Employee Benefits Report

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Basic Steps to Avoid Discrimination in the Workplace

Workplace discrimination takes many forms, but sound policies and procedures can reduce the occurrences.

The U.S. Equal Employment Opportunity Commission (EEOC) reported that in 2018 it resolved 90,558 charges of workplace discrimination and collected $505 million for victims. Retaliation was the most frequently filed charge, followed by sex, disability and race.

What does this mean for employers? According to CERS (Cutting Edge Recruitment Solutions), the average out-of-court discrimination settlement for an employer is about $40,000 and

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Prescription Drug Rule Implementation Delayed

The U.S. Department of Labor, Health and Human Services (HHS) and Treasury delayed the implementation of the HHS 2020 Notice of Benefit and Payment Parameters until Jan. 1, 2021, or later. The federal rule would require health insurance plans to credit to the out-of-pocket maximum the amount of financial assistance received from drug manufacturers.

Large group health insurance issuers and self-insured group health plans have been using manufacturer drug coupons to help plan members get lower or no cost brand-name drugs. These coupon programs, known

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the majority of cases are ruled in the plaintiff's favor. Ten percent of wrongful termination and discrimination cases result in $1 million settlements.

Not all discrimination, though, deals with sex, disability or race. Another form of discrimination is when employers fail to offer benefits equally to all employees. For instance, granting special accommodations to one employee and not another — such as granting extra time off — can lead to inconsistencies, which can lead to lawsuits. Make sure you apply policies equally when dealing with promotions, vacation, pay, assignments, awards, discipline and termination.

Here are some guidelines for staying compliant with the law and making your company a more respectful workplace:

Based on Salaries

- **Respect non-exempt status:** You must pay your employees overtime if they work more than 40 hours per week. However, there is an exemption, and this is where it gets tricky. You do not have to pay exempt employees, and they do not qualify for minimum wage because they are paid for work performed, not for the hours they work. There are strict guidelines as to who qualifies for status as an exempt employee, outlined by the federal government's Fair Labor Standards Act and some state regulations. For an employee to be considered exempt, they must use their independent judgment in performing their duties at least 50 percent of the time and must earn more than $455 per week. An example of an exempt employee would be an executive who supervises at least two employees and makes decisions to hire or fire employees.
- **Base pay on job requirements:** Salaries should be based on what the market demands, not on what a new employee made in a previous job or how long you've known that employee. If two employees are doing the same job, their salaries should be similar, although they do not have to be exact. Performance can be a factor.
- **Don't deduct from exempt employees' paychecks:** You don't pay exempt employees for overtime. But you also can't dock their pay if they leave work early. Plus, if you dock your exempt employees' checks for missing partial days, you've automatically made them non-exempt and you may owe them overtime.
- **Pay non-exempt employees for all of the time worked:** It is illegal for you to make an employee work off the clock. It also is illegal for an employee to work off the clock when you tell them not to. If they do, you must pay them for the time they worked before you can fire them.

Based on Hiring and Firing Practices

- **Follow discrimination law:** You must hire people based on their qualifications. You cannot discriminate on the basis of race, gender, age, national origin, disability, religion, sexual orientation or pregnancy. Some states and localities have additional laws regarding discrimination. However, it is legal to discriminate based on weight, unless the weight is considered a disability.
- **Document everything:** Don't fire any employee for poor performance or other issues unless you have documented the circumstances at least twice. Also, don't be in a hurry to terminate an employee. In addition to being well documented, the decision to terminate someone's employment should at least be reviewed by more than one manager and involve someone with Human Resources training. Also consider offering severance which can reduce the chance of a lawsuit.

as "copay assistance programs," typically apply to high-cost specialty drugs for which a generic is not available.

Confusion arose over whether the HHS rule requires plans to count the value of drug manufacturers' coupons toward the patient's out-of-pocket maximum.

Additionally, the departments issued an FAQ in 2014 stating that non-grandfathered health plans in the individual and small group markets must provide coverage of essential health benefits and that other requirements apply.

The 2021 HHS Notice of Benefit and Payment Parameters will address these issues in more detail.

Therefore, until the 2021 Notice is issued, the Departments will not initiate enforcement action if a group health plan excludes the value of drug manufacturers' coupons from the annual limit on cost sharing.

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Based on Employee Actions

- **Make it Easy to Report Complaints:** Provide more than one option for employees to complain about discrimination so that they can bring legitimate issues to management's attention. This also ensures that a supervisor cannot hide issues from Human Resources and upper management. The sooner you learn about a problem, and investigate, the sooner you can fix it.
- **Train Your Managers:** Your managers need to be aware of potential discrimination issues in the workplace and how to handle complaints. If not handled properly, they can become lawsuits. Also, ensure that you have specialists knowledgeable in the Family and Medical Leave Act (FMLA) and Americans With Disabilities Act (ADA) rules and regulations.
- **Have a good handbook:** Include up-to-date policies on issues including at-will employment; equal employment and harassment issues; work hours; leave and accommodation under the FMLA and the ADA; workplace violence; trade secrets and confidentiality of company information; and work rules and the consequences for violating them. Employees should acknowledge that they received and read the handbook.

Please contact us if you need more information.

Key Elements of a Good Health Benefit Plan for Small Companies

The cost of providing health insurance for employees and their families is expected to be five percent higher this year than in 2019.

The National Business Group on Health estimates that the average cost of coverage for an employee and their family will be $15,375. This is obviously bad news for small employers, even though they are not required by the federal employer mandate to offer coverage if they have 50 or fewer full-time equivalent employees. However, many small employers feel that offering health benefits is necessary as a way to attract and retain valuable employees.

Another advantage to offering group health insurance is that it's usually less expensive to spend money on employees' coverage than using the same money to provide higher wages. Payroll and income taxes are not assessed on employers or employees on funds used to purchase health insurance. Generally, taxes also are not assessed on the portion of premiums that employees pay.

Most employers assume that traditional group health insurance is their only option, and many employees like traditional health insurance because they're familiar with how it works. Employers purchase coverage through an insurance broker and pay a fixed premium to the insurance provider. Employees who are participating in the plan usually pay a portion of the premium and are responsible for the co-pays and deductibles.

The downside to traditional insurance is that group health insurance premiums have increased significantly in recent years. The least expensive policies usually have higher deductibles, which can be difficult for employees to pay.

In this environment, many small employers are looking beyond traditional coverage for affordable options, which include:

QSEHRAs

A Qualified Small Employer Health Care Reimbursement Arrangement (QSEHRA) allows companies with fewer than 50 full-time equiva-

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lent employees to contribute tax-deductible funds to a health reimbursement account (HRA). Employees purchase the health care they need, like individual insurance policies, prescriptions, medical services and dental services and then are reimbursed. Expenses that are reimbursed through a QSEHRA are free of payroll taxes for businesses and their employees, including social security, Medicare and unemployment tax.

A small business that qualifies and chooses to offer a QSEHRA cannot offer a group health plan to its employees. Also, it can limit the benefit to only full-time employees.

ICHRAs

New and effective Jan. 1, 2020, is a plan called Individual Coverage Health Reimbursement Arrangement (ICHRA). Similar to a QSEHRAs, an ICHRA is a company-funded, tax-free health benefit that allows businesses to reimburse their employees for personal health care expenses. The difference is that this arrangement is available to businesses of any size. With no annual allowance caps, businesses may offer different amounts of tax-free money based on different classes of employees: full-time, part-time or seasonal.

Self-funded Health Insurance

Self-funding is when a company pays for employees' out-of-pocket health care claims as they arise instead of paying fixed premiums to an insurance provider. The Self-Insurance Educational Foundation says cost savings in non-claims expenses alone can range from 10 to 25 percent. You will probably also want to contract with a third party administrator (TPA) to handle claims management.

Previously, self-funding only was an option for large businesses that could afford potentially high claims. To reduce the possibility of high claims depleting a claims fund or risking unknown monthly costs, many companies opt to do level funding by pairing the fund with a stop-loss policy limiting the potential financial burden. Self-funding, or level funding allows employers to keep unused money from their fund.

Taxable stipends

Another option for employers is to give employees an informal wage increase (taxable stipend) to purchase health care services. The downside is that the funds are taxable for both the employees and the business and employees might not use the funds for health care premiums.

Association Health Plans

Some states allow companies to band together to purchase health insurance at lower prices than purchased separately. However, the rules for Association Health Plans (AHPs) are up in the air. A federal judge ruled in March 2019 that several key aspects of the Trump Administration's 2018 rules relating to AHPs are unlawful. The Trump Administration could appeal that ruling, but the judge also granted the option to revise the new rules. Some observers are concerned that increased access to AHPs could destabilize the ACA-compliant individual and small group markets

Please contact us if you have questions.

Ways to Make Saving Easier for Your Employees

Employees know they should save for retirement, but it's not always easy. Many worry they don't have enough money to put into retirement savings because they're having difficulties paying bills.

You can help employees save and maximize their savings. As an employer, you are well positioned to remove barriers to saving for retirement and you can provide important retirement education.

One of the ways to maximize employees' interest in a 401(k) is to structure it to make it more appealing. Talk to a qualified professional, but here are some ideas:

- **Automatically enroll** employees into your 401(k) plan. Automatic enrollment in retirement plans has proven to greatly boost plan participation. With automatic enrollment, employees often don't even think about the money that's being withdrawn. However, if they do object, they can choose to not participate.

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- If you don't do automatic enrollment, consider shorter or no waiting periods. Employees are more likely to enroll during their orientation meetings when you have their full attention and can explain the benefits of saving for retirement.
- No one turns down free money, and **employer matching contributions** encourage employees to save — and to save more — if they know you also will be contributing and helping their savings grow more quickly.
- Allow employees to take out **loans or hardship withdrawals** so they know they can access their money if there's an emergency.
- Provide a **variety of investment options.** The average plan has more than 10 options — but 20 options can be too many and can cause confusion.

Another key factor is communication.

The better employees understand the importance of investing and how it works, the more likely they are to participate in the plan.

- **Hold regular 401k meetings.** Quarterly meetings are great opportunities to communicate plan benefits and features. Or, have an investment advisor meet one-on-one to help participants meet their retirement goals.
- Use **emails, newsletters, internet and intranet** to provide easy-to-understand messages for employees with different levels of income and financial knowledge.
- In addition, send personalized statements. These include enrollment materials and other forms of communications. For example, if you are providing enrollment material to 20-year-olds, the ideas and data should be targeted to their life circumstances. Most investment companies can provide personalized communications materials, which help convey the importance of saving as employees watch their accounts grow. According to Watson Wyatt's latest 401k Value Index™ research, companies that use personalized statements to inform employees about their 401k plan have on average a six percent higher participation rate compared with those that don't.
- Many people in debt need help forming a financial plan. **Provide budget templates or budget apps** to teach employees ways to save. Once the employee has a budget, encourage them to start saving in small increments and then make gradual increases that add up to long-term savings.
- Encourage employees who think it's too late to save to contribute the maximum. Provide them with a financial advisor to learn how to earn a higher rate of return. They also may want to consider retiring later as a way to increase their savings.

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Employees Need to Know About 401(k) Required Minimum Distributions

Effective January 1, 2020, your employees must withdraw at least the minimum amount from their employer-sponsored 401(k) and IRAs (Individual Retirement Accounts) by age 72

The required minimum distribution (RMD) age was formerly 70½. The RMD amount is determined by applying a life expectancy factor set by the IRS to the employees' account balance at the end of the previous year.

Account holders who are taking a RMD for the first time may wait until April 1 of the year after the year they turn age 72. For 401(k) plans, they can wait until 72 or until the year they retire, if they don't have a five percent or more ownership stake in their employer. After that, account holders' RMD for a given year must be withdrawn by Dec. 31, either in a lump sum or in installments.

If they decide to delay taking their first RMD until the next year, they'll have to take two minimum distributions during that calendar year. This can put them in a higher tax bracket for that year, which may significantly increase their taxes. They also could have to pay a 50 percent excise tax on the amount that was not withdrawn. That is 50 percent of the difference between the required distribution and the actual distribution. There also is a penalty for not withdrawing the full amount.

Employees can find out how much of their RMD will be taxable by visiting the IRS website at www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-required-minimum-distributions.

The RMD deadlines apply even if the account owner dies. The beneficiaries must take the regular required minimum distribution the year in which the account holder dies. The following year, the required minimum distribution will depend on the age of the beneficiary.

Remember, the more your employees know about their 401(k) accounts, the better informed they'll be when making decisions about how much to save. Talk to your broker about how best to communicate this information.

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