Employee Benefits Report

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Invest in Wellness; Invest in Productivity

When you look at employee health costs, are you overlooking one very important component? A study published in the *Journal of Occupational and Environmental Medicine* (JOEM), which followed 10 employers over several years, found that employers tend to ignore the cost of productivity lost due to health problems. The study found that health conditions cost an average of $2.3 in lost productivity for every $1 of medical and pharmacy costs. For some conditions, lost productivity costs were much higher.

Some employers might be reluctant to adopt wellness programs out of cost concerns. Sure, they might be good for morale, but do they make any contribution to the bottom line? The JOEM study and others indicate that investing in wellness can cut healthcare costs and boost employee productivity.

Others might hesitate out of fear of seeming too intrusive into their employees' personal lives. However, employees surveyed by Work Trends strongly supported the idea of employer-provided wellness programs. Among all workers surveyed, 70 percent believed employers should provide some type of wellness program to employees. Among those who already had a wellness program at work, 80 percent believed employers should provide wellness programs.

Employees want wellness programs

And while many wellness programs are as simple as free or discounted memberships to health clubs, employees seem interested in getting their employer's help with more targeted wellness programs. A 2008 survey by the National Business Group on Health (NBGH) found that most employees want their employer's help with setting and achieving their health goals. Specifically, 54 percent of employees surveyed would take advantage of health-related activities offered by their employer. More than half of these employees would use on-site health screenings, fitness centers, weight management programs or healthcare providers; they would also use Web-based wellness programs.

Employers seem to be getting the message. The percent of full-time private sector workers with access to wellness programs increased from 19 per-

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This Just In

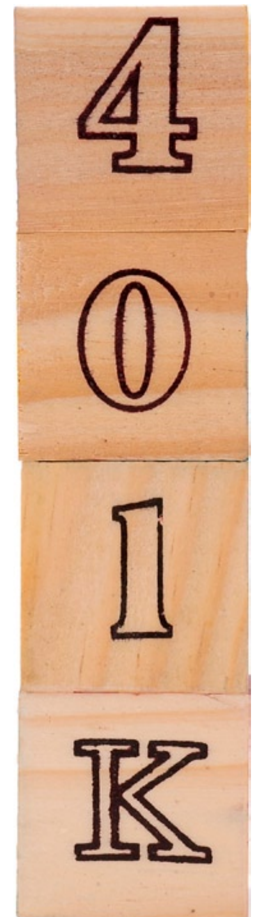
THE IRS has clarified some of the questions raised by plan sponsors attempting to apply the COBRA subsidy provisions of the American Recovery and Reinvestment Act of 2009. This law subsidizes 65 percent of the cost of coverage for individuals who qualify for COBRA benefits as the result of an involuntary termination occurring from September 1, 2008, through December 31, 2009.

IRS Notice 2009-27 clarifies what constitutes "involuntary termination." It specifically states that other events, such as divorce or a dependent child ceasing to be a dependent, do not qualify an individual for the premium reduction. Likewise, losing coverage due to the death of an employee or absence from work due to illness or disability does not qualify an individual for the premium reduction.

Although the IRS stated that an involuntary termination does not generally include a reduction in hours, it does consider an employee's voluntary termination in response to a reduction in hours an involuntary termination if the reduction creates a "material negative change" in employment.

Details can be found at the IRS Web site at www.irs.gov/pub/irs-drop/n-09-27.pdf. For information on COBRA compliance, please contact us.

Safe Harbor 401(k)s



Despite the economic downturn, more than 80 percent of small business owners surveyed earlier this year said that having a 401(k) would benefit themselves and their employees. Eighty-six percent said that a 401(k) would allow employees to better manage their retirement plans, while 80 percent said that having a 401(k) they could participate in themselves would give them greater peace of mind.

Although small employers (and their employees) like the idea of a 401(k) plan, many hesitate to implement a plan because nondiscrimination testing creates administrative hassles and can limit what highly compensated employees (HCE) can contribute on their own behalf. A safe harbor 401(k) allows HCEs to maximize their 401(k) contributions while automatically satisfying actual deferral percentage (ADP) and actual contribution percentage (ACP) nondiscrimination testing rules, as long as the plan meets certain requirements.

Like all 401(k)s, a safe harbor 401(k) plan allows eligible employees to contribute a portion of their own salary to a retirement plan. Employers contribute either matching or non-elective amounts to the plan on behalf of eligible employees. Employer contributions are tax-deductible and employee contributions are excluded from income for federal income tax purposes.

Safe harbors help satisfy nondiscrimination rules

To satisfy the ADP and ACP testing requirements, your organization has to: 1) make contributions for your employees and 2) eliminate all vesting requirements placed on those contributions.

The employer contribution requirement provides you with two options. Under the first option, you must make a matching contribution for each non-highly compensated employee (NHCE) who elects to contribute to the plan. The basic matching formula is 100 percent for at least the first three percent of employee compensation and 50 percent on the employee's own contributions above three percent, but

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When tough times force contribution suspensions

In 2007, company contributions to 401(k)s averaged 3.2 percent of payroll. But in November 2008, a survey by Mercer found that 17 percent of companies were considering lowering or eliminating employer contributions. Although lowering contributions or matches can affect morale, sometimes it's necessary. Here are critical points to consider.

1. **Compensation limits.** If you're changing your match or contributions mid-year, the IRS may require the plan to prorate the statutory limit on plan compensation. The compensation limit for 2009 is $245,000. If you suspend matching contributions on July 1, the prorated compensation limit would be half that amount, or $122,500.
2. **Nondiscrimination.** Reducing or suspending employer contributions could make your plan top-heavy; consider its effects on the contributions of non-highly compensated employees versus highly compensated employees.
3. **Safe harbors.** Plans using safe harbor matching contributions can reduce or suspend elective contributions on a prospective basis, as long as the sponsor amends the plan and provides notice of at least 30 days to eligible employees. The notice must inform employees how the amendment will affect employees and how they can change their deferrals. The plan must also give eligible employees a "reasonable opportunity" to change their deferrals before the amendment takes place.

   Before May 18, employers facing financial hardship could not reduce or suspend nonelective contributions to a safe harbor plan — their only alternative was to terminate the plan. To prevent plan cancellations, the IRS published proposed regulations allowing employers incurring "substantial business hardship" to suspend or reduce nonelective contributions to a safe harbor plan. For details, see the IRS publication at www.irs.gov/pub/irs-tege/se0509.pdf.
4. **Auto-enrollments.** If your firm offers auto-enrollment, check your plan documents and revise them accordingly. As with other changes, employees will need adequate notice.
5. **Communications.** Employees are likely to see any suspension or reduction of contributions as a takeaway. When communicating plan changes, do so with sensitivity and make sure employees understand the need for making them. ■

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cent in 1999 to 28 percent in 2008, according to the National Compensation Survey conducted by the U.S. Bureau of Labor Statistics. However, access to wellness programs varies greatly by occupational status. Only 15 percent of part-time workers and 13 percent of service workers had access, while 28 percent of all full-time workers and 43 percent of managerial and professional workers had access. And access is greater among public sector or union employees.

Tips for making your wellness program successful

1. Tailor it to your employees' health needs. Use health insurance claim data and employee health risk assessments to determine which lifestyle-related health conditions cost your company the most. Diabetes? Heart disease? High cholesterol? Then tailor your program to address these needs first.
2. Offer incentives. A survey by Principal Financial Group found that 79 percent of workers will take advantage of educational programs offered by their employer and 77 percent will participate in blood sugar and cholesterol screenings. However, when it comes to changing ingrained behaviors, your employees might need more of a nudge. For example, although two-thirds of American adults are overweight and one-third are obese, fewer than 5 percent of employees with access to weight management programs take advantage of them.

   The 2009 National Business Group on Health annual survey found that financial incentives significantly improve participation in wellness programs. Companies that pay employees between $51 and $100 see increased participation in smoking cessation, weight management programs and biometric screenings. When employers offer incentives of more than $100, participation in health risk appraisals will increase as well. Still, the survey found that participation in disease management programs varies little with incentives.
3. Obey the law. The federal Health Insurance Portability and Accessibility Act (HIPAA) generally prohibits a group health plan from denying benefit eligibility or charging higher premiums based on a health factor. "Health factors" include health status, medical condition (both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability and disability.

   HIPAA does allow plans to provide financial incentives, such as discounts on premiums, for participation in a wellness program. However, the program must meet certain qualifications (see the Department of Labor Web site at www.dol.gov/ebsa/regs/fab2008-2.html for more information), and the incentive or reward cannot exceed 20 percent of the cost of coverage.
4. Avoid discrimination. No federal law prohibits discrimination solely on the basis of weight, although Michigan, the District of Columbia and some cities have such laws. However, because women and certain minorities have a greater tendency to be overweight, you can land in legal hot water if your employment practices have a disparate impact on these classes of employees. And although most Americans agree on the benefits of maintaining a healthy weight, most would find any type of policy that punishes those who are overweight unfair.
5. Be creative. Incentives don't always have to be monetary. Make your wellness programs fun to increase participation. Some companies have had success with weight loss contests based on "The Biggest Loser" TV show. Others organize group walks or runs to build participation and camaraderie.
6. Involve a professional. For more suggestions on tailoring an effective wellness program, please contact us. ■

So what exactly is a "wellness program"? The National Compensation Survey (NCS) defined a wellness program as one that offered employees two or more of the following benefits:

- **Smoking cessation clinics**
- **Exercise/physical fitness programs**
- **Weight control programs**
- **Nutrition education**
- **Hypertension tests**
- **Periodic physical examinations**
- **Stress management courses**
- **Back care courses**

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not to exceed five percent of compensation. Such matching contributions automatically satisfy the ACP test.

Alternatively, you can design an enhanced matching formula as long as the rate is non-increasing and the aggregate amount of the match at least equals the basic matching formula (e.g., 100 percent match on deferrals up to four percent of compensation). If you choose the second option, you must make a flat, non-elective contribution for each NHCE who is eligible to participate in the plan, even if the employee opts not to contribute. The non-elective contribution must equal three percent of the employee's compensation for the year.

In either employer contribution option, you can make similar contributions for highly compensated employees, as long as the match percent for any HCE is no greater than the match percent for any NHCE at the same rate of deferral.

A safe harbor 401(k) plan also requires that any employer contribution, either matching or non-elective, is fully vested to the employee. And therein lies a major drawback of the safe harbor; your plan loses its power as an employee retention incentive.

For more information on implementing or changing a 401(k) plan, please contact us. ■

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Add Value at No Cost with Voluntary Benefits

In 2008, 55 percent of all employers offered voluntary benefits, according to the MetLife "Study of Employee Benefits Trends." Among professional services firms, nearly two-thirds of employers offered at least one kind of voluntary benefit, found the International Foundation of Employee Benefit Plans. Of all voluntary benefits, life insurance is the most popular, with 46.8 percent of employers offering it.

As employers seek to cut costs, the number offering voluntary benefits is likely to increase. Voluntary benefits allow employers to maintain a benefit program even if the economy forces them to trim benefit costs.

Under a voluntary benefits program, the employer offers employees a menu of benefits; employees select only those they want. Unlike traditional group benefits, voluntary programs require no employer contributions. Employees pay all of the premiums, sometimes on a pre-tax basis (for qualified benefit plans only), through payroll deduction. While traditional group benefits demand high levels of participation, typically 75 percent, voluntary programs require only 20 percent participation (for most health plans); other voluntary benefits may have no participation requirements.

Voluntary benefits include:

- Dental insurance.
- Vision insurance.
- Long-term care insurance.
- Short-term disability insurance.
- Long-term disability insurance.
- Accidental death and dismemberment insurance.
- Life insurance. Options include term life insurance, variable life and dependent life coverages.
- Supplemental health coverages, including cancer/specified disease insurance, critical care insurance and hospital indemnity plans.
- Group auto and homeowners insurance.
- Nontraditional benefits, such as prepaid legal services, pet insurance, payroll deduction purchasing of computers and appliances, and more.

Some voluntary benefits, such as most health coverages, dental insurance, vision insurance and group term life, qualify for tax-preferred treatment. Employees can use pretax dollars to pay for them and receive benefits tax-free. The IRS considers other benefits "nonqualified," so employees must pay for them with after-tax dollars.

For employees, voluntary benefits can offer cost savings through group buying, convenient payroll deduction and portability. For employers, they offer the following advantages: no cost, no administrative burdens and more attractive benefit programs.

For more information on voluntary benefits, please call us.

While voluntary benefits have advantages, they can pose some challenges for employers. Here are some things to consider:

A Does the voluntary benefit provide real value? Employees often view a voluntary program as employer-sanctioned. If it provides little real value, it could create a negative impression of the rest of your benefits program.

B Does the voluntary program enhance existing offerings? If you provide group life to employees that pays one or two times salary, voluntary life insurance with a higher benefit could provide real value to employees who need a higher benefit but who might not qualify for individual coverage.

C Are you offering too many choices? Too many choices can confuse employees and depress participation rates, which increases per-unit costs.

D Will the plan create any fiduciary responsibilities under ERISA? ERISA, the federal law governing employee benefits, applies to most group life and health programs unless they meet certain conditions. To avoid ERISA liability, follow all of these guidelines:

1 Make no contributions. The program should be completely employee-paid.

2 Keep the program completely voluntary, and communicate this fact to employees.

3 Do not endorse the program. This includes using company logos on informational material, encouraging employees to sign up or even negotiating with the insurer for better terms for your employees. You can, however, permit the insurer to publicize the program to your employees, collect premiums through payroll deduction and remit them to the insurer.

4 Accept no payment in connection with the program, other than reasonable compensation for administrative services in connection with payroll deductions.

Although the responsibilities imposed by ERISA are not onerous, the failure of your insurer or administrator to file required forms could expose your firm to fiduciary liability. Before offering voluntary benefits, we recommend talking with an experienced benefit consultant to see how they fit into the rest of your benefit program.