

WELLNESS

EASE EMPLOYEE STRESS DURING THE HOLIDAY SEASON

Five short weeks. That’s all that lies between Thanksgiving and the New Year, but during this time, festivities can turn to “stresstivities” quicker than you can say Fa La La.

During the mid-winter holidays – more ubiquitous than bright lights, presents, rich food and (in some places) snow – is stress. “Happy holidays!” is an often shared greeting during this time of year that may be answered with the same, a smile, but just as often can be accompanied by an inward groan, as people try to balance the many extra demands of the season, financial challenges in uncertain economic times and their jobs that they must continue to do as well as they can.

Employers can help.

Where to start? If you have an Employee Assistance Program (EAP) in place, promote the benefits and services of the EAP. Letting employees know that resources are available – even free ones that may be available in your community – can ease their stress burden and help them feel less helpless. Contact the EAP to see what topics their representatives can speak on. Topics such as resiliency, relaxation tips and techniques, humor and holiday stress can be especially relevant this time of year and more welcome than a traditional “stress management” presentation.

Bringing an element of fun into the workplace each week can help lighten the mood. Consider these ideas and come up with more of your own:

- Invite the local comedy club to present to the organization.
- Offer a “Be a Kid Again” snack of graham crackers and milk.
- Implement a candy cane campaign. Tie a joke to a candy cane and drop off at employees’ desks.
- Create a stress free zone in an unused office area. In the space have crossword puzzles, board games, a comfortable chair, radio, etc.



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- Integrate a game, such as Jeopardy or Trivia, into existing organization celebrations.
- Invite employees to share healthy, holiday recipes at a potluck lunch.
- Host a non-alcoholic “happy hour” on a Friday afternoon and serve up smoothies or fruit juice drinks.
- Begin a “teaser” campaign with hints of what types of health and wellness programs will be available to employees in the coming year.

With just a little effort, an employer can help make this a season to be jolly, instead of just stressed.

LEGAL & COMPLIANCE

TIME AGAIN...TO IMPUTE INCOME ON GROUP TERM LIFE INSURANCE

If an employee has more than \$50,000 in group term life insurance coverage through his or her employer, the excess coverage may be taxable under federal law. If it is, federal law also requires the employer to impute income to the employee. Some employers satisfy the requirement by imputing income on life insurance coverage as it is provided during the year. Others wait until the end of the year. Both methods are permitted as long as imputing is completed by the end of the year.

BACKGROUND

The federal tax code excludes the cost of the first \$50,000 in group term life insurance coverage that an employer provides to an employee. Because there is no tax code exclusion for additional employer-provided coverage, the cost of excess coverage is subject to federal income and FICA (Social Security and Medicare) taxes. The employer providing the excess coverage must report the cost of it on the employee’s W-2 and must withhold the employee’s portion of FICA taxes and pay the employer’s portion.

NOTE: The imputing requirement may be avoided in some cases if the premium rates under the group term life insurance policy(ies) meet certain requirements. This design strategy is discussed in Chapter Eight of the Willis Online Compliance Manual, but is beyond the scope of this article. (Editor’s Note: Please contact your Willis adviser should you need to obtain access to a document in this manual.)

EMPLOYEE PAYS, BUT EMPLOYER PROVIDES

If an employee pays the entire premium for life insurance, one might assume that the coverage is not employer-provided. For group term life insurance, however, that is not always the case. First, if the employee pays for coverage using pre-tax dollars, the coverage is treated, for tax purposes, as if the employer paid those premiums. Second, even if the employee pays the entire premium on an after-tax basis, the coverage may be considered partly employer-provided. That can happen when the cost of coverage for tax purposes is higher than the premium that an insurer charges.

IRS DETERMINES THE “COST” OF GROUP TERM LIFE INSURANCE

IRS regulations include a table of rates (reproduced below) for calculating the cost of excess group term life insurance for tax purposes. The Table I rates are not indexed for inflation, so they do not change each year – the rates are the same for 2011 as they were for 2010 and will not change until the regulations are revised.

TABLE I RATES FOR GROUP TERM LIFE INSURANCE

| MONTHLY COST/ \$1,000 OF COVERAGE AGE BRACKET* | RATES |
|--|--------|
| Under 25 | \$0.05 |
| 25-29 | \$0.06 |
| 30-34 | \$0.08 |
| 35-39 | \$0.09 |
| 40-44 | \$0.10 |
| 45-49 | \$0.15 |
| 50-54 | \$0.23 |
| 55-59 | \$0.43 |
| 60-64 | \$0.66 |
| 65-69 | \$1.27 |
| 70 and over | \$2.06 |

**When imputing income for 2011, use the employee’s age on December 31, 2011.*

Of course, the IRS-determined rates may be higher or lower than the premiums actually paid for group term life insurance coverage. If the IRS rates are higher, an employee who paid 100% of the premiums for excess coverage with after-tax pay may nonetheless have additional taxable income due to the excess coverage as deemed by the IRS measurement of value.

DETERMINING THE AMOUNT OF INCOME TO IMPUTE

If an employer pays the premiums for all of an employee's group term life insurance coverage, determining the amount to impute is easy: subtract \$50,000 from the total group term life insurance coverage in effect for the employee during the year and multiply the remaining coverage amount by the applicable Table I rate. If the employer does not pay all of the premiums, but the employee's contributions are made on a pre-tax basis, this same calculation applies.

If the employee pays all or part of the premium for any group term life insurance coverage (including the first \$50,000) on an after-tax basis, an additional calculation is needed. After finding the Table I cost of all coverage above \$50,000, as described above, deduct from that amount all of the employee's after-tax contributions toward the coverage (including contributions for coverage under \$50,000). If the result is a positive number, that is the amount to impute.

NOTE: If an employee is covered by more than one group term life plan, the IRS requires aggregation of all coverage so that the employee may not exclude the cost of more than \$50,000 in coverage for the year.

W-2 REPORTING AND FICA TAXES

As taxable income, the imputed amount must be included in the employee's taxable income reported on Form W-2, but the employer is not required to withhold for the employee's federal income tax liability. FICA taxes apply, however, and the employer must withhold the employee's portion of FICA taxes. The employer also must pay its portion of FICA taxes and remit both the employer and employee FICA amounts. For 2011, the Social Security tax rate is 4.20% on annual pay up to \$106,800. The Medicare tax rate is 1.45% on all pay, without a maximum limit. (See the following link: <http://www.ssa.gov/pressoffice/colafacts.htm>)

Other Reasons To Impute Income On Group Term Life Insurance

In addition to imputing income based on an employee's coverage over \$50,000, an employer might be required to impute income for employees in a few other circumstances.

DISCRIMINATION IN FAVOR OF KEY EMPLOYEES

If group term life insurance discriminates in favor of key employees (usually by limiting eligibility to certain owners and officers or by offering those individuals broader coverage), additional imputing requirements apply. The employer is required to impute income to these individuals on their entire coverage amount – not just amounts exceeding \$50,000. In addition, the cost of coverage to be imputed is the greater of the Table I cost or the actual cost of coverage. (Any after-tax contributions would be deducted from the cost.) Actual cost for this purpose may not be the premium rate paid to the insurer; it may be a higher amount determined according to IRS regulations.

DEPENDENT LIFE INSURANCE

The cost of employer-provided term life insurance on the lives of an employee's dependents must be imputed to the employee unless the benefit provided is \$2,000 or less. If the \$2,000 limit is exceeded, all dependent life insurance, including the first \$2,000, is taxable. The Table I rates – using the dependents' ages to select the applicable rate – must be used in

calculating the amount to impute to the employee. As with the employee's life insurance, any after-tax contributions toward the cost of coverage are deducted when determining the amount to impute. If the dependent coverage is no greater than \$2,000, the value of the coverage is excluded from the employee's income as a *de minimis* fringe benefit.

CMS MAKES MORE HRAS EXEMPT FROM MSP REPORTING

The exemption from the Medicare Secondary Payer (MSP) reporting requirements for health reimbursement arrangements (HRAs) has been expanded so that, for plan years starting on or after October 3, 2011, a participant's HRA coverage need only be reported if the annual benefit available is \$5,000 or greater (instead of the previous \$1,000 or greater threshold). For HRAs that are subject to the reporting requirements, the new guidance from the Centers for Medicare and Medicaid Services (CMS) also changes the occasions on which reporting is required.

HRA DEFINITION: An HRA is an account-based plan under which the employer makes 100% of the contributions (i.e., no employee contributions). An employer establishing an HRA chooses -

- The amount that is available to a participant each year to reimburse otherwise-uncovered medical expenses
- The schedule on which all or part of that amount becomes and remains available to the participant

In setting an HRA's plan terms, an employer might provide that \$1,200 becomes available to a participant on January 1 or, alternatively, the employer might make \$100 available on January 1 and an additional \$100 available on the first of each month during the remainder of the year. In addition, an employer might provide that unused balances are forfeited at the end of each plan year and whenever participation ends, or the employer might provide that unused balances may be carried over to the next plan year or made available to spend on expenses incurred after active participation ends. The rules governing HRAs allow employers a lot of flexibility in designing these plan features. Regardless of how availability of HRA amounts is designed, however, an HRA generally is (or is a component of) an employer-sponsored group health plan, and it is subject to the MSP reporting provisions.

BACKGROUND ON MSP REPORTING

Third-party administrators (TPAs), insurers and, in a few cases, employers are required to report certain individuals' health coverage under an employer-sponsored health plan to CMS. Employers who provide health benefits through an insurance carrier or who have a self-insured plan under which a TPA adjudicates claims have no direct burden to collect required reporting elements from employees. This is because insurers and TPAs are the "Responsible Reporting Entities" (RREs) for the plans under which they pay claims. As RREs for these plans they are the entities that will incur any penalties CMS imposes for the plans' MSP reporting non-compliance. Even so, insurers and TPAs may press plan sponsors to gather information for the MSP report.

TIP: Employers should check their insurance contracts and administrative services agreements to be sure that the employer is not made responsible for MSP reporting generally or for gathering information for the insurer's or TPA's MSP reporting. A provision transferring this responsibility might not refer to MSP reporting at all. It might refer to "governmental" or "legally required" reports or filings. While most employers are happy to cooperate with insurers' and TPAs' requests for information, the better practice is to avoid having a contractual duty to the insurer or TPA in connection with MSP reporting.

MSP REPORTING FOR HRAS BEGAN IN 2010

Since the MSP reporting requirements became effective in 2009, CMS has struggled to determine what reporting requirements are appropriate for HRAs.

TIP: CMS has indicated that for MSP reporting purposes, health flexible spending arrangements (health FSAs) are not considered to be group health plans and that no MSP reporting is required for health FSAs.

When MSP reporting first became effective, CMS delayed the reporting start date for HRAs. MSP reporting was first required for HRAs with respect to plan years starting on or after October 1, 2010. In addition, CMS provided that:

- HRA coverage need only be reported if the annual benefit available is \$1,000 or more
- Termination of HRA coverage need only be reported in the event of loss or cancellation of HRA coverage (termination need not be reported when an individual exhausts the HRA balance)

As noted above, for an HRA under which a TPA pays claims, MSP reporting is the TPA's obligation (the TPA is the RRE for the HRA). If an employer administers its HRA in-house with no assistance from a third party, the employer will be the RRE that must file the MSP report with respect to the HRA. For an individual having both reportable HRA coverage and reportable employer-sponsored "major medical" coverage, two separate MSP filings would be required – one for the major medical and one for the HRA coverage.

CHANGES TO MSP REPORTING FOR HRAS

As noted above, starting with plan years that begin on or after October 3, 2011, the annual HRA benefit threshold for MSP reporting increases to \$5,000. This means that, for an HRA with a January 1 – December 31 plan year and a maximum annual benefit of \$4,000, MSP reporting would be required to continue through the end of 2011, but no MSP reporting would be required for that HRA during 2012. On the other hand, if this same HRA had an October 1 – September 30 plan year, MSP reporting must continue until September 30, 2012 (the end of the plan year that started on October 1, 2011).

TIP: When calculating the maximum annual benefit under an HRA, CMS specifies that any carry-over amounts from previous years that are still available to a participant must be included. For example, if an employer adds \$2,000 to a participant's HRA balance each year and allows unlimited carry-over of unused amounts, it is possible that some participants will exceed the \$5,000 threshold.

In addition to changing the threshold for the exemption from reporting, the new CMS guidance changes the times for MSP reporting on termination of coverage under HRAs that exceed the threshold. Termination of HRA coverage must be reported when a participant exhausts the HRA balance and no additions to the participant's HRA balance will be made during the remainder of the plan year. This change is effective immediately for all HRAs that are required to report, including those that do not meet the new \$5,000 threshold but still must report until the end of the current plan year. Of course, reporting loss or cancellation of HRA coverage is still required. The CMS announcement, which can be found [here](#), includes details on when and how RREs are to report terminations of HRA coverage. However, as most employers will not be the RRE in regard to the HRA, a discussion of those requirements is beyond the scope of this article.

MICHIGAN IMPOSES NEW TAX ON PAID CLAIMS

The Michigan legislature recently passed two new bills, Senate Bills 347 and 348, which will impose a 1% assessment on all paid claims under fully insured and self-funded employer-sponsored group health plans beginning in 2012. The new law will sunset on January 1, 2014 unless the legislature takes additional action to extend it.

BACKGROUND

Michigan currently imposes a 6% use tax on Medicaid HMOs and plans providing Medicaid mental health services. The use tax finances the state's share of Medicaid.

NEW ASSESSMENT

The recently enacted legislation replaces the 6% use tax with a 1% assessment on all "paid claims" under fully insured and self-funded employer-sponsored group health plans. The term "paid claims" means reimbursements by the plan for medical, prescription drug and dental claims with dates of service on or after January 1, 2012 with respect to residents of Michigan receiving services in Michigan. Reimbursements under health flexible spending accounts (FSA), Health Savings Accounts (HSA) and Health Reimbursement Arrangements (HRA) are not subject to the assessment.

The assessment is to be paid by insurers and third-party administrators (TPAs) on a quarterly basis. Insurers and TPAs are permitted to pass the 1% assessment cost back to employers (and will likely do so).

CONCLUSION

While such an assessment would seem to be preempted by the Employee Retirement Income Security Act of 1974 (ERISA), particularly as it applies to self-insured plans, a similar requirement applies in New York. Since January 1, 1997, New York State has required insurers and, most significantly, employers sponsoring self-insured plans to pay an assessment plus a surcharge whenever plan enrollees are treated by hospitals in New York. The U.S. Supreme Court ruled (*New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Company*) that the New York surcharge was not preempted by ERISA.

Employers will want to discuss with their insurers/TPAs how the assessment will affect the employer and its plans (e.g., whether the insurer/TPA plans to pass the assessment onto the employer).

IRS ANNOUNCES NEW VOLUNTARY WORKER CLASSIFICATION SETTLEMENT PROGRAM

Misclassification of employees as independent contractors for tax purposes is a widespread problem. Where an employer treats a worker as an independent contractor, the employer withholds no taxes from amounts paid to the worker. In an effort to get more businesses into compliance, the Internal Revenue Service (IRS) recently announced a new program to help settle worker classification issues.

The Voluntary Classification Settlement Program (VCSP) allows eligible taxpayers to voluntarily reclassify their workers for federal employment tax purposes and obtain relief similar to what can be obtained in the current Classification Settlement Program (this program permits the prospective reclassification of workers as employees with reduced federal employment tax liabilities for past nonemployee treatment). The program applies to taxpayers who are currently treating their workers (or a class or group of workers) as independent contractors or other nonemployees and want to prospectively treat the workers as employees.

To be eligible to participate in the program, the taxpayer must:

- Consistently have treated the workers in the past as nonemployees
- Have filed all required Forms 1099 for the workers for the previous three years
- Not currently be under audit by the IRS, the Department of Labor or a state agency concerning the classification of these workers

The taxpayer must apply to participate in VCSP and enter into a closing agreement with the IRS. A taxpayer who participates in the VCSP will agree to prospectively treat the class of workers as employees for future tax periods. In exchange, the taxpayer will pay 10% of the employment tax liability that may have been due on compensation paid to the workers for the most recent tax year. The taxpayer will not be liable for any interest and penalties on the employment tax liability and will not be subject to an employment tax audit with respect to the worker classification of the workers for prior years.

Frequently Asked Questions on the VCSP can be found here:

<http://www.irs.gov/businesses/small/article/0,,id=246014,00.html>

Interested employers can apply for the program by filing Form 8952 (the employer should file the application at least 60 days before it wants to begin treating the workers as employees): <http://www.irs.gov/formspubs/article/0,,id=242970,00.html>

NO UNION, NO NOTICE, NO WAY!

On August 25, 2011 the National Labor Relations Board (NLRB) announced its final rule on the Notification of Employee Rights under the National Labor Relations Act (NLRA). The final rule is a reminder to many employers that, even if non-unionized, certain sections of the NLRA are applicable to all workplaces. The new rule addresses the concern of the NLRB that many employees and employers are unaware of their respective rights and obligations under the NLRA.

Thus, effective January 31, 2012 (the implementation date was originally November 14, 2011 but the NLRB announced a delay on October 5, 2011), employers are required to post notices to employees informing them of their NLRA rights, together with NLRB contact information and information concerning basic enforcement procedures. The **required notice** is now available for download from the NLRB website.

Under the NLRA, an employee has a right to:

- Form, join or assist a union
- Discuss terms and conditions of employment or union organizing with co-workers or a union
- Take action with one or more co-workers to improve working conditions, by, among other things, raising work-related complaints directly with an employer or with a government agency, and seeking help from a union
- Strike and picket, depending on the purpose or means of the strike or the picketing
- Organize a union to negotiate with an employer concerning wages, hours and other terms and conditions of employment
- Bargain collectively through representatives of employee's own choosing for a contract with the employer setting wages, benefits, hours and other working conditions
- Choose not to do any of these actions, including joining or remaining a member of a union

Private-sector employers within the NLRB's jurisdiction will be required to display the poster where other workplace notices are posted. Employers who customarily post personnel rules or policies on an internet or intranet site must also provide a link to the

rights poster from those sites. The rule excludes public sector employers, employers of agricultural and domestic workers, independent contractors, family-owned businesses only employing children or a spouse, air and rail carriers covered by the Railway Labor Act, and the U.S. Postal Service. Although federal contractors are also subject to the posting requirement, if the federal contractor complies with the Department of Labor's notice of employee rights posting, it will satisfy the NLRB rule. The rule also provides an exception for very small employers whose annual business does not have more than a *de minimis* effect on interstate commerce.

The rule requires that the notice be posted in English and any other language if at least 20% of employees are not proficient in English. For a detailed discussion of which employers are covered by the NLRA and what to do if a substantial share of the workplace speaks a language other than English, visit the NLRB's website for **Frequently Asked Questions**.

Although the general remedy for a violation of this rule will be a Board order to post the notice, an employer's failure to post the notice may be treated as an unfair labor practice under the NLRA.

SEATTLE APPROVES PAID SICK LEAVE LAW

On September 23, 2011, Seattle Mayor Mike McGinn (D) signed into law Council Bill 117216, which requires businesses in Seattle to provide paid leave to employees when they or their family members become sick or are a victim of domestic violence. The new law is effective September 1, 2012. Highlights of the law are summarized below.

COVERED EMPLOYEES

The law covers employees who perform work in Seattle. Employees who occasionally work in Seattle must work more than 240 hours in Seattle within the calendar year to be covered. Covered employees include traditional, temporary and part-time employees but not participants in a work-study program. Absent a contractual agreement stating otherwise, temporary employees supplied by a staffing agency or similar entity are deemed employees of the staffing agency.

COVERED EMPLOYERS

The legislation establishes minimum standards for "paid sick and safe time" based on company size. Employers are broken into "tiers" as follows:

- **TIER 1 EMPLOYER** An employer with 5-49 full-time equivalent (FTE) employees on average per calendar week during the preceding calendar year

- **TIER 2 EMPLOYER** An employer with 50 to 249 FTE employees on average per calendar week during the preceding calendar year
- **TIER 3 EMPLOYER** An employer with 250 or more FTE employees on average per calendar week during the preceding calendar year

Companies with four or fewer employees are exempt from the requirement to provide paid sick and safe time to their employees. The term "full-time equivalent" refers to the number of hours an employee works for compensation that add up to one full-time employee, based on either an eight-hour day and a five-day week (i.e., 40 hours), or as full-time is defined, in writing or in practice, by the employer. All employees, including part-time employees, leased or temporary workers and employees who work outside of Seattle, count for purposes of determining an employer's tier placement.

TIME ACCRUAL AND CARRYOVER

Workers for Tier 1 and Tier 2 employers will accrue a minimum of one hour of paid sick and safe time for every 40 hours worked. Workers for a Tier 3 employer will accrue a minimum of one hour for every 30 hours worked. Time begins to accrue when employment commences (for current employees time begins to accrue as of the law's effective date). Employees may begin to use accrued time beginning on the 180th calendar day after their employment begins. The law does not apply to new Tier 1 and Tier 2 employers until 24 months after the hire date of their first employee (employer tier shall be calculated based upon the average number of full-time equivalents employed per calendar week during the first 90 calendar days following the hire date of its first employee).

Tier 1 employers can limit employees to using 40 hours in a calendar year (such employees are allowed to carry over 40 hours of accrued, unused time from one calendar year to the next). Tier 2 employers can limit employees to using 56 hours in a calendar year (such employees are allowed to carry over 56 hours of accrued time). Tier 3 employers can limit employees to using 72 hours in a calendar year (employees are allowed to carry over 72 hours of accrued time).

PAID SICK AND SAFE TIME USES

Paid sick time can be used:

- For an absence resulting from an employee's mental or physical illness, injury or health condition, to accommodate the employee's need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or an employee's need for preventive medical care
- To allow the employee to provide care of a family member with a mental or physical illness, injury or health condition, care of a family member who needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition, or care of a family member who needs preventive medical care

Paid safe time can be used:

- When the employee's place of business has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material
- To accommodate the employee's need to care for a child whose school or place of care has been closed by order of a public official for such a reason
- For domestic violence, sexual assault or stalking, affecting the employee or employee's family member

NOTICE AND RECORDKEEPING

The law imposes a notice obligation on employers. Employers have to notify employees of the following:

- That employees are entitled to paid sick time and paid safe time
- The amount of paid sick and safe time and the terms of use guaranteed under the law
- That retaliation against employees who request or use paid sick and safe time is prohibited
- That each employee has the right to file a complaint or bring a civil action if paid sick time or paid safe time is denied by the employer or the employee is retaliated against for requesting or taking paid sick time or paid safe time

The Seattle Office for Civil Rights will create and make available a poster and model notice that employers can use to comply with the notice requirement. The employer will comply with the notice requirement if it displays the poster in a conspicuous and accessible place in each establishment where employees work. Employers can also comply if they include the notice in employee handbooks or other written guidance distributed to employees concerning employee benefits or leave rights. Employers can also comply by distributing a copy of the notice to each new employee upon hiring.

Each time wages are paid employers must provide a written statement of the amount of paid sick and safe time that the employee has available. Employers may choose a reasonable system for providing this notification, including listing remaining available paid time on each pay stub or developing an online system where employees can access their own paid leave information. Employers must retain records documenting hours worked by employees and paid sick time taken by employees for a period of two years.

CONCLUSION

While the law is not effective until September 2012, given its complexity employers will want to begin planning for compliance now. To the extent that the employer chooses to use its existing paid leave program to comply with the ordinance (rather than create a separate program specifically for Seattle paid sick and safe time), it will have to review its current leave policies to determine what changes are necessary. Compliance with the law will likely also require changes to the employer's current system of tracking hours worked (including hours worked in Seattle) and absences. More information on the paid sick and safe leave legislation, including a copy of the bill, can be found on the Council's [information page](#).

CALIFORNIA CLARIFIES ORGAN DONATION LEAVE LAW

California Governor Jerry Brown (D) recently signed Senate Bill (SB) 272, which clarifies several elements of the Michelle Maykin Memorial Donation Protection Act (the Act). The Act, which was effective on January 1, 2011, 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. It also grants up to five days off per year for a bone marrow donation.

SB 272 clarifies that the one-year period referenced in the statute is 12 consecutive months from the date of the employee's request for leave, not a calendar year. The law also confirms that the days of leave are business days, as opposed to calendar days. It also provides certainty that the employee's employer-sponsored benefits (e.g., health care benefits) must be maintained at the same level during the paid leave, as if the employee had continued to work during that period. Finally, SB 272 specifies that employers may require, as a condition of an employee's initial receipt of bone marrow or organ donation leave, that an employee take up to five days of earned but unused sick leave, vacation or paid time off for bone marrow donation and up to two weeks of earned but unused sick leave, vacation or paid time off for organ donation, unless doing so would violate the provisions of any applicable collective bargaining agreement.

A copy of SB 272 can be found [here](#). California employers will want to review their current employment policies to ensure they are administering this leave correctly.

BACKGROUND

The Act applies to a private employer with 15 or more employees. Leave granted under the Act 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. 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.

SINCE YOU ASKED:

ARE DOMESTIC PARTNERS ENTITLED TO COBRA?

Following the recent enactment of legislation in several states involving domestic partners, civil union partners and same-sex spouses, the National Legal & Research Group (NLRG) has received many questions on how these laws affect employee benefits. One particular area of concern has been in regard to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Please note: the term domestic partner also includes same-sex spouses as federal law does not recognize same-sex marriage and does not confer any special tax benefits on the parties of such relationships.

Under the COBRA rules, “covered employees” and their spouses and dependent children who are covered under a plan on the day before a qualifying event are qualified beneficiaries. Domestic partners, however, are not qualified beneficiaries. This is because they are not “spouses,” as defined under federal law. As they are not qualified beneficiaries, they do not have an individual right to elect and maintain COBRA coverage (they only have COBRA for as long as the employee maintains COBRA).

COBRA coverage, however, may be offered on a more generous basis than required by federal law, so an employer can specifically include “domestic partners” in the category of individuals who will receive coverage continuation rights (COBRA-like benefits). Many employers who cover domestic partners also extend continuation coverage rights to them. Health plans with domestic partner benefits should contain a specific provision addressing COBRA and domestic partners. (An employer expanding the list of individuals who can be qualified beneficiaries would, of course, need to determine if insurance carriers associated with its plan [including stop-loss carriers] would provide that coverage. In addition, they should articulate exactly what type of continuation right is being extended and then abide by those terms on a consistent basis.)

Regardless of the coverage continuation rights the plan grants to the domestic partner, the employee is a qualified beneficiary. As such, he or she must be extended the same enrollment and election rights as those made available to similarly situated active employees. As a result, if the employer provides coverage for domestic partners, then the qualified beneficiary would have the same enrollment/election rights in regard to his/her domestic partner while on COBRA. This means that, if an active employee could enroll a domestic partner as a dependent, a COBRA-qualified beneficiary may do the same and enroll the domestic partner during annual enrollment. The domestic partner in this case would not have any independent COBRA rights, and his or her coverage would continue only as long as the former employee retained COBRA coverage.

The special enrollment rights afforded by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) rules require plans to allow special enrollment in several situations. Special



enrollment opportunities exist when a current employee or a current employee’s dependent loses other coverage (such individual would also have the right to select among all of the benefit options available under the plan. For example, if a qualified beneficiary’s dependent loses other coverage and qualifies for special enrollment, the qualified beneficiary may add the dependent to the COBRA coverage and also may elect to switch to different benefits option (e.g., HMO to PPO). An eligible dependent for this purpose is an individual who is or may become eligible for plan coverage due to his or her relationship with a plan participant. Because this definition looks to plan terms, it is not limited to individuals who are defined as dependents under federal income tax laws. Therefore, if the plan provides coverage for domestic partners, an employee could have a special enrollment right with respect to a domestic partner who loses other coverage.

Finally, certain coverage continuation rights may be extended to domestic partners through state insurance laws. Several states have insurance laws mandating that the same coverage that is provided to spouses be extended to domestic partners. To the extent that the state insurance law grants spouses coverage continuation rights, such rights will also be available to domestic partners. Some states may also have special rules that apply for domestic partners of state employees and may require the provision of coverage to the domestic partner. Always check with the insurance carrier for specialized requirements that may be incorporated into state law.

Additional information about how these types of relationships affect employee benefits plans is in *HR Focus*, August 2011, “**New York Enacts Same-Sex Marriage Law.**”

HR CORNER

RETAINING EMPLOYEES: FIVE AFFORDABLE WAYS TO BOOST EMPLOYEE LOYALTY

No matter how much they want to reward their employees, many leaders just don't have the financial resources to give out much-deserved raises and bonuses.

In the battle for survival, many organizations have developed perpetually stressful atmospheres in which employees are asked to do more with less – often with little thanks. In many cases, it's not that employers want to shaft their people; they simply can't afford not to cut hours and positions, and they definitely don't have the funds for raises and bonuses.

Fortunately, says **Todd Patkin**, author of the new book *Finding Happiness: One Man's Quest to Beat Depression and Anxiety and—Finally—Let the Sunshine In* (StepWise Press, 2011), you don't need a single dime to make your people happy at work or to show them just how much you care about them and appreciate their efforts.

“People will never admit it, but money is not the thing they desire most from their work. Instead, showing appreciation, respect, and, yes, even love are the three most important ways to make your people feel great about their work,” points out Patkin. “And happy, engaged employees are the single best way to impact your company's bottom line.”

Patkin speaks from experience; for nearly two decades, he was instrumental in leading his family's auto parts business, Autopart International, until it was finally bought by Advance Auto Parts in 200. During that time, Patkin made it his number-one priority to always put his people and their happiness first.

“As a leader, I quickly found that if my team was content and their work environment was a positive one, they would be more engaged and motivated, and they would truly care about our organization's future,” he elaborates.

“Plus, it was even more rewarding for me to see that my employees were happy – and often even ecstatic – than it was for me that we were making money.”

Patkin adds, “It's more important now than ever before to show your employees love and appreciation, because we're in the midst of an economic downturn, so you probably won't have the money to give big raises and bonuses.”

Furthermore, Patkin adds that if your employees are perpetually stressed out, they'll be less motivated and more disengaged. And when they're unhappy, they'll do only what they must to avoid chastisement ...and you'll lose money in the long term. Also, when the economy turns around, they'll be more likely to look for a new job elsewhere.

“If there is one thing I would like to tell all leaders at all levels and in all industries, it's that you have nothing to lose and everything to gain – including an improved bottom line – by making your organization as happy a place to work as possible.”

FIVE 'SHOW THE LOVE' STRATEGIES

Here are five of Patkin's "show-the-love" strategies that you can use to say "thanks for a job well done!" to any employee, any time ... without spending a cent!

1. SEND "LOVE" NOTES

Writing and sending a thank-you note is standard practice when you receive a gift. And what is great, thorough work other than a gift from your people to you? When you notice that an individual has done an excellent job or has achieved an important goal, send a specific *handwritten* (not typed!) note conveying your most sincere appreciation and admiration. This will take only one sheet of paper and 5 minutes out of your day ... but it'll make a lasting impression on your employee.

"When you're a leader, you're busy and often overwhelmed," Patkin acknowledges. "It's understandable that you might overlook saying the words 'thank you,' much less writing them. Remember, though, that positive reinforcement and sincere gratitude will increase the respect your team has for you and will improve their opinion of your entire organization. Also, it will encourage them to likewise say 'thank you' more often to their own subordinates within your company. Think of writing what I call 'love notes' as a way to invest in your company's atmosphere and future!"

2. DISTRIBUTE INSPIRATION

Our society tends to think of work as a place of drudgery, obligation, and boredom, as exemplified in the now-iconic movie *Office Space*. People certainly don't think of receiving inspiration and rejuvenation between nine and five. According to Patkin, though, buoying your team's spirits should be one of your daily goals. If you help them to see the world as a sunnier place and to improve their attitudes and ways of thinking about their entire lives, their professional and personal productivity will increase too.

"If you run across a quotation or story that inspires you, don't keep it to yourself – pass it along to an employee, and perhaps, if appropriate, also mention that the quote or anecdote reminded you of him and his great attitude," suggests Patkin. "Alternatively, you might consider sending out a quote or lesson of the day. Yes, the idea might sound hokey at first, but I firmly believe that most people vastly underestimate the power of feeding their minds with inspirational and educational material."

3. TELL SUCCESS STORIES

Even if they brush off praise or downplay their achievements, everybody loves to be recognized and complimented. When someone in your organization has done something great, tell her that you noticed her outstanding work, and tell the rest of the team, too! Whether correctly or incorrectly, many employees feel that their leaders take them for granted and only point out their mistakes, so make it your daily mission to prove that perception wrong.

"When I was at Autopart International and I saw that one of my people did something noteworthy, I made sure that everyone else knew about it by sending the story about her accomplishment around in an email to the entire chain," Patkin recalls. "I could literally see the glow on the highlighted employee's face for weeks, and I also noticed that many of the other team members now worked even harder too in order to earn a write-up themselves. Remember to always praise in public as 'loudly as possible,' and conversely, criticize only in private!"

4. IDENTIFY STARS

According to Patkin, identifying stars is taking the concept behind telling success stories to the next level. Yes, recognize achievements whenever you see them, but also make celebrating your stars a regular event. Sure, some team members will roll their eyes at “Employee of the Week/Month” programs, but you can rest assured that no one is going to turn down this honor.

“Instead of singling out just one person, you might even consider recognizing multiple individuals every month,” Patkin suggests. “For example, I always wrote about several store managers in our ‘Managers of the Month’ newsletter. Later, I included assistant managers, store supervisors, store salespeople, and our drivers in this letter of champions as well. My profiles for each star would often be a full page in length, lauding both their professional achievements and wonderful personal qualities. The newsletters themselves were often thirty pages in length when finished. But I know many within the team loved to read these personalized recognitions each month, and they motivated lots of the employees to work even harder to earn a spot on the pages themselves.”

5. MAKE IT A FAMILY AFFAIR

Whenever possible, engage your employees’ families when praising them. Having a leader validate all the hours each team member spends at work will be remembered far longer than a bonus (really!). Plus, when spouses and kids know what Mom or Dad does at work and are “on board” with it, your employee’s performance will be buoyed by support from the ones he or she loves the most.

“For example, if an employee did something really tremendous, I would call his home, generally trying to get the answering machine and not a person,” Patkin shares. “Then I’d leave a voicemail like this one:

“Hi, (name of spouse and kids), this is Todd Patkin from Autopart International where your husband and dad works. I just want to tell you that your husband and dad is the most incredible, wonderful, amazing person in the whole world. He just broke our Nashua, New Hampshire, store’s all-time sales record. Guys, that is incredible!! So, please, kids, do me a favor. When your dad comes home tonight, everyone run up and give him a huge hug and tell him how proud you are of him and how great he is. And, (name of spouse), I hope you too will give him a big hug and a wonderful kiss to make sure he knows how much you love him and how much he is appreciated for all he’s doing for our company. Thanks, guys.

“And in fact, years later, many employees whose families received these phone calls told me that although they didn’t remember how much their bonus checks were for that year, that extra-special homecoming was still clearly etched in their memories.”

“Trust me, showing people love, appreciation, and respect trump money just about every time when it comes to building long-term motivation and boosting employee morale and loyalty,” concludes Patkin. “When you take the time to make your employees feel valued, they’ll know that you care about them on a more personal level, and they’ll be much happier at work. And in the end, when you’ve achieved a really positive atmosphere at work and the improved bottom line that will surely come from it, you’ll feel amazing too!”

Source: www.toddpatkin.com



WEBCASTS

HEALTH CARE REFORM A YEAR LATER

**NOVEMBER 15, 2011
2:00 PM EASTERN TIME**

**Presented by:
KATHY VACCARO
VICE PRESIDENT
CIGNA HEALTHCARE PROGRAM
MANAGEMENT OFFICE**

Please join us for a discussion about the impacts and upcoming changes related to the passage of the Patient Protection and Affordable Care Act. In this informative webcast, we will highlight the judicial controversy surrounding the passage of the legislation, ongoing effects of the implemented provisions, and we will summarize the upcoming provisions. We will also spend some time on the evolution and establishment of the State Health Benefit Exchanges, how their implementation is progressing and, importantly, their impacts on the marketplace.

PARTICIPANT ACCESS

Advance reservations are required to participate. **Click here** to RSVP for this call.

VOLUNTARY BENEFIT SOLUTIONS

**DECEMBER 20, 2011
2:00 PM EASTERN TIME**

**Presented by:
RICHARD SHAFFER
UNUM
REGIONAL VOLUNTARY BENEFITS
SPECIALIST**

While healthcare reform began as debate about controlling cost, it quickly moved through the political process into a plan for increasing access to health insurance. Employers are left to figure out cost containment strategies alone and with their benefit advisors. This webcast will focus on the growing use of High Deductible Health Plans as a cost-control measure by employers. Join us as we review research showing the necessary levels of plan participation needed to achieve a bend in the cost-curve, and the barriers to employee migration into those plans. Voluntary worksite health benefits and the education/enrollment campaigns surrounding them can increase employee understanding and migration into high deductible health plan. The changing role of the benefits broker will also be discussed.

PARTICIPANT ACCESS

Advance reservations are required to participate. **Click here** to RSVP for this call.



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