

# HEALTH, ENGAGEMENT & PRODUCTIVITY

## PRODUCTIVITY

Convention holds that employee engagement drives productivity resulting in greater firm growth, earnings and margin.

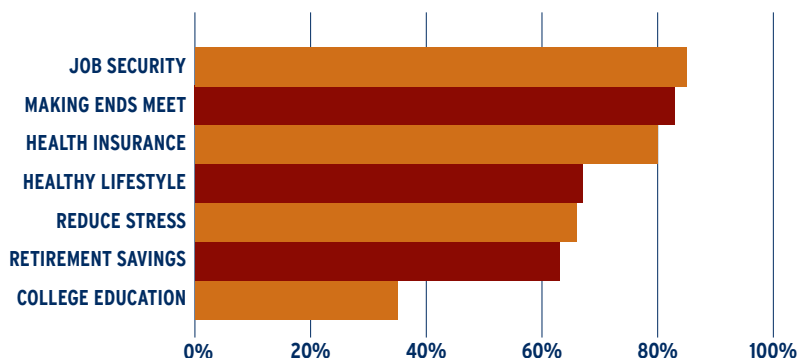
Studies suggest firms with higher levels of engagement are three times more productive than peers with lower engagement levels.<sup>1</sup> But what role does health play in the matter?

Are healthy employees more likely to be engaged? Are the workplace programs fostering greater health and wellbeing also likely to spur engagement? *This essay will address the hidden links between health, engagement and productivity.* Let's begin by defining engagement:

**“Pride, satisfaction and commitment employees bring to the workplace and the willingness to advocate on behalf of the organization.”**

## ENVIRONMENT

No employer operates in a vacuum. Therefore it is important to understand the political and economic environment in which we operate. Current economic conditions are deplorable. The “Great Recession” has resulted in 10% unemployment. Nearly 70% of America’s employers indicate the economy has negatively impacted their businesses.<sup>2</sup> The same survey reports job security is the #1 worry among employees (85% rate job security as a top priority).



<b>HEALTH, ENGAGEMENT &amp; PRODUCTIVITY</b>	1
<b>WELLNESS</b>	
Health Care Reform And Its Impact On Your Wellness Program Strategy Incentive Design	7
Small Business Wellness Grants	7
<b>HR CORNER</b>	
Put Some Flexibility in Their Work Lives	9
For Better Results, Ramp Up Recognition	10
<b>LEGAL &amp; COMPLIANCE</b>	
Nondiscrimination Requirements for Insured Health Plans Delayed	11
Agencies Release More FAQ Guidance	12
Guidance Issued on Debit Cards and Reimbursement of OTC Medicines	14
Tax Relief Bill Enacted	14
IRS Delays Transportation Benefit Guidance Effective Date	15
IRS Guidance on Pay Withholding Changes	16
“Red Flags” Rule Amended	16
2010 Form M-1 Available	17
New Jersey Family Leave Tax Reduced	17
Paid Leave for California Organ Donors	18
<b>WEBCASTS</b>	19
<b>CONTACTS</b>	20

The economic downturn has prompted some, like author Judith Bardwick,<sup>3</sup> to coin terms specific to today's social/psychological cognitive framework. Bardwick notes a "psychological recession," where employee pessimism is eroding corporate loyalties due to such economic factors as downsizing, globalization and overwork.

As such, economic woes dictate a heightened sense of "morale awareness" on the part of employers. Strong evidence also suggests the economy negatively affects employee decision making relative to personal health and wellbeing.

The CDC in their National Health Interview Survey finds "the worse things get, the worse we behave." Simply put, today's economic environment contributes to poor decision making regarding diet, exercise, smoking and other unhealthy habits. The effects of bad behavior are hazardous for general health and wellbeing, as well as employer insurance costs and imputed productivity measures.

Moreover, despite high unemployment, employee voluntary turnover continues at a double-digit pace for most American firms (11% on average according to the Willis Staffing & Services Survey, 2009).<sup>4</sup> Willis HR Consultant Jennifer Barton suggests that employers are fighting harder than ever to compete for key talent "in a market where under-performers have already been laid off."

Discourse on environment would be incomplete without an examination of the impact of Health Care Reform. Most agree the political context has the effect of throwing gasoline on a fire. While many employers struggle to maintain benefits program integrity – while balancing cost factors – recent studies indicate 88% of employers believe Health Care Reform will further increase program costs.<sup>5</sup>

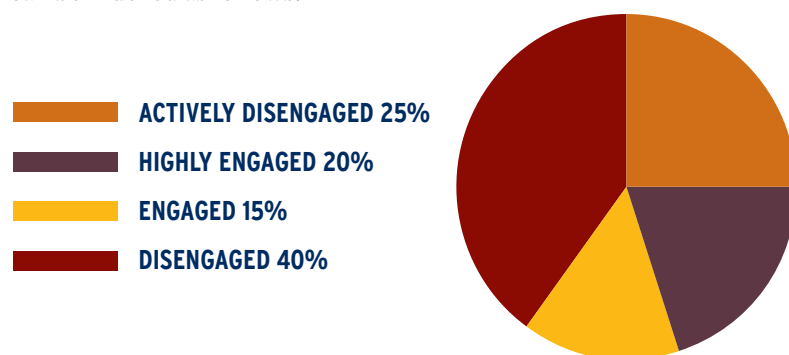
There are two major issues with the American health insurance model: 1) gaps in coverage and 2) cost of care. *Health Care Reform may*

*mitigate the first issue, but it ignores the second.* The cost equation is largely a function of buyer demand. Buyer demand is driven by lifestyle choices; in particular, our decisions around diet, exercise and smoking.

Again, a clear link exists between political/economic factors, health and employee engagement. A thorough analysis of the connections between health, engagement and productivity needs to carefully weave in these marketplace realities.

## TRADITIONAL WISDOM

Disengagement costs U.S. employers \$350B per year in lost productivity.<sup>6</sup> Research Works estimates most employer engagement can be indexed as follows:



Given that 65% of the average organization's staff is to some extent disengaged, it is little wonder firms with higher levels of engagement report greater innovation, morale, loyalty, service quality, growth and earnings.<sup>7,8</sup>

Productivity, however, is also affected by the relative health of workers. *The Journal of Environment & Occupational Medicine (Health Risks & Productivity, 2005)* draws a correlation between employee "risk factors" and reductions in productivity. A risk factor might be a chronic condition (such as diabetes or obesity). Published findings indicate American employees suffer from – on average – 2.16 risk factors per employee. Each risk factor is believed to be valued at a 2.4% reduction in productivity. Using cost estimates for average salary, this equates to \$2,861 in lost productivity per employee per year (using present day measures).

Evidence clearly supports the notion that both employee engagement and health impact productivity. But does health impact engagement? *Does an organizational imperative exist to link good health with increased engagement as a method to increase productivity?* The answer to these questions rests with our ability to think in new ways about old concepts.

## NEW THINKING

Decoding the relationship between good health and employee engagement requires us to seek consistent themes among employer groups reporting success on both measures. “High performing” employers report medical costs per employee of \$7,138, while under-performing firms suffer much higher costs of \$8,167.<sup>9</sup> This prompts the question, “What are high performers doing differently?” *Are the programs high performers undertake to control costs consistent with those used to drive engagement?* If so, where do overlaps exist?

An inventory of employer programs for high performers reveals consistency in program “initiative categories.” This supports the notion that programs supporting good health also spur engagement.

PROGRAM INVENTORY		
Health	Initiative Category	Engagement
Stress Management	EAP offering	Stress Management
Gym (on-site or discount)	Fit Environment	Safety Concerns
Smoke Free/Healthy Campus	Working Conditions	Day Care/Elder Care
Earned Benefits	Culture/Leadership	Rewards & Recognition
Healthy Competitions	Positive Supervisor	Training & Development
Healthy Days/Health Fairs	Work/life Balance	Flex Time/Telecommute
Health Coach/HRA/Biometric Screen/ Disease Management	Support Resources	Community Involvement

While some of the programs may differ, there is significant overlap in initiative type. In most cases, the audience and leadership remain the same with messaging tweaked to support a specific purpose. There are two common denominators for program success: 1) positive relationship with immediate supervisor and 2) effective communication campaigns.

Clear opportunities exist to design and deploy programs joining key themes from both health and engagement initiatives. Moreover, critical execution elements overlap (supervisor relationship and communication elegance).

Health and wellbeing are extremely powerful elements in employee engagement, productivity, talent retention and innovation. *As such, employers must strive to articulate health and engagement in the context of organizational strategy (well beyond traditional talent management).* The question becomes, “What new conventions should employers apply to their business models?”

## CREATING CONVENTIONS

Every company is in a constant state of evolution. The question is, “Is your evolution planned or unplanned?” *The absence of a plan is evolution by default.* Examples in corporate America are too numerous to count. Willis Health and Productivity expert Cheryl Mealey maintains “only through persistence and purpose” can an organization affect its culture and by virtue of that, its future.

*When creating conventions, be unconventional!* What do I mean by that? Today’s conventions aren’t working.

1. 60% wellness program participation equates to 2.2 days per year reduced absenteeism, yet only 20% of employers offer a wellness program.
2. Employers know that rewards increase program participation by 200%, but only 41% offer incentives.
3. Most employers offer CDHPs, but the vast majority have participation <20%.
4. 86% of business leaders claim to be committed to work/life balance, while only 33% offer flexible schedules (even less offer a telecommuting option).
5. 95% of leaders believe health and productivity are related, but 80% of employers offer no real alternatives for employee behavior change.

In short, we know what we need to do but fail to do it. New employer conventions need to factor in the link between health, engagement and productivity. The payoff is enormous. TowersWatson<sup>10</sup> reports vast differences in performance between highly engaged companies and low engaged firms:

- 12-month change in net income 14% vs. 4%
- Growth in EPS 28% vs. 11%
- Net profit margin expansion 2.1% vs. 1.4%

So what is the prescription for America’s employers? Create conventions that achieve: 1) *supervisor buy-in*, 2) *broad scale, leader-led communications* and 3) *work/life balance*. In constructing

***Supervisor Relationship:*** Company strategies are important, but manager support of those initiatives is critical. **Where there is a disconnect between company policy and supervisor direction, disengagement ensues.** Employees may choose an employer based on brand or offer; they stay because of supervisor relationship.

***Effective Communications:*** Program participation, as well as employee perception, is increased exponentially by well crafted, multi-media campaigns (as much as 400% improvement). Effective communications are also characterized by leader involvement.

conventions to achieve these three themes, employers must also:

- Make it easy and convenient
- Create time – on the employer’s clock

Any initiative without the resources or support to drive adoption will fail the “easy to use” test. Things that are not easy are hard – and things that are hard to do don’t get done. RTI economist, Eric Finklestein, suggests the greatest barrier to behavior change is time. *Without the time to do something, change cannot occur.* Since work/life balance is already in question for most employees, time must be endowed by the employer.

## THE PRESCRIPTION

So how will forward thinking employers optimize business outcomes?

Understand that human capital isn’t just a strategic asset. *Taking care of your employees and their family members is the business you are in.* Effective use of Total Rewards initiatives is central to business operations, not tangential (certainly not optional). Building a culture of health is a central component of forward thinking employers who strive to win the hearts and minds of their employee population and their families.

The payoff for deep, multi-faceted, Total Reward strategies spells dividends well beyond traditional expectations. Understanding the link between health, engagement and productivity renders common ROI calculations banal (e.g., invest 1% of benefits cost in wellness programs to get a future 3% reduction in benefits cost).

What is the value of being a space innovator? Recognized as an Employer of Choice? Perceived as an industry leader in service excellence? What is the value of brand recognition in any of these areas? *The effects of an organization characterized by fit environment, safe/healthy working conditions, culture of health, positive/engaged supervisors, work/life balance emphasis and the leadership/resources*

*to support these initiatives is transformational.*

*Moving from peer to leader isn't a "nice to have," it is a "need to have."* Political and economic considerations dictate immediate action. Your business success depends on your ability to make fundamental improvement in each of the Total Reward buckets if you are to increase health and employee engagement as a means to impact productivity.

## TOTAL REWARDS TACTICS

Benefits	Compensation	Performance & Recognition	Work/Life Balance	Career Development
Earned benefit approaches (healthy behaviors = better benefits)	Pay for performance to align organization/employee objectives	Frequent retention discussions (individual development plans)	Flextime and Telecommute policies	Line manager accountability for HR activities
CDHP - to align incentives with behavior	Pay ranges aligned to market data	360 degree performance evaluations	Healthy Days (well days off for healthy behaviors)	Tuition reimbursement
HRA/HSA subsidies based on health improvement	Align maximum motivation with high performance (mix of base to variable pay strategy)	Credible - data driven - performance mgmt	Healthy Time @ work (part of workday)	Career ladders & paths (upward + lateral)
Healthy contributions/healthy incentives (e.g., tobacco)	Management incentive plans (weighted balance - tied to supervisor 360 degree reviews + HR activity success)	Identify key job competencies - adopt spot awards for use	Day Care subsidies, facilities, resources and support	Development programs with active progress management
EAP offering - support emotional wellbeing	Merit programs reward high performers	Healthy competitions/behavior change challenges	Elder Care tools & resources	Training & Development
Financial planning/wellbeing support	Wide dispersion of pay range (low to high performers)	Rewards & Recognition for model behaviors (e.g., days safety)	Community Involvement (company related)	Mentoring/Coaching programs (identify/develop high performers)
Healthy subsidy for gyms (based on gym usage)			Paid & Unpaid time off	Succession planning (bench strength)

# THE PAYOFF

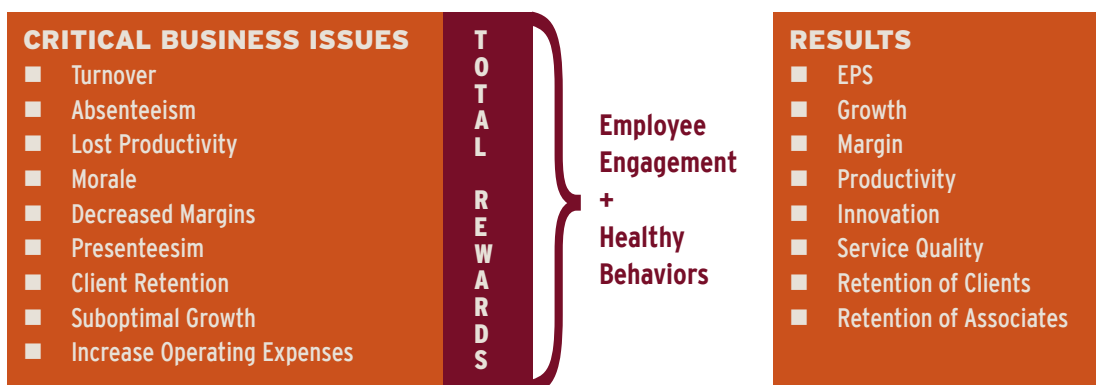
Change will not be undertaken in the absence of expectation of return. The payoff for a fully executed Total Reward strategy is both staggering and measurable.

*The key to financial success lies in creating a business strategy that articulates achievement in terms of employee health and engagement.* These businesses understand that Total Rewards are the tools of a winning enterprise.

So what is the payoff? A Total Rewards strategy that understands the common links between health and employee engagement programs will pay hard and soft dollar dividends. *Hard dollar dividends* are increased productivity measuring thousands of dollars per employee per year. *Soft dollar dividends* are increased associate loyalty, service quality and innovation translating into space-leading earnings, margin and revenue growth.

	HIGH PERFORMERS	LOW PERFORMERS
Medical Cost	\$7,138/ee	\$8,167/ee
Turnover	4%	11%
Cost of Turnover	\$500/ee	\$1,375/ee
Absenteeism	\$1,430	\$2,861
Income Growth	14%	4%
Earnings	28%	11%
Margin	2.1%	1.4%

**Can today's employers afford not to capitalize on the links between health, engagement and productivity?**





# WELLNESS

## HEALTH CARE REFORM AND ITS IMPACT ON YOUR WELLNESS PROGRAM STRATEGY

According to our recent **Willis Health Care Reform survey**, about one-third of survey participants (30%) disagreed or strongly disagreed that health care reform will likely improve employee health and wellness. Other key findings from the survey related to worksite wellness programs included:

- 44% agreed or strongly agreed that employee wellness programs will require more mandatory participation as a result of health care reform.
- 38% agreed or strongly agreed that the adoption of voluntary disease management and wellness programs will increase as a result of health care reform.
- Only 25% of small businesses (those with fewer than 100 employees) were aware of the small business wellness grant program; 17% of small businesses indicated that they were planning to apply for the funds.

Despite the many debates, discussions and issues that were highlighted in recent years on prevention and health promotion, the passage of the Patient Protection and Affordable Care Act (PPACA) in 2010 has limited impact on the way worksite wellness programs are designed and implemented. Two main areas of health care reform that may impact your wellness strategy are outlined below.

### INCENTIVE DESIGN

The use of financial incentives in workplace wellness or health management programs has been gaining momentum over the past several years. The passage of PPACA may increase the likelihood that employers will expand their use of incentives tied to participants meeting certain health standards. The legislation did not affect the current requirements for wellness programs, which continue to allow employers to tie employee costs to “health status factors,” such

as body weight or tobacco use, as long as other HIPAA requirements are met. The maximum incentive employers can offer will now increase, with the current HIPAA limit of 20% of the total cost of health coverage growing to 30% on January 1, 2014.

To ensure the success of any type of incentive strategy and to effectively integrate it into their overall health management strategy, employers need to harness the power of workplace culture to drive employee engagement and health outcomes. Strong cultural support is critical because incentives by themselves only net compliance. Employees may just play by the incentive rules and declare themselves “done” when the incentive requirement is met. Long-term success with wellness program engagement does not come from compelling people to jump through incentive hoops but from creating a culture of shared responsibility for health and using incentives strategically to accelerate individual change. As you evolve your health management program and incentive strategy, work with your wellness program vendors and your internal legal counsel to ensure that your program complies with HIPAA, ADA and other relevant laws and regulations.

### SMALL BUSINESS WELLNESS GRANTS

Health care reform legislation includes provisions to fund grants to help small business develop comprehensive wellness programs. Employers are eligible for these grants if they have no more than 100 employees who work at least 25 hours per week and also did not provide a worksite wellness program prior to March 23, 2010 (the date of the enactment of PPACA). The act outlines several requirements that must be included to qualify as a “comprehensive



workplace wellness program.” Applicants must be offering a program that includes:

- Health awareness initiatives (such as health education, preventive screenings and health risk assessments)
- Efforts to maximize employee involvement and participation
- Initiatives (such as coaching, seminars and self-help materials) to change unhealthy behaviors and lifestyle choices
- Workplace policies to encourage healthy lifestyles, healthy eating, increased physical activity and improved mental health

Unfortunately, at this time no funds have been appropriated and no guidelines or regulations have been created to better clarify the application process. Hopefully, grants will be available in 2011 as planned.

Many smaller organizations struggle with employee wellness programs due to the challenges of measuring the impact of these programs (because of the lack of data and small group size), limited internal resources and lack of budget. The Willis Wellness Consulting Practice offers a number of value-added resources to help our clients of all sizes get started – even with limited resources and budget. Utilizing the *Willis Employee Interest Survey Tool Kit* is a great first step in better understanding the types of programs in which employees are willing to participate, their current health behavior patterns and their readiness to make behavioral changes. Consider establishing a wellness committee made up of employees from all levels of the organization to guide the wellness program initiative. Willis offers a *Wellness Committee Tool Kit* with sample templates and guidelines to help get this effort started.

Another foundation-building element of a wellness program is an assessment of available resources. There are numerous free and low-cost resources available to small worksites. Community programming may be available from state and local governments or organizations such as business councils or chambers of commerce. Resources may also be available through your health insurance carrier. Creating awareness for healthy lifestyles should be an ongoing element of any wellness initiative and especially for those in a small-employer setting. This approach is particularly applicable to small businesses, because education and promoting awareness are generally low-cost efforts and often requires minimal specialized skills to administer. Willis offers a number of resources in this area as well as a monthly wellness newsletter and communication materials that address various health topics.

To learn more about how health care reform may impact your worksite wellness program and the resources available from the Willis Wellness Consulting Practice, contact your local Willis service team.

# HR CORNER

## PUT SOME FLEXIBILITY IN THEIR WORK LIVES

Employees may be grateful to have their jobs these days, but Jay Weiss finds that their concern with balancing work with personal lives is at an all-time high. Whatever the reasons – working harder than ever, skimpy or nonexistent raises, rising healthcare costs – Weiss urges employers to address the concern. He is with JGI Consulting, a firm that advises clients in human resource issues, strategies, processes, and systems.

Weiss tells employers to begin with employee surveys – online, face-to-face focus groups, and interviews with managers – to assess where problems and stressors crop up. He notes that the goal should not be only to find out whether employees are happy; it's just as important to measure their levels of motivation and engagement. The next phase, Weiss says, is for the employer to make stressful or time-consuming work processes more efficient, especially by giving employees useful tools and technologies.

Strive to eliminate unnecessary work steps, frequent or lengthy meetings, processes that add no value, forms that don't need to be filled out. Next, rely on what you learned from surveys and interviews what kinds of flexibility employees want and need. Remember that it's especially important to your youngest workers, the Millennials, not just to young parents. Then implement as many programs as you possibly can. Consider telework, ensuring that remote workers have the technologies they need and are in frequent touch with co-workers and supervisors. Where employees must be onsite, such as in healthcare facilities, consider offering a compressed work week of four 10-hour days rather than 5 8-hour days.

Job sharing takes ingenuity, reliability, and maturity to handle, but Weiss feels it can work well even for some high-level jobs such as that of chief marketing officer. Encourage parents with school-age children to start their workdays early, such as at 7 am, so they can be home in mid-afternoon. Explore part-time jobs, especially for older people. Weiss cautions that employees who take advantage of such offerings need to understand that they may not be on a fast track up the career ladder, so they make informed choices.

Afraid you'll have trouble selling the programs to top management? Remind execs that the options enhance any organization's recruiting, retention, employee engagement – and its reputation in the community and marketplace.

**TIP:** Here's a popular and easy format for employee surveys: Ask groups of workers to tell you, one by one, what steps and processes they would recommend the organization stop, start, and continue.

*This article provided by BLR.*

## FOR BETTER RESULTS, RAMP UP RECOGNITION

In *Winning with a Culture of Recognition* (Globoforce Ltd., 2010), authors Eric Mosley and Derek Irvine discuss a new and more strategic approach to employee recognition. Their goal is first to identify employee behaviors that help to achieve the company's goals and reinforce its values and then to reward those behaviors. Along the way, such a program should make clear to all employees exactly what behaviors the organization wants to encourage and will recognize.

Like several other current workplace gurus, the authors are disturbed by what at least one such guru has dubbed "the under-management epidemic." Mosley and Irvine write, "Have you... ever worked in an organization in which management talks about what the culture is, and the employees silently think, 'Yeah, yeah, you speak about this value, but your behavior says otherwise.' This cynicism in the face of management is epidemic. It's one reason we laugh at Dilbert cartoons."

So here are two of the author's mantras: (1) Employees expect more than a paycheck, and (2) Authenticity is golden. Human beings, the authors note, "have a fundamental need for social acceptance, increased self-esteem, and self-realization." That's way more than a salary or hourly wage can give them: "Paid in the 'currency' of recognition, psychic income is intangible but no less real than material income." And what Mosley and Irvine mean by authenticity is the art of "walking the talk" – managers behaving the way they say they want employees to behave.

The authors also distinguish between incentives and recognition. Incentives, many executives believe, are sufficient – bonuses for salespeople who exceed their goals, profit-sharing or stock options for exceptional performance by managers, for example. Mosley and Irvine don't suggest abandoning incentives, but they believe recognition is fundamentally different.

Incentives are numbers-based, infrequent, applied to only a few, and tangible. Recognition, by contrast, is subjective, values-based, focused on many, frequent, and intangible. Only recognition, unlike incentives, provides psychic income. The authors stress that HR will usually be tasked with the organization's recognition program and can enhance their professional reputations if it is effective and well managed. In addition, a good program eases recruitment and retention.

**TIP:** To promote recognition, good managers will also consider any factors in their subordinates' work lives that may act as de-motivators. For example, an employee may love the work and the culture but struggle against a schedule that keeps her away when her school-age children get home.

*This article provided by BLR.*



# LEGAL & COMPLIANCE

## NONDISCRIMINATION REQUIREMENTS FOR INSURED HEALTH PLANS DELAYED

If you have an insured health plan that's not grandfathered, here's some great news: the federal agencies responsible for implementation of the new health care reform law have decided to delay the law's provision making nondiscrimination requirements applicable to insured plans. The delay will remain in effect until sometime after the agencies issue regulations explaining how to comply. The nondiscrimination requirements had been set to become effective for plan years starting on or after September 23, 2010.

### BACKGROUND

Nondiscrimination rules are generally designed to measure whether a plan impermissibly favors highly compensated workers by limiting lower-paid employees' plan eligibility or by providing lesser benefits to lower-paid employees. Before the health care reform law was enacted, insured health plans were not subject to any federal nondiscrimination rules. Therefore, insured plans could limit eligibility or provide more generous benefits to highly compensated individuals without adverse tax consequences (although, in some cases, such health benefits would cause problems with an employer's pre-tax premiums program complying with cafeteria plan nondiscrimination rules). Self-insured health plans, on the other hand, were subject to Internal Revenue Code § 105(h), which provided that highly compensated individuals could be required to pay tax on benefits they received under a self-insured health plan that discriminated in their favor with respect to eligibility or benefits.

The health care reform law provided that nondiscrimination requirements similar to those of Code § 105(h) would be extended to fully insured group health plans, unless they were grandfathered. Non-grandfathered insured group health plans (as well as all self-insured group health plans) would be prohibited from discriminating in favor of highly compensated individuals with respect to eligibility or benefits. The consequences of an insured plan failing to comply, however, are much different from those applying if

a self-insured plan discriminates. If an insured plan violates the rules, the employer will be subject to a \$100 per day, per affected participant excise tax (plus, in some cases, potential participant lawsuits or civil penalties). Moreover, the employer would be required to file a tax return, identifying the violation and paying the excise tax due. As noted above, highly compensated participants bear the consequences of a self-insured plan discriminating in their favor because their health benefits become taxable.

## AGENCIES' REQUEST FOR COMMENTS

In September, the agencies responsible for implementing the nondiscrimination requirements for insured plans requested comments on what guidance would be needed for insured plans to comply with the nondiscrimination requirements. After reviewing the comments, the agencies decided that “regulatory guidance is essential to the operation of the statutory provisions” and that compliance with the nondiscrimination requirements by insured plans “should not be required (and thus, any sanctions for failure to comply do not apply) until after regulations or other administrative guidance of general applicability has been issued.” This decision was announced in **IRS Notice 2011-1**.

## COMPLIANCE DELAYED INDEFINITELY

The agencies “anticipate” that any guidance implementing the nondiscrimination requirements for insured plans will not apply until plan years beginning “a specified period after” the guidance is issued. In the announcement, the IRS specifies that an employer sponsoring an insured group health plan that discriminates in favor of highly compensated workers will not be required to file an excise tax return before the guidance implementing the nondiscrimination requirements becomes effective for that plan. Of course, nothing in this announcement changes the nondiscrimination obligations of self-insured group health plans, which continue to be subject to the § 105(h) nondiscrimination requirements.


## AGENCIES RELEASE MORE FAQ GUIDANCE

The agencies (Departments of Health and Human Services, Labor and Treasury) charged with the implementation of the Patient Protection and Affordable Care Act (PPACA) released their fifth set of **FAQs**. The FAQs are intended to help answer questions regarding compliance with PPACA. The other FAQs (**Part I**, **Part II**, **Part III** and **Part IV**) can be found on the Department of Labor’s (DOL) website.

The **Part V** FAQ guidance addresses a variety of issues involving preventive care coverage, automatic enrollment, the required 60-day notice for material modifications to plans or coverage, dependent coverage to age 26 and grandfathered health plans. The guidance also includes FAQs regarding the Mental Health Parity and Addiction Equity Act (MHPAEA) and HIPAA nondiscrimination rules for wellness plans.

The following are some highlights of the PPACA guidance that affect employer-sponsored coverage:

- Under PPACA, non-grandfathered health plans and insurance are permitted to utilize value-based insurance designs to provide first-dollar coverage for certain preventive care services. The FAQs clarify that plans may use reasonable medical management techniques to steer patients to a particular high-value setting, such as an ambulatory care setting, provided the plan accommodates any individuals for whom it would be medically inappropriate to have the preventive service provided in the high-value setting.
- PPACA generally requires employers with more than 200 full-time employees to automatically enroll any new full-time employees in available employer-sponsored coverage. The FAQs confirm that the DOL’s Employee Benefits Security Administration (EBSA), in conjunction with the Treasury Department, will develop the regulations and until such regulations are issued, employers are not required to comply with the automatic enrollment requirement. The DOL intends to complete the rulemaking by 2014.
- Under PPACA, the agencies must develop standards (not later than 12 months after the date of the law’s enactment) for group health plans and health insurance issuers to use in compiling and providing a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage. PPACA further provides that not later than 24 months after the date of the law’s enactment, plans and issuers must begin to provide the summary pursuant to the standards. If a group health plan or health insurance



issuer makes any material modification in any of the terms of the plan or coverage involved that is not reflected in the most recently provided summary of benefits and coverage, PPACA requires the plan or issuer to provide notice of such modification to enrollees not later than 60 days prior to the modification's effective date. The FAQs explain that group health plans and issuers are not required to comply with the 60-day prior notice rule until they are required to provide the summary of benefits and coverage pursuant to the standards issued by the agencies. The agencies, however, have not yet issued those standards.

- PPACA requires plans that provide dependent child coverage to make such coverage available to all qualifying children to age 26, and it prohibits plans from providing different benefits to adult children based on age. The FAQs clarify, however, that PPACA does not prohibit a plan from imposing age-based rules regarding benefits and coverage so long as the age-based rules apply broadly to all plan participants, including employees and spouses as well as dependent children.
- The FAQ guidance provides that if a plan or coverage has a fixed-amount cost-sharing requirement other than a copayment (for example, a deductible or out-of-pocket limit) that is based on a percentage-of-compensation formula, the cost-sharing arrangement will not cause the plan or coverage to lose grandfathered health plan status as long as the formula remains the same as what was in effect on March 23, 2010. If the formula for determining the out-of-pocket limit does not change, an increase in earnings that causes the out-of-pocket limits to exceed the thresholds allowed under the grandfather rules will not cause the plan to lose grandfather status.

Generally, the MHPAEA provides that the financial requirements and treatment limitations imposed on mental health (MH) and substance use disorder (SD) benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical and surgical (M/S) benefits. Additional information about the MHPAEA requirements can be found in Willis' Human Capital Practice *Alert*, Vol. 3, No. 11, "**Parity Redefined.**" The following are highlights of the **Part V FAQs** regarding MHPAEA implementation:

- Small employers are exempt from the MHPAEA. For this purpose, a small employer is one with 50 or fewer employees.
- The MHPAEA requires that criteria for medical necessity determinations made under a plan or insurance coverage with respect to MH/SD benefits must be made available to any current or potential participant, beneficiary or contracting provider upon request. ERISA requires that plan documents, including documents with information on the medical necessity criteria for both M/S and MH/SD benefits, be furnished within 30 days of request.
- The MHPAEA contains an increased cost exemption that is available for plans that make changes to comply with the law and incur an increased cost. However, the interim final regulations implementing MHPAEA did not provide guidance for implementing the increased cost exemption. The guidance provides an interim enforcement safe harbor (until future regulatory guidance is effective) for the MHPAEA's increased cost exemption for plans that make changes to comply with the law and incur an increased cost of at least 2% in the first year that MHPAEA applies to the plan or at least 1% in any subsequent plan year. The exemption lasts for one year, generally after which the plan must comply again.

The guidance also includes FAQs regarding wellness programs and the application of the 2006 HIPAA nondiscrimination rules. The guidance indicates that the agencies intend to propose regulations regarding nondiscrimination and wellness. In 2014, PPACA increases the maximum reward that can be provided under a health-contingent wellness program from 20% to 30%. The agencies are also considering what accompanying consumer protections may be needed to prevent wellness programs from being used as a subterfuge for discrimination based on health status.

## GUIDANCE ISSUED ON DEBIT CARDS AND REIMBURSEMENT OF OTC MEDICINES

The Patient Protection and Affordable Care Act (PPACA) limits reimbursements from employer-provided health plans, including account-based plans such as health flexible spending accounts and health reimbursement arrangements for over-the-counter (OTC) medications. After December 31, 2010, employer plans cannot reimburse expenses for OTC medicines or drugs unless a prescription is obtained. There is an exception to this rule for insulin (which can be purchased and reimbursed without a prescription). Additional information about this limitation can be found in Willis' *HR Focus*, Issue 41 "**IRS Issues Guidance: Reimbursement of OTC Medicine from Account-Based Plans.**"

The Internal Revenue Service (IRS) recently issued guidance that clarifies how the PPACA prescription requirement for OTC medicines and drugs will apply to debit card systems. **IRS Notice 2011-5**, which modifies previously released guidance, **Notice 2010-59**, confirms that health debit cards can be used to purchase OTC medicines and drugs at drug stores and pharmacies, at non-health care merchants that have pharmacies and at mail order and web-based vendors that sell prescription drugs provided that certain requirements are met. These requirements include, among other things, the following:

- A prescription is presented to a pharmacist
- The pharmacist dispenses the drug in accordance with applicable law
- An Rx number is assigned
- The health debit card system will not accept a charge for an OTC medicine or drug unless an Rx number is assigned

- The pharmacist retains certain records (the Rx number, the name of the purchaser or the name of the person for whom the prescription applies and the date and amount of the purchase)
- The records are accessible by the employer's plan or its agent upon request

## TAX RELIEF BILL ENACTED

The recently enacted Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the Tax Relief Act) extends a variety of employer-sponsored benefits that would have expired at the end of 2010 pursuant to the sunset provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).

One provision of the Tax Relief Act is of particular interest to employers that provide mass transit passes to their employees (or provide for employees to purchase transit passes using pre-tax amounts). That provision continues a temporary increase in the monthly limit on tax-favored employer-provided transit passes. Before March 2009, the limit was \$120 per month, meaning that an employer could provide up to \$120 worth of transit passes to an employee tax-free (or

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could allow the employee to purchase up to \$120 in transit passes with pre-tax amounts). That \$120 limit increased to \$230 on February 17, 2009 due to a measure that temporarily set the monthly limit on transit passes at the same level as the limit on parking. Without

Congressional action, the limit would have reverted to the lower amount (subject to adjustment for inflation) starting January 1, 2011. The Tax Relief Act extends the “parity-with-parking provision” through the end of 2011.

The Tax Relief Act also extends employer-provided educational assistance, the adoption credit and the employer-provided child care credit.

- EGTRRA allowed an employer to provide employees on a tax-free basis up to \$5,250 in annual educational assistance provided under an employer’s educational assistance plan. The tax relief extends this benefit to December 31, 2012.
- Taxpayers who incur qualified adoption expenses may be eligible for the adoption credit or, in the case of employer-provided assistance, an exclusion from income. EGTRRA increased the dollar limitation for the adoption credit and the income exclusion for employer-provided adoption assistance. The Patient Protection and Affordable Care Act (PPACA) made the adoption tax credit refundable and further increased the credit and exclusion for 2010 and 2011 (the dollar limitation for the adoption credit and income inclusion for employer-provided adoption assistance for 2011 is \$13,360). The Tax Relief Act allows the PPACA enhancements (the increased dollar limitation and the refundable tax credit) to expire after the 2011 tax year but it extends the EGTRAA enhancements through December 31, 2012.
- Under EGTRRA, employers that provide child care facilities may be eligible for a tax credit equal to 25% of qualified expenses for employee child care plus an amount equal to 10% of qualified expenses for child care resource and referral services (subject to a cap on qualified costs). The Tax Relief Act extends the credit through December 31, 2012.

Also of interest to employers, the Tax Relief Act reduces the Social Security payroll tax for employees to 4.2% (from 6.2%) during 2011. This reduction applies to the employee portion of the Social Security payroll tax only. The employer portion of the tax remains at 6.2%. The Medicare payroll tax rate for 2011 remains unchanged at 1.45% each for employers and employees.

## IRS DELAYS TRANSPORTATION BENEFIT GUIDANCE EFFECTIVE DATE

The Internal Revenue Service (IRS) recently delayed (again) the effective date of **Revenue Ruling 2006-57** which provides guidance to employers on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringe benefits under sections 132(a)(5) and (f) of the Internal Revenue Code. The effective date for this guidance is delayed from January 1, 2011 to January 1, 2012. This is the fourth delay since 2009. Additional information about transportation benefits can be found in Chapter 3 of the *Willis Online Compliance Manual*.

The latest guidance, Notice 2010-94, is “intended to provide relief to mass transit providers that have been unable to update their systems to comply with the revenue ruling guidelines” prior to the current January 1, 2011 effective date.

According to the IRS, “certain transit systems need additional time to complete the process by adapting their technology to achieve compatibility with the requirements for vouchers.”



# IRS GUIDANCE ON PAY WITHHOLDING CHANGES

The Internal Revenue Service (IRS) released instructions to assist employers in implementing the 2011 cut in payroll taxes provided under the recently enacted Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the Tax Relief Act). The guidance also included the new income-tax withholding tables that employers will use during 2011.

**Notice 1036** contains the percentage method income tax withholding tables, the lower Social Security withholding rate and other information needed to implement the changes under the Tax Relief Act.

According to the Notice, the IRS recognizes that the late enactment of the Tax Relief Act makes it difficult for employers to update their withholding systems. The IRS advised

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The IRS advises that for any Social Security tax withheld during January, employers should make an offsetting adjustment in workers' pay as soon as possible but not later than March 31, 2011.

## BACKGROUND

The Tax Relief Act reduces the Social Security payroll tax for employees to 4.2% (from 6.2%) during 2011. This reduction applies to the employee portion of the Social Security payroll tax only. The employer portion of the tax remains at 6.2%. The Medicare payroll tax rate for 2011 remains unchanged at 1.45% each for employers and employees. The Tax Relief Act also maintains the income-tax rates that have been in effect in recent years.

## "RED FLAGS" RULE AMENDED

President Obama signed the Red Flag Program Clarification Act of 2010 (Senate Bill 3987). The new law narrows the scope of the Federal Trade Commission's (FTC) "Red Flags" Rule (RFR) and is intended to address the confusion over which businesses were required to implement identity theft prevention programs by December 31, 2010.

Under the law, the definition of a "creditor" under the Fair Credit Reporting Act is amended to limit its application to only those entities that use consumer reports, furnish information to consumer reporting agencies, or advance funds to or on behalf of a person.

In effect, the new definition excludes certain

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entities, such as law firms, health care practices, accountants, other professionals and small businesses from having to comply with the "Red Flags" Rule. This change is intended to ensure that only those creditors who pose the highest risk for identity theft are subject to its requirements, including creditors which use consumer reports, furnish information to consumer reporting agencies or loan money to individuals.



## BACKGROUND

The RFR was developed under the Fair and Accurate Credit Transactions Act, in which Congress directed the FTC to develop regulations requiring “creditors” and “financial institutions” to address the risk of identity theft. The resulting RFR requires all such entities that have “covered accounts” to establish written identity theft prevention programs to help identify, detect and respond to patterns, practices or specific activities – known as “red flags” – that could indicate identity theft.

Additional information about the “Red Flags” rule can be found in Willis’ *HR Focus*, Issue 29, “**Red Flags’ Rule and Employee Benefit Plans**” and *HR Focus*, Issue 37, “**FTC Postpones Enforcement Deadline for ‘Red Flags’ rule.**”

## 2010 FORM M-1 AVAILABLE

The Department of Labor (DOL) issued the 2010 Form M-1 (the form on which a MEWA would provide information on its 2010 plan year). The 2010 Form M-1 is available by clicking [here](#) (for a printer friendly version) and [here](#) to file online.

Multiple Employer Welfare Arrangements (MEWAs) that do not qualify for a filing exemption must file a Form M-1 each year. ERISA imposes this filing requirement on MEWAs and defines a MEWA as an arrangement that offers welfare benefits to the employees of two or more employers. As always, complicated rules apply to determine whether two employers are sufficiently related to be considered a single employer, and whether an exception to the filing requirement might apply. Very generally, companies are considered to be separate employers for this purpose if they are separate business entities (e.g., corporations or partnerships) that are not related by a high level of ownership.

Filers must comply with the March 1, 2011 filing deadline unless they apply for an extension. A one-time extension until May 2, 2011 will be automatically granted if requested by the administrator of the MEWA. To make the request, the administrator must complete Parts I and II of Form M-1, sign, date and print the name of the plan administrator as indicated, and file the request no later than March 1, 2011. A copy of the extension request must be attached to the Form M-1 when it is filed before the extended deadline expires.

Questions about the completion of Form M-1 can be directed to the M-1 help desk at 202 693 8360.

## NEW JERSEY FAMILY LEAVE TAX REDUCED

Effective January 1, 2011, New Jersey reduced the employee payroll tax rate for the Family Leave Insurance (FLI) program. The tax rate dropped from .12% to .06%. The 2011 maximum withholding for FLI will be \$17.76. According to a **statement** by Labor Commissioner, Harold J. Wirths, “We have determined that the Family Leave Insurance program does not need to maintain the program’s current tax rate set at 0.12% of taxable wages. By cutting the tax rate to 0.06%, workers will keep more of their hard-earned wages while maintaining the healthy asset base needed to pay Family Leave Insurance benefits in 2011.”

The New Jersey FLI program provides workers with up to six weeks of wage replacement benefits. Participating workers receive benefits equal to no more than two-thirds of their weekly pay, up to a maximum weekly benefit of \$561 in 2010 (\$559 in 2011). Additional information about New Jersey’s FLI program can be found in *HR Focus*, Issue 6, “**Paid Family Leave for NJ Employees.**”

Since the FLI program launched in July 2009, \$83 million in benefits have been provided to more than 37,600 claimants. Of these claims, more than 29,700 or 79% were for bonding with a newborn or newly-adopted child; and approximately 7,900 or 21% were claims for care of a seriously ill family member.



## PAID LEAVE FOR CALIFORNIA ORGAN DONORS

As of January 1, 2011, the Michelle Maykin Memorial Donation Protection Act (**Senate Bill 1304**) grants employees in California a paid leave of absence, of up to 30 days per year, for the purpose of donating an organ to another person. The law also grants up to five days off for a bone marrow donation.

The law, which applies to a private employer with 15 or more employees, will require employers to maintain health care benefits during the leave. Further, the law states that the leave is not to be taken concurrently with leave taken under the federal Family and Medical Leave Act (FMLA) or the California Family Rights Act (CFRA), and the leave can be taken all at once or on an incremental basis. An employer may require the employee to take up to five days of earned but unused sick or vacation leave for bone marrow donation and up to two weeks of earned but unused sick or vacation leave for organ donation (unless doing so violates the provisions of an applicable collective bargaining agreement). The employee can be asked to provide the employer with written verification that the employee is an organ or bone marrow donor and that there is a medical necessity for the donation.

The law requires an employer to restore an employee returning from leave for organ or bone marrow donation to the same or equivalent position held by the employee when the leave began. The law will prohibit a private employer from interfering with an employee taking organ or bone marrow donation leave and from retaliating against an employee for taking that leave or opposing an unlawful employment practice related to organ or bone marrow donation leave. The law will also create a private right of action for an aggrieved employee to seek enforcement of these provisions.

California employers will want to review their current employment policies and update them to include this new right.

<sup>1</sup> Right Management, Organizational Effectiveness Survey 2009.

<sup>2</sup> Prudential: Study of Employee Benefits 2009 & Beyond.

<sup>3</sup> Barwick, Judith, *One Foot Out The Door*; <http://judithbarwick.com/content/books>.

<sup>4</sup> Willis Staffing & Services Survey 2009.

<sup>5</sup> HCR Survey 2010: Willis, Diamond: management & technology consultants, American Benefits Institute.

<sup>6</sup> Gallup: August 2009 Employee Engagement Index.

<sup>7</sup> Research Works: Employee Work Engagement, Best Practices for Employers June/2009.

<sup>8</sup> Towers Watson: 2010 Rising the Bar of Health Care.

<sup>9</sup> Towers Watson: 2010 Rising the Bar of Health Care.

<sup>10</sup> Towers Watson: 2010 Rising the Bar of Health Care.

# WEBCASTS

## WILLIS CLIENT SUCCESS STORY

February 15, 2011  
2:00PM EASTERN TIME

Presented by:  
**AMERICAN DIABETES ASSOCIATION**

Join us for the first educational webcast of 2011. During this webcast we will hear from a Willis client – the American Diabetes Association – about the changes they made and challenges they endured with their employee benefits program. The topics will include: designing a competitive program (using benchmark data and industry experience), building in components that support the organizational goals (in this case support the American Diabetes Association cause) and developing a strong, branded communication strategy. They will also share how the American Diabetes Association managed the implementation of the new programs with the assistance of their Willis team, all of which had to be rolled out in a tight timeframe.

### Participant Access

Advance reservations are required to participate. [Click here](#) to RSVP for this call.

## FINDINGS FROM THE 2010 ANNUAL HEALTH & PRODUCTIVITY SURVEY - FOCUS ON ENGAGEMENT

March 15, 2011  
2:00PM EASTERN TIME

Presented by:  
**CHERYL MEALEY, CHES, NATIONAL  
PRACTICE LEADER - WELLNESS  
CONSULTING**

Employees are eight times more likely to be engaged in their work when wellness is a priority in the workplace. One of the biggest challenges facing employers with worksite wellness programs is employee engagement. Participation is often the first major hurdle when launching a program, but maintaining sustained engagement over time is essential to optimal outcomes, and can be difficult to achieve. Join us for this webcast which will highlight some of the key findings from our annual survey of more than 1,300 employers. Learn what other organizations are doing, the results they are achieving, and the challenges they are overcoming.

### Participant Access

Advance reservations are required to participate. [Click here](#) to RSVP for this call.

# KEY CONTACTS

## US BENEFITS OFFICE LOCATIONS

### NEW ENGLAND

**Auburn, ME**  
207 783 2211

**Bangor, ME**  
207 942 4671

**Boston, MA**  
617 437 6900

**Burlington, VT**  
802 264 9536

**Hartford, CT**  
860 756 7365

**Manchester, NH**  
603 627 9583

**Portland, ME**  
207 553 2131

**Shelton, CT**  
203 924 2994

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908 931 3005

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**Morristown, NJ**  
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973 829 6465

**New York, NY**  
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**Norwalk, CT**  
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**Radnor, PA**  
610 254 7289

**Wilmington, DE**  
302 397 0171

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**Memphis, TN**  
901 248 3103

**Nashville, TN**  
615 872 3716

**Norfolk, VA**  
757 628 2303

**Reston, VA**  
703 435 7078

**Richmond, VA**  
804 527 2343

**Rockville, MD**  
301 692 3025

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404 224 5000

**Birmingham, AL**  
205 871 3300

**Charlotte, NC**  
704 344 4856

**Gainesville, FL**  
352 378 2511

**Greenville, SC**  
704 344 4856

**Jacksonville, FL**  
904 355 4600

**Marietta, GA**  
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**Miami, FL**  
305 421 6208

**Mobile, AL**  
251 544 0212

**Orlando, FL**  
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**Savannah, GA**  
912 239 9047

**Tallahassee, FL**  
850 385 3636

**Tampa, FL**  
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813 289 7996

**Vero Beach, FL**  
772 469 2842

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312 288 7700  
312 621 4843  
312 348 7678

**Cleveland, OH**  
216 357 5921

**Columbus, OH**  
614 326 4722

**East Lansing, MI**  
517 349 3226

**Grand Rapids, MI**

248 735 7249

**Green Bay, WI**

414 259 8837

**Milwaukee, WI**

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414 259 8837

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763 302 7209

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972 715 6272

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303 773 1373

**Houston, TX**

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713 625 1082

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**Mills, WY**

307 266 6568

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913 339 0800

**San Antonio, TX**

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602 787 6078

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602 787 6078

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**Seattle, WA**

800 456 1415

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