ON THE HRISON

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Dear Valued Clients and Business Partners,

We hope that this newsletter finds you well and off to a productive start to the new year. This is a busy time of year when some of you may be conducting performance reviews, setting goals, or undergoing audits. We hope that these processes are going well, or any other HR initiatives that may be ongoing. Please refer to the information contained in this newsletter for some current HR trends, recent and/or pending legislation, and other current events affecting the workplace.

In This Issue

Mental Health Parity Act

The Department of Health and Human Services, the Department of Labor, and the Treasury Department have jointly issued new rules providing parity for employees enrolled in group health plans who need treatment for mental health or substance use disorders. The rules implement the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). MHPAEA applies to employers with 50 or more workers whose group health plan chooses to offer mental health or substance use disorder benefits. The new rules are effective for plan years beginning on or after July 1, 2010.

The new law requires that any group health plan that includes mental health and substance use disorder benefits along with standard medical and surgical coverage must treat them equally in terms of out-of-pocket costs, benefit limits, and practices such as prior authorization and utilization review. These practices must be based on the same level of scientific evidence used by the insurer for medical and surgical benefits. For example, a plan may not apply separate deductibles for treatment related to mental health or substance use disorders and medical or surgical benefits--they must be calculated as one limit.

MHPAEA greatly expands on an earlier law, the Mental Health Parity Act of 1996 which required parity only in aggregate lifetime and annual dollar limits between the categories of benefits and did not extend to substance use disorder benefits. The new law expands parity to include deductibles, co-payments, out-of-pocket expenses, co-insurance, covered hospital stays, and covered out-patient visits.

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COBRA Subsidy Extension

As part of the Department of Defense Appropriations Act of 2010, signed into law by President Obama on December 21, 2009, both the amount of time that involuntarily terminated workers will receive subsidies for COBRA continuation coverage and the deadline for workers to qualify for the COBRA subsidy program are extended.

As you may know, the COBRA subsidy program was created in early 2009 by the American Recovery and Reinvestment Act (ARRA) and provides for a 65% subsidy of COBRA continuation premiums for workers who have been involuntarily terminated. While the ARRA provided for 9 months of subsidies, under the new legislation, eligible workers will receive subsidies for a total of 15 months. To be eligible for continued subsidized coverage, workers must pay 35% of premium costs by the latter of 60 days after the date of enactment or 30 days after notice of the extension is provided by their plan administrator.

Under the ARRA, the COBRA subsidy program applied to workers who were involuntarily terminated between September 1, 2008 and December 31, 2009. The Department of Defense Appropriations Act extends eligibility to workers who are involuntarily terminated through February 28, 2010. Additionally, there are two major changes to notice requirements under the new legislation as follows:

- Individuals who were "assistance eligible individuals" as of October 31, 2009 (unless they are in a transition period - see below) and individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage (unless they were already provided a timely, updated General Notice) must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act by February 17, 2010;
- Individuals who are in a "transition period" must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act within 60 days of the first day of the transition period. (The transition period begins immediately after the end of the nine months of premium reduction in effect under ARRA before the amendments made by the 2010 DOD Act, as long as the premium reduction provisions of the 2010 DOD Act would apply due to the extension from nine to 15 months).

Model notices provided by the Department of Labor to assist employers in complying with notice requirements can be found by the following these links:

Premium Assistance Extension Notice
General Notice
Alternative Notice

A fact sheet regarding the COBRA Premium Reduction can be found at the end of this newsletter.

The ADA Amendments Act and EEOC Guidance

Last fall, the Equal Employment Opportunity Commission (EEOC) published proposed regulations on applying the provisions of the ADA Amendments Act of 2008. These regulations are expected to be finalized this month, with no major changes.

The ADA Amendments Act, which went into effect in January 2009, expanded the definition of "major life activity" and specified that the effects of mitigating measures (e.g., hearing aids, wheelchairs, and medication) may not be considered when determining whether an impairment substantially limits a major life activity.

Under the ADA Amendments Act and proposed regulations, the definition of disability is interpreted more broadly than in the past. Previously, a condition was considered disabling under the law if it had a "severe" impact on an individual's ability to carry out a major life function; however, certain "temporary" or "episodic" conditions, such as chronic fatigue, may now qualify for disability protection where the courts may not have considered that as qualifying as a protected disability in the past.

The proposed regulations also provide guidance on a provision of the law specifying that employers can no longer consider mitigating measures when determining whether an employee is disabled. For example, under the original Act and guidance, if an employee's condition could be corrected with medication, the individual was not considered to be disabled. That same individual would be considered disabled under the new law and EEOC guidance.

What this means to you and your company is that the ADA is going to apply to more people than it originally did and you should be aware of which employees may be covered under the new regulations. The best way to maintain compliance is to update any applicable company policies or make sure that current policies are appropriate, and to be very conservative when evaluating an employee's request for an accommodation. If you are unsure if a request by an employee is covered by the ADA as amended, consult with an HR professional or legal counsel for assistance.

New Jersey's Paid Leave Law

In 2008, New Jersey became the third state, after California and Washington, to enact a paid family leave law. The New Jersey paid leave law amended New Jersey's existing Temporary Disability Benefits Law to provide Family Leave Insurance (FLI) benefits to eligible employees for up to six weeks of paid leave in a 12-month period in order to care for a family member with a serious health condition or to bond with a newborn or adopted child. The paid leave law became fully effective on July 1, 2009, and FLI benefits are now available to eligible employees.

In most cases, FLI benefits are paid for by the State of New Jersey through its existing Temporary Disability Insurance (TDI) program. FLI benefits are funded by employee contributions in the form of a payroll tax that is withheld from employees' wages. Employers were required to begin withholding 0.09 percent of their employees' taxable wages as of Jan. 1, 2009, increasing to 0.12 percent as of Jan. 1, 2010. Employers may choose to participate in the state TDI program or arrange for coverage by a private insurance carrier; however, choosing a private plan is fairly complicated and generally not considered a preferable alternative.

Employees of all private and governmental employers subject to the New Jersey Unemployment Compensation Law are eligible for FLI benefits, regardless of the employer's size. An employee is eligible for FLI benefits in New Jersey to care for a family member with a serious health condition or to bond with a newborn or newly adopted child. Employees and employers must satisfy their respective notice requirements.

The FLI program does not impose any leave requirements on employers and is simply a monetary benefit. If an employee is eligible for both paid leave under the new law and unpaid leave under the FMLA or the NJFLA, the paid leave runs concurrently with the unpaid leave. Accordingly, an employee would receive FLI benefits for the first six weeks, and any remaining leave after six weeks would be unpaid. Eligible employees will receive up to two-thirds of their salary, up to the 2010 maximum of $561 per week, during the paid leave after a one-week waiting period. If the leave period extends beyond three weeks, the employee will be paid retroactively for the one-week waiting period.

Employers are required to post written notice of employees' rights relating to FLI benefits in an area accessible to all employees. In addition, employers are required to provide written notification on an ongoing basis each time an employee is hired or whenever an employee requests or provides notice of leave. Notices for posting and distribution are available on the web site for the New Jersey Department of Labor and Workforce Development at http://lwd.state.nj.us/labor/fli/content/emp_requirements.html.

Compensation Administration During Emergency Closings

In the midst of one of the most severe winter seasons in recent years, Punxsutawney Phil saw his own shadow on Groundhog Day last Tuesday (2/2), indicating six more weeks of winter, according to common belief. In preparation for additional inclement weather likely to occur before the dawn of Spring this year, we would like to provide you with the following information regarding the administration of compensation during a business closing.

When the business remains open during an emergency situation:

A. When the business remains open, but an Exempt Staff Member chooses not to work due to an emergency:
   - The Company may not reduce his/her pay for a partial day when work has been performed during that day;
   - The Company may reduce his/her salary (in 1 day increments) for a full day absence when no work is performed for that day and the employer remains open; **or**
   - The Company may reduce his/her available paid time off (Vacation, Personal Days, etc.) for either a partial day or full day absence, based on Company policy.

B. Non-Exempt Staff Members must be paid for any time that they perform work during an emergency, but are not entitled to wages for non-working time.

C. Employers generally ignore lateness of 1 or 2 hours during an emergency situation and pay all staff who report to work for the full day.

When the business is closed for a partial day due to an emergency situation:

A. When the Company decides to close early or delay opening due to an emergency:
   - Exempt Staff must be paid their regular salary if they worked any part of that day;
   - Non-Exempt Staff must be paid only for hours that were actually worked; however, best practice is to pay Non-Exempt Staff for the hours that they would normally work during that day;
   - If the Company asks staff to remain at the work site until an emergency situation is assessed (such as during a fire alarm, etc.), staff must be compensated for that time even if no work is performed.

When the business is closed for a full day or more due to an emergency situation:

A. When an employer chooses to close the work site due to an emergency:
   - Exempt Staff Members must be paid for any day during which they perform work;
   - Exempt Staff Members must be paid for absences of less than a full workweek if the facility is closed due to an emergency;
   - An Exempt Staff Member's pay may be reduced when the business is closed for an entire workweek;
   - An employer may not require Exempt Staff Members to use accrued paid time off when they miss work because a facility is closed;
   - The Company is not required to pay Non-Exempt Staff Members for missed work time due to an emergency closing; however, the Company may allow Non-Exempt Staff to use available paid time off for this purpose.
   - When the business closes and staff report to work as regularly scheduled, Non-Exempt Staff Members are not required to be paid for commuting time or regularly scheduled hours (not worked) due to a business closing; however, the Company may create a policy whereby Non-Exempt Staff are compensated when the business is closed during regularly scheduled working hours.

Best practice is to develop some type of notification system to alert staff members of an emergency situation and/or business closing such as via Company web page, phone chain, designated call-in phone number, etc. Imageon strongly recommends implementing such a system.

Additional Information

This information is being provided to you as a courtesy. For specific information about how the information in this newsletter affects your business, please do not hesitate to contact us at:

Imageon Consulting, Inc.
757 Third Ave., Suite 2118
New York, NY 10017
Phone: (212) 376-5780
Fax: (646) 758-8149
E-mail: info@imageon-consulting.com

Or visit us on the web at: www.imageon-consulting.com or www.hrison.com

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This document has been prepared for information purposes only and provides practical information from the HR Management perspective concerning the subject matter covered. No part of this document should be taken as legal advice. While you may contact Imageon Consulting, Inc. regarding advice or services related to the information presented herein, you should consult a competent attorney in your state if you are in need of specific legal advice concerning any of the subjects addressed.

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Fact Sheet

U. S. Department of Labor
Employee Benefits Security Administration
January 27, 2010

COBRA PREMIUM REDUCTION

The American Recovery and Reinvestment Act of 2009 (ARRA), as amended on December 19, 2009 by the Department of Defense Appropriations Act, 2010 (2010 DOD Act) provides for premium reductions for health benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly called COBRA. Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. To qualify, individuals must experience a COBRA qualifying event that is the involuntary termination of a covered employee's employment. The involuntary termination must occur during the period that began September 1, 2008 and ends on February 28, 2010. The premium reduction applies to periods of health coverage that began on or after February 17, 2009 and lasts for up to 15 months.

What is COBRA?

COBRA gives workers and their families who lose their health benefits the right to purchase group health coverage provided by the plan under certain circumstances.

If the employer continues to offer a group health plan, the employee and his/her family can retain their group health coverage for up to 18 months by paying group rates. The COBRA premium may be higher than what the individual was paying while employed but generally the cost is lower than that for private, individual health insurance coverage.

The plan administrator must notify affected employees of their right to elect COBRA. The employee and his/her family each have 60 days to elect the COBRA coverage; otherwise, they lose all rights to COBRA benefits.

COBRA generally does not apply to plans sponsored by employers with fewer than 20 employees. Many States have similar requirements for insurance companies that provide coverage to small employers. The premium reduction is available for insurers covered by these State laws.

Changes Regarding COBRA Continuation Coverage under ARRA, as amended by the 2010 DOD Act

The 2010 DOD Act extended the COBRA premium reduction eligibility period for two months until February 28, 2010 and increased the maximum period for receiving the subsidy for an additional six months (from nine to 15 months).

Individuals who have reached the end of the original premium reduction period are in a “transition period” giving them additional time to pay extension-related reduced premiums. An individual’s transition period is the period that begins immediately after the end of the maximum number of months (generally nine) of premium reduction available under ARRA prior to its amendment. An individual is in

a transition period only if the premium reduction provisions would continue to apply due to the extension from nine to 15 months and they otherwise remain eligible for the premium reduction. These individuals must be provided a notice (see below for details) of the extension within 60 days of the first day of their transition period. An individual's transition period may include multiple periods of coverage. The retroactive payment(s) for the period(s) of coverage must be made by the later of February 17, 2010, 30 days from when the notice was provided, or the end of the otherwise applicable payment grace period. (For more information about the "transition period" see the Frequently Asked Questions on the COBRA Premium Reduction Extension Provisions on the EBSA website at www.dol.gov/cobra.)

Individuals who lost their subsidy and paid the full 100 percent premium for December 2009 should contact their plan administrator or employer sponsoring the plan to discuss a credit for future months of coverage or a reimbursement of the overpayment.

Eligibility for the Premium Reduction: The premium reduction for COBRA continuation coverage is available to "assistance eligible individuals".

An "assistance eligible individual" is the employee or a member of his/her family who:

- has a qualifying event for continuation coverage under COBRA or a State law that provides comparable continuation coverage (for example, so-called "mini-COBRA" laws) that is the employee's involuntary termination at any point from September 1, 2008 through February 28, 2010; and

- elects COBRA coverage timely.

Those who are eligible for other group health coverage (such as a spouse's plan) or Medicare are not eligible for the premium reduction. There is no premium reduction for periods of coverage that began prior to February 17, 2009.

Assistance eligible individuals who pay 35 percent of their COBRA premium must be treated as having paid the full amount. The premium reduction (65 percent of the full premium) is reimbursable to the employer, insurer or health plan as a credit against certain employment taxes.

Period of Coverage

The premium reduction applies to periods of coverage beginning on or after February 17, 2009. A period of coverage is a month or shorter period for which the plan charges a COBRA premium. The premium reduction for an individual ends upon eligibility for other group coverage (or Medicare), after 15 months of the reduction, or when the maximum period of COBRA coverage ends, whichever occurs first. Individuals paying reduced COBRA premiums must inform their plans if they become eligible for coverage under another group health plan or Medicare.

Notice Requirements

ARRA, as amended by the 2010 DOD Act, mandates that plans notify certain current and former participants and beneficiaries about the premium reduction. The Department has updated its existing models and created an additional model to help plans and individuals comply with these requirements.

Each model notice is designed for a particular group of individuals and contains information to help satisfy ARRA's notice provisions, including those added by the 2010 DOD Act.

Plans subject to the Federal COBRA provisions must provide a General Notice to all qualified beneficiaries, not just covered employees, who experienced a qualifying event at any time from September 1, 2008 through February 28, 2010, regardless of the type of qualifying event, and who have not yet been provided an election notice. Individuals who experience any qualifying event after December 19, 2009 must get the updated General Notice within the normal timeframes for providing a COBRA election notice. The updated model General Notice includes information on the premium reduction as well as information required in a COBRA election notice.

Plan administrators must also provide notice to certain individuals who have already been provided a COBRA election notice that did not include information regarding ARRA, as amended. The Department has developed a model Premium Assistance Extension Notice. This model notice includes information about the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act. Listed below are the affected individuals and the associated timing requirements.

- Individuals who were "assistance eligible individuals" as of October 31, 2009 (unless they are in a transition period - see below) and individuals who experienced a termination of employment on or after October 31, 2009 and lost health coverage (unless they were already provided a timely, updated General Notice) must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act by February 17, 2010;

- Individuals who are in a "transition period" must be provided notice of the changes made to the premium reduction provisions of ARRA by the 2010 DOD Act within 60 days of the first day of the transition period. (The transition period begins immediately after the end of the nine months of premium reduction in effect under ARRA before the amendments made by the 2010 DOD Act, as long as the premium reduction provisions of the 2010 DOD Act would apply due to the extension from nine to 15 months).

Note: Some individuals may be entitled to multiple notices. To satisfy the notice requirements, these individuals may be provided a single notice that includes all of the required information so long as the notice is provided by the earliest date required.

Insurance issuers that provide group health insurance coverage must provide notice to persons who became eligible for continuation coverage under a State law. The Department updated its model Alternative Notice to assist issuers with satisfying this requirement. However, continuation coverage requirements vary among States and issuers should modify this model notice as necessary to conform it to the applicable State law. Issuers may also find the model Premium Assistance Extension Notice or the updated model General Notice appropriate for use in certain situations.

Expedited Review of Denials of Premium Reduction: Individuals who are denied treatment as assistance eligible individuals and thus are denied eligibility for the premium reduction (whether by their plan, employer or insurer) may request an expedited review of the denial by the U.S. Department of Labor. The Department must make a determination within 15 business days of receipt of a completed request for review. The official application form is available at www.dol.gov/COBRA and can be filed online or submitted by fax or mail.

Switching Benefit Options: If an employer offers additional coverage options to active employees, the employer may (but is not required to) allow assistance eligible individuals to switch the coverage options they had when they became eligible for COBRA. To retain eligibility for the ARRA premium reduction, the different coverage must have the same or lower premiums as the individual's original coverage. The different coverage cannot be coverage that provides only dental, vision, a health flexible spending account, or coverage for treatment that is furnished in an on-site facility maintained by the employer.

Income limits: If an individual's modified adjusted gross income for the tax year in which the premium assistance is received exceeds $145,000 (or $290,000 for joint filers), then the amount of the premium reduction during the tax year must be repaid. For taxpayers with adjusted gross income between $125,000 and $145,000 (or $250,000 and $290,000 for joint filers), the amount of the premium reduction that must be repaid is reduced proportionately. Individuals may permanently waive the right to premium reduction but may not later obtain the premium reduction if their adjusted gross incomes end up below the limits. If you think that your income may exceed the amounts above, consult your tax preparer or contact the IRS at www.irs.gov.

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice phone: 202.693.8664; TTY: 202.501.3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.