 14 for any month that they enter Code 2E (multiemployer interim relief) on Line 16. However, the Form C Instructions caution that this approach may change for 2017.

Clarification of COBRA Continuation Coverage

ALE Members offering COBRA coverage to former employees should report Code 1H (no offer of coverage) in Line 14, and 2A (Employee not employed during the month) in Line 16. However, ALE Members offering COBRA coverage to employees that remain employed should report this as an offer of coverage.

An ALE Member is treated as having offered coverage to the employee's dependents for the entire plan year so long as the ALE Member gave the employee an effective opportunity to enroll dependents at least once during the plan year, even if the employee declined to enroll the dependents, and as a result, the dependents did not receive an offer of COBRA coverage.

Finally, post-employment (**non-COBRA**) coverage offers should not be reported as offers of coverage on Line 14 of Form 1095-C (i.e., ALE Members may use 1H on Line 14 and 2A on Line 16).

Adjusted Affordability Percentages

The Form C Instructions explain that the 9.5% affordability safe harbors are applied as indexed (9.56% for plan years beginning in 2015 and 9.66% for calendar year 2016). Although not specifically mentioned in the Form C Instructions, the affordability safe harbor has been adjusted to 9.69% for plan years beginning in 2017.

Employee Required Contribution Definition

The Form C Instructions added a new definition of this term, which corresponds with its revision on Line 15 of Form 1095-C. Employee Required Contribution refers to the employee's share of the monthly cost for the lowest-cost self-only minimum essential coverage providing minimum value that is offered to the employee by the ALE Member. The employee's share is the portion of the monthly cost that would be paid by the employee for self-only coverage, whether paid through salary reduction or otherwise.

Format of Substitute Statements

The Form C Instructions clarify that entities may furnish substitute statements to individuals in portrait format. However, substitute returns filed with the IRS on paper must be printed in landscape format.

Clarification to Codes

Form C Instructions contains the following clarifications:

- Code 1G: Code 1G applies for the entire year or not at all (Code 1G is used to report participation of part-time employees in a self-funded plan).
- Code 2C: Code 2C should not be entered on Line 16 of Form 1095-C for any month during which the employee enrolled in coverage which was not MEC.

Changes in B Forms

No revisions were made to Form 1094-B.

Form 1095-B contains the following revisions:

- Filing entities can now use TINs instead of SSNs for covered individuals (in Parts I and IV)

IRS Releases Final Versions of Forms 1094/1095 B & C and Instructions for 2016 (Continued)

- Line 9 is now marked "Reserved" and should be left blank. Previously, issuers and carriers were instructed to report coverage under group policies sold through Small Business Health Options Programs (SHOPs) in this section; and
- The heading to Part II was changed to "Information about Certain Employer-Sponsored Coverage" to clarify that this section may be blank for some individuals with employer-sponsored coverage (previously titled, "Employer Sponsored Coverage")

Changes in B Forms Instructions

The following changes were made to the Form B Instructions.

Reporting Exchange Coverage and Catastrophic Plans

The Form B Instructions reiterate that insurance issuers and carriers should report coverage under a qualified health plan (QHP) that individuals enroll in through the Exchange on Form 1095-A, not on Form 1095-B. However, issuers and carriers should report coverage to individuals under group policies sold through SHOPs on Form 1095-B.

In addition, carriers are **encouraged** (but not required) to report 2016 coverage under catastrophic health plans on Form 1095-B.

Taxpayer Identification Number Cross-Reference

The Form B Instructions cross-reference proposed Section 6055 regulations that address the obligations of an employer to solicit covered individuals' TINs.

Reporting Coverage in More than One MEC Plan

The 2015 Instructions and current Form B Instructions include additional details regarding the two filing exceptions for individuals covered by more than one MEC plan. The first exception states that if an individual is covered by more than one MEC plan that is provided by the same provider, then the provider is required to only report one of the plans for that month.

The second exception states that reporting is generally not required for an individual's MEC coverage for a month in which the MEC coverage is offered only to individuals who are also covered by other MEC coverage for which reporting is required.
The Form B Instructions include additional language regarding the application of this second exception to employer-sponsored MEC plans, stating that the exception only applies where both MEC plans are offered by the same employer. The Form B Instructions also include a cross-reference to the proposed Section 6055 regulations which address reporting of supplemental coverage.

Now that the final Form 1094/1095 B & C Forms and Instructions have been released, employers that anticipate filing these forms in 2017 (for reporting 2016 coverage) should familiarize themselves with the changes to better prepare themselves for filing the next round of Information Returns.

IRS Releases Final Versions of Forms 1094/1095 B & C and Instructions for 2016 (Continued)

Action Required

Employers should become familiar with the updated 1094/1095 B & C Forms and Instructions, as these must be used for filing informational returns with the IRS in 2017. Employers should begin the daunting task of preparing to file their 1094/1095-C Forms.

For the complete details, see:

Form 1094-B: https://www.irs.gov/pub/irs-pdf/f1094b.pdf
Form 1095-B: https://www.irs.gov/pub/irs-pdf/f1095b.pdf
Form 1094/1095-B Instructions: https://www.irs.gov/uac/about-form-1095-b
Form 1094-C: https://www.irs.gov/pub/irs-pdf/f1094c.pdf
Form 1095-C: https://www.irs.gov/pub/irs-pdf/f1095c.pdf
Form 1094/1095-C Instructions: https://www.irs.gov/uac/about-form-1095-c

CALIFORNIA PASSES AB 72: PATIENTS PAY IN-NETWORK COSTS FOR OUT-OF-NETWORK PROVIDERS WORKING AT IN-NETWORK HEALTH CARE FACILITIES

On September 23, 2016, the Governor of California signed into law AB 72 (The Bill). The Bill changes the way in which out-of-network providers charge patients for out-of-network, non-emergency services performed at in-network health care facilities. Highlights of AB 72 are listed below.

AB 72 Highlights

The Bill becomes effective for all health care service plans or health insurance policies issued, amended, or renewed on or after **July 1, 2017**. Under AB 72, when an out-of-network individual health care professional provides services at an in-network health care facility, an enrollee/insured can only be charged for in-network cost sharing for those services by the out-of-network provider. For an enrollee/insured to receive the benefit of in-network cost sharing for an out-of-network provider, **all** of the following must apply:

1) The individual is enrolled in either a health care service plan or a health insurance policy as of July 1, 2017
2) The individual is **not** receiving **emergency** services from an out-of-network provider
3) The individual is **not** receiving services from a **dentist**
4) The individual is seeking care at a “health care facility” which is defined below; and
5) The individual has **not** signed a **consent form** (as more fully described below) allowing the out-of-network provider to charge out-of-network cost sharing to the individual

Enrollees/insureds, therefore, must ensure they meet **all** of the above requirements to receive in-network cost sharing for out-of-network providers.

California Passes AB 72: Patients Pay In-Network Costs for Out-of-Network Providers Working at In-Network Health Care Facilities (Continued)

Health Care Facility

So long as an enrollee/insured receives treatment by an out-of-network provider at an in-network "health care facility," that enrollee/ensured cannot be required to pay out-of-network expenses to an out-of-network provider (unless they sign a consent form). A "health care facility" includes, but is not limited to, the following:

- A licensed hospital
- An ambulatory surgery or other outpatient setting
- A laboratory; or
- A radiology or imaging center

Enrollees/insureds should be aware of these above examples when considering an out-of-network provider.

Consent Form, Waiver of AB 72 Protections

Enrollees/insureds may consent to paying out-of-network expenses to out-of-network individual health professionals who provide services at in-network facilities. However, the consent **must**:

1) Be delivered to the enrollee/insured at least 24 hours in advance of the care sought
2) Be delivered to the enrollee/insured separately than all other consent documentation
3) Include an estimate of the enrollee/insured's out-of-pocket expenses
4) Advise the enrollee/insured that they may seek an in-network provider for a lower out-of-pocket expense
5) Be delivered (along with the estimate of out-of-pocket expenses) in the language spoken by the enrollee/insured, if the language is a Medi-Cal threshold language; and
6) The consent shall also advise the enrollee/insured that any costs incurred for out-of-network services is in addition to any in-network cost sharing amounts, and will not count towards any out-of-pocket maximums under the health care service plan or health insurance policy

Enrollees/insureds should ensure that if they are asked to sign a consent form, that all of these elements are included with the consent form for out-of-network services to be paid at out-of-network cost sharing.

No Action Required

Employers should be aware of the change in rules for out-of-network providers if the employer assists employees with any health insurer/servicer claims.

For the complete details, see:

AB 72:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB72

PAID SICK LEAVE FOR FEDERAL CONTRACTORS FINALIZED

On September 30, 2016, the U.S. Department of Labor (DOL) released its Final Rules requiring federal contractors provide up to 56 hours of paid sick leave to employees working on certain contracts issued on or after January 1, 2017. These Final Rules follow Executive Order 13706 (Executive Order), signed in September 2015 by President Obama, which was entitled "Establishing Paid Sick Leave for Federal Contractors," along with the DOL's proposed rules to implement the Executive Order, released on February 25, 2016. Highlights of the Final Rules are discussed below.

Covered Employers

Generally, the Final Rules cover federal contractors subject to the federal contractor minimum wage requirements under the McNamara-O'Hara Service Contract Act Service Contract Act (SCA) or Davis-Bacon Act (DBA). Specifically, the paid sick leave rules cover federal contractors and subcontractors performing services on certain contracts entered into or renewed on or after January 1, 2017, and performed in the 50 States or the District of Columbia. This includes four major categories of contracts:

1) Procurement contracts for construction covered under the DBA
2) Service contracts covered by the SCA
3) Concessions contracts (including those excluded from coverage under the SCA by DOL regulations); and
4) Contracts in connection with federal property or lands and related to offering services for Federal employees, their dependents, or the general public

The Final Rule does not apply to contracts for the manufacturing or furnishing of materials, supplies, articles, or equipment to the Federal government that are subject to the Walsh-Healey Public Contracts Act.

Covered Employees

Covered employees include any individuals who perform work on or in connection with covered contracts entered into or renewed on or after January 1, 2017, and whose wages are governed by the DBA, SCA, or Fair Labor Standards Act (FLSA), including employees exempt from FLSA's minimum wage, such as, employees employed in bona fide executive, administrative, or professional capacities.

Employees who spend less than 20% of their hours in a particular workweek working on covered contracts are excluded from paid sick leave requirements.

If employees are covered by collective bargaining agreements (CBAs) which are ratified before September 30, 2016, apply to the work on a covered contract, and provide at least 56 hours or 7 days of paid sick leave per year that can be used for health-related reasons, the Final Rule will not apply until the CBAs terminate, or on January 1, 2020, whichever occurs earlier.

Accrual, Use, and Carryover

Contractors can offer paid sick leave using either the accrual method, or a lump sum method. Under the accrual method, employees must be provided with one hour of paid sick leave for every 30 hours worked on or in connection with a covered contract, up to at least 56 hours per year. Alternatively, employers could allow accrual at the rate of one hour of paid sick leave for every 30 hours worked (regardless of whether the hours worked were in connection with covered contracts), also up to at least 56 hours per year. Employees do not accrue leave when they are on paid time off (e.g., vacation). Employers may allow employees to accrue leave on a calendar-year basis, or any 12-month period, so long as they apply the same 12-month period for all similarly-situated employees. Finally, employers can frontload the hours by providing employees with at least 56 hours of paid sick leave at the beginning of each accrual year.

Regardless of whether an employer uses the accrual method or the frontloading method, employees must be allowed to carry over any accrued but unused paid sick leave to the following year. In addition, although an employer may cap accrued paid sick leave at 56 hours each year, they cannot establish an annual or per event cap on an employee's use of paid sick leave.

Termination of Employee

Employers are not required to pay out accrued, but not used, sick time to an employee upon the employee's separation. However, if an employee is rehired within 12 months of his or her separation, the employer must reinstate the employee's accrued but unused paid sick time. However, the employer does not need to reinstate the paid sick time if the employer cashed out the employee's accrued sick leave time at the time of termination.

Paid Sick Leave for Federal Contractors Finalized (Continued)

Permitted Uses of Paid Sick Leave

Employees that want to use sick leave may request leave verbally. Employees can use paid sick leave for:

- Their own illness or health care needs,
- To deal with an illness or health care need of a family member or loved one; and
- To deal with issues relating to domestic violence, sexual assault, or stalking if the employee or their family member or loved one is the victim

Health care need is defined broadly, and includes everything from recovering from a common cold or upset stomach, seeking preventive care, to a serious health condition. Issues relating to domestic violence, sexual assault, or stalking include receiving counseling, seeking relocation, or taking legal action.

The Final Rules expanded the definition of "family" to include not only an employee's child, parent, spouse, and domestic partner, but also persons with whom the employee has a "familial-like" relationship, such as close friends or long-time neighbors.

Notice and Recordkeeping Requirements

Employers must account for an employee's use of paid sick leave time in one-hour increments, and at the employee's regular rate of pay. In addition, employers must calculate each employee's accrual of paid sick leave, and notify an employee in writing of the amount of leave available each pay period or each month, whichever is shorter, upon separation and on rehire within 12 months of separation. The amount of accrued paid sick leave must be disclosed separately from other types of paid time off.

Request for Certification

If an employee requests to take leave for three or more consecutive days for the employee's physical or mental illness, injury, or medical condition, or obtaining a diagnosis, care, or preventative care, or caring for the employee's family member, then employers can require certification by a health care provider.

If an employee is requesting sick leave to deal with issues arising from domestic violence, sexual assault, or stalking, documentation may come from a health care provider, counselor, attorney, clergy member, friend, or self-certification. FMLA certifications may be used to satisfy the paid sick leave certifications.

Confidentiality and Nondisclosure

Employers that request documentation about an employee's, or family member's, medical condition must treat the documentation received as confidential, unless disclosure is required by law.

Existing Laws and PTO Policies

Employers may not use paid sick leave required by the Final Rules toward its SCA or DBA obligations, or FMLA obligations. Paid sick leave may run concurrently with unpaid FMLA leave, but employers must note that paid sick leave may be available in some cases when FMLA is not available.

Paid Sick Leave for Federal Contractors Finalized (Continued)

Action Required

Employers that are considered federal contractors should review and familiarize themselves with the requirements in the Final Regulations, and if necessary, revise their policies so that they have adapted their paid sick leave policies to the Final Regulations for any employees working on federal contracts issued or renewed on or after January 1, 2017. Employers should evaluate whether they should provide training to managers on how to handle paid sick leave requests (which will be treated differently than with an employee's FMLA leave request).

Employers that have existing PTO policies that provide equal or greater paid sick leave times than the Federal Rule need not provide additional paid sick leave to federally-contracted employees.

For the complete details, see:

Text of Final Rule:

https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22964.pdf

DOL Q&A on Final Rule to Implement Executive Order 13706: Paid Sick Leave for Employees on Federal Contracts:

https://www.dol.gov/whd/govcontracts/eo13706/faq.htm

2017 SAN FRANCISCO HEALTH CARE SECURITY ORDINANCE RATE ADJUSTMENT

The San Francisco City & County Office of Labor Standards Enforcement (OLSE) released the 2017 health care expenditure rates pursuant to the San Francisco Health Care Security Ordinance (HCSO). The HCSO provides that qualified employees who work in San Francisco are entitled to access to affordable health care. To accomplish this, certain employers are required to spend a minimum amount of money each quarter on behalf of a covered employee's healthcare.

Below is a chart of the adjusted expenditure rates for calendar year 2017:

Employer Size	Number of Employees	2016 Rate	2017 Rate
Large	All employers with 100+ employees	$2.53 per hour payable	$2.64 per hour payable
Medium	Business with 20-99 employees Non-profits with 50-99 employees	$1.68 per hour payable	$1.76 per hour payable
Small	Business with 0-19 employees Non-profits with 0-49 employees	Exempt	Exempt

2017 San Francisco Health Care Security Ordinance Rate Adjustment (Continued)

Action Required

Employers subject to the San Francisco HCSO should ensure that they increase their health care expenditure rates for 2017, to ensure compliance with these rates.

For the complete details, see:

http://sfgov.org/olse/health-care-security-ordinance-hcso

MORRISTOWN, NEW JERSEY ENACTS PAID SICK LEAVE ORDINANCE

On September 13, 2016, the Morristown Town Council passed the Paid Sick Leave Ordinance No. 35-2016 (Ordinance), requiring covered employers provide paid sick leave to covered employees working in Morristown, New Jersey. The Ordinance was initially set to be effective "upon passage and publication," but Morristown, New Jersey Mayor Timothy P. Dougherty signed Executive Order No. 16-01, delaying the effective date of the Ordinance until January 11, 2017.

Covered Employers

Covered employers include any "individual, partnership, association, corporation, or any person or group of persons" that act directly or indirectly in the interest of an employer in relation to an employee. The Ordinance does not apply to government employers.

Covered Employees

The Ordinance applies to all employees who work in Morristown, New Jersey, for at least 80 hours during a calendar year. Covered employees do not include government employees, construction union members covered by a collective bargaining agreement, or employees covered by collective bargaining agreements that waive the Ordinance's paid sick time requirements.

Accrual, Caps, and Carryover

Employees accrue a minimum of one (1) hour of paid sick time for every 30 hours worked. Employees begin to accrue this paid sick time on the first day of employment.

Employers may cap accrued sick leave depending on the number of employees it employs (including full-time, part-time, and temporary employees).[1] Employers with 10 or more employees may cap accrued sick time at 40 hours in a calendar year. Employers with less than 10 employees may cap accrued sick time at 24 hours in a calendar year. However, regardless of the employer size, employers must provide up to 40 hours of paid sick time in a calendar year to child care workers, home health care workers, and food service workers.

Employees may carry over accrued but unused sick time into the following calendar year, but employers may limit the amount of paid sick time to be carried over to 40 hours. Employers may also limit the use of accrued sick time to 40 hours per calendar year.

If an employer has an existing leave policy that satisfies the Ordinance's requirements, the employer is not required to provide additional sick time.

[1] When the number of employees fluctuates, employer size may be determined based on the average number of employees the previous calendar year.

Morristown, New Jersey Enacts Paid Sick Leave Ordinance (Continued)

Termination of Employee

Upon an employee's separation from the company, employers are not required to pay out accrued but unused sick time to the employee. However, if an employee is rehired within six (6) months of separation, the employer must reinstate the employee's accrued but unused paid sick time.

Permitted Uses for Leave

Employees may begin using accrued paid sick time 90 calendar days after their employment begins. Employees may use accrued sick leave for the following reasons:

- For an employee's or family member's mental or physical illness, injury, or health condition, or for medical diagnosis, care, treatment, or preventative care
- For employees to close their place of business, by order of a public official, in connection with a public health emergency
- For childcare for a child whose school or care facility has been closed due to public health emergencies; and
- Care for a family member when health authorities or a health provider have determined that the family member's presence in the community is a risk to others' health due to exposure to a communicable disease

Family member includes a biological, adopted, foster, or step child, a child over which the employee is a legal ward or stands in loco parentis, and a child of a domestic partner. Family member also includes a parent, step-parent, mother-in-law, father-in-law, spouse, grandparent, grandchild, domestic partner, and sibling.

Employers may not require an employee to find a replacement worker as a condition of using his/her paid sick time.

Notice by Employee

Employers are not prohibited from requesting from an employee confirmation, in writing, that the employee did in fact use paid sick time for a permitted reason.

When the use of paid sick time is foreseeable, employers may require employees to provide up to seven (7) days of reasonable advance notice of the use of paid sick time. When the use of paid sick time is not foreseeable, the employer may require the employee provide notice of the need for the use of sick time before the start of the employee's work day or as soon as practicably possible.

If an employee has used three (3) consecutive days of paid sick leave, the employer may require the employee to provide reasonable documentation that the paid sick time was used for a permitted reason under the Ordinance.

Notice and Record Keeping Requirements

The Ordinance requires covered employers to provide written notice to employees detailing their rights to paid sick time under the Ordinance, including the accrual rate and amount of paid sick time, the prohibition on employer retaliation, and the right of employees to file a complaint or legal action if paid sick time is improperly denied. Employers must provide this notice to new employees on the date of hire, or as soon as practicably possible for current employees. The notice must be in English and the primary non-English language spoken by the employee, as long as that language is the primary language for at least 10% of its non-English speaking employees.

Employers are also required to display a poster in a conspicuous and accessible location in the workplace containing similar information to the above-mentioned notice. The poster must be in English and any first language of at least 10% of its non-English speaking employees.

The Ordinance requires employers to maintain records of hours worked and the amount of paid sick time used by employees. Failure to maintain such records creates a rebuttable presumption that an employer has violated the Ordinance, unless the employer can show otherwise by clear and convincing evidence.

Confidentiality and Nondisclosure

The Ordinance prohibits employers from requiring an employee to disclose specific details about the employee's or family member's medical conditions in order to receive paid sick leave. Any employee health information the employer possesses must be treated as confidential.

Morristown, New Jersey Enacts Paid Sick Leave Ordinance (Continued)

No Denial or Retaliation

Employers may not restrain or deny an employee from exercising any rights provided under this Ordinance, nor may an employer retaliate against an employee for the use of his/her paid sick time.

Enforcement and Penalties

The Department of Administration is responsible for enforcement of the Ordinance. Employers who violate any provision of the Ordinance are subject to fines, as well as payment of restitution in the amount of any paid sick leave that was wrongly withheld from an employee.

Action Required

Although the effective date of the Ordinance is delayed until January 11, 2017, employers with employees working in Morristown, New Jersey should still review and revise their current sick leave policies, and implement any necessary changes by January 11, 2017.

For the Ordinance, see:

http://morristownnj.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=1005&MediaPosition=&ID=1069&CssClass

COOK COUNTY, ILLINOIS ENACTS PAID SICK LEAVE ORDINANCE

On October 5, 2016, the Cook County Board of Commissioners approved the Cook County Earned Sick Leave Ordinance (Ordinance), requiring covered employers provide paid sick time to covered employees working in Cook County, Illinois. The Ordinance will become effective on July 1, 2017. Highlights of the Ordinance are described below.

Covered Employers

A covered employer is any "individual, partnership, association, corporation, limited liability company, business trust, or any person or group of persons that employs at least one covered employee and has a place of business within Cook County." The Ordinance does not apply to government employers, Indian tribes, or a corporation wholly owned by an Indian tribe.

Covered Employees

The Ordinance applies to employees who perform at least two (2) hours of work in Cook County during any two (2) week period and perform at least 80 hours of work for a covered employer in any 120-day period. The two (2) hour work requirement includes compensated time for traveling within Cook County, including time spent on deliveries, sales calls, and other business-related activities within Cook County. However, uncompensated time commuting in Cook County is not counted.

The Ordinance does not apply to certain railroad employees under the Railroad Unemployment Insurance Act, or employees in the construction industry that are covered by a collective bargaining agreement.

Accrual, Caps, and Carryover

Employees accrue a minimum of one (1) hour of paid sick time for every 40 hours worked. Employees begin to accrue paid sick time on the first day of employment, or July 1, 2017, whichever is later. Earned sick time may only accrue in one (1) hour increments, not fractions of an hour. Employees' accrual of earned sick time is capped at 40 hours per 12-month period (calculated from the date he/she began accruing earned sick time), unless the employer chooses to allow a higher cap.

Cook County, Illinois Enacts Paid Sick Leave Ordinance (Continued)

At the end of the 12-month period, an employee is permitted to carry over up to 20 hours of earned sick time to the following 12-month period. If an employer is subject to the Family and Medical Leave Act (FMLA), its covered employees may carry over an additional 40 hours of accrued but unused earned sick time to use for FMLA purposes.

If an employer has an existing leave policy that satisfies the Ordinance's requirements, then the employer is not required to provide additional sick time.

Termination of Employee

Upon an employee's separation from the company, employers are not required to pay out accrued but unused sick time to the employee, unless an employee is covered by a collective bargaining agreement that requires otherwise.

Permitted Uses for Leave

Employers must allow covered employees to use accrued sick time within 180 days of employment. Employees may use accrued sick time for the following reasons:

- The employee or family member is ill or injured, or is receiving medical care, treatment, diagnosis, or preventative medical care
- The employee or family member is a victim of domestic violence, sexual violence, or stalking
- For employees to close their place of business, by order of a public official, in connection with a public health emergency; and
- For childcare for a child whose school or care facility has been closed due to a public health emergency

Family member includes a child (biological, step, foster, adopted, or of which the employee stands in loco parentis), legal guardian or ward, spouse, domestic partner, parent (biological, step, foster, adoptive or legal guardian, or person who stood in loco parentis when employee was a minor), spouse or domestic partner's parent, sibling, grandparent or grandchild, and any other individual related by blood or "whose close association with the employee is the equivalent of a family relationship."

Employees are limited to using 40 hours of earned sick time during the 12-month period (calculated from the date he/she began accruing earned sick time), unless the employer allows for a greater limit. If an employee carries over and uses 40 hours of FMLA leave, the employee is permitted to use a maximum of 20 additional hours of accrued sick time in the same 12-month period, unless the employer allows for use of additional hours.

Employers may set a reasonable minimum increment in which an employee may use accrued sick time, not to exceed four (4) hours.

Employers may not require an employee to find a replacement worker as a condition of using his/her paid sick time

Notice by Employee

When the use of paid sick time is foreseeable (e.g., prescheduled appointments with health care providers for the employee or family member and court dates for domestic violence cases), employers may require employees to provide up to seven (7) days of reasonable advance notice of the use of paid sick time. When the use of paid sick time is not foreseeable, the employer may require the employee provide notice of the need for use of sick time as soon as practicable on the day the employee intends to use earned sick time. If the leave is covered under FMLA, notice must be requested and provided in accordance with FMLA requirements.

If an employee has used three (3) consecutive days of paid sick time, the employer may require the employee to provide certification (e.g., doctor's note or court document) that the paid sick time was used for a permitted reason under the Ordinance. The employer may not require that the documentation specify the nature of the employee's or family member's condition. The Ordinance does not prohibit an employer from taking disciplinary action (e.g., termination) against an employee for using earned sick time for a reason other than those permitted under the Ordinance.

Notice and Record Keeping Requirements

The Ordinance requires covered employers to post a written notice detailing employees' rights to paid sick time under the Ordinance in a conspicuous place at each facility in Cook County where a covered employee works. The Cook County Commission on Human Rights (Commission) is required to provide a model notice for covered employers to use, that satisfies the Ordinance's requirements. In addition to the posting requirement for the notice, employers are also required to provide a covered employee with a written notice regarding paid sick leave at the beginning of their employment that advises the employee of his/her rights to earn paid sick time under the Ordinance.

Morristown, New Jersey Enacts Paid Sick Leave Ordinance (Continued)

Collective Bargaining Agreements

The Ordinance does not affect an employee's right to enter into a collective bargaining agreement that establishes wages or other conditions that exceed the Ordinance's minimum requirements. The Ordinance does not affect the validity or terms of a collective bargaining agreement in place as of July 1, 2017. A collective bargaining agreement entered into after July 1, 2017 may waive the requirements of the Ordinance, as long as the waiver is explicitly set forth in clear and unambiguous terms in the agreement.

No Denial or Retaliation

Employers may not discriminate or take adverse action against an employee for exercising any rights provided under this Ordinance. Adverse action includes, but is not limited to, unjustified termination, denial of promotion, or negative evaluation.

Enforcement and Penalties

The Commission is responsible for enforcement of the Ordinance. Employers who violate any provision of the Ordinance are subject to civil action damages equal to three (3) times the full amount of any unpaid sick time that was denied to an employee, plus interest and attorney's fees. The employee is not required to file an administrative claim prior to filing a civil action against an employer who allegedly violates the Ordinance. An employee has three (3) years from the date of the last alleged violation by the employer to file an action.

Action Required

Although the effective date of the Ordinance is not until July 1, 2017, employers with employees working in Cook County, Illinois should still review and revise their current sick leave policies, and implement any necessary changes by July 1, 2017.

For the complete details, see:

https://cook-county.legistar.com/LegislationDetail.aspx?ID=2775571&GUID=CCBEEF29-D744-4015-91A1-7948EEE28668&Options=&Search=&FullText=1

MINNEAPOLIS, MINNESOTA AMENDS PAID SICK LEAVE LAW

Minneapolis, Minnesota originally passed its Sick and Safe Time Ordinance on May 31, 2016 (original Ordinance) requiring Minneapolis employers provide employees with paid sick and safe time. On September 28, 2016, about four months after enacting the original Ordinance, Minneapolis amended its Sick and Safe Time Ordinance (amended Ordinance). Highlights of the amended Ordinance, which is scheduled to take effect on July 1, 2017, are discussed below.

New Frontloading Method

Under the original Ordinance, covered employers were required to let employees accrue one hour of sick and safe time for every 30 hours worked, up to 48 hours per year, and carry over a balance of up to 80 hours. The amended Ordinance grants Minneapolis employers the option to "frontload" leave time, by providing a lump sum of sick and safe time to employees at the beginning of an accrual year. Employers that select this method must provide employees with at least 48 hours of leave, following their initial 90 days of employment, to use during the first year, and may cap the accrual of leave at 80 hours for subsequent years.

Minneapolis, Minnesota Amends Paid Sick Leave Law (Continued)

Employers will have to decide whether they prefer the administrative convenience of frontloading (at the risk of employees using up 48 hours of leave and terminating before the end of the year), or the accrual method (which may take more time to administer, as the employer must constantly update records of the leave accrued and used by each employee).

Modifications to Rate of Pay

Under the original Ordinance, employers with six or more employees must pay employees their regular rate of pay when the employees use leave, at the same hourly rate, and with the same benefits earned had the employees not taken leave. The amended Ordinance deleted the statement that employees are not entitled to lost commissions and tips on paid sick leave, and instead added a list of items excluded from an employee's regular rate of pay, including: tips, commissions, reimbursement for expenses incurred on an employer's behalf, premium payments/rates for overtime or work on Saturdays, Sundays, holidays or scheduled days off (if the premium rate is at least 1.5 times the normal rate), and bonuses.

Employers should consult with counsel to review and resolve any conflicts between exclusions in the Ordinance and their plan documents/policies and procedures.

Changes to Recordkeeping Requirements

The amended Ordinance made several changes to the recordkeeping requirements imposed on employers. Now, employers must calculate the leave time accrued by its employees on at least a monthly basis. In addition, employers must now record the hours worked by each employee, in addition to reporting to the employee their available hours of paid sick leave.

Finally, employers no longer need to track hours worked by employees occasionally working in Minneapolis (the Ordinance only applies to employees who work in Minneapolis for at least 80 hours in a 12-month period). Although these changes do not take effect until July 1, 2017, employers with six or more employees in Minneapolis may want to familiarize themselves with the original Ordinance, and any amendments made to the Ordinance.

Action Required

Although the Ordinance is not effective until July 1, 2017, employers with six or more employees working in Minneapolis, Minnesota should review their sick leave policies, and ensure that they are in compliance with the amended Ordinance.

For the complete details, see:

Amended Ordinance:
http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcmsp-186672.pdf

Original Ordinance:
http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcmsp-180691.pdf

COMPLIANCE REMINDER: ACA TRANSITIONAL REINSURANCE FEE SUBMISSION FORMS DUE NOVEMBER 15TH

The Affordable Care Act (ACA) created the transitional reinsurance program to help stabilize premiums in the individual market (both inside and outside the Marketplace/Exchange) by assessing fees on health insurers and group health plans (excluding plans that are self-insured **and** self-administered). These fees, assessed in 2014, 2015, and 2016, reimburse health insurers in the individual market for losses sustained when they enroll high-cost claimants. Fees are typically paid by a plan sponsors of a self-funded plan, and by a carrier of a fully-insured plan.

Transitional Reinsurance Fee Submission Form Is Due November 15th

Plan sponsors must submit the ACA Transitional Reinsurance Program Annual Enrollment and Contributions Submission Form (Submission Form) to the U.S. Department of Health & Human Services (HHS) by **November 15, 2016**, via www.pay.gov, the same process used in 2014 and 2015. The Submission Form requires plan sponsors to calculate and report the average number of members participating in the plan sponsor's health plan, which is based on the average member count, from the first nine (9) months of the calendar year. A plan sponsor may use any of the prescribed counting methods in the rules (Actual Count Method, Snapshot Method, and Form 5500 Method).

Fees are assessed on a per-member basis for each "covered life" under a plan, which includes a spouse or any dependents of an employee. For 2016, the fees are $27 per covered life, and payments are due in 2017. Plan sponsors may pay the 2016 contribution fee in one payment ($27 per covered life due by January 17, 2017), or in two installments ($21.60 per covered life due by January 17, 2017, plus $5.40 per covered life due by November 15, 2017).

Second Installment of 2015 Transitional Fee Is Due November 15th

If a plan sponsor opted to make its **2015** Transitional Reinsurance fee payment in two installments, then it should have made its first payment of $33 on January 15, 2016, **and** should make its second installment of $11 per covered life by **November 15, 2016**.

Action Required

Plan sponsors should calculate their average enrollment counts, complete the ACA Transitional Reinsurance Fee Submission Form, and submit this to the Department of Health & Human Services by November 15, 2016. In addition, plan sponsors that were subject to the Transitional Reinsurance fee in 2015 and opted to pay in two annual installments, must make their second installment payment of $11 by November 15, 2016.

For the complete details, see:

https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/The-Transitional-Reinsurance-Program/Reinsurance-Contributions.html

COMPLIANCE REMINDER: SECTION 1557 NONDISCRIMINATION NOTICE WAS DUE TO PLAN PARTICIPANTS ON OCTOBER 16TH

The Final Rules implementing Section 1557 of the Affordable Care Act (ACA), titled *Nondiscrimination in Health Programs and Activities*, were initially published on May 18, 2016. Section 1557 of the ACA prohibits discrimination based on race, color, national origin, sex (including gender identity), age, and disability under any health program or activity that receives Federal financial assistance. The Final Rules required covered entities provide nondiscrimination notices with information on how plan participants can request accessibility or language assistance services starting on **October 16, 2016**.

Who is a Covered Entity?

A covered entity is defined as:

- Any health program or activity that receives federal financial assistance through the Department of Health & Human Services (HHS), including Medicaid, most Medicare, and student health funds;
- Any health program or activity administered by an entity established under Title I of the ACA, including state-based marketplaces; and
- The HHS and the programs it administers, including the federally facilitated marketplace.

What is Required in the Notice?

Covered entities must provide initial and continuing notification to beneficiaries, enrollees, applicants, and the public of individuals' rights under Section 1557. The notices should include the following information:

- That they (the covered entity) do not discriminate on the basis of race, color, national origin, sex, age, or disability
- That they will provide appropriate aids and services without charge and in a timely manner, including qualified interpreters for people with disabilities
- That they will provide language assistance including translated documents and oral interpretation free of charge and in a timely manner
- How to obtain aids and services
- How to file a grievance; and
- How to contact the Office of Civil Rights (OCR) to file a discrimination complaint

In addition, if a covered entity has 15 or more employees, the notice must include the contact information for the individual responsible for resolving grievances and overseeing Section 1557 compliance.

Covered entities must include language taglines in each notice, in the top 15 non-English languages in the entity's state, informing individuals of the availability of language assistance services. For small-sized significant publications (e.g., postcards), covered entities must post taglines in at least the top two non-English languages in the state.

OCR provides a sample notice and taglines on its website in 64 languages that covered entities may use for guidance.

Where Does the Notice Need to be Posted?

The notice must be posted in:

- Any "significant publications and significant communications" targeted to beneficiaries, enrollees, and applicants (a shorter nondiscrimination statement may be substituted for the full notice in smaller-sized publications and communications)
- A conspicuous location where the covered entity interacts with the public, and the notice may be viewed by the public; and
- A conspicuous location on the entity's website accessible from the homepage

Compliance Reminder: Section 1557 Nondiscrimination Notice Was Due to Plan Participants on October 16th (Continued)

Action Required

If they have not done so, covered entities should immediately provide the Section 1557 Nondiscrimination Notice in publications and communications to participants, in public locations, and on their website.

For the complete details, see:

http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html

For Sample Notices, see:

http://www.hhs.gov/civil-rights/for-individuals/section-1557/translated-resources/

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QUESTION OF THE MONTH

What Are the HIPAA Breach Notification Requirements for the Plan Sponsor of a Self-Insured Group Health Plan?

QUESTION: Our company sponsors a self-insured group health plan for our employees and is designated as the plan administrator. If we discover an unauthorized disclosure of PHI, what are our notification obligations?

ANSWER: HIPAA imposes detailed notification requirements on covered entities, including employer-sponsored group health plans and their business associates, in the event of a breach of "unsecured" protected health information (PHI). As an employer that sponsors and administers a self-insured group health plan, you are ultimately responsible for providing the required notifications, although you may contract with a third party for assistance.

When a potential breach is discovered (or reported by a business associate), the first step in determining whether notification is required is assessing whether unsecured PHI has been acquired, accessed, used, or disclosed in a manner that is impermissible under HIPAA's privacy rule. Electronic PHI is considered unsecured unless it has been destroyed or has been encrypted according to an OCR-approved algorithmic process. Paper PHI is considered unsecured until it is destroyed.

If unsecured PHI has been impermissibly acquired, accessed, used, or disclosed, the second step is to determine whether the incident is actually a breach. Regulations include a presumption that a breach has occurred, unless the covered entity or business associate can show a low probability that the privacy or security of the PHI has been compromised, using a four-factor risk assessment. The factors include: the nature and extent of PHI involved; the identity of the unauthorized person who received the PHI; whether PHI was actually acquired or viewed (as opposed to just being accessible); and the extent to which risks to the PHI have been mitigated. All four factors must be considered.

If the incident is determined to be a breach of PHI, your company would be required to notify individuals whose PHI was impermissibly used or disclosed "without unreasonable delay" and in no case later than 60 calendar days after discovery of the breach. ("Discovery" occurs when an entity knows, or with reasonable diligence should have known of the incident—making early identification of potential breaches critically important.) The notification must be written in plain English and comply with specific content and delivery requirements. In addition, if the breach involves the PHI of 500 or more individuals, HHS must be notified within the same timeframe as the individual notification; if the breach involves fewer than 500 individuals, it must be included in a year-end annual report to HHS. Finally, media must be notified (within the same timeframe as the individual notification) if the breach involves more than 500 residents in one state.

Source: EBIA

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