



## Ideas and Information for Human Resources Professionals

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# Stephens

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### In This Edition

FSAs

Unions

Wellness

In Brief

Webinars

### FSAs

#### Bigger Changes May Be in Store for FSAs

A recent IRS clarification regarding contribution limits for some health flexible spending accounts (FSAs) comes at a time when the agency and Congress are seriously rethinking some of the other constraints to the accounts.

In late May, the IRS released a notice that clarified that the \$2,500 annual contribution limit to FSAs that was imposed by the Patient Protection and Affordable Care Act (PPACA) is effective for plans that begin in 2013 -- meaning noncalendar-year plans in 2012-2013 do not have to comply, according to a post on the *E is for ERISA* website.

That change, however, may do little good for proactive employers with noncalendar-year plans that already made adjustments. The notice does not contain guidance about changing the contribution limit midyear, so it appears that employers that made changes to the contribution limits at the start of the 2012-13 plan year must stick with them, according to *ftwilliam.com*, a division of Wolters Kluwer.

This adjustment could be the first in a number of significant changes to rules governing FSAs. The IRS is considering a change to the "use-it-or-lose-it" rule, which requires participants to spend their FSA balance annually or lose the money, according to a report in *Business Insurance*. The report notes that the IRS acknowledges that the cap under PPACA "limits the potential for using health FSAs to defer compensation," and so a rework of the use-it-or-lose-it rule likely is due.



The U.S. House of Representatives also is stepping into the debate, as legislators recently passed a bill that would ease the use-it-or-lose-it rule, according to *Business Insurance*. The House bill allows workers to withdraw up to \$500 in unused balances from the accounts, although the funds would be taxable.

The bill also abolishes an unpopular rule that restricts the purchase of over-the-counter medications with FSA money. Under the PPACA rule, tax-advantaged health accounts, including FSAs and health savings accounts, cannot be used to purchase over-the-counter medications without a prescription. The bill strikes that provision from the law, the *Business Insurance* report said.

However, the Obama administration already has pledged to veto the bill if it makes it through the Senate because the legislation also would eliminate a tax on makers of medical devices -- a tax that the administration sees as vital to funding the health care reform law, according to a *Workforce* online report.

## Unions

### Labor Power Softens But Still Lingers

Wisconsin Gov. Scott Walker's recent recall-election victory over a union-backed opponent may serve as another black eye for the U.S. labor unions. But employers shouldn't consider unions down for the count, experts say.

Walker, who defeated Milwaukee Mayor Tom Barrett, had been strongly opposed by the state's public-sector unions because of his support of a bill that curtailed collective bargaining rights.

Walker's win followed a recent federal ruling that threw out a National Labor Relations Board rule that would have allowed for faster votes on union elections, according to *Bloomberg BusinessWeek*. Unions historically have a much higher success rate in elections if the vote is held 15 days or less after the request, according to a *Bloomberg Government* report.



For unions, the recent events add to a growing trend of decline in membership and influence.

"[Unions] have declined to the point of irrelevance in most workplaces," Peter Cappelli of The Wharton School told *Human Resource Executive Online*. "They are having a hard time hanging onto whatever [contract] arrangements they have."

Government statistics back up Cappelli's view. Slightly more than 20 percent of U.S. workers belonged to unions in 1983, according to the U.S. Bureau of Labor Statistics. By 2011, that number had shrunk to 11.8 percent, according to *HREO*.

As union power wanes, labor leaders in Wisconsin worry that Walker will push for legislation that would make Wisconsin join 23 other states as a "right-to-work" state, which would bar employers from agreeing to contracts with unions that force employees to join the organization, according to *The Capital Times* of Madison, Wis.

Still, unions continue to carry political weight, Cappelli noted.

"There are still, in absolute terms, a lot of people who are union members -- so they have feet on the ground," Cappelli told *HREO*. "They can run voter-registration drives, and they can help get out the vote -- so they will still be a force in the election."

The days of powerful unions dictating terms to employers -- public or private -- however, may be at an end, he said.

"Unless the political climate in the U.S. changes quite radically, it's hard to imagine any scenarios where this turns around," Cappelli said.

### Want to Win the Wellness Game? Start with Good Communications and Fun

For many employers, wellness has become a no-brainer. The challenge, many employers discover, is getting employees on board and keeping them on the right track.

The solution, experts say, is to

keep employees informed and keep it fun.

"The goal of wellness workplace programs is to improve health and slow health care costs," said Amy Gallagher, wellness expert with Cornerstone Group in Warwick, R.I. "And to get there, a clear communication strategy is a must."

Gallagher noted in a recent blog post on *GoLocalProv* that employers need to be aggressive and proactive when promoting their programs.

"Don't be shy when rolling out a wellness program; make it an event," Gallagher wrote. "In a kick-off meeting, position the program as an employee benefit the employer fully supports and be sure to involve leadership."

Gallagher also suggested discussing the importance of wellness with employees and clearly defining the activities and expectations.

Once the program is rolling, employers should consistently remind employees of the initiative and provide online portals and tools to boost participation.

Like any activity, it's more fun when it's a game. And wellness is no exception, according to Limeade Inc.'s Henry Albrect in a recent Society for Human Resource Management report.

In the article, Albrect noted that while employers may want to be aggressive with their programs, securing buy-in from employees and making participation voluntary will generate better results.

"Traditional wellness programs often fail to achieve lasting change using a heavy-handed reliance on high incentives to drive goals passed down by the company," Albrect wrote. Programs that rely on games that appear to serve the participants' interests -- not the company's -- tend to fare better, he noted. Also, social games -- contests that involve people with whom workers already interact and know -- can be particularly effective, he said.

Like any game, the players -- not just the employer -- will want to know the score, wrote Gallagher of Cornerstone, a Member Firm of United Benefit Advisors.

"After a cycle of activities is completed, be sure to report back to employees on progress and results. Share where the population health risks are, how future activities and participation will help reduce them and any new program goals or offerings. Don't forget to survey employees to gauge their satisfaction with the program -- perhaps the most important result of all."



## In Brief

### SAME OLD DOMA

Although a federal court has ruled that the federal Defense of Marriage Act is unconstitutional, the case won't have an immediate impact on employer plans, experts say. In a May 31 ruling, the 1st U.S. Circuit Court of Appeals ruled that DOMA violates the U.S. Constitution but also recognized states' right to decide whether or not to allow same-sex marriages. For employers, that means the patchwork of state laws governing marriage remains the same, according to John Ilek of SmartHR Manager.

### **COSTS RISE**

The overall cost of health care is projected to increase 7.5 percent next year, according to research by PricewaterhouseCoopers. In addition, more than half of the 1,400 employers surveyed said they are thinking about increasing their workers' share of the health care bill and expanding wellness programs next year, the report found.

### **POT WATCH**

Cities that crack down on medicinal marijuana dispensers are not violating the Americans with Disabilities Act, a federal court has ruled. The 9th U.S. Circuit Court of Appeals ruled that cities in California have the right to take steps to close dispensing facilities, even if those facilities are legally operating under state law.

### **SPECIALTY STRATEGY**

Employers have shifted their focus on specialty drugs from coverage to costs, according to new research by Express Scripts, Inc. In 2007, 57 percent of polled employers said their primary goal of a pharmacy benefit management program was "providing the broadest coverage." That figure dipped to only 14 percent in 2012, with 78 percent now saying "balancing cost with care" is most important.

### **GROWING ISSUE**

Future controls on the nation's health care costs may be erased if the number of obese Americans balloons by more than one-third in the next 20 years, according to a study by the American Journal of Preventive Medicine. The study notes that in 1991, only 12.7 percent of Americans were considered obese (a body-mass index of 30 or higher). By 2008, that number had grown to 28.6 percent.

### **DOOR TO DB**

Most U.S. firms that currently offer defined benefit (DB) retirement plans expect to continue to do so in the future, a new Towers Watson survey finds. Only 36 percent of polled employers still offer DB plans in 2012 - down from more than 90 percent in 2000. Yet many of those companies that have stuck with DB plans aim to keep them, with 68 percent responding that they remain committed to offering DB options to new hires.

### **FLSA DIP**

A new report reveals that the government is seeing fewer cases related to the Fair Labor Standards Act (FLSA). An analysis by the Administrative Office of the U.S. Courts found that in the 12-month period ended Sept. 30, 2011, 6,335 FLSA cases had been filed in federal district courts. That compares to 6,825 cases filed in the same period during the prior year.

### **NONHEALTH WOES**

More executives are saying they are fretting about benefit costs beyond health care. A new report by Prudential Financial and CFO Research finds that 33 percent of respondents said they are considering cuts to benefits other than health care, such as retirement plans. Those benefits were not listed as a major cost concern in the 2009 and 2010 reports. Health care remained the top worry, with 70 percent saying they were concerned about those costs. Seventy-one percent are considering replacing some employer-sponsored benefits with voluntary options within the next two years.

### **SUMMER HIRES**

As the weather heats up, more companies are looking to hire summer interns and workers, according to a new poll. Of surveyed U.S. employers, 29 percent said they plan to hire summer workers, up from 21 percent last year. The top sectors include manufacturing (45 percent), hospitality (44 percent), retail (34 percent) and finance (31 percent).

### **TELEWORK SURGE**

Technology-reliant industries have seen a big jump in the use of teleworking over the past decade, according to a new study by The Conference Board. Advancements in home networking has led to a 275 percent increase in insurance underwriters (4.5 percent) and a 127 percent jump in computer programmers (6.1 percent) working from home compared with 2001-03.

## Webinars

### **PPACA Legislative Update**

**Tuesday, July 10, 2012**

2 p.m. ET / 11 a.m. PT

Learn where employers stand on the health care reform law in a discussion led by Janet Trautwein, CEO of the National Association of Health Underwriters.

Janet will examine the fate of the law, pending a decision by the U.S. Supreme Court, and will explore what the decision will mean for employers that sponsor health plans. A frequent speaker on health policy issues, Janet is considered an expert in health insurance markets and health plans of all sizes and frequently testifies before Congress on these issues. Her expertise in issues related to the uninsured, health insurance pools, risk and reinsurance pooling, health related tax issues, and both national and global health reform has been recognized throughout the industry.

To learn more or to register, please contact us.

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