

Benefits BULLETIN

Benefits tips brought to you by
Baldwin Krystyn Sherman Partners

IN THIS ISSUE

3rd Quarter 2016

PAGE 1

DOL Issues New Overtime
Payment Rules

PAGE 1

EEOC Finalizes Wellness
Rules Under ADA and
GINA

PAGE 2

HHS Launches Phase 2 of
HIPAA Audit Program

PAGE 2

ACA's Affordability
Contribution Percentage
Increased for 2017

DOL Issues New Overtime Payment Rules

On May 18, 2016, the U.S. Department of Labor (DOL) announced [a final rule](#) regarding overtime wage payment qualifications for the "white collar exemptions" under the Fair Labor Standards Act (FLSA).

Currently, the salary threshold (salary level test) for overtime pay under the white collar exemptions is \$23,660 per year or \$455 per week. The new rule more than doubles the salary threshold to **\$47,476 per year or \$913 per week**. This change could affect more than 4 million workers across the United States.

In addition, the final rule increases the \$100,000 salary level for highly compensated individuals to \$134,004 per year. The required salary threshold will be automatically updated every three years. The final rule does **not** modify the duties employees must meet to qualify for a white collar exemption.

The new rule has been controversial because it will require employers to

review employees' exempt status, update overtime policies, notify employees of changes and adjust payroll systems. According to estimates from the DOL, employers will spend more than \$592 million to comply with the new rule.

Employers must comply with the new rule by **Dec. 1, 2016**. Given the magnitude of this ruling, it is important to start preparing now for changes to overtime regulations.

Employers will need to reclassify employees as exempt or nonexempt, as necessary, by Dec. 1, 2016. In addition, employers will need to review work schedules and evaluate timekeeping practices to determine what changes, if any, are needed.

Changes to time tracking, benefits and pay can all have a significant impact on employee morale, so it is important to develop an effective communications plan. The earlier you can start, the better.

Employers who fail to respond to overtime changes could face lawsuits, criminal charges, fines and restrictions in commerce.

EEOC Finalizes Wellness Rules Under ADA and GINA

On May 16, 2016, the Equal Employment Opportunity Commission (EEOC) issued long-awaited guidance that describes how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA) apply to employer-sponsored wellness programs.

Previously, one of the issues in question was the extent to which employers could offer incentives that asked employees to answer disability-related questions or undergo medical examinations like health risk assessments. The [final ADA rule](#) states that wellness programs that ask questions about employee health or that include medical examinations may not offer incentives that exceed 30 percent of the total cost of self-only coverage.

In addition, the [final GINA rule](#) clarified that an employer can offer a limited incentive for an employee's spouse to provide information about his or her health status as part of a voluntary wellness program.

CONTINUED ON PAGE 2



BALDWIN
KRISTYN SHERMAN

Benefits BULLETIN

EEOC Finalizes Wellness Rules Under ADA and GINA

These rules provide much needed guidance for employers on how to structure their wellness programs without violating the ADA or GINA.

The final rules' notice requirements and incentive limits apply as of the first day of the first plan year that begins on or after **Jan. 1, 2017** (for the health plan used to determine the amount of the incentive).

Employers with workplace wellness programs should work with their brokers to determine what changes, if any, are needed to ensure their programs adhere to the EEOC's final rules.

HHS Launches Phase 2 of HIPAA Audit Program

The Department of Health and Human Services (HHS) has launched Phase 2 of its HIPAA audit program, which focuses on compliance with HIPAA's Privacy, Security and Breach Notification Rules. HHS' Office for Civil Rights (OCR) will be conducting these audits.

Both covered entities and business associates may be selected for a HIPAA audit. The goal of this program is to improve compliance. However, if an audit reveals a serious compliance issue, the HHS may initiate a compliance review to further investigate the issue.

Entities selected for an audit will have 10 business days to draft a response. Communications from the OCR will be sent via email. Make sure to check your spam folder for emails from OSOCRAudits@hhs.gov to make sure this important email is not missed.

To prepare for a potential audit, employers should self-audit their compliance with HIPAA rules using the OCR's audit protocol. The OCR's audit protocol is organized around modules, each representing separate elements of privacy, security and breach notifications.

The protocol pinpoints nearly 180 areas for possible audit inquiry. More information about the audit protocol can be found [here](#).

In addition, HIPAA's Security Risk Assessment (SRA) Tool can be used to perform and document an organization's security risk analysis. The SRA tool can be downloaded [here](#).

Even if your organization is not selected for a Phase 2 audit, it is important to self-audit your business to ensure compliance, since the OCR will likely continue its enforcement efforts after Phase 2 audits are completed.

ACA's Affordability Contribution Percentage Increased for 2017

On April 12, 2016, the Internal Revenue Service (IRS) released [new guidance](#) on the percentages used to determine what is considered "affordable" health coverage.

Under the Affordable Care Act (ACA), the affordability of an employer's plan may be assessed for the employer shared responsibility penalty, the individual mandate and the premium tax credit. The affordability test varies for each provision.

For plan years beginning in 2017, employer-sponsored coverage will only be considered affordable if the employee's required contribution for self-only service coverage does not exceed:

- **9.69 percent** under the employer shared responsibility rules (up from 9.66 percent in 2016). The shared responsibility rules, or pay or pay rules, require applicable large employers (those that employ 50 full-time employees or full-time equivalents) to offer coverage that does not exceed 9.69 percent of an employee's household income for the year.

CONTINUED ON PAGE 3

Benefits BULLETIN

ACA's Affordability Contribution Percentage Increased for 2017

- **9.69 percent** under the premium tax credit eligibility rules (up from 9.66 percent in 2016). If employees' required contributions exceed 9.69 percent, those employees could be eligible for a premium tax credit through the Marketplace, which could result in penalties for employers.
- **8.16 percent** under an exemption from the individual mandate (up from 8.13 percent in 2016). Individuals that lack access to affordable, minimum value coverage are exempt from the individual mandate.

Failing to offer coverage that meets these requirements could result in significant penalties for your business. Please note that these percentages only apply to individual coverage, and do not include additional costs for family coverage.

If your company offers various health coverage options, the affordability test applies to the lowest-cost option that also meets the minimum value requirement established by the ACA.

These new requirements are effective for taxable years and plan years beginning after Dec. 31, 2016.

For more information on these requirements, contact Baldwin Krystyn Sherman Partners today.

The information contained in this newsletter is not intended as legal or medical advice. Please consult a professional for more information.

© 2016 Zywave, Inc. All rights reserved.