

Benefit **Beat**



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In This Edition:

- ❖ **FAMILY AND MEDICAL LEAVE ACT UPDATES**
- ❖ **THE TUG OF WAR: CAN SMALL EMPLOYERS SELF-FUND?**
- ❖ **DOL ISSUES REVISED MEDICAID/CHIP NOTICE**
- ❖ **CONTINUING EXPANSION OF PAID SICK LEAVE LAWS IN THE STATES**

FAMILY AND MEDICAL LEAVE ACT UPDATES

CHANGE IN DEFINITION OF SPOUSE FOR FMLA PURPOSES

On February 25, 2015, the Wage and Hour Division of the Department of Labor (DOL) **modified** the definition of spouse for the federal Family and Medical Leave Act (FMLA) purposes, specifically to use the “place of celebration” rather than the “state of residence”. What this means is, for FMLA purposes, a spouse, whether same or opposite-sex, is entitled to all of the benefits and rights under the law as long as the marriage is legal in the jurisdiction in which it is celebrated, without regard to whether the marriage is legal where the individuals reside. Previously, the DOL had used the rule of residence, meaning the marriage had to be legal in the state of residence in order to be entitled to FMLA.

The change made by this regulation becomes effective March 27, 2015. This change also applies to the military family leave provisions of the FMLA relating to qualifying exigency and caregiver leave. The DOL has established a webpage, together with explanatory material (fact sheet, FAQs, regulation text) relating to this change in definition of spouse (<http://www.dol.gov/whd/fmla/spouse/index.htm>).

It is important to note that the change in definition of spouse does not extend FMLA rights and benefits to civil union couples, domestic partnerships or other similar relationships. If an employer intends to extend FMLA-like rights and benefits to its workforce in these types of relationships, it can do so by its policies and procedures. The employer would also have to amend its relevant plans to reflect this expanded entitlement.

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Continued from Page 1

REVISED MODEL FMLA FORMS

The DOL's Wage and Hour Division provides model FMLA forms that can be used by employers to assist in satisfying their notice obligations such as the obligation to provide information to employees of their eligibility, rights and responsibilities under the law, as well as the certification form to report the need for FMLA leave in the event of an employee's or his/her family member's serious health condition. These model FMLA forms expired on February 28, 2015. However, a new set of forms has been issued with a temporary extension date through March 31, 2015. While there has not been any change in the content of these forms, employers are encouraged to use these updated versions until further notice:

- ◆ WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition
- ◆ WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition
- ◆ WH-381 Notice of Eligibility and Rights & Responsibilities
- ◆ WH-382 Designation Notice
- ◆ WH-384 Certification of Qualifying Exigency For Military Family Leave
- ◆ WH-385 Certification for Serious Injury or Illness of Current Servicemember for Military Family Leave
- ◆ WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

THE TUG OF WAR: CAN SMALL EMPLOYERS SELF-FUND?

The District of Columbia is following a growing trend to regulate stop-loss insurance available to small employer health plans.

Stop loss insurance is often purchased by employers who sponsor self-funded health plans. It is intended to protect an employer in the event of large claims.

Historically, only large employers have self-funded their health plans. As health care costs have increased, more and more small employers have begun considering self-funding.

Some regulators and legislatures have expressed some angst over this concept. Several years ago, the National Association of Insurance Commissioners (NAIC) adopted a Stop Loss Insurance Model Act setting out guidelines. The NAIC Stop Loss Model Act contains the following minimum attachment points:

- For large employer groups over 50 employees: 110% aggregate and \$20,000 specific attachment point
- For groups under 51, the aggregate attachment point must be at least the greatest of:
 - ◆ \$4,000 times the number of group members;
 - ◆ 120% of expected claims; or
 - ◆ \$20,000.

States are not obligated to follow the model rules but many do. In fact, three states: Oregon, New York, Delaware and now the District of Columbia outright prohibit the sale of stop loss insurance to small employers. The requirements of these restrictions vary greatly; for example, Delaware restricts the issuance of stop loss insurance only to employers employing fewer than 15 employees.

The District of Columbia enacted a **stop loss law** on January 25, 2015 which, in effect, precludes small employers from self-funding comprehensive health coverage in that stop loss coverage can't be issued to a small employer unless it has an insured health plan product. Small employers in the District can only purchase health coverage through the District's marketplace (DC Health Link) and can only self-fund excepted benefits for which stop-loss can be purchased.

The minimum attachment points for stop-loss insurance policies issued in the District are:

- ❑ Minimum \$40,000 individual attachment point;
- ❑ Aggregate attachment point to be at least the greater of:
 - ◆ \$5,000 times the total number of group members;
 - ◆ 120% of expected claims; or
 - ◆ \$40,000.

The premise behind these stop loss laws is presumably not only financial protection to affected individuals and entities; but also to ensure employees of small employers have access to what is deemed to be adequate coverage. States cannot regulate stop loss insurance as health insurance, i.e., state mandates cannot be imposed on stop loss insurance. However, a state can regulate the stop loss insurance as a general insurance product imposing the kinds of limitations described above. It will be interesting to see how this trend plays out in the years to come.

DOL ISSUES REVISED MEDICAID/CHIP NOTICE

Employers sponsoring health plans are obligated to annually provide a premium assistance notice to their workforce. This notification can be accomplished by using a model notice provided by the Department of Labor (DOL)(see links below). The DOL has recently updated its model Medicaid/CHIP notice.

The revised notice, current as of January 31, 2015, makes the following changes from the July 31, 2014 version:

- ◆ New website addresses for Medicaid offices in Alabama, Minnesota and Montana
- ◆ Arizona no longer offers a CHIP program
- ◆ New website address and phone number for Medicaid office in Colorado
- ◆ Idaho no longer offers Medicaid
- ◆ New website address and phone for CHIP office in Utah
- ◆ New website address for Medicaid and CHIP office in Wisconsin

The notice explaining the right to premium assistance must be provided to anyone residing in the following states, without regard to where the employer is located, or where the plan is issued. The employer can provide the notice to all of its employees, or just to those who are residing in the below-listed states. States that provide some form of premium assistance are:

STATES WITH PREMIUM ASSISTANCE		
Alabama	Minnesota	Pennsylvania
Alaska	Missouri	Rhode Island
Colorado	Montana	South Carolina
Florida	Nebraska	South Dakota
Georgia	Nevada	Texas
Indiana	New Hampshire	Utah
Iowa	New Jersey	Vermont
Kansas	New York	Virginia
Kentucky	North Carolina	Washington
Louisiana	North Dakota	West Virginia
Maine	Oklahoma	Wisconsin
Massachusetts	Oregon	Wyoming

The revised Medicaid/CHIP notice can be viewed and/or saved from these website addresses:

English

- Word version:
<http://www.dol.gov/ebsa/chipmodelnotice.doc>
- PDF version:
<http://www.dol.gov/ebsa/pdf/chipmodelnotice.pdf>

Spanish

- Word version:
<http://www.dol.gov/ebsa/chipmodelnoticesp.doc>
- PDF version:
<http://www.dol.gov/ebsa/pdf/chipmodelnoticesp.pdf>

CONTINUING EXPANSION OF PAID SICK LEAVE LAWS IN THE STATES

State and local governments continue the trend of requiring paid sick leave laws, most recently in the City of Philadelphia. In addition, employers in California have revised posting obligations relating to the state's paid sick leave law.

PHILADELPHIA – PROMOTING HEALTHY FAMILIES AND WORKPLACES ORDINANCE

Beginning May 13, 2015, the **Promoting Healthy Families and Workplaces Ordinance** requires employers employing 10 or more employees to provide one hour of paid sick leave for every 40 hours worked by their employees. Employers with fewer than 10 employees are required to provide unpaid sick leave under the same criteria and conditions. Eligible employees are those who work at least 40 hours a week within the geographical boundary of the City of Philadelphia.

The earned sick time can be used to care for an illness, injury or medical condition of the employee, or the employee's spouse or life partner, child, grandchild, sibling or sibling's spouse, parent or legal guardian, or the employee or spouse's grandparent and their spouse. In addition, leave may be taken to address the psychological, physical or legal effects of domestic violence. Employees can begin to use the accrued leave following their 90th day of employment. Up to 40 hours of accrued leave can be carried over year to year.

If an employer's leave policy mirrors or exceeds the requirements of the Ordinance, the employer will not be obligated to change its policy. This law contains both employee and employer notice obligations and posting requirements, as well as recordkeeping requirements.

CALIFORNIA SICK LEAVE NOTIFICATION

The California's paid sick leave law requires employers to provide a minimum of one hour of paid sick leave for every 30 hours worked by their employees beginning July 1, 2015 (see **California Paid Sick Leave**, *Benefit Beat*, 10/4/14).

Beginning January 1, 2015, employers were required to display a workplace poster describing the right to paid sick leave as well as provide employees with a wage notice form containing sick leave information.

Recently, the Division of Labor Standards Enforcement (DLSE) modified the required notification requirement such that all new hires employed on or after January 1, 2015 must be provided notification about the paid sick leave law upon their date of hire. Employers must provide the same notification to their existing employees by July 8, 2015. The **DLSE's website** provides resources for employers, including the required poster and notice to employees (available in English, Spanish and Vietnamese), together with FAQs and Fact Sheets.

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