

## WELLNESS

### REDUCING THE PRICE TAG OF YOUR WELLNESS PROGRAM

The major reason for not implementing a wellness program is cost.\* The good news is that low-cost and even no-cost resources exist for companies who want to get started on the road to wellness, but do not have the budget or staff to launch a full-fledged, fully funded program.

More organizations are exploring alternate strategies to lower health care costs and improve employee productivity, and many are turning to employee wellness programs as part of the solution. While thousands of companies have implemented successful wellness programs over the past 20 years, many small and medium-sized businesses have not.

Today's difficult economic climate has put added stress on the bottom line and increased pressure to produce more with less human capital investment. Fortunately, more constituents are working together to collectively improve the health of our nation, which provides businesses with increased resources to access as a part of their wellness initiative. Whether you are sharing general health information or focusing on a particular topic, use evidence-based web resources (such as the American Heart Association, American Cancer Society, American Dietetic Association, American Council on Exercise, National Heart, Lung and Blood Institute, USDA) or local chapters of these organizations to support your program efforts or provide employee information.

Research shows that many existing worksite wellness programs today remain underfunded to effectively manage the health and productivity of the workforce. Whether you are starting a new program or looking to expand current program offerings, maximizing existing partnerships, such as resources available through your medical carrier, can support health and wellness initiatives. Most major medical carriers offer comprehensive wellness program services for purchase, but many also offer a variety of value-added tools and resources embedded in the health plan that can serve as an economical starting point for promoting health in the workplace.



#### TABLE OF CONTENTS

##### WELLNESS

Reducing The Price Tag Of Your Wellness Program	1
---	---

##### HR CORNER

Successful Employment Relationship Starts With A Good Interview	2
HR Metrics Provide Evidence Of HR's Value	5

##### LEGAL & COMPLIANCE

Massachusetts Releases 2011 Individual Mandate Penalties	6
ERRP Budget Update	7
San Francisco Releases Data On HCSO Compliance	8
Lactation Equipment: Reimbursable Expense	8
States Legalize Civil Unions	9
Government To Stop Defending DOMA In Court	10

##### SINCE YOU ASKED

Does Federal Law Allow The Use Of Canadian Pharmacies?	11
--	----

##### WEBCASTS

##### CONTACTS

12
13

**\*Findings from the Willis 2010 Health and Productivity Survey reveal that for employers with fewer than 1000 employees:**

- 36% have a wellness program
- 53% have no program in place
- 11% are planning to offer one in the future
- 60% cite budget constraints as the primary barrier to implementing a wellness program

Consider creating a marketing and communication plan to promote these typical carrier tools and resources as part of your organization's wellness efforts:

- Monthly health/wellness newsletter
- Health awareness quizzes, tools and trackers (walking log, stress management tools)
- Self-directed learning modules (nutrition, physical activity, tobacco cessation)
- Health risk assessment tools and aggregate reporting capabilities
- 24/7 nurse line
- Evidence-based health library
- Health care utilization/provider comparison tools
- Educational webcasts and seminars
- Health and wellness discount programs

You may also consider employing additional external resources available through your benefits consultants, employee assistance program provider and local community business partners, such as hospitals and teaching institutions.

Leveraging new and existing strategic partnerships can help increase your wellness program's scope of offerings and may increase participation and effectiveness.

For more information or to learn more about Willis value-added wellness program tools and resources or negotiating medical carrier wellness program funding, contact your local Willis Associate.

## HR CORNER

### SUCCESSFUL EMPLOYMENT RELATIONSHIP STARTS WITH A GOOD INTERVIEW

Let's face it, if you have conducted any number of interviews, you know that all things being equal on paper, the face-to-face meeting with an applicant can be invaluable. For years, I advised job seekers on how to achieve the "fit-in factor" with an employer during an interview. Like it or not, this is often the ultimate hiring criteria. Will this applicant fit in with the corporate culture? Will this person enhance the cohesiveness of our "team" atmosphere? Will this individual grow with the company and contribute towards its goals and success? The fit-in factor! Or, from the applicant's perspective, the most important response to the question: "Why should I hire you?"

But how do you find that perfect match? Looking for the right employee is just like any other relationship; it takes commitment, creativity, an open mind, and time. Although the economy has forced many talented and capable individuals into the job-hunting pool, recruiting is still very much a mutual selection process. A good applicant is also sizing up your company for the "fit-in factor."

A strong interview not only provides you the insight into a potential employee, but affords you the opportunity to make a good impression, market your company and set the tone for a possible employer-employee relationship. In the grand scheme, you do not want someone to take a job out of desperation only to leave you high and dry when the economy improves. Turnover is costly. While interviewing may at times feel like a chore, it can be a positive and rewarding task when you find that perfect match.

Here are some important considerations before you conduct that next interview.

## **HAS THE JOB CHANGED SINCE YOU LAST RECRUITED FOR THE POSITION?**

Before you open a job posting, review the current position description to determine whether the duties, qualifications, and other requirements of the job have changed over time. An exit interview with the employee who last held the job can be very useful in determining how the position may have evolved. In fact, if your company does not have a routine practice of reviewing job descriptions, then the ideal time to perform this task is prior to recruiting a new employee.

Position descriptions should always include the essential functions of the job so that an applicant may appropriately consider their abilities in light of these functions. This can be critical for applicants with disabilities as they must be able to perform the essential functions of the job with or without a “reasonable accommodation.” In this same regard, carefully consider what tasks and qualifications are essential, and which are merely desirable.

## **KNOW YOUR APPLICANT POOL**

The unemployment rate remains high. With the influx of job seekers, now is a great time to fine tune your company's hiring practices. Here are some ideas on how to do that.

First, unless your business is in a constant recruiting mode for specific positions, you should not accept applications on an open basis. Provide applications only when there is an actual vacancy. Second, if there is more than one opening with varied job descriptions, require applicants to submit separate applications for each position. Finally, applicants are always tempted to complete one general application and write “see resume” throughout. Require a complete application.

My own practice as a manager was to interview all applicants who applied within the prescribed timeframe, I also strictly enforced that applicants would not be considered for an interview without previously submitting a COMPLETED application packet. This included not submitting a resume in lieu of completing a formal application. There are lots of good reasons for this. An application creates a sworn record of the individual's stated background, qualifications and abilities for a specific job, and prior experience. A resume is just a selection of highlights, sometimes cleverly worded, and always unsigned. When appropriate, ask applicants to submit references and work samples along with their application. This should be completed prior to an interview so that you have time to review each individual's credentials and prepare for the actual meeting.

But how do you find that perfect match? Looking for the right employee is just like any other relationship; it takes commitment, creativity, an open mind, and time. Although the economy has forced many talented and capable individuals into the job-hunting pool, recruiting is still very much a mutual selection process. A good applicant is also sizing up your company for the "fit-in factor."

## THE WRONG QUESTIONS CAN COST YOU!

Even if you are in a hurry to hire someone, take the time to cover more than the basics. Remember that state, federal, and local anti-discrimination laws cover applicants, as well as employees. While you don't need a canned checklist of questions, it's important to determine what you need to learn about each interviewee. Generally, a list of topics relevant to the position will suffice. This should include a review of qualifications, previous employment, and reasons for leaving. A good practice is to apply the 80/20 rule, i.e. you listen, while they do most of the talking.

If you really want to be prepared, as you review application packets jot down specific questions for the individual to supplement your general topics. This is helpful for you as an interviewer to know your applicants and will also show the interviewee that you are looking closely at the information submitted and are interested in what they have to offer.

Remember there are certain questions you cannot ask without running afoul of anti-discrimination laws. Here are some questions that could lead to trouble, and that should be avoided in an interview:

- Does your religion prevent you from working weekends and holidays?
- Are you married?
- Do you live with your parents?
- What year did you graduate high school or college?
- Are you pregnant?
- Do you have childcare responsibilities?

Additionally, the Americans with Disabilities Act prohibits questions such as those relating to an individual's past medical history or present medical condition and those related to an individual's health asked prior to a contingent offer of employment.

Finally, allow time at the end of the interview for the applicant to ask questions. If they have prepared properly, they will have at least one or two probing questions. If all they want to know about is salary and benefits, this may signal someone who is focused only on the short term job prospect. Be observant: if applicants have done their homework, they will appear at the interview ready to start work, i.e. dressed appropriately, knowledgeable

about the position for which they applied and how their skills and abilities fit, and exhibiting a positive attitude. Sometimes it is the non-verbal statements that are the most telling.

## THE INTERVIEW IS OVER, NOW WHAT?

Depending on the caliber of the position you are attempting to fill, one interview may not be enough. A second, or even third, interview with a different interviewer or a panel of interviewers may well be appropriate, particularly when considering an individual for a supervisory or executive position.

You cannot spend too much time interviewing, it is a skill that develops with time and experience. 95% of employee problems are often caused by 5% of the employees. A good interviewer can spot these potential problem employees before a job offer is made.

Once you have found your ideal candidate and made a conditional offer of employment, it is a good idea to do some post-interview investigation. For example, checking references, running a criminal background check, or drug testing. You should always consult your local counsel when developing post-interviewing investigations, as many states have specific policy and procedural requirements.

Finally, once you have concluded the hiring process, it's a good idea to notify those who received an interview that the position was filled by someone else and advise whether their application will be kept on file for a specified period of time or that they must reapply for future openings.

*This article provided by Fisher & Phillips.*

## HR METRICS PROVIDE EVIDENCE OF HR'S VALUE

“The recession has refocused management’s attention on revenue generation, asset value, expense control, cash flow, profitability, competitiveness, and risk management,” explains Ronald Adler, president and CEO of Laurdan Associates. This renewed focus on an organization’s ability to survive and ideally to thrive puts the spotlight on human capital in an organization.

“As organizations recognize the value of their human capital, HR management is increasingly expected to provide quantitative and qualitative information about the value added by the organization’s human capital [employees]; how human capital increases competitiveness, how human capital helps the organization achieve its business objectives and how human capital helps the organization manage risks,” he explained during a webinar, hosted by Business & Legal Resources (BLR), Inc. In addition, Adler says that human capital helps an organization seize opportunities.

Organizational leadership is looking to HR to be able to quantify and justify its programs and functions. Adler provided some details. From management’s perspective, HR should:

- Demonstrate its ability to support companywide initiatives
- Monetize human capital related activities and results
- Make the link between investments in human capital and organizational results
- Identify and assess human capital related risks
- Provide human capital related information that allows the organization to make business decisions.

## THE ROLE OF HR METRICS & ANALYTICS

“HR metrics are standards of measurement used to assess human capital value, HR efficiency, performance and progress, and human capital outcomes,” Adler explains. “HR analytics include the use of historical data and trends to predict future occurrences and to help management make decisions. An example is that Google uses HR analytics to predict when top performers are going to leave.”

HR practitioners have the difficult job of trying to decide which of the hundreds of HR metrics they should choose, notes Adler.

Their objective is to determine the key metrics that will provide the most information to organizational leadership.

He shares a quote from Robert S. Kaplan and David P. Norton, authors of *The Balanced Scorecard: Translating Strategy Into Action* (Harvard Business School Press, 1996). “An organization cannot possibly assign a meaningful financial value to an intangible asset like ‘a motivated and prepared workforce’ in a vacuum because value can be derived only in the context of the [organization’s] strategy. What a company can measure, however, is whether its workforce is properly trained and motivated to pursue a particular goal.”

Alder stressed that as HR metrics are developed, they need to be put in the context of the specific business. Two of the questions he suggested asking as you think about choosing the appropriate HR metrics to track include the following: “Are HR activities and employment practices aligned with your organization’s strategic and business goals and objectives? How do human resources impact these objectives?”

He also shared two rules regarding metrics in general:

1. Organizations measure what they treasure.
2. What gets measured gets done. If you want someone to do something, you have to measure their performance and hold them accountable. An example: if you tell supervisors that diversity is important but don’t measure them on how well they’re accomplishing it, and if you don’t get the response you want from the supervisors, you’ll know why.

Energy and resources get committed to the things that are measured, Alder commented.

## WHAT TO MEASURE

Adler's co-presenter, Theresa Murphy, an independent HR consultant based in Raleigh, North Carolina, said, "Metrics should be tied directly to the business issues facing the company. These might include a need to cut costs because of price competition, improve customer satisfaction, or develop new technology to keep pace with competitors. [Metrics] become that roadmap to your company objectives."

She explained that metrics, when communicated clearly to employees, allow staff to understand what is being measured and how they will be rewarded for meeting goals and objectives.

Murphy said that metrics generally measure one of the following:

- Increased job performance (e.g., the new recruiting program resulted in new employees with first year job performance ratings that are 30 percent higher than under the old program)
- ROI (e.g., the new commission plan resulted in \$100 of increased sales for each additional commission dollar paid)
- Decreased costs.

*This article provided by BLR.*



## LEGAL & COMPLIANCE

### MASSACHUSETTS RELEASES 2011 INDIVIDUAL MANDATE PENALTIES

It has been five years since Massachusetts enacted its health care reform that mandates nearly every resident obtain a state-government-regulated minimum level of health care insurance coverage. Massachusetts recently released the 2011 penalties for non-compliance with the individual mandate under the Massachusetts Health Care Reform Care Act (HCRA). Penalties accrue for each month that a taxpayer fails to comply with the state's individual mandate. Under this requirement, almost every Massachusetts resident who is age 18 or older is required to maintain health coverage (that meets certain minimum coverage requirements). A lapse in coverage of no more than 63 days is permitted. (This 63-day rule corresponds with federal HIPAA portability standards for maintaining valid "creditable coverage.")

The maximum penalty for tax year 2011 will be \$101 a month (\$1,212 for an entire year of non-compliance) for a person 27 or older with income over 300% of the federal poverty level (in 2011 it is \$32,670 or more for singles). For 2010, the penalty was \$93 a month or \$1,116 annually. For individuals up to age 26 with incomes over 300% of the federal poverty level, the penalty will be \$72 a month (\$864 annually). Penalties are waived for individuals with incomes up to 150% of the federal poverty level (\$16,335). For individuals with incomes between 150.1% and 300% of the federal poverty level, the penalties are stepped up as income increases. A married couple that can afford health insurance but lacks coverage will be penalized equally the sum of the penalties for each spouse. Information about the 2011 tax penalties can be found [here](#).

The Massachusetts HCRA was a model for the federal health care reform legislation, the Patient Protection and Affordable Care Act (PPACA). PPACA also has an individual mandate requiring individuals to maintain minimum essential coverage each month or pay a penalty. This requirement is effective January 1, 2014. Under PPACA, the annual penalty for not having minimum essential coverage will be the greater of a flat dollar amount per individual (\$95 in 2014, \$325 in 2015 and \$695 in 2016) or a percentage of the individual's taxable income (1% in 2014, 2% in 2015, 2.5% in 2016). After 2016, the flat dollar amount is indexed to inflation. Generally, the annual penalty is capped at an amount equal to the national average premium for qualified health plans which have a bronze level of coverage available through the state exchanges.

## ERRP BUDGET UPDATE

The Department of Health and Human Service's (HHS) fiscal year 2012 budget includes projected expenditures for the early retiree reimbursement program (ERRP). HHS indicates that, as of the end of January 2011, more than 5,000 plan sponsors had been accepted into the program, and approximately \$1 billion had been distributed. HHS projects that it will outlay another \$2.6 billion by the end of fiscal year 2011 (which ends September 30, 2011). This results in a total distribution of \$3.6 billion by September 30, 2011. The Patient Protection and Affordable Care Act (PPACA) set the funding for ERRP at \$5 billion, and the program is set to expire on January 1, 2014 (when state exchanges are set to become operational). However, the program could end sooner if the ERRP funds are depleted before then. Based on HHS' current projections, only \$1.4 billion is left to be distributed in fiscal year 2012 (which begins on October 1, 2011). A summary of the budget can be found [here](#). HHS has also released a [report](#) that provides information on the implementation and operation of the ERRP during calendar year 2010.

PPACA directed HHS to establish the ERRP to provide reimbursement to participating employment-based plans for certain retiree health benefits coverage. The ERRP will reimburse 80% of the costs of all the claims paid by or for a plan participant that are between \$15,000 and \$90,000 for the plan year. For additional information on the ERRP, see Willis Human Capital Practice [Alert, Vol. 3, No. 7, "It's a Start: Guidance on the Early Retiree Reinsurance Program."](#)

# SAN FRANCISCO RELEASES DATA ON HCSO COMPLIANCE

San Francisco's Office of Labor Standards Enforcement (OLSE) recently released its analysis of the information it gathered from the 2008 and 2009 Annual Reporting Forms (ARF) that it received from employers. The ARF fulfills the annual reporting requirement under San Francisco's Health Care Security Ordinance (HCSO). It is used by employers to report on their compliance efforts.

Highlights of San Francisco's findings are as follows:

- The primary way for employers of all sizes to meet the expenditure requirement was through health insurance.
- The larger the business the more likely it was to utilize the city option (paying any required expenditures to the city).
- Medium employers (20-99 employees) were more likely than large employers to self-administer health spending accounts in order to comply.
- For those offering health spending accounts that are self-administered or administered by a third party, low employee utilization was reported (in 2009, 84% employers using a third party to administer the accounts reported reimbursing to employees 50% or less of the required minimum expenditure).

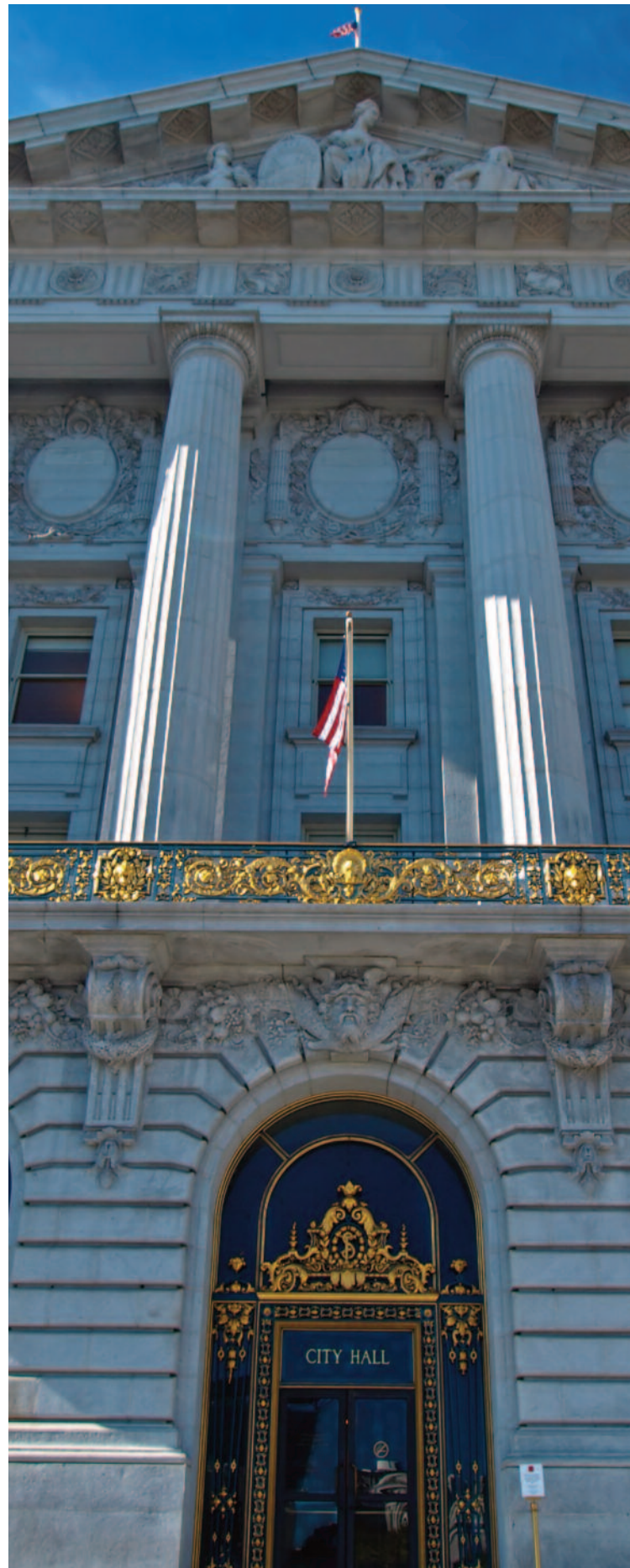
A copy of the report can be found [here](#).

## BACKGROUND

San Francisco's HCSO requires that medium and large businesses make certain minimum contributions toward their San Francisco employees' health care. Under this provision, an employer may either contribute at least the minimum amount to a medical plan or other health benefits or pay that amount into the publicly available program established by the HCSO. (See Willis Human Capital Practice Alert, **Issue 112**, for additional details on the HCSO's requirements.) Under the HCSO, covered employers must report on their health care expenditures by April 30 of each year. A copy of the ARF for 2010 is available on the OLSE's [website](#).

## LACTATION EQUIPMENT: REIMBURSABLE EXPENSE

In **Announcement 2011-14**, the Internal Revenue Service (IRS) stated that the purchase of breast pumps and supplies that assist lactation are considered deductible medical expenses under §213(d) of the Internal Revenue Code (IRC). This allows such expenses to be reimbursed on a tax-free basis from health





flexible spending accounts (FSAs), health reimbursement arrangements (HRAs) and health savings accounts (HSAs). It will also allow taxpayers to deduct such expenses on their tax returns (assuming the threshold and other requirements for deducting medical expenses are met).

In previous determinations (IRS Information Letters 2010-0173 and 2009-0033), the IRS refused to include breast pumps and supplies in the definition of medical care. Under applicable IRS rules, medical care includes “the diagnosis, cure, mitigation, treatment or prevention of disease.” Medical care “does not include goods or services that are merely beneficial to general health and do not mitigate or treat a disease.” Despite the health benefits that extend to nursing mothers and their infants, the IRS previously found that breast pumps and related supplies, to the extent not used for actual medical reasons, did not come within the definition of medical care. For purposes of the health FSA, this meant that expenses would not qualify for tax-free reimbursement if they were used for general health benefit purposes, for scheduling convenience or other personal reasons.

The IRS’ announcement did not provide an effective date for the change but appears to have had immediate effect. Plan sponsors will want to review plan documents to determine whether, in light of this change, any amendments are necessary. If plan documents already state that the plan reimburses expenses that qualify as medical care expenses under §213(d) of the IRC, then no amendments are necessary to allow reimbursement of these expenses. Plan sponsors will also want to review and revise any employee communication materials that explain what expenses are reimbursable under the terms of the plan.

## STATES LEGALIZE CIVIL UNIONS

Illinois and Hawaii recently became the sixth and seventh state, respectively, to approve legislation legalizing civil unions. Illinois Governor Pat Quinn (D) signed the Illinois Religious Freedom Protection and Civil Union Act (Senate Bill 1716) on January 31, 2011. The law, which is effective June 1, 2011, grants civil union partners in Illinois the “same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses.” The state will also confer civil union status upon a marriage between persons of the same sex, a civil union, or a substantially similar legal relationship (other than common law marriage) legally entered into in another jurisdiction. A copy of the Illinois law can be found [here](#).

Hawaii Governor Neil Abercrombie (D) signed **Senate Bill 232** on February 23, 2011. The law extends the same rights, benefits, protections and responsibilities of spouses in a marriage to partners in a civil union. The state will also confer civil union status upon similar

relationships lawfully entered into in other jurisdictions (assuming the relationship meets Hawaii's eligibility requirements). The law takes effect January 1, 2012.

Hawaii currently recognizes "reciprocal beneficiaries." A reciprocal beneficiary relationship is a legal relationship created when two consenting adults who are prohibited from marriage declare their intent to enter a reciprocal beneficiary relationship (it is not limited to same-sex partners).

Under both state laws, insurance policies regulated by each state will be required to extend insurance benefits to civil union partners to the same extent as benefits are provided to spouses. This will affect those employers offering insured benefits plans to their employees. As the law only applies to insured plans regulated by the state, self-insured plans will not be affected.

Please note that these laws only affect those rights and benefits granted under state law. The Defense of Marriage Act (DOMA) defines marriage, for federal law purposes, as a legal union between a man and a woman. Consequently, federal law does not currently recognize a marriage, civil union or other legal construction between individuals of the same sex, therefore civil union partners will generally not be entitled to the rights and benefits afforded by federal law. These include various tax benefits, benefit continuation rights under COBRA, leave-of-absence rights under FMLA. Unless the civil union partner qualifies as the employee's tax dependent (for purposes of tax-free employer-sponsored benefits), any employer-sponsored benefits provided to the civil union partner will be subject to imputed income. In addition, benefits cannot be provided on a pre-tax basis through a §125 cafeteria plan. The National Legal & Research Group has written extensively on the amount of taxable income we believe employers

are required to report for coverage provided to a non-tax dependent (see **Willis Human Capital Practice Alert, Issue 63**). The states, however, will extend state tax benefits to civil union partners. Benefits contributions for civil union partners should be exempt from state taxes just like similar benefits for spouses of different sexes would be.

## GOVERNMENT TO STOP DEFENDING DOMA IN COURT

The Department of Justice (DOJ) recently **announced** that it would no longer defend the constitutionality of Section 3 of the Defense of Marriage Act (DOMA). Section 3 of DOMA defines marriage for purposes of federal law. A copy of the letter that Attorney General Eric Holder sent to Congressional leadership explaining the DOJ's new position can be found **here**. Specifically, the DOJ will not defend DOMA's constitutionality in regards to two cases pending in the U.S. Court of Appeals for the Second Circuit (*Windsor v. United States and Pederson v. OPM*). The announcement comes following the determination by both President Obama and Attorney General Eric Holder that DOMA unconstitutionally discriminates against same-sex couples who are in marriages that are legally recognized by the states.

Enacted in 1996, DOMA is a federal law providing that, when interpreting any federal statute, ruling or regulation, a spouse can only be a person of the opposite gender.

Several lawsuits have been filed challenging the constitutionality of DOMA provisions that prohibit same-sex married couples from receiving the same federal rights available to opposite-sex married couples. In 2010, a federal judge in Massachusetts declared DOMA unconstitutional in two separate cases. Both decisions have been appealed to the U.S. Court of Appeals for the First Circuit (the First Circuit includes Maine, New Hampshire, Massachusetts, Puerto Rico and Rhode Island).

In the lawsuits currently making their way through the U.S. Court of Appeals for the Second Circuit (the Second Circuit

includes Connecticut, New York and Vermont), same-sex married couples claim that DOMA violates the Equal Protection Clause under the U.S. Constitution by not allowing participants in same-sex marriages to receive the same federal benefits available to opposite-sex couples.

Attorney General Holder points out that “Section 3 of DOMA will continue to remain in effect unless Congress repeals it or there is a final judicial finding that strikes it down,” and the Executive Branch will continue to enforce the law. This means that the rights and benefits that federal law grants to opposite-sex spouses are not yet available to same-sex spouses. As such, the DOJ’s decision has no immediate impact on how employers administer their employee benefits plans.

## SINCE YOU ASKED: DOES FEDERAL LAW ALLOW THE USE OF CANADIAN PHARMACIES?

Over the years, the National Legal & Research Group (NLRG) has, several times, fielded questions about using Canadian pharmacies as a cost-saving mechanism for employer-sponsored plans. Canada has prescription drug controls so some name-brand drugs are cheaper there (although according to a **study** by the U.S. Food and Drug Administration (FDA) generic drugs are typically cheaper in the U.S.).

NLRG recently received the question again and was asked to provide more documentation that the practice is actually illegal and not just frowned upon.

**While enforcement of the applicable law is lax, the practice is actually illegal.** The Federal Food, Drug, and Cosmetic Act (the Act), which gives the FDA the authority to oversee the safety of food, drugs and cosmetics in the United States, specifically prohibits the practice of importing drugs from abroad (**21 U.S.C. §331**). The penalties that can be assessed for violating the Act are described at **21 U.S.C. § 333**. A violation of the Act is punishable by imprisonment for not more than one year or fine of not more than \$1,000, or both. Any violation of the Act after a conviction has become final or if the violation is committed with the intent to defraud or mislead is a felony offense punishable by up to three years of imprisonment or up to a \$10,000 fine, or both. If a business or consumer knowingly violates the reimportation provision of the Act, then the violation is a felony offense punishable by up to 10 years in prison or up to \$250,000 in fines.

While the FDA is not out actively looking for violators of the Act, employers are plan fiduciaries. As such, they owe a special and heightened duty to plan participants. The FDA’s regulatory stance is that it is promoting safety and this should not be taken lightly by plan



fiduciaries. News stories published from time to time show that the reimportation industry is not scrupulous in the oversight of specific drugs and their countries of origin, and that some drugs have been provided that are not actually U.S. or Canadian sourced. If an employer allowed drugs to be provided to plan participants from an unapproved source and the source of an adulterated or counterfeit drug that harms a plan participant, the plan fiduciary would be hard pressed to defend itself.

NLRG continues to counsel employers that the use of pharmacies that have not been approved by the FDA (whether in Canada or elsewhere) is a violation of U.S. law. As such, it is our conclusion that there is no good way for employers to demand or encourage the use of pharmaceuticals from such sources for participants in employer-sponsored plans.



## WEBCASTS

### THE LINK BETWEEN HEALTH, ENGAGEMENT & PRODUCTIVITY

**APRIL 19, 2011**  
**2:00 PM EASTERN TIME**

**Presented by Michael Barton**  
**Chairman**  
**Willis Human Capital Practice**

Buyers, vendors and consultants have not effectively made a connection between health, engagement and productivity. Studies link employee engagement to employee productivity, and much has been made of the relationship between employee health and productivity. But little proof exists of the correlation/overlap among all three principles of health, engagement and productivity.

Why is this correlation so important? In a study combining the three, Willis has found the Return on Investment (ROI) of all three significantly greater than the simple sum of its parts. In other words, it doesn't make sense to combine just engagement and productivity, or just health and productivity, when combining all three will result in a dramatically improved ROI.

Please join this Willis webcast as we demonstrate how to improve ROI by linking all three key principles in tandem: employee engagement, productivity and health.

### PARTICIPANT ACCESS

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

## 9<sup>TH</sup> ANNUAL METLIFE EMPLOYEE BENEFITS TREND STUDY FINDINGS

**MAY 17, 2011**  
**2:00 PM EASTERN TIME**

**Presented by Dr. Ron Leopold**

MetLife is proud to give you a first look at its much anticipated 9<sup>th</sup> Annual MetLife Study of Employee Benefits Trends. For the ninth consecutive year MetLife has surveyed employers and employees to develop a current and comprehensive look at the state of the U.S. employee benefits industry. This year's study examines employee/employer relations on the cusp of economic recovery and reveals unexpected challenges for companies as the economy rebounds; over a third of employees hope to be working somewhere else in 2011. Balancing retention goals with the other key benefits objectives of cost control, and maintaining recession-generated employee productivity gains is a skillful juggling act, especially in the light of health care reform. But the Study findings suggest a new benefits blueprint for guiding this effort - especially when it comes to health and financial security benefits.

Join Dr. Ron Leopold as he shares the latest findings and insights that can help as you work with your clients to identify opportunities to modify or improve upon current benefits strategies - ensuring that they realize the full potential of their benefits programs and continue to maximize the return on their investment.

*The annual Study reflects MetLife's long-standing commitment to providing executives, benefits professionals, brokers, and consultants with the latest knowledge and insights to maximize the effectiveness of employee benefits plans.*

### PARTICIPANT ACCESS

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

# KEY CONTACTS

## U.S. HUMAN CAPITAL PRACTICE 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

### NORTHEAST

**Buffalo, NY**  
716 856 1100

**Cranford, NJ**  
908 931 3005

**Florham Park, NJ**  
973 410 4622

**Morristown, NJ**  
973 829 6374  
973 829 6465

**New York, NY**  
212 915 8802

**Norwalk, CT**  
203 523 0501

**Radnor, PA**  
610 254 7289

**Wilmington, DE**  
302 397 0171

### ATLANTIC

**Baltimore, MD**  
410 584 7528

**Bethesda, MD**  
301 581 4261

**Knoxville, TN**  
865 588 8101

**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

### SOUTHEAST

**Atlanta, GA**  
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**  
770 425 6700

**Miami, FL**  
305 421 6208

**Mobile, AL**  
251 544 0212

**Orlando, FL**  
407 562 2493

**Raleigh, NC**  
704 344 4856

**Savannah, GA**  
912 239 9047

**Tallahassee, FL**  
850 385 3636

**Tampa, FL**  
813 490 6808  
813 289 7996

**Vero Beach, FL**  
772 469 2842

### MIDWEST

**Appleton, WI**  
414 259 8837

**Chicago, IL**  
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**

414 203 5248

414 259 8837

**Minneapolis, MN**

763 302 7131

763 302 7209

**Moline, IL**

309 764 9666

**Pittsburgh, PA**

412 645 8537

412 586 3524

**Schaumburg, IL**

847 517 3469

**SOUTH CENTRAL****Amarillo, TX**

806 376 4761

**Austin, TX**

512 651 1660

**Dallas, TX**

972 715 2194

972 715 6272

**Denver, CO**

303 765 1564

303 773 1373

**Houston, TX**

713 625 1017

713 625 1082

**McAllen, TX**

956 682 9423

**Mills, WY**

307 266 6568

**New Orleans, LA**

504 581 6151

**Oklahoma City, OK**

405 232 0651

**Overland Park, KS**

913 339 0800

**San Antonio, TX**

210 979 7470

**Wichita, KS**

316 263 3211

**WESTERN****Fresno, CA**

559 256 6212

**Irvine, CA**

949 885 1200

**Las Vegas, NV**

602 787 6235

602 787 6078

**Los Angeles, CA**

213 607 6300

**Novato, CA**

415 493 5210

**Phoenix, AZ**

602 787 6235

602 787 6078

**Portland, OR**

503 274 6224

**Rancho/Irvine, CA**

562 435 2259

**San Diego, CA**

858 678 2000

858 678 2132

**San Francisco, CA**

415 291 1567

**San Jose, CA**

408 436 7000

**Seattle, WA**

800 456 1415

*The information contained in this publication is not intended to represent legal or tax advice and has been prepared solely for educational purposes. You may wish to consult your attorney or tax adviser regarding issues raised in this publication.*