

## HR SOLUTIONS

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### HR Compliance Updates & Actions

There are a number of important compliance updates, calendar items and actions to keep in mind in the upcoming months. In this month's edition of *HR Solutions*, we provide you with a number of updates and suggested action steps to help you comply.

#### **COBRA Subsidy – Extended Again**

In case you have not heard, the Federal Government has extended the COBRA subsidy program (that was enacted under the ARRA) through March 31, 2010. Individuals involuntarily terminated through this time period may be eligible for the 15-month, 65% premium subsidy. Although the 15 month benefit and extension applies only to organizations with 20 or more employees, states seem to be following the Federal extension with shorter benefit periods (e.g., Utah's benefit period is one year).

#### **Actions:**

1. Revise your Cobra letters to reflect the extended time period.
2. Maintain clear documents that show reason for termination, term dates, and notifications given, in case you need to defend an audit.

#### **OSHA Form 300 Summary Posting**

Each year OSHA requires employers to post the Form 300 summary in a common area by February 1 of the year following the year covered by the form and keep it posted until April 30 of that year.

#### **Actions:**

1. If you have not done so already, post the OSHA Form 300 summary in a common area.
2. Establish a procedure that assigns one individual to be responsible to collect all applicable injury data that requires entry on Form 300 and Form 300-A.
3. Setup a calendar reminder to post the summary data prior to February 1 of each year.

#### **CHIP Reauthorization Act**

The CHIP Reauthorization Act of 2009 (CHIPRA) requires employers offering group health plans to notify employees of their potential rights to receive premium assistance under a state's Medicaid or CHIP program. Employers are required to provide these notices by the date that is the later of 1) the first day of the first plan year after February 4, 2010; or 2) May 1, 2010. Accordingly, for plan years beginning February 4, 2010 through April 30, 2010 the Employer CHIP notice must be provided by May 1, 2010. For employers whose next plan year begins on or after May 1, 2010, the Employer CHIP notice must be provided by the first day of the next plan year (January 1, 2011 for calendar-year plans).

#### **Actions:**

1. Provide employees with a notice of their potential rights to receive premium assistance.
2. Document notices given, in case you are audited, including who was notified, when and how.

#### **HIPAA Privacy and Security Changes**

By February 17, 2010, health plan sponsors and health care providers should review and, as appropriate, update their HIPAA forms to comply with the HITECH rules. On February 22, 2010, the new breach notification requirements become enforceable. Health plans, health care providers and business associates will need to be alert for potential breaches. Each may have obligations, with regard to a breach, that ultimately require notice to affected individuals and the U.S. Department of Health and Human Services. Although most of the HIPAA changes impact health care providers and administrators, employers should make sure their providers/administrators are compliant and take steps to safeguard employee medical information and other data that could be used for identity theft.

**Actions:**

1. Take needed precautions to protect employee data both physical files and electronic data from identity theft.
2. Establish secure file locations, lock up files when not in use, and assign ownership to one person.
3. If you use third party administrators and health care providers, verify they are in compliance with the enhanced obligations under HIPAA.

**Independent Contractor Enforcement**

The federal budget includes new incentives and resources for the United States Departments of Treasury (i.e., the IRS) and Labor (DOL) to increase enforcement efforts against businesses that misclassify workers as independent contractors. State governments, via the unemployment compensation system, are also cracking down on misclassification. Governments are more proactive on this issue now than in recent memory, primarily because they are seeking additional sources of revenues for shrinking public budgets. The distinction between an employee and independent contractor hinges on several factors, but primarily on how much control the business exercises over a worker's activities. A useful description of the employee/contractor distinction can be found at the IRS website at:

<http://www.irs.gov/businesses/small/article/0,,id=99921,00.html>. Beware of additional planned audits related to the FLSA (exemption status) and from OSHA, as well.

**Actions:**

1. Review the IRS definition of Independent Contractor.
2. Review current independent contractors against the IRS definition guidelines.
3. Make any needed corrections hiring on those who are misclassified.
4. Verify you have employees classified correctly as exempt and non-exempt.

**IRS Reporting and Excise Taxes for Health Plan Noncompliance**

Employers that sponsor group health plans now have a duty to self-report certain regulatory plan failures and pay excise taxes, where such failures are not corrected in a timely fashion once discovered or are attributable to willful neglect.

**Actions:**

1. Make sure to follow all requirements for all group plans: Health Plans, 125 Plans, COBRA, HIPAA, HSA, etc.
2. Report any plan failures using Form 8928 and pay any due excise tax when filed.

**Mandatory Form 5500 Online Filing**

With the start of 2010, the US DOL has converted to a total electronic system for online filing of Forms 5500 and the new 5500-Short Form. The all-electronic EFAST2 system lets benefit plan administrators submit and access filings online at [www.efast.dol.gov](http://www.efast.dol.gov).

**Action:**

1. Contact third party administrators to ensure they are using the new online 5500 reporting forms or use this system, if doing own filing.

**Utah Only – Legal Update****New Utah Rules on Drug-Testing**

The Utah State Legislature has passed two new laws regarding employee drug testing, both of which are likely to be signed into law by Governor Gary Herbert. HB 23 clarifies the current Utah state law allowing employment drug testing. The bill also provides that an employer is not liable for taking a job action based on an inaccurate drug test, if the employer complies with the requirements of the statute, acts reasonably and in good faith, and relies on a licensed physician as a medical review officer (MRO) to interpret the results of the test. The MRO provision is new and not currently included in the Utah drug testing law.

The Legislature also approved a bill that requires all contractors for state construction projects to drug test their employees (see <http://le.utah.gov/~2010/bills/sbillint/sb0013.htm>).

**Actions:**

1. Modify your drug testing procedures to ensure you act reasonably and in good faith when responding to positive tests.
2. Make sure to use a licensed physician as a medical review officer (MRO) to review positive tests prior to taking action.

*By Ken Spencer, CEO and HR Coach, HR Service, Inc.*

**Sources:**

1. *Attorney Michael Patrick O'Brien of Jones Waldo Holbrook & McDonough.*
2. *Society of Human Resource Managers*

**Need Compliance or HR Help?**

Contact HR Service, Inc. at (801) 685-8400 for assistance with any of the above compliance issues or help with any HR practice. Visit us online at: [www.HRServiceInc.com](http://www.HRServiceInc.com).