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# HR & Benefits Advisor

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Brought to you by: BOHANNON INSURANCE GROUP

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## Payroll Tax Cut Extended Through the End of 2012

Employees will continue to receive larger paychecks for the rest of this year based on a lower Social Security tax withholding rate of 4.2%. This reduced rate (from 6.2% to 4.2%), originally in effect for all of 2011, was previously extended through February 2012. A recently enacted law, the [Middle Class Tax Relief and Job Creation Act of 2012](#), further extends the payroll tax reduction to the end of 2012.

A rate reduction in the Social Security portion of the self-employment tax, from 12.4% to 10.4%, applies for self-employed individuals. For 2012, the Social Security tax applies to the first \$110,100 of wages and net self-employment income received by an individual.

The new law also repeals the recapture provision included in the previous extension that effectively capped at \$18,350 the amount of wages eligible for the payroll tax cut. As a result, the now repealed recapture provision does not apply.

### Revised Payroll Tax Form Available for Employers

Revised [Form 941](#), *Employer's Quarterly Federal Tax Return*, is now available for employers to properly report the newly-extended payroll tax cut.

No action is required by employees to continue receiving the payroll tax cut. As before, the lower rate will have no effect on employees' future Social Security benefits.

### Additional Information

The Internal Revenue Service will issue additional guidance, as needed, to implement the newly-extended payroll tax cut, and any further updates will be posted on [IRS.gov](#). To read more about the Social Security and Medicare payroll taxes, please visit our section on the [Federal Insurance Contributions Act](#) (FICA).



## Updated Model CHIP Notice for Employers

An [updated model notice](#) for employers to provide information on eligibility for premium assistance under [Medicaid](#) or the [Children's Health Insurance Program](#) (CHIP) is now available for download.

## Annual Notice Requirement

Employers that provide coverage in states with premium assistance through Medicaid or CHIP must inform employees of potential opportunities for assistance in obtaining health coverage annually before the start of

each plan year.

The [updated model notice](#) includes information on how employees can contact their state for additional information and how to apply for premium assistance, with information current as of January 31, 2012.

To download the updated CHIP model notice, please [click here](#). Our section on [CHIPRA](#) (the Children's Health Insurance Program Reauthorization Act) contains additional information on employer responsibilities related to the state Children's Health Insurance Program.

## Change in Effective Dates for New Retirement Plan Fee Disclosures

[Beginning later this year](#), plan administrators will be required to provide workers who make their own investment decisions in 401(k)-type retirement plans with [certain information about plan and investment costs](#), including quarterly statements showing the dollar amount of plan-related fees and expenses charged to or deducted from their individual accounts.

The effective date for this new requirement works in conjunction with the compliance date for another rule requiring [fee disclosures by certain service providers to plans](#), which was recently delayed. As a result of this delay, plan administrators for calendar year plans now must make the **initial annual disclosure of plan and investment - related**

## Special Health Care Reform Update: New Summary of Benefits and Coverage (SBC) Notice Requirements Delayed -- 5 Q&As for Employers

[Final rules](#) have been issued relating to the requirement under Health Care Reform that group health plans provide participants and beneficiaries a summary of benefits and coverage (SBC) and related notices. The final rules include a **6-month delay in the effective date for compliance** (originally set for March 23, 2012), and make changes to a number of requirements proposed in earlier regulations.



The following highlights major areas of importance employers should know about related to SBCs.

### 1. What notices are required in connection with the SBC?

Group health plans are required to provide participants and beneficiaries, without charge, a written SBC containing specific information about the plan coverage, as well as a uniform glossary of terms commonly used in health insurance coverage, at several points during the enrollment process and upon request.

Additionally, notice of any material modification in any of the terms of the plan or coverage that is not reflected in the most recently provided SBC generally must be provided to enrollees at least 60 days before the effective date of the change.

SBCs provided in connection with group health plan coverage may be provided in combination with other summary materials (for example, a summary plan description or SPD), if the SBC information is intact and prominently displayed at the beginning of the materials (such as immediately after the Table of Contents in an SPD) and in accordance with the timing requirements for providing an SBC.

### 2. Who is responsible for providing the notices?

An insured group health plan satisfies the requirement to provide an SBC if the issuer provides a timely and complete SBC to the participant or beneficiary. However, the final rules ultimately hold both the group health plan and the issuer responsible, so an employer (as the plan administrator or sponsor) should make arrangements with the issuer to ensure compliance.

Advance notice of material modification to the plan or coverage must be provided by the group health plan or the issuer. Again, an employer should coordinate with the issuer to ensure compliance.

### 3. What information is required to be included in the SBC?

A complete list of required information is provided in the final rules. Some of the requirements include: uniform standard definitions of medical and health coverage terms; a description of the coverage and cost sharing

**information (including associated fees and expenses) to participants in 401(k)-type plans no later than Aug. 30, 2012, and the first quarterly statement (for fees incurred July through September) must be furnished no later than Nov. 14, 2012.**

**Note:** The plan administrator is a person specifically designated by the terms of the plan that is responsible for the management of the plan. If the plan does not make such a designation, then the plan sponsor (typically the employer) is generally the plan administrator.

#### **For More Information**

Additional details regarding the new retirement plan fee disclosure requirements are available by clicking on the links below. For more information on the responsibilities associated with administering a retirement plan, please visit our section on the [Employee Retirement Income Security Act](#).

- [Final Rule](#) and [Fact Sheet](#) for 401(k)-Type Retirement Plan Fee Disclosures
- [Final Rule](#) and [Fact Sheet](#) for Service Provider Disclosures

#### **Online Tax Tools and Resources for Small Businesses**

Small employers and self-employed individuals can find answers to tax questions, educational materials and other

requirements; and information regarding any coverage limitations or

exceptions. The SBC also must include coverage examples, similar to the Nutrition Facts labels required for packaged foods, which illustrate sample medical situations and describe how much coverage the plan would provide in an event such as having a baby or managing Type II diabetes.

#### **4. When is compliance required?**

The new requirements apply with respect to participants and beneficiaries who enroll or re-enroll in group health coverage through an open enrollment period (including re-enrollees and late enrollees), beginning on the first day of the first open enrollment period that begins on or after Sept. 23, 2012.

For disclosures to participants and beneficiaries who enroll in group health plan coverage other than through an open enrollment period (including individuals who are newly eligible for coverage and special enrollees), the requirements apply beginning on the first day of the first plan year that begins on or after Sept. 23, 2012.

#### **5. How should the SBC and uniform glossary look?**

Both the SBC and the uniform glossary must comply with certain appearance and format requirements and must use terminology understandable by the average plan enrollee. The SBC may not exceed 4 double-sided pages in length, with print no smaller than 12-point font.

An [SBC template](#) and [uniform glossary](#), along with instructions and related materials that may be used to satisfy the notice requirements, are available from the [Center for Consumer Information & Insurance Oversight](#). Updated templates and other materials will be issued for later years to accommodate certain changes under Health Care Reform that are scheduled to take place beginning in 2014.

#### **For More Information**

Check out our [Health Care Reform Checklist](#) for information on other key provisions of Health Care Reform that may impact your company this year. The links below contain additional details relating to the summary of benefits and coverage and uniform glossary requirements.

- [News Release](#)
- [Fact Sheet](#)
- [Final Regulations](#)
- [Guidance for Compliance](#)
- [Templates, Instructions and Related Materials](#)

#### **Independent Contractor or Employee?**

As an employer, it is very important that you correctly determine whether individuals working for your company are employees or independent contractors. This will affect whether workers are entitled to benefits, how much you pay in taxes, whether you need to withhold from your workers' paychecks and what tax documents you need to file.

tools to help run their businesses in the [Small Business and Self-Employed Tax Center](#), available on the IRS website. The site provides important federal tax information for all stages of owning and operating a business.

Among the information and resources available on the website are:

- Small business forms and publications
- Online applications for an Employer Identification Number
- Employment tax information - including federal income tax, Social Security and Medicare taxes, FUTA and self-employment tax
- Tax-related news that could affect your business
- Small business educational events
- IRS videos for small businesses
- A-Z Index for Business, a fast way to find information

Other resources available on the IRS website include a virtual small business tax workshop for learning about federal tax obligations, and a 12-month tax calendar for small business taxpayers with information on general business taxes, IRS and Social Security Administration customer assistance, electronic filing and paying options, retirement plans, business publications and forms, and common tax filing dates.

To access the IRS Small

In determining whether a worker is an employee or independent contractor, employers must consider the entire relationship and evaluate the degree of control and independence - there is no one factor which automatically classifies a worker. If you have the right to control or direct not only what is to be done, but also how it is to be done, then your workers are more likely to be employees.

#### **Guidance from the IRS**

According to the [Internal Revenue Service](#), facts that provide evidence of the degree of control and independence for determining worker status fall into three categories:

- **Behavioral Control** covers facts that show whether the business has a right to direct or control how the work is done through instructions, training or other means.
- **Financial Control** includes facts that show whether the business has a right to direct or control the financial and business aspects of the worker's job.
- **Type of Relationship** relates to how the workers and the business owner perceive their relationship.

For more information and resources related to determining worker status, visit our section on [Independent Contractors -- How to Classify](#) or click on the [Small Business](#) link found on IRS.gov. If you have any questions, you should consult a knowledgeable employment law attorney or contact the IRS for guidance. Businesses may also complete and file [Form SS-8, Determination of Worker Status](#), to have the IRS make the determination.

## **Proposed Rules Follow Amendments to FMLA Military Family Leave Provisions**

[New rules](#) have been proposed to implement 2010 amendments to the military family leave provisions of the federal [Family and Medical Leave Act](#) (FMLA), which provide for qualifying exigency leave (to address special issues arising from active duty or call to active duty) and military caregiver leave. To be eligible for FMLA leave, an employee must work at a location where the company employs 50 or more employees within 75 miles and meet certain other requirements with respect to time worked.

#### **Qualifying Exigency Leave**

Eligible employees whose spouse, child, or parent is a covered military member may take up to 12 weeks of FMLA leave during any 12-month period to address certain special issues (called "qualifying exigencies") related to active duty or a call to active duty status, such as attending military sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.

#### **Military Caregiver Leave**

Under the FMLA's military caregiver leave provision, eligible employees who are the spouse, child, parent or next of kin of a covered servicemember (National Guard, Reserves, or Regular Armed Forces) may take up to 26 weeks of FMLA leave during a single 12-month period to care for the

Business and Self-Employed Tax Center, please [click here](#). Our section on [Employer Tax Laws](#) provides additional information on an employer's tax responsibilities.

servicemember with a serious injury or illness.

#### **Changes Made by the 2010 Amendments**

The [2010 amendments](#) to the FMLA military family leave provisions extended qualifying exigency leave to eligible employees with family members serving in the Regular Armed Forces (in addition to the National Guard and Reserves), and added a requirement that the covered military member be deployed to a foreign country.

With respect to military caregiver leave, the [2010 amendments](#) expanded the definition of a covered servicemember to include recent veterans with serious injuries or illnesses (in addition to current members of the Armed Forces), and also expanded the definition of a serious injury or illness to include preexisting serious injuries or illnesses that are aggravated by service in the line of duty (in addition to serious injuries or illnesses incurred in the line of duty).

The proposed rules are intended to implement the 2010 amendments, which are currently already in effect (except that, according to the [proposed rules](#), employers are not required to provide the 26-week military caregiver leave to employees to care for a veteran until final regulations are issued defining a qualifying serious injury or illness of a veteran). Highlights of the proposed rules include:

- Extension of qualifying exigency leave to eligible employees with covered family members serving in the Regular Armed Forces and inclusion of a foreign deployment requirement;
- Extension of military caregiver leave to eligible family members of recent veterans with a serious injury or illness incurred in the line of duty; and
- Extension of military caregiver leave to cover serious injuries or illnesses for both current servicemembers and veterans that result from the aggravation during military service of a preexisting condition.

The proposed rules also incorporate amendments to the FMLA eligibility requirements for certain airline flight crew employees.

#### **Additional Information**

The U.S. Department of Labor has provided a [fact sheet](#) and [FAQs](#) with further information regarding the [proposed rules](#). You may also visit our section on the [Family and Medical Leave Act](#).

Newsletter provided by:

## **Bohannon Insurance Group**

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