

## HR CORNER

### TARGETING FMLA FRAUD AND ABUSE

One of the biggest FMLA frustrations for employers is knowing what to do with an employee who appears to be abusing the law's protections or, even worse, fraudulently using approved leave for non-FMLA purposes.

Although DOL regulations attempt to provide employers with tools to manage and control such behavior, many employers still frequently feel helpless. There is no one foolproof remedy or strategy for handling such issues, but the following are a few techniques employers have found helpful.

#### WHAT FRAUD ISN'T

First and foremost, just because employees are on FMLA leave doesn't mean they are rendered immobile, confined to bed at all times.

It also does not mean the employees can never leave a seriously ill family member they have been approved to care for during an FMLA leave. So, for example, seeing employees at the mall while they are on FMLA leave does not mean they are committing FMLA fraud, or even abuse. Even if an employer or co-worker sees an employee working at the mall, he or she may not be committing fraud.

Keep in mind that the "may" here depends in part on whether the employer has a moonlighting policy that prohibits employees from working a second job while on leave.

If the employer does not have such a policy, the mere fact that an employee is found to be working for another employer during leave will not be proof of fraud. The issues around moonlighting are discussed in more detail below.

#### WHAT FRAUD IS

So what is FMLA fraud, then? It is, quite simply, using FMLA leave in situations that lie outside of the medical or other parameters for which it has been approved. Some examples include:

- Working for another employer doing the same or similar duties that the employee's medical certification form says he or she is unable to perform.



#### TABLE OF CONTENTS

##### HR CORNER

Targeting FMLA Fraud and Abuse 1

What Should HR Include in New Hire Orientation? 4

##### LEGAL & COMPLIANCE

NLRB Posting Requirement Postponed Again 5

DOL Issues New Rules to Address MEWA Abuses 6

USERRA Amended 7

DOL Issues FAQs On Mental Health Parity 8

Reimbursement of All Health Care Expenses Not Required 9

##### SINCE YOU ASKED

Can Health FSAs Reimburse Concierge Fees? 10

##### WELLNESS

Planning A Successful Health Fair 12

WEBCASTS 14

CONTACTS 15

- Working another job when the employee is supposed to be on leave for a doctor’s appointment.
- Using leave to cover a personal absence that is not related to a serious health condition at all (i.e., going on a hunting trip instead of having surgery).
- Employees who cannot “stand, twist, or bend” at all at work according to their certification form yet can perform quite well on the softball field.

## MOONLIGHTING AND OTHER ACTIVITIES WHILE ON LEAVE

What should an employer do when it gets a tip that an employee on FMLA leave is actually working at another job? When an employer learns that an employee is working for another employer while on FMLA leave, the first steps should be to:

- Let the employee know that the employer knows about the other work,
- Ask the employee for a job description for the other job, and
- Compare that job description with what the employee is restricted from doing according to his or her medical certification form.

If the employer can’t tell from the medical certification form exactly what the employee is prohibited from doing – for instance, if the form simply says “employee cannot work,” – the employer can send a letter, through the employee, to his or her healthcare provider that includes the job description for both the job with you and the other job and asks the provider to recertify that the employee can do the other job but not his or her job with the first employer.

## SURVEILLANCE

Some employers have hired private investigators to watch and/or record employees suspected of moonlighting while on leave (or other suspected fraud), but what are the consequences of such surveillance? They are not always good. Employees caught in the act have responded with claims of harassment, intimidation, and interference with FMLA rights.

In addition, surveillance photos and tapes are admissible in an FMLA retaliation or interference lawsuit – regardless of whether they are great (or even good) for the employer’s case.

Perhaps more important, juries traditionally dislike the idea of surveillance. They often conclude that the employer was “out to get” the employee and use it as evidence of interference or retaliation.

However, conducting surveillance may be worth the risk provided the employer has sufficient information to question the legitimacy of an employee’s absences.

The first step is to make sure first that the employer has a reasonable basis for its suspicions. For example, if an employee has physical restrictions that can be readily observed (such as the “can’t stand, twist, or bend” softball superstar), surveillance can be effective.

Once the employer has evidence, it may choose to send it to the employee’s healthcare provider with a request to recertify the employee’s need for leave in light of his or her extracurricular activities.

## DEALING WITH SUBTLE FMLA ABUSE

Rooting out the more subtle types of FMLA abuse takes, first of all, diligence on an employer’s part to track patterns of leave.

Keep an eye out for absences that tend to be concentrated in particular departments or with certain individuals as well as those that occur disproportionately in conjunction with weekends, holidays, or paydays. Because evidence of a pattern of abuse is usually going to be circumstantial rather than medical, the employer must track such evidence over a long enough period so as to demonstrate that the suspicious absences are due to more than mere coincidence.

Another strategy is to send a letter to the employee’s healthcare provider, through the employee, describing the pattern observed and asking whether there is a medical reason for it. If the healthcare provider says “no,” the employer may be able to terminate or otherwise discipline the employee. Even if the provider supports the leave pattern, the employee will often change his or her behavior once the employer has taken notice.

Finally, let’s take a look at some additional methods for reducing FMLA abuse in an organization:

1. *Training supervisors* about how the FMLA and your leave policies work should be the first step. Frontline supervisors are the employer’s eyes and ears, and employers depend on them for information about potential FMLA abuse issues. Providing even 30 minutes of training for supervisors each year is invaluable. At the very least, it will sensitize them to the importance of giving you a heads-up when potential problems arise.

2. Once the employer has received a request for leave, the first rule in reducing abuse is to *check FMLA eligibility at once*. Before assuming an employee is eligible for FMLA leave, take the time to run the eligibility traps. Sometimes employers find themselves first granting FMLA leave, only to later realize that the employee was not eligible for leave. This includes getting a new certification for every new 12-month period an employee seeks/uses FMLA leave.
3. Employers should *consistently require certification (and recertification) of the employee's medical condition*. This lets employees know the employer is tracking FMLA absences. Attach the employee's job description or a list of their essential functions to the certification form so that the healthcare practitioner can accurately assess whether the employee is truly incapacitated from doing his or her specific job.
4. *Don't settle for marginal medical certifications*. Require employees to provide satisfactory, detailed, and informative certifications as a condition of FMLA leave.

If they don't do so, the employer should follow up, using all the tools allowed by the regulations, i.e., requiring the employee to correct the certification and following up with the doctor directly, if necessary, and permitted. However, it is generally considered safer to leave the responsibility of obtaining a satisfactory medical certification with the employee.

5. Be diligent in requiring employees to take leave that's consistent with their medical certification; *don't make exceptions in sympathetic situations*.
6. Ensure that employees provide enough information to distinguish between planned and unplanned leave. If they don't provide *adequate notice of planned leave*, ask them to explain why. The employer can deny leave if the employees don't have a good reason.
7. Note that although they may be justified in some circumstances, *second or third medical opinions* are not usually a practical solution. They delay the process and muddy the waters in terms of medical conclusions, not to mention that the employer ultimately bears the cost of those multiple examinations.
8. Another important strategy – and one that employers frequently overlook – is to exercise their right to *require employees to furnish periodic updates on their status* and whether and when they intend to return to work. Stay in communication with them to see how they are progressing. Periodic communication with Human Resources or supervisors makes it more difficult for the employees to abuse their leave.
9. Throughout employees' absences, *keep track of their use of FMLA leave* and remind them from time to time how much leave they have used and how much they have remaining. Doing so can be particularly valuable when wrestling with intermittent leave.
10. Don't be afraid to *seek recertification* if the employer learns information raising questions about the stated use of the leave.

*This article provided by BLR.*

Another important strategy – and one that employers frequently overlook – is to exercise their right to *require employees to furnish periodic updates on their status* and whether and when they intend to return to work. Stay in communication with them to see how they are progressing. Periodic communication with Human Resources or supervisors makes it more difficult for the employees to abuse their leave.

# WHAT SHOULD HR INCLUDE IN NEW HIRE ORIENTATION?

New-hire orientation is the first step toward employee retention. A formal and well-developed new employee orientation program not only impacts the new hire but also the organization as a whole – both directly in terms of productivity, employee referrals, and retention, and indirectly, as far as employee satisfaction, culture, and safety.

These can provide significant return on investment and contribute to both dollars gained and dollars saved. In a BLR webinar titled “On-Boarding for the Long Term: How to Make the New Employee Honeymoon Last,” Martin Taylor and Lisa Dominisse of the Human Capital Initiative outlined the purpose of new hire orientation and some suggestions of what to include.

“According to a recent Wall Street Journal article, workplace turnover is expected to increase over the next 5 years to levels many companies have never experienced.” Taylor noted. “This makes it even more important to select the right people for the right positions, and keep them engaged so they stay with your organization for the long haul.”

## PURPOSE OF NEW-HIRE ORIENTATION

Starting a new job can be an exciting and sometimes nerve-wracking experience, filled with questions and uncertainties of about how things are done in the new organization. Simple questions such as “when do I get paid?” and “where is the break room?” can be addressed in new-hire orientation. This is the time to introduce the new employee to the organization’s mission, vision, culture, policies, benefits and, sometimes, even the company’s executive team.

## NEW-HIRE ORIENTATION SUGGESTIONS

In the webinar, Dominisse advised: “the purpose of new-hire orientation is to introduce the employee to the organization’s mission, its vision, its culture, policies, benefits, and – if possible – your leadership team.” While new-hire orientation is going to be different for every organization, Dominisse outlined some essential elements of corporate new-hire orientation sessions:

- The suggested length of this program is a 1/2-day to 3/4-day session with a mid-morning break and/or a lunch break. Encourage questions throughout the day.
- Have someone from your executive team, such as the CEO or COO, or your HR staff, do a brief 5-minute welcome speech.
- Have participants introduce themselves to group.
- Next, begin your cultural integration, including your company history, vision statement, mission statement, company values, code of ethics, and organizational chart.
- Include the value proposition for employees, including payroll information (presented by the payroll manager), statutory benefits (legally-provided or mandated benefits are those required by federal and state laws), and voluntary benefits (presented by the benefits manager).
- Company expectations should also be discussed. Have a discussion of some key policies and procedures. Distribute your employee handbooks and have employees sign acknowledgement of receipt. For example, you might discuss your attendance policy; PTO/holiday/leave policy; anti-harassment policy; complaint procedure policy; health, safety and security policies; flextime and telecommuting policy; and your performance management policy.

- Finally, explain how and when employees should access departments such as Building and Administrative Services or Information Technology.

*This article provided by BLR.*

## LEGAL & COMPLIANCE

### NLRB POSTING REQUIREMENT POSTPONED AGAIN

Once again the National Labor Relations Board (NLRB) has agreed to postpone the effective date of its employee rights notice-posting rule – this time at the request of the federal court in Washington, D.C., which is hearing a legal challenge regarding the rule. This is the second postponement (originally required to be posted by November 14, 2011, the NLRB had extended the deadline to January 31, 2012).

The NLRB postponed the effective date of the rule to allow more time to resolve the pending legal challenges. The new implementation date is April 30, 2012.

#### BACKGROUND

On August 25, 2011 the NLRB announced its final rule on the Notification of Employee Rights under the National Labor Relations Act (NLRA). The final rule is a reminder to many employers that certain sections of the NLRA are applicable to all workplaces, even if non-unionized. The new rule addresses the NLRB's concern that many employees and employers are unaware of their respective rights and obligations under the NLRA.

Employers are required to post notices to employees informing them of their NLRA rights, together with NLRB contact information and information concerning basic enforcement procedures. (The **required notice** is available for download from the NLRB website.) Under the NLRA, an employee has a right to:

- Form, join or assist a union
- Discuss terms and conditions of employment or union organizing with co-workers or a union
- Take action with one or more co-workers to improve working conditions by, among other things, raising work-related complaints directly with an employer or with a government agency, and seeking help from a union
- Strike and picket, depending on the purpose or means of the strike or the picketing
- Organize a union to negotiate with an employer concerning wages, hours and other terms and conditions of employment
- Bargain collectively through representatives of employees' own choosing for a contract with the employer setting wages, benefits, hours and other working conditions
- Choose not to do any of these actions, including joining or remaining a member of a union

For additional information about the posting requirement, visit the NLRB's website for **Frequently Asked Questions**.

# DOL ISSUES NEW RULES TO ADDRESS MEWA ABUSES

On December 5, 2011, the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) released new proposed rules authorized by the Patient Protection and Affordable Care Act (PPACA) and intended to provide a more difficult environment in which to operate an abusive multiple employer welfare arrangement (MEWA).

While the primary goal of the proposed regulations is to address fraudulent acts, such as embezzlement or the use of MEWA funds to pay for expenses other than claims, employers that currently participate in MEWAs will likely want to reassess their current structures. A MEWA will continue to be defined as an arrangement that covers the employees of two or more trades or businesses that are not under common control.

## BACKGROUND

MEWAs have been operated and legislation has tried to curb their abuses for many years. Nevertheless, the DOL notes that, “[a]lthough MEWAs that are properly operated provide an option for small employers seeking affordable employee health coverage, some have been marked by fraudulent practices and financial instability. Some self-insured MEWAs, in particular, have been found to have failed to use sound underwriting practices and have paid excessive amounts to operators and service providers.”<sup>1</sup> As part of PPACA, the DOL was given additional authority to issue cease and desist orders and seize assets of any MEWA that “is fraudulent or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably

expected to cause significant, imminent, and irreparable public injury.”<sup>2</sup>

While the primary goal of the proposed regulations is to address fraudulent acts, such as embezzlement or the use of MEWA funds to pay for expenses other than claims, employers that currently participate in MEWAs will likely want to reassess their current structures. A MEWA will continue to be defined as an arrangement that covers the employees of two or more trades or businesses that are not under common control. (If the businesses *are* under common control, the plan would not be a MEWA.) Exceptions to the definition exist for union plans,

church and government plans, certain insurance plans, and rural electrical and telephone cooperatives, among others.

## NEW RULES

The PPACA required the DOL to issue new guidelines that require MEWAs to register with the DOL prior to operating in a state or be subject to substantial penalties. The new proposed regulations are intended to implement that requirement. As stated in the proposed rules, the requirement that MEWAs register with the DOL applies to MEWAs that currently must file Form M-1 with the DOL each year. For these MEWAs, registration is in addition to the existing annual reporting requirement on Form M-1. The proposed regulations also would require MEWAs that are subject to ERISA to file Form 5500 Annual Return/Report, regardless of plan size.

## NOTABLE EXCEPTIONS TO THE REGISTRATION REQUIREMENT

Employers sometimes find themselves with MEWAs because of some inadvertent changes to their corporate structure or coverage rules. The proposed rule provides exceptions for several situations that might technically result in MEWAs but which would be exempted from the new requirement if:

- The coverage is provided to employees of two or more trades or businesses that share a common control interest of at least 25% during the year
- The coverage applies to two or more employers due to a change of control, and the multiple employer situation will not last beyond the end of the year
- The coverage is provided to individuals (other than spouses or dependents) who are not employees or former employees of the sponsoring employer provided that those individuals are not more than 1% of the employees who are covered as of the end of the plan year

## RULES PUBLISHED ON DOL WEBSITE

For additional information, the text of the proposed rules and related materials are available at the following sites:

- Proposed Rule on Filings Required of Multiple Employer Welfare Arrangements and Certain Other Entities, available by [clicking here](#).
- Notice of Proposed Revision of Annual Information Return/Report, available by [clicking here](#).
- Notice of Proposed Revision of the Form M-1, available by [clicking here](#).
- Proposed Form M-1 Revisions, available by [clicking here](#).

The screenshot shows the EBSA website header with the United States Department of Labor logo and navigation links. The main content area is titled "Proposed Form M-1 Revisions" and includes a detailed notice of proposed rulemaking, links to the proposed form and instructions, and a note that the current form M-1 is still available on the website. A sidebar on the left contains links for "Contact EBSA", "About EBSA", "FAQs", and "Consumer Information".

## CONCLUSION

The DOL has asked for additional comments, and final regulations will more fully explain the registration requirement rules. Willis will provide additional guidance on this issue when final regulations are released.

## USERRA AMENDED

President Obama recently signed legislation amending the Uniformed Service Employment and Reemployment Rights Act (USERRA). The Veterans Opportunity Work (VOW) to Hire Heroes Act of 2011 protects employees against hostile work environment harassment based on an employee's military service. The law has immediate effect.

Federal courts have been reluctant to recognize hostile work environment claims under USERRA. For example, in March 2011 the U.S. Court of Appeals for the Fifth Circuit ruled that USERRA does not expressly allow employees to file hostile work environment claims when harassed by co-workers or supervisors because of their military service. In *Carder v. Continental Airlines, Inc.*, Continental was sued by a group of its pilots who were also members of the Air National Guard and the Reserves. The pilots alleged that the airline had violated USERRA by subjecting them to a hostile work environment and harassment because of their military service obligations.

USERRA was amended to include the same language as used for Title VII of the Civil Rights Act of 1964 and other employment discrimination laws. Specifically, it prohibits discrimination based on military status with respect to the “terms, conditions, or privileges of employment.” This change ensures that the same standard applies to harassment claims based on military status as applies to claims based on other protected classes, such as race, sex and religion.

VOW to Hire Heroes Act also provides tax credits to employers that hire veterans in amounts that vary depending on the veteran’s length of unemployment.

## BACKGROUND

USERRA provides protections against discrimination in employment based on an individual’s “membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.” USERRA establishes minimum requirements in regard to employment and reemployment rights and benefits in connection with uniformed service. Additional information about USERRA can be found on Willis Essentials under Compliance/Employment Related Issues.

## DOL ISSUES FAQs ON MENTAL HEALTH PARITY

The Department of Labor (DOL) has recently issued its seventh set of Frequently Asked Questions about health care reform. All but one of the questions, however, address certain aspects of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). Under the MHPAEA:

- Financial requirements and treatment limitations imposed on mental health and substance use disorder benefits cannot be more restrictive than the predominant financial requirements and treatment limitations that apply to substantially all medical and surgical benefits.
- Separate financial requirements or treatment limitations that are applicable only to mental health or substance use disorder benefits are prohibited.

Please see Willis Human Capital Practice *Alert*, Volume 3, Number 11, “**Parity Redefined**” for an extensive discussion of the compliance requirements for the MHPAEA. The new FAQs are posted [here](#).

The new FAQs are primarily focused on non-quantitative treatment limitations. Examples of non-quantitative treatment limitations include:

- Medical management standards for medical necessity, appropriateness or experimental/investigational determinations

- Formulary design for prescription drugs
- Standards for provider admission to participate in a network, including reimbursement rates
- Plan methods used to determine usual, customary and reasonable fee charges
- Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols)
- Exclusions based on failure to complete a course of treatment

The FAQs confirm that:

- A plan may use processes, strategies, evidentiary standards and other factors in prior authorization requirements where the requirements are applied no more stringently to mental health and substance use disorder benefits than to medical/surgical benefits.
- Different outcomes from the application of non-quantitative treatment limitations will not violate MHPAEA where the plan applies the same evidentiary standards on the same basis to both mental health and substance use disorder benefits and medical/surgical benefits.

The FAQs are clear that a plan may not:

- Apply a non-quantitative treatment limitation to mental health and substance use disorder benefits that is not applied to medical/surgical benefits
- Operate in a manner that applies stricter non-quantitative treatment limitations to mental health and substance use disorder benefits, such as approve significantly shorter stays for inpatient mental health and substance use disorder treatment than those applied to medical/surgical benefits
- May not require preauthorization for the medical necessity of mental health and substance use disorder benefits where the plan does not impose such a requirement on medical/surgical benefits

These FAQs serve as an important reminder to employers to review their plans to ensure that all financial distinctions applied to mental health and substance use disorders are compliant with MHPAEA classification requirements (some plans may have inadvertently retained limits that are only applied to mental health and substance



use disorders, such as day limits on in-patient hospitalization). And, importantly, employers should review the operation of the plan with respect to non-quantitative treatment requirements and limitations.

## REIMBURSEMENT OF ALL HEALTH CARE EXPENSES NOT REQUIRED

In 2011 the Internal Revenue Service (IRS) released two information letters that emphasize the fact that employer-sponsored plans, such as health reimbursement arrangements (HRA) and health flexible spending accounts (FSA), are not required to pay or reimburse every item or service that qualifies as a medical care expense. Plans are free to limit payment or reimbursement for certain expenses.

The first letter (2011-0027) responded to an inquiry as to whether reimbursement from a medical reimbursement account could reimburse a medical concierge fee paid to a doctor. The fee entitled the individual to heightened access to physicians, a comprehensive annual physical, minimum half-hour doctor visits, and access to dietitians and exercise therapists. The administrator of the account had determined that the fee was not reimbursable. Rather than address whether the fee was a qualified medical expense, the IRS answered the question by saying that each plan can have its own rules as to which medical expenses under Internal Revenue Code (IRC) § 213(d) are reimbursable. (To see how the National Legal & Research Group (NLRG) addressed a similar question on whether concierge fees were reimbursable by a health FSA, please see the Since You Asked in this issue of HR Focus.)

The second letter (2011-0055) stated that hearing aid repair expenses qualify as medical care expenses that can be reimbursed

from a health FSA, but whether they will be reimbursed depends on the rules of the participant's health FSA. The letter notes that the health FSA's plan documents should identify the qualified medical expenses that the plan will reimburse.

These information letters highlight how much control plan sponsors have in determining the terms of their employer-sponsored plans. Health FSAs and HRAs are not required to pay or reimburse every item or service that qualifies as a medical care expense under IRC Section 213(d). In fact, the IRS is clear that the terms of the specific plan determine whether the expense can be reimbursed. These letters are a welcome reminder to an employer who may wish to exclude certain expenses, such as those that are difficult to administer due to substantiation issues. For those employers wishing to exclude certain expenses, please be sure that this is properly addressed within the relevant plan documents.

---

<sup>1</sup> <http://www.dol.gov/ebsa/newsroom/fsproposedmlrevisions.html> or <http://www.dol.gov/ebsa/pdf/fsproposedmlrevisions.pdf>.

<sup>2</sup> Ibid.

# SINCE YOU ASKED:

## CAN HEALTH FSAS REIMBURSE CONCIERGE FEES?

The National Legal & Research Group (NLRG) was recently asked a question concerning so-called “concierge” medical services in which patients pay an annual fee to obtain access to a physician. Because of the annual fees the physicians have far fewer patients and provide much more service to the patients they do have. Specifically, we were asked if the annual retainer, annual fee, access fee (or whatever name these arrangements may be called in a given program), can be reimbursed under an employer’s health flexible spending account (FSA). Our response was that, although the answer is somewhat ambiguous, we believe that the correct view at this time is that such a reimbursement would not meet the requirements of a reimbursable expense under the FSA rules.

### BACKGROUND

Although health FSAs are actually governed by regulations that remain in proposed form, employers can rely on the proposed regulations, and most practitioners treat them as the governing rules (since there aren’t any other governing rules).

Applicable proposed regulations specify that an FSA can reimburse participants for expenses that are not otherwise reimbursable through insurance. Generally speaking, all the expenses that are treated as medical expenses under § 213(d) of the Internal Revenue Code (and would therefore be deductible on a tax return) would be reimbursable. However, the proposed regulations specifically exclude any reimbursement for the cost of premiums for accident and health insurance (those costs are deductible on an individual’s return).

Another restriction on the reimbursements in the proposed regulations is that the reimbursement is available only after the services are rendered and is not dependent on when the actual payment occurs. The Internal Revenue Service (IRS) has carved out two exceptions to that rule – one for prenatal care and the other for orthodontia.

### DISCUSSION

In this specific situation, the physician’s practice charges an annual retainer of \$1800. Apparently the participant is entitled to some services (such as an annual physical) for that fee and other services are on a fee-for-service basis. Since medical services are included – isn’t that fee for medical services and, therefore, can’t the entire fee be reimbursed by the plan? We think the correct answer is no.



First, the payment is not really for medical services, but for access. The fact that some medical services are also provided is only partially relevant to the discussion. The set-up is very similar to many staff model HMOs – some services are provided at no or very low cost. Presumably they are being paid for through the monthly fee. That fee is the same whether or not the services are used. There is no question that the monthly fee (or premium) for the HMO is not reimbursable from the FSA. The co-pay, if any, is reimbursable, but not the monthly fee or premium. That is really how these concierge programs work as well. Some incidental services may be included for the annual retainer, but the annual retainer is the same whether or not the services are used. That certainly indicates that the fee is for access, not the services.

In addition, FSAs may only reimburse participants for the costs of services rendered after they are rendered. It does not matter when payment is made, but rather when the services are received. That means that the physician must actually provide a medical service (not just a membership or access to services) before the cost for the service is reimbursable.

Therefore, assuming the physical exam (and other “free” services) is rendered, perhaps some value can be assigned to those services and an allocable portion of the fee could be reimbursed.

One might argue that the entire amount of the fee can be billed as though it paid for the annual physical exam (assuming the exam was actually provided). Does this perspective hold water? Although it is certainly possible to pay \$1800 for an annual physical, it is unlikely that the individual is actually paying for that service. Not many annual exams are that costly. Just because a physician is willing to participate in the subterfuge does not change the actual nature of the expense. The fee should be properly seen for what it is – an annual retainer. It might be possible to divide the expense up and allocate some of it to the annual physical. In that case the part associated with the annual physical might be properly reimbursable. However, if the annual physical is not actually performed, then even that portion would not be reimbursable.

## **HOW ABOUT HSAS AND HRAS?**

We think the same analysis applies to Health Reimbursement Arrangements (HRAs) and Health Savings Accounts (HSAs). That is, the payment is more like an insurance premium than a fee for service. Since insurance premiums ARE reimbursable under an HRA, then these expenses would be reimbursable on a tax-free basis from the HRA. HRAs can reimburse any expense that is covered by Code Section 213(d) – even insurance premiums.

However, the rules for HSAs are more complex. Sometimes the premiums can be reimbursed tax-free from an HSA. If the premiums are for COBRA coverage, or for premiums that are paid when the person is unemployed, dead, disabled or age 64, then as long as the premiums are not for a Medicare supplement, the reimbursement is tax free. In all other cases, the reimbursement is taxable (and subject to a 20% excise tax imposed on any reimbursements that are not for qualified medical expenses). As a result, although the employee could actually get the reimbursement, in most cases the reimbursement would be included in the employee’s taxable income and subject to an excise tax.

## **CONCLUSION**

An aggressive employer might want to reimburse these expenses since there is no direct authority from the IRS to prohibit them. If an employer does want to take the more aggressive approach, the employer would be well advised to seek the input of its legal counsel before proceeding.



# WELLNESS

## PLANNING A SUCCESSFUL HEALTH FAIR

Looking for something fresh and fun to introduce a culture of health and wellness to your workforce or serve as the kick-off to roll out your ongoing programs? A health fair might be just the ticket, and it doesn't have to be expensive.

From an employee perspective a health fair event can be the entry point to raising awareness of individual health risks and help motivate and encourage employees to take the next step. From an employer perspective health fairs can generate an element of fun in the workplace, provide an opportunity for preventative screenings and immunizations and increase overall awareness of certain adverse health conditions. The needs of your organization will dictate the type and size of your health fair. Below are key planning considerations to make your health fair engaging and successful.

### PREPARATION

Determine what you hope to accomplish with the event and outline clear goals and objectives. Setting goals and objectives will help establish how you will measure its overall success. Health fairs are typically excellent venues to introduce and promote health awareness and prevention.

### PLANNING COMMITTEE

A planning committee will provide leadership and coordination and can vary in size, depending on how elaborate your health fair is and the size of your company. If you are implementing a health fair at multiple locations you may consider having a contact person or small planning committee at each location to assist with both planning and organization, logistics, promotion and coordination of local resources. Clearly defining each of the delegated tasks of committee members will keep everyone on track and facilitate timely completion of assigned duties.

### TIMELINE

Building a realistic timeline is essential to achieving an organized event. A timeline should provide a complete overview of all steps needed and when they are to be completed. This important planning tool will vary depending on the complexity of the event and other variables, but a timeline of three to six months in advance of your event date is ideal.

## **ACTIVITIES**

Consider your goals and objectives and select activities that will best help achieve them while staying within budget. The most successful health fairs offer a variety of activities that are typically divided into the following categories: Awareness, Screening and Demonstration.

## **BUDGET**

A health fair budget will vary widely depending upon the number of participants you expect, the size of the event, the activities provided, the number of locations hosting an event and the size of the organization. If you are working with a nominal budget, do not be discouraged as there are many great low cost and no cost resources that you can access. Take a quick inventory of internal and external resources and build from there.

## **LOGISTICS**

The location for the health fair should be convenient for participants and have adequate room to accommodate exhibitors, vendors and participants. Try to find one room or area large enough to accommodate your needs and a central site that is easily accessible to most of the population. If you are offering any type of screenings, be sure to consider participant privacy.

## **PROMOTION**

A creative and engaging marketing campaign for all your wellness program events, including the health fair, is critical in making sure employees are aware of the events, which will significantly impact participation. To generate a strong turnout, begin promoting the health fair a minimum of four weeks in advance and at least weekly thereafter and consider offering incentives to employees for attendance or participation in activities.

## **EVALUATION**

To measure the success of your health fair, gather feedback from both participants and exhibitors or vendors. Measuring this data against your stated goals and objectives should help you determine the success of your event.

A health fair can be a great opportunity to introduce employees to health and wellness in the workplace. To obtain a comprehensive guide, additional information or access to health fair planning tools and resources, please contact your Willis Client Service Team.

# WEBCASTS

## EMPLOYEE MOBILITY

**FEBRUARY 21, 2012  
2:00 PM EASTERN TIME**

**Presented by:  
CHRIS BURNS  
CHIEF EXECUTIVE OFFICER  
WILLIS GLOBAL EMPLOYEE BENEFITS  
PRACTICE**

As business goes global, more and more companies are finding they must station employees overseas. Providing benefits in an international environment opens up new but crucial challenges, including a host of issues that complicate benefits, such as health care management and compliance for employers and expatriates. Benefits programs need to reflect the realities of the world into which expatriates are sent. By knowing what the challenges are, as well as best practice solutions, employers can better understand what expatriates will need. Join Willis for an informational webcast, in which we will cover:

- Health Care – What are the real risks?
- International insurance issues and important considerations
- Traveler support
- Expatriate facts and concerns
- Overview of health care challenges
- Typical benefits and plan design
- Meeting expatriate health care needs

### **PARTICIPANT ACCESS**

Advance reservations are required to participate. **Click here** to RSVP for this call.

## ANNUAL HEALTH & PRODUCTIVITY SURVEY FINDINGS: WORK & LIFE – THE DELICATE BALANCING ACT

**MARCH 20, 2012  
2:00 PM EASTERN  
TIME**

**Presented by:  
CHERYL MEALEY, CHES  
NATIONAL PRACTICE LEADER -  
WELLNESS CONSULTING  
WILLIS HUMAN CAPITAL PRACTICE**

Try as we might, it is impossible to completely disconnect from our lives outside of work when we arrive at work each day. As a result, many employees come to work struggling with issues, such as finding or affording reliable child care, managing financial strains and dealing with aging parents or grandparents. We set out to uncover how employers are helping workers balance work and life in a special focus section of our most recent Annual Health & Productivity Survey. Join us for an updated look at worksite wellness trends, a discussion of work/life balance and a peek at how multinational employers are expanding their program efforts outside of the United States.

### **PARTICIPANT ACCESS**

Advance reservations are required to participate. **Click here** to RSVP for this call.

# KEY CONTACTS

## U.S. HUMAN CAPITAL PRACTICE OFFICE LOCATIONS

### NEW ENGLAND

**Auburn, ME**  
207 783 2211

**Bangor, ME**  
207 942 4671

**Boston, MA**  
617 437 6900

**Burlington, VT**  
802 264 9536

**Hartford, CT**  
860 756 7365

**Manchester, NH**  
603 627 9583

**Portland, ME**  
207 553 2131

**Shelton, CT**  
203 924 2994

### NORTHEAST

**Buffalo, NY**  
716 856 1100

**Cranford, NJ**  
908 931 3005

**Florham Park, NJ**  
973 410 4622

**Morristown, NJ**  
973 829 6374  
973 829 6465

**New York, NY**  
212 915 8802

**Norwalk, CT**  
203 523 0501

**Radnor, PA**  
610 254 7289

**Wilmington, DE**  
302 397 0171

### ATLANTIC

**Baltimore, MD**  
410 584 7528

**Bethesda, MD**  
301 581 4261

**Knoxville, TN**  
865 588 8101

**Memphis, TN**  
901 248 3103

**Nashville, TN**  
615 872 3716

**Norfolk, VA**  
757 628 2303

**Reston, VA**  
703 435 7078

**Richmond, VA**  
804 527 2343

**Rockville, MD**  
301 692 3025

### SOUTHEAST

**Atlanta, GA**  
404 224 5000

**Birmingham, AL**  
205 871 3300

**Charlotte, NC**  
704 344 4856

**Gainesville, FL**  
352 378 2511

**Greenville, SC**  
704 344 4856

**Jacksonville, FL**  
904 355 4600

**Marietta, GA**  
770 425 6700

**Miami, FL**  
305 421 6208

**Mobile, AL**  
251 544 0212

**Orlando, FL**  
407 562 2493

**Raleigh, NC**  
704 344 4856

**Savannah, GA**  
912 239 9047

**Tallahassee, FL**  
850 385 3636

**Tampa, FL**  
813 490 6808  
813 289 7996

**Vero Beach, FL**  
772 469 2842

### MIDWEST

**Appleton, WI**  
800 236 3311

**Chicago, IL**  
312 288 7700  
312 621 4843  
312 348 7678

**Cleveland, OH**  
216 861 9100

**Columbus, OH**  
614 326 4722

**East Lansing, MI**  
517 349 3226

**Grand Rapids, MI**

248 735 7249

**Milwaukee, WI**

414 203 5248

414 259 8837

**Minneapolis, MN**

763 302 7131

763 302 7209

**Moline, IL**

309 764 9666

**Pittsburgh, PA**

412 645 8506

**Schaumburg, IL**

847 517 3469

**SOUTH CENTRAL****Amarillo, TX**

806 376 4761

**Austin, TX**

512 651 1660

**Dallas, TX**

972 715 2194

972 715 6272

**Denver, CO**

303 765 1564

303 773 1373

**Houston, TX**

713 625 1017

713 625 1082

**McAllen, TX**

956 682 9423

**Mills, WY**

307 266 6568

**New Orleans, LA**

504 581 6151

**Oklahoma City, OK**

405 232 0651

**Overland Park, KS**

913 339 0800

**San Antonio, TX**

210 979 7470

**Wichita, KS**

316 263 3211

**WESTERN****Fresno, CA**

559 256 6212

**Irvine, CA**

949 885 1200

**Las Vegas, NV**

602 787 6235

602 787 6078

**Los Angeles, CA**

213 607 6300

**Novato, CA**

415 493 5210

**Phoenix, AZ**

602 787 6235

602 787 6078

**Portland, OR**

503 274 6224

**Rancho/Irvine, CA**

562 435 2259

**San Diego, CA**

858 678 2000

858 678 2132

**San Francisco, CA**

415 291 1567

**San Jose, CA**

408 436 7000

**Seattle, WA**

800 456 1415

*The information contained in this publication is not intended to represent legal or tax advice and has been prepared solely for educational purposes. You may wish to consult your attorney or tax adviser regarding issues raised in this publication.*