

A Publication Dedicated to Employers' Current HR Issues & Solutions

# The **BOTTOM** LINE

Quarterly Magazine: September – December 2009

## THE HEALTH CARE REFORM ACT

*How are you affected?*

Try Our Test –

How well do you know employment law?

### STATE UNEMPLOYMENT INSURANCE – THE FACTS

COBRA – Your questions answered

### Employment Law 101

## COMPLIANCE

WHAT YOU NEED TO KNOW

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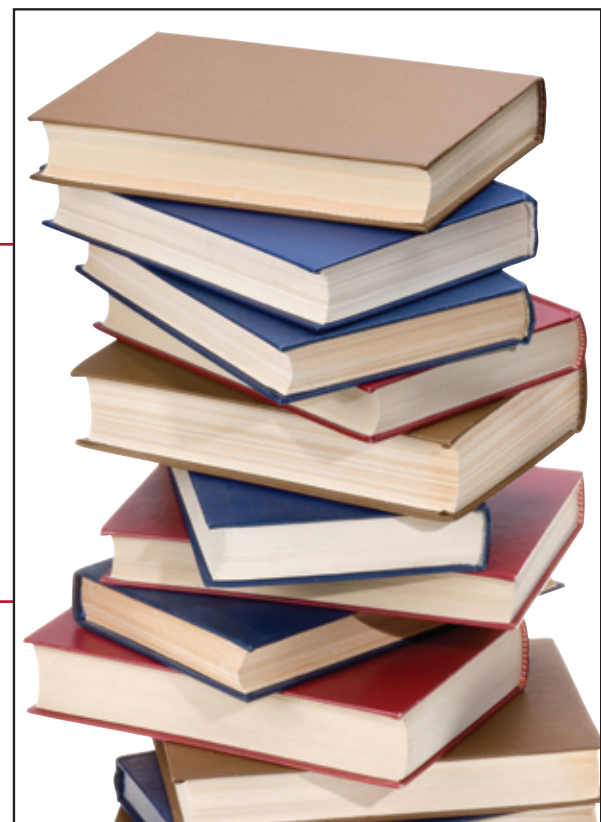
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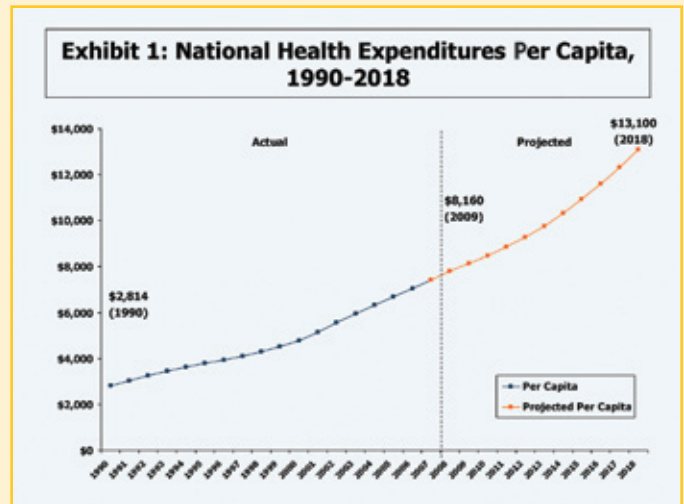
# EYE ON WASHINGTON:

With an estimated 46 million uninsured people, reduced employee coverage, increased deductibles and inadequate reimbursement, America's health care is a subject of great debate.

Research estimates that in 1970, U.S. health care spending totaled about \$75 billion, or \$356 per resident. Contrasted with projections suggesting that by 2018, U.S. health care spending will total more than \$4.3 trillion dollars – or \$13,100 per individual – it's clear that the current pace of health care cost increases isn't sustainable. (See the graph to the right for per-capita health care costs.) Since 1970, health care costs have risen 2.4% faster annually than the gross domestic product (GDP), and in 2010, employer health care costs are expected to rise about 9%.

Clearly, something must be done. While the need for action is obvious to all constituents – including the government, insurance companies, hospitals and doctors, employers, employees and consumers – the complexity of the health care reform puzzle makes creating a resolution very difficult. The Senate Health, Education, Labor and Pensions (HELP) Committee, the Senate Finance Committee and the House of Representatives Tri-Committee are all attempting to piece together a solution to our health care problem.

One of the primary points of contention is whether a health care overhaul should include a public option. A public option would enable the federal government to offer its own health insurance plan, which would compete with the plans offered by private insurers in an effort to expand insurance coverage to more Americans. If a public health care plan is created, its premiums could be approximately 10% less than those of private insurance carriers for similar plans. While some feel a public option would be a positive change and could stimulate competition among insurance companies, others feel it could undercut private



## FOR MORE INFORMATION, PLEASE VISIT:

- <http://healthcare.nationaljournal.com/2009/04/will-health-care-reform-squeeze.php>
- [www.healthreform.kff.org](http://www.healthreform.kff.org) ("Side-by-Side Comparison of Major Health Care Reform Proposals" provides a respected overview of the House of Representatives, Senate, and White House health reform proposals)
- <http://www.ifebp.org/Resources/News/ResearchTools/Most+Requested+Topics/hcctrends.htm>

ADP TOTALSOURCE® IS COMMITTED TO OBTAINING THE MOST CURRENT INFORMATION ON HEALTH CARE REFORM TO ENSURE THAT OUR HEALTH AND WELFARE PLANS REMAIN COMPLIANT WITH THE CHANGING LAWS WHILE YOU FOCUS ON YOUR BUSINESS.





# HEALTH REFORM

insurers and burden the federal government with unsupportable cost.

Other ideas under consideration are being watched even more closely by American employers. While “socialized medicine” – a complete overhaul of the U.S. health care system – is essentially off the table, pending legislation includes requirements for all individuals to procure health insurance coverage or face tax penalties. The flip side of the same coin offers tax credits to individuals who purchase coverage. Other key provisions include minimum standards that all plans must meet and restrictions preventing health insurance companies from excluding individuals with pre-existing conditions.

Employer responsibility is a notable part of each of the main proposals currently under consideration. The House and Senate proposals (as compared by the Kaiser Family Foundation) all include employer “play or pay” mandates that require employers to provide health coverage for employees or pay “assessments,” or penalties. These mandates would also require employers to subsidize 50–72.5% of employee-only premiums. Only the Senate Finance Committee’s proposal offers an option without a “play or pay” provision. According to these mandates, companies

not providing workers with coverage would be required to contribute as much as 8% of their payroll toward government-administered funds designed to help employees purchase insurance, with exemptions or reduced penalties for some small businesses. Unsurprisingly, many employers are not in favor of this part of the legislation currently offered.

In fact, according to a 2009 Aon Consulting poll of more than 1,000 benefit managers, compensation and benefit leaders and senior HR representatives, 63% of employers oppose an employer mandate that requires them to sponsor group health insurance, a clear indicator that employers want the freedom to design their own health and benefits program. In addition, if Congress modifies the ERISA preemption, health benefits could become more costly and difficult for many employers to provide to their employees, since it would limit or prevent the ability of multi-state employers to offer a single health plan to all of its employees.

The proposals under consideration also include subsidies for small employers offering employee health coverage, based on the number of employees in the company and their average earnings. The subsidies could match the required 50%

minimum employer premium contribution in the Senate Finance Committee’s proposal, or up to \$1,000 per employee with single coverage in the Senate HELP bill. They would offset some of the costs of required coverage to small businesses, but would, like the employer-mandate penalties, be phased out as employer size and average salary increases. The Senate HELP and House Tri-Committee bills also include reinsurance for employers offering coverage to employees ages 55-64. The ultimate cost or benefit to small employers will be difficult to predict accurately until the proposals’ details are solidified.

However, the results from Aon’s survey also indicated that the majority of employers surveyed agree with lawmakers that small businesses need a better way to buy health insurance. As it stands now, small companies may be given an option to “shop around” for affordable plans through a Health Insurance Exchange, aimed at reducing administrative costs and offering a variety of plan options that meet the soon-to-be-set minimum benefit standards. Lawmakers hope to finalize the details of the health care reform plan shortly after they return from their August break. ■

# THE CASE FOR CALLING IN COMPLIANCE EXPERTS

Employment laws and regulations are a fact of life for any business owner with employees to manage and a payroll to meet. With every new regulation, or change to an existing regulation, employers worry about how they'll keep up and the impact on their business.

**S**ix months into a new administration in Washington, and it's clear that the compliance burden on employers has already grown significantly and that the trend will continue. In the first 100 days since he took office, President Obama signed into law two measures that significantly affect employers:

- **Lilly Ledbetter Fair Pay Act of 2009**, which restarts the statute of limitations for filing pay-discrimination claims every time the discriminatory decision is applied – i.e., with each “discriminatory” paycheck the individual receives
- **American Recovery and Reinvestment Act of 2009 (ARRA)** – also known as the federal stimulus bill. ARRA includes several employment-related provisions, including a 9-month COBRA premium subsidy for eligible qualified beneficiaries and

increased funding for enforcement of worker protection laws and regulations.

Even before the new administration took office, the trend was for increasing regulation. For example, the Family and Medical Leave Act (FMLA) was expanded last year to include situations related to active-duty military service by an employee's family member. The Americans with Disabilities Act (ADA) was amended to significantly broaden the protections afforded to disabled individuals. That was just on the federal level; last year, more than 170 new state labor laws came into effect.

More is on the horizon, including the following initiatives currently making their way through Congress:

- **Proposed extensions to FMLA and the Worker Adjustment and Retraining Notification Act (WARN)**
- **The Healthy Families Act (HFA)**, which would mandate paid sick leave for eligible employees

- **The Protecting America's Workers' Act (PAWA)**, which would expand the Occupational Safety and Health Act's (OSHA) scope and the penalties for non-compliance
- **The Employee Free Choice Act**, which would amend the National Labor Relations Act to include the so-called “card check” rule

## Stepped-Up Enforcement Means More Scrutiny for Employers

Enforcement of current rules is also increasing. In the past six months, the Department of Homeland Security has stepped up I-9 enforcement, the Department of Labor has increased its wage and hour investigation staff by one-third, and the Occupational Safety and Health Administration announced plans to add hundreds of field investigators.

Along with the new regulations and increased enforcement of existing ones, litigation is also on the rise. In 2008, the EEOC reported a 15% increase in charge filings. More strikingly, half of those charges were against small- to midsize businesses, a change from the past when the bulk of such activity involved Fortune 500® companies.

Each year three out of five employers are sued — and the most common targets are employers with between 15 and 100 employees. Up to 70% of such cases will be settled out of court, and another 24% are resolved prior to going to trial. In both cases the employer winds up paying legal expenses of as much as \$100,000.<sup>1</sup>

Of the 6% of suits that do go to trial, the average legal fee paid in defending against such claims is now more than \$200,000.<sup>1</sup> Plaintiffs win roughly 30% of cases that go to trial, but even in cases where the employer prevails, they still incur out-of-pocket expenses.

# Why HR Experts Are a Smart Investment

Clearly, employers face a huge and growing compliance challenge, which is why those who enlist the help of compliance experts have the inside edge. It begins with recruiting — knowing what questions are appropriate and which are actionable, and what to do when a background check turns up negative information. It continues through the day-to-day routine of payroll, record-keeping, benefits administration, risk management, workplace safety, terminations and more.

More and more companies are deciding that the growing compliance burden is too much to handle on their own and are turning to outside experts for support and guidance. HR compliance in today's workplace requires consultation, communication, and a proactive approach to training managers and supervisors on compliance essentials.

The most effective compliance efforts are planned, implemented, tracked and communicated in such a way that potential problems are identified and handled before they become major issues. For example, with the guidance of HR experts, a company is well served by creating formal policies for preventing harassment or ensuring

equal opportunity, including a telephone hotline where employees can go with questions or complaints.

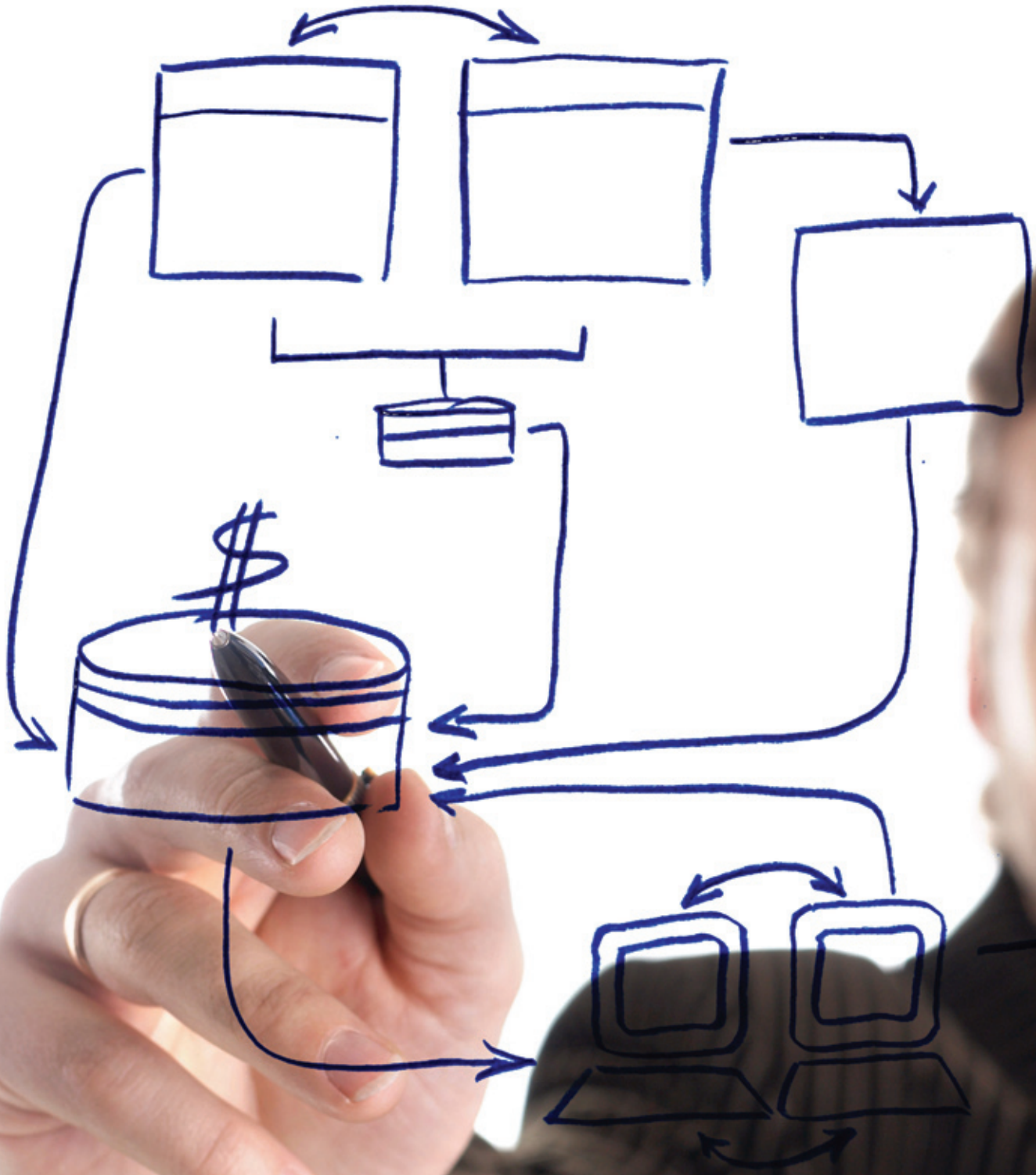
Technology is crucial here, adding another line of communication that can keep employers up to date with legislative developments or guide them through complicated transactions. Finally, timely feedback is critical both for lessons learned and for spotting potential trouble areas. ■

**THE BOTTOM LINE: WHEN IT COMES TO EMPLOYMENT LAWS AND REGULATIONS, CHANGE IS THE ONLY THING WE CAN COUNT ON. GETTING GUIDANCE FROM HR EXPERTS — LIKE ADP TOTALSOURCE — WHEN YOU FIND THE COMPLIANCE BURDEN TOO MUCH TO MANAGE ON YOUR OWN IS A SMART INVESTMENT.**



<sup>1</sup>Business Week, April 23, 2007 citing a Cornell Law School Hofstra Labor & Employment Law Journal







**A new study reveals** changing attitudes toward outsourcing as a means for increasing control while reducing costs. The concept of outsourcing sometimes conjures up a variety of negative scenarios, many having little or nothing to do with reality — job loss, reduced responsiveness, poor communication. What many companies have found is that by selectively leveraging the expertise of others, focusing particularly on non-core yet essential functions such as HR rather than eliminating employees or departments entirely, they get the best of both worlds.

How?

A January 2009 study, "HR Outsourcing Redefined: Options for Workforce

Management," set out to discover exactly how midsized companies view and use outsourcing. The study found that those who react positively to outsourcing usually see increased efficiency, reduced costs, and more effective staff deployment as prime drivers. On the other hand, those with negative points of view actually see rising costs, loss of efficiency through loss of control, and the issue of jobs lost to workers in other countries as reasons to avoid outsourcing.

When respondents were asked what concerns they would have in outsourcing HR functions, the key factor clearly was service delivery (36%). And some of those respondents (13%) simply believe that employees would rather talk to an HR representative on site.

Yet, those more inclined to try outsourcing see three main benefits:

- More efficiently handled HR tasks
- Access to expertise otherwise unavailable
- High level of service

Another less direct benefit of outsourcing is the ability of the on-site staff to focus on strategy. In fact, a large percentage (39%) of respondents see the ability to have their own staff working on strategic initiatives as a key benefit to outsourcing.

This clearly gives the internal staff more reason to think positively about it.

# THE NEW OUTSOURCING: A BLUEPRINT FOR ORGANIZATIONAL EFFECTIVENESS

## EXTERNAL HR HELPING HANDS

One reason people in HR tend to look to outsourcing is to streamline more administrative tasks. That's probably because most respondents spend nearly half their time with payroll, benefits, or general HR administration. Of course, that leaves far less time for other activities like employee relations, recruitment, training and managerial tasks – many of which are done more effectively on site.

However, there are five key areas where nearly everyone who responded to the 2009 HR Outsourcing survey asks for outside help:

- Employee grievances, harassment or disciplinary matters
- Specific answers to regulatory compliance questions
- Best practices for organizational challenges

- Plans and policies for complicated HR functions
- Training programs for employees and managers

But when these questions arise, where do people in HR go for help? Two options come to mind: seeking outsourcing solutions on a piecemeal basis for specific HR functions, or seeking a single source of expertise that spans the entire HR spectrum.

## ASK THE EXPERTS

Since a number of the five areas listed above have significant legal components or ramifications, it should be no surprise that 89% look to their company's attorney for help. Issues like regulatory compliance and harassment can be almost entirely legal in nature, so the company attorney is an obvious place

to turn. Other functions like developing plans and policies also need input from those with the legal knowledge and expertise to protect an organization from potential liability.

The question that remains is whether an attorney or some other specialist like an insurance broker, who has expertise in a specific field, is the right person for the large and varied number of issues that arise in today's HR environment. Fortunately, there are more options available to human resources departments today than ever before.

## THE NEW OUTSOURCING

While outsourcing efforts in the past were likely aimed at eliminating certain jobs and lowering labor costs, today's outsourcing conversation centers on company effectiveness — identifying your needs, then finding people or companies with that specific knowledge and experience.

The first step in this process is to have a clear understanding of the daily tasks the company's HR people have. Looking at which activities take up the most time in a day or a week and which are the most time consuming is a great place to start.

Respondents named four areas for which they were most likely to seek outside assistance:

- Regulatory compliance
- Risk management
- Benefits administration
- Training

This is consistent with research indicating that recordkeeping tasks are highly favored as activities companies like to outsource. Yet, nearly all of the respondents handle all or most of each of the four tasks listed above, and just 1–3% outsource one of the tasks completely. Interestingly, midsized companies are more likely to outsource one of these areas.

Another key ingredient is forming a relationship that can grow over time. Most respondents clearly preferred to get as many HR services and software solutions as possible from the same vendor. At the same time, people see the value of a continuing relationship with outside experts, which may ease some of the concerns of those with some anxiety about outsourcing. The relationship potential — not to mention the efficiency — inherent in a single-source, bundled service offering make it a compelling choice.

## HUMAN RESOURCES BUSINESS PARTNERS

A new option that businesses are turning to more and more is the HR Business Partner (HRBP). This model gives companies a primary point of contact through which they can gain access to experts in different HR functions for advice and support on complex HR issues and answers to specific questions. The HRBP model also gives companies the type of ongoing

relationships that create both synergy and comfort on both sides of the equation.

When asked how they would most likely use an HRBP, survey respondents said:

- Get answers to specific regulatory compliance questions
- Develop employee and manager training programs
- Obtain help with employee issues
- Develop company plans and policies for complex HR functions
- Receive information on best practices

Most respondents (91%) would be willing to interact with their hypothetical HRBP by phone or email for most routine issues. That said, periodic on-site visits serve to cement the relationship and help the HRBP deliver more tailored services, adding value to the relationship for clients. Clearly, most of the respondents would feel comfortable with long-distance relationships, as long as the relationship is consistent and ongoing — and having occasional “face time” helps to ensure that consistency.

## HELPING EMPLOYEES HELP THEMSELVES

Along with the potential for outsourcing core HR functions to an HRBP, another increasingly popular method for making human resources work better is to put some functions online. More and more companies are taking advantage of this “self-serve” option as software design and security improve.

## HOW TO DETERMINE YOUR OUTSOURCING NEEDS

Clearly, outsourcing is now an important piece of the human resources puzzle. Though certainly not a cure-all, its benefits — ability to get specialized expertise, focus company resources on activities that generate revenue, reduce the cost of administrative tasks, and remain flexible when it comes to work demands — are increasingly essential if a company is to reach and sustain peak performance.

With the economy faltering, flexibility in all areas, including HR, allows the best companies to navigate rough waters. Interestingly, the respondents with the most positive attitude toward outsourcing tend to be those with the most experience with outsourcing — so trying it appears to be the first step toward liking it.

By measuring and assessing your HR needs, establishing best practices for your industry, and finding where you may be comfortable trying something new, chances are you will find that a bundled service offering headed by an HRBP and supported by online administrative tools is the smart strategic choice. ■



# EMPLOYMENT **LAW** 101

When it comes to employment law, what you don't know can hurt you. Read on for a quick snapshot of the basics.

Workplaces in the U.S. are more protected now than ever. Many of today's employment laws establish and standardize safety and fairness practices that otherwise might be ignored or overlooked, making for a more diverse and professional workplace.

They also create responsibilities that employers ignore at their peril. Failure to understand these requirements can leave your organization open to costly claims ranging from discrimination to unfair practices. What many employers often don't realize is the amount of exposure they have to possible claims in today's workplace. It all adds up to a compelling case for partnering with HR professionals with the expertise to guide you through the compliance maze.

## Which Employees Are Protected? **More Than You Might Think.**

Once employers cross the 15-employee threshold that requires them to comply with many federal employment laws, they should know the categories under which their employees might be covered by these laws. According to federal law, a person must be a member of a group that is viewed as a "protected class" before he or she can claim a violation on the basis of discrimination.



**These protected classes include:**

- Race
- Color
- Gender
- Religion
- Age of 40 or older
- Disability
- Uniformed services (employees on active or inactive duty)
- Citizenship status

Your exposure doesn't stop there — indeed, these federal classifications are often just the start. State and local governments may have additional classes that can seek protection. Some of these include height, weight, smoking habits, political affiliation, arrest record, and even personal appearance.

## More Than Discrimination Protection

Employment laws do more than simply protect against discriminatory practices in the workplace. They also protect employees if they report an incident or testify on behalf of someone who is a member of a protected class. The sheer volume of applicable legislation quickly underscores just how workplace protections have grown over time and how much information an employer needs to limit potential liability for a violation.

Here's a sampling of the federal laws that may come into play if you face a claim:

**Fair Labor Standards Act of 1938** — Requires certain employers to pay at least the federal minimum wage and overtime to eligible employees. Also prohibits retaliation against a worker who files any type of formal complaint about unfair payment practices.

**Title VII of the Civil Rights Act of 1964** — Bans discrimination on the basis of race, color, religion, gender (including pregnancy), or national origin; covers both intentional discrimination as well as practices that end in a result that reflects discrimination against one or more of the protected classes.

**Age Discrimination in Employment Act of 1967** — Prevents discrimination against employees who are 40 or older on the basis of age.

**Occupational Safety and Health Act of 1970** — Employers must provide a safe work environment. Also prohibits retaliation against workers who file complaints about an unsafe or unhealthy workplace and those who refuse an assignment based on health or safety.

**Americans with Disabilities Act of 1990** — Prevents discrimination against individuals with physical and mental disabilities; also restricts pre-employment physical exams and requires employers to make reasonable accommodations for such individuals. This is especially noteworthy for companies in older facilities that may want to expand or remodel.

**Family and Medical Leave Act of 1993** — Provides employees with 12 weeks of job-protected unpaid leave for certain family or medical reasons. Also prevents retaliation against employees who take advantage of this type of leave. Under recent regulations, eligible employees may be granted leave for military caregiver purposes and for military duty-related reasons.

**Sarbanes-Oxley Act of 2002** — Protects employees from retaliation for reporting a violation of any federal securities law, rule or regulation. The employee does not have to prove that his or her employer actually violated the law but must have a "reasonable belief" that they engaged in unlawful activity.

**The Uniformed Services Employment and Re-employment Rights Act** — Prevents discrimination against uniformed service members. In certain cases, it protects the jobs of those on active duty. With so many military personnel currently deployed around the world, knowledge of this legislation is more vital than ever. Penalties for employers who fail to comply with these and the many other federal, state and local employment laws can range from a warning to hundreds of thousands of dollars for serious or repeat offenses. Many penalties are assessed on a per-employee basis; thus, the potential exposure for your organization can be substantial.

With the number of laws and their requirements accelerating every year, one thing is clear: A solid understanding of employment law is critical to the longevity of your business. This knowledge is essential for fostering a fair and productive work environment — and protecting the business you've worked hard to build. Many, if not most, employers lack the relevant in-depth knowledge and can be vulnerable to inadvertent non-compliance, which is why enlisting the help of HR experts can be a smart investment over the long term. ■



# PUT YOUR EMPLOYMENT LAW KNOWLEDGE TO THE TEST

With the sheer volume of federal employment laws in effect — and more on the horizon — it becomes difficult to track what law(s) might apply in a given situation. Here's a chance to assess your knowledge by matching the situation to the law that may apply:

1. Uniformed Services Employment and Re-employment Rights Act

2. National Labor Relations Act

3. Equal Pay Act

4. Age Discrimination in Employment Act

5. Occupational Safety and Health Act

6. Americans with Disabilities Act

7. Family and Medical Leave Act

8. Sarbanes-Oxley Act

A. A worker who complains about second-hand smoke

B. A single mother re-entering the workforce after raising her family

C. A National Guard member returning from Iraq

D. An employee who is caring for an elderly parent

E. A highly paid employee age 41

F. An employee who reports suspected stock fraud

G. An employee who distributes union information

H. An employee who uses a wheelchair

**Answers:** 1(C), 2(G), 3(B), 4(E), 5(A), 6(H), 7(D), 8(F)

# State Unemployment Insurance:





# WHERE ignorance IS NOT BLISS

No business can escape the sobering reality of dealing with unemployment claims — a task that is likely to become more prevalent and potentially expensive as the current recession lingers.

How bad is it? The latest figures show that more Americans applied for unemployment insurance benefits during the last few weeks of 2008 than at any time in the last 25 years.

Even with the federal stimulus plan now under way, reversal of this trend won't happen overnight. That means more businesses than ever will have to manage the unemployment process, potentially increasing both your up-front administrative costs and ongoing payroll and unemployment tax expenses.

With nearly two million jobs lost in the first quarter of 2009, dealing with unemployment claims is becoming more time-consuming and costly. Yet those companies who outsource HR functions to a Human Resources Business Partner, such as a Professional Employer Organization (PEO), are relieved of this immense burden.

## Controlling Your Tax Liability

There is a bit of a bright side, however: Unemployment insurance is the only controllable employer payroll tax. By managing your unemployment program effectively, you can substantially control the amount of unemployment taxes paid by your business. This is where having an outside Human Resources Business Partner can help, by delivering access to the expert guidance needed to control your tax liability.

If you're a bit confused about how your state unemployment insurance (SUI) tax rate is established, you're in good company. Every state's rate is calculated in a slightly different manner, using

your company history to determine the current rate.

Critical factors are your payroll history — which indicates employee count and turnover — and benefit charge history, which shows the charges you've had to pay for ex-employees' unemployment claims. The fewer the claims, the lower your SUI tax rate.

## Knowing the Rules

Making sure only eligible and qualified claimants receive unemployment is essential to controlling costs. It's imperative to know what may or may not make someone ineligible or disqualify a claim. Again, guidance from outside experts can make all the difference.

Failing to uniformly apply policy rules in the workplace can work against you in an unemployment claim. By selectively enforcing the rules, an employer loses credibility when it comes to making your case at a hearing. Uniform doesn't necessarily mean identical, but consistency is key.

For companies with multiple locations, state law governs unemployment claims. So understanding your responsibilities — and your rights — as an employer in one state doesn't necessarily mean you have a good handle on your exposure in other states.

For example, in one state willful misconduct may be the standard, but in another an employee's behavior might need to reach a level of gross misconduct for a denial of unemployment benefits. Keep in mind that many of these rules and regulations are still left to the interpretations of individual officials — and knowing how those interpretations generally vary is essential to an effective employment policy.

## To Appeal or Not To Appeal?

Tempting as it may be to appeal every time you feel an unfair unemployment benefits claim is filed, it doesn't always make good business sense to do so.

There may be cases where there may not be much difference in your tax rate or benefits account. If you're already at the maximum rate, there won't be any change in your rate, and it will only cost you money and resources to dispute the claim.

Understanding how to establish the employment policy that's right for your company is the first step toward properly handling unemployment claims. That includes determining what approach makes the most sense from both the human resources and financial perspectives. Above all, it includes consideration of outsourcing core HR functions, including SUI administration, to HR experts who can minimize your administrative burden and effectively help you manage your tax liability.

Without thorough planning, your company could be paying a higher SUI tax rate than necessary for the coming years — funds that could certainly be put to better use. ■

# QUESTIONS ON THE NEW COBRA?

## WHAT DOES COBRA MEAN?

**CONGRESS PASSED THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT (COBRA) IN 1986. IT PROVIDES MANDATORY CONTINUATION OF GROUP HEALTH COVERAGE THAT MIGHT OTHERWISE END WHEN AN EMPLOYEE IS TERMINATED. NOW ARRA REQUIRES EMPLOYERS TO SHARE THE COST.**



If you offer health insurance benefits to your employees, then you're probably familiar with COBRA: It's the federal law that allows certain individuals to extend the health insurance benefits they received as an active employee for up to 18 months following an event such as termination of employment.

In February 2009, the American Recovery and Reinvestment Act of 2009 (ARRA) was enacted. This economic stimulus package contains a COBRA subsidy for employees that are involuntarily terminated and lose coverage during the period beginning September 1, 2008 and ending December 31, 2009. Here are some answers to the questions you may be asking:

### What has changed?

The stimulus plan subsidizes 65% of the applicable COBRA premium for up to nine months for employees who experience an involuntary termination of employment between September 1, 2008 and December 31, 2009. It also extended the COBRA election period for individuals that were involuntarily terminated on or after September 1, 2008 but prior to the enactment of ARRA by giving them the opportunity to make a "second chance" election to receive COBRA coverage even though their initial COBRA election period had expired. You, as the former employer, may have a role and responsibility in the processing of this subsidy if you have not outsourced this core HR function to a human resources business partner such as a Professional Employer Organization (PEO). This is a regulatory compliance issue, which took effect for most group health plans on March 1, 2009.

### How does the subsidy work?

ARRA specifies that people who are eligible for COBRA assistance will pay 35% of the total cost of their coverage. Ordinarily, the remaining 65% will be paid by you, their former employer, on their behalf, and will be reimbursed in the form of a credit against the employment taxes you owe the IRS. The amount of the subsidy is not considered taxable income to the employee. If your company outsources core HR functions to a human resources business partner, such as a PEO, then this subsidy and the associated filing requirements are handled by the PEO. If you are not with a PEO but have outsourced your benefits administration, including COBRA administration, then your COBRA administrator will likely handle the processing of the subsidy and associated filing requirements as well, although your company will likely be responsible for initially covering the 65% premium cost.

### Are there any exceptions?

A former employee whose modified adjusted gross income in any year in which the subsidy is received exceeds \$145,000 when filing as single, or exceeds \$290,000 if married and filing jointly, is not eligible for the subsidy. If the employee's modified adjusted gross income in any year in which the subsidy is received is \$125,000–\$145,000 (if filing singly) or \$250,000–\$290,000 (married and filing jointly), he or she is eligible to receive a partial subsidy. If the employee's adjusted gross income exceeds the limits, they can opt out of receiving the subsidy. If they don't opt out, they'll owe additional tax on their federal tax return equal to the amount of the subsidy they were not entitled to receive.



# THE ANSWERS YOU NEED...NOW

## How are taxes handled?

The COBRA subsidy is considered part of your payroll taxes for the date that the employee's premium payment is received, for the same amount of the subsidy. If it's overstated, it will be considered underpayment of payroll taxes and may be assessed and collected ... in the same manner as payroll taxes. This indicates that the penalties associated with underpaying payroll taxes would apply in the case of overstatements of the COBRA subsidy payments. The key thing to remember is that you can't claim the subsidy amount paid as a refund on your payroll tax filing until it has actually been paid to the insurance carrier. Again, an HR business partner such as a PEO or third-party COBRA administrator would typically handle all COBRA-related tax filing issues on behalf of its clients.

## How long does COBRA last?

The subsidy period is not longer than nine months. It can be shorter if the former employee becomes eligible for coverage under another plan including Medicare or spousal plan, or if COBRA coverage is terminated because the former employee fails to pay the employee portion of the premium on a timely basis.

## Does ancillary coverage affect eligibility?

Coverage under the following types of plans (or a combination of them) doesn't affect an employee's eligibility for the COBRA subsidy: Dental, vision, counseling, referral services, or employer on-site medical treatment (consisting primarily of first aid, wellness and preventive care). Health flexible spending accounts (FSAs) also do not affect COBRA subsidy eligibility.

## Is there an extended election period?

As described above, ARRA provided a "second chance" for certain individuals to elect COBRA if they had previously turned down COBRA continuation coverage prior to the ARRA date of enactment.

**The 2009 stimulus bill included substantial changes to COBRA. Here's a look at the law's potential impact on your HR processes — and your bottom line.**

## When did COBRA become effective in an extended election period?

If selected under these circumstances, COBRA continuation coverage typically started with the first period of coverage beginning on or after the date of enactment of ARRA, which in most cases was March 1, 2009. Retroactive coverage prior to ARRA enactment is not allowed. The applicable COBRA coverage period is still 18 months from the date the individual was first eligible to receive COBRA coverage.

## What kind of information do I have to provide to terminated employees?

An outside HR Business Partner, such as a PEO or third-party COBRA administrator, would handle notification requirements on behalf of its clients.

Otherwise, ARRA specifies that whenever you provide the required

COBRA Election Notice to a terminated employee, you must include information in relation to the availability of the premium subsidy. You can do this by modifying your existing COBRA Election Notice or by including separate documents that contain the required information. Sample documents can be located on the U.S. Department of Labor Web site at [www.dol.gov/COBRA](http://www.dol.gov/COBRA).

## What kind of outreach is the government doing?

ARRA requires that the U.S. Department of Labor and Health and Human Services provide public education and enrollment assistance relating to the COBRA subsidy. The U.S. Department of Labor has issued guidance for both employees and employers on its Web site at [www.dol.gov/COBRA](http://www.dol.gov/COBRA).

The Internal Revenue Service Web site ([www.irs.gov](http://www.irs.gov)) contains guidance on how to claim the COBRA credit on your payroll tax filing, if you have not outsourced these responsibilities, by contracting with a PEO or third-party COBRA administrator.

## Will any of the proposed health care reform affect the COBRA subsidy?

Although it is unclear at this point whether the health care reform provisions proposed by Congress will affect the COBRA subsidy, it is possible that Congress may decide to extend the COBRA subsidy period beyond December 31, 2009, in order to permit additional individuals to benefit from the COBRA subsidy provisions. ■





# Why Choosing ADP for More Than Just Payroll Is a Smart Business Decision

As we've explored elsewhere in this magazine, the case for outsourcing the HR function to a single business partner is a compelling one. And as a worldwide leader in outsourced business solutions, ADP offers business owners the industry-leading Professional Employer Organization (PEO): ADPTotalSource.

Anchoring the ADPTotalSource service delivery is an assigned Human Resources Business Partner (HRBP). This experienced HR professional is the client's point of access to experts from across the HR spectrum, who in turn deliver the support, guidance, tools and technology that enable clients to streamline their administrative burden and refocus on their core operations.

Many of America's smartest companies choose ADPTotalSource, for good reason. They look to us to help their team get better.



## ADP TotalSource: Sharing the risks and burdens of employers

Clients of ADP TotalSource choose the PEO route because they are seeking an integrated suite of services that incorporate all major HR functions with ADP TotalSource as the co-employer. The experience of NexMed, Inc., a New Jersey-based pharmaceutical company, can be summarized in a few words: focus, flexibility, compliance, competitiveness.

“ADP TotalSource allows me to spend more of my time strategizing with the C-level folks in our company, while the HRBP handles the HR detail work,” says Linda Burns, Director Corporate Relations of NexMed, Inc. “Small businesses just don’t have the staff to devote to HR, and they struggle with these issues on a daily basis. They want to be able to go after new business and allow employees to become more self-sufficient for routine matters. ADP TotalSource allows that to happen.”

In particular, Burns cites three elements of ADP TotalSource’s service bundle as being especially valuable to NexMed, Inc.: payroll, benefits, and compliance support. “ADP delivers the nuts and bolts of payroll, but what really helped us is the flexibility. Because of the industry we’re in, we need to be able to run our payroll on a ‘project costing’ basis, and ADP’s systems enable us to tailor our payroll to our own business needs.”

The employee benefits plans and administration that are offered as part of the ADP TotalSource solution enable our clients to stay competitive within their own industries. As Burns explains, “We are a small company competing for top employees with Fortune 500 corporations that are household names in the pharmaceutical business. With ADP TotalSource, we are able to offer state-of-the-art benefits packages that keep us competitive and which are a much better deal than anything we’d be able to get on our own. With ADP TotalSource you have strength in numbers, and that’s critical to our own competitiveness.

“Plus, if it weren’t for ADP TotalSource I’d have to spend much more time staying on top of different benefits vendors, managing enrollment, and so on. Instead, I can hand it off to our HRBP and the folks at ADP.”

Regulatory compliance is another hot button, especially with the changes to COBRA and increased enforcement across the board. “The compliance guidance and support that ADP TotalSource offers has been very valuable to us,” Burns says. “For example, there’s the new COBRA subsidy. Because of our size, if it weren’t for ADP TotalSource, it would be financially difficult for us to offer the subsidy to our former employees. As it is, we are able to offer our employees broader access to COBRA coverage.” With ADP TotalSource handling all administrative tasks for COBRA and covering the employer portion of the subsidy, clients are not out-of-pocket for the subsidy costs and are able to focus on their core business functions.

Above all, Burns values the relationship with her HRBP and support staff from ADP, and the fact that ADP TotalSource is equally strong in human communications and leading edge technology. “With everything being Web-based now, it’s a lot easier for example to process payroll with ADP TotalSource. At the same time, it’s important for us to have a name on our side that we know will be there tomorrow. It keeps us comfortable – and makes it very easy to get answers.” ■





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