Employee Benefits & Workers' Comp News

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Anti-discrimination Laws and The Effect on Employee Benefit Packages

A balanced benefits package can attract and keep valued employees, but the cost of offering benefits can skyrocket if not monitored.

In 2017, the Bureau of Labor estimated that the average cost of providing benefits for each employee is $11.38 per hour. However, costs for these packages ultimately depend on factors such as geography, industry, workforce size, health plans offered, and the overall health of the workforce.

Employers looking for savings might wonder whether they can save money by providing certain benefits only to certain employees. And, while there are situations when employers are able to offer specified benefits to certain employees, employers should have a good understanding of federal and state anti-discrim-

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This Just In…

National Council on Compensation Insurance (NCCI) released its briefing for the second quarter of 2019. The report examines work arrangements that go beyond traditional wage and salary employment, paying particular attention to the kind of short-term work arrangements that comprise the so-called "gig economy."

"This quarter, we looked at the trends in nontraditional jobs and how they are changing the landscape of employment," said Bill Donnell, president and CEO of NCCI.

"We found the numbers of those engaging in these nontraditional jobs as their primary job is not increasing, but many people do nontraditional work as

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ination laws or seek professional guidance. It is illegal for employers to discriminate against employees on the basis of race, color, religion, sex (including gender identity, sexual orientation and pregnancy), national origin, age (40 or older), disability or genetic information.

What's Legal

There are no federal laws requiring that plans provide the same benefit coverage to all employees as long as benefit eligibility is based on tenure, work location, full- or part-time status, exempt/nonexempt status, job group or department.

Here are a few exceptions:

Health Plans

- In certain welfare plans, including self-insured medical and group term life insurance plans, taxable income is created for employees if they receive a disproportionate amount of tax-advantaged benefits. These situations could cause a company plan to fail the nondiscrimination test.
- The Patient Protection and Affordable Care Act (PPACA) requires employers with 50 or more employees to either offer employees health care coverage or pay a fee. The law does not apply to part-time workers, except in determining if the employer has 50 or more "full-time equivalent" employees.
- A plan also may be able to offer different benefits to employees, their spouses and their dependents. A plan also can make distinctions between the beneficiaries themselves if the distinction is not based on a health factor. However, under the PPACA, adult dependents must be covered to age 26. To avoid fees, employers must offer adult dependents the same level of coverage at the same price as currently offered to other similarly situated dependents.

Vacations

- It is legal to offer three weeks of vacation to exempt employees and only two weeks to nonexempt employees because the benefit is offered based on Fair Labor Standards Act (FLSA) categories and is not based on any protected category or other applicable law.

Paid Sick Leave

- While federal laws might not require all coverage to be the same, some states have laws covering certain benefits, including paid sick leave, that apply to all of an employer's employees.

It's the Law

There are a variety of federal and state laws that govern the establishment and operation of employee benefits. Consult with your broker for each of your plans or with an attorney if you have questions as to whether you are administering benefits fairly under state and federal laws.

The Employee Retirement Income Security Act (ERISA) was passed in 1974 to protect employees whose employers offer retirement and health plans. ERISA requires plan sponsors to provide detailed benefit information to covered employees and beneficiaries; follow a strict fiduciary code of conduct; and provide detailed reporting through Form 5500, if required.

ERISA ensures that employers cannot:

- Deny an employee benefits because they are about to incur significant medical expenses.
- Offer different coverage benefits for pregnancy.
- Improperly manage investment accounts.

a secondary source of income," said Patrick Coate, co-author of the paper and an NCCI economist. "We also took a special look at electronically mediated work, which is small but growing, and receiving a lot of legislative and regulatory attention."

Here are some key takeaways:

- **The proportion of self-employment and nontraditional work arrangements have not increased in the last 15 years with respect to primary employment**
- **There are about 15 million people in the United States in alternative work arrangements as their primary job, but as many as 30 percent of US adults do some informal work**
- **The number of Americans doing electronically mediated work has tripled in the past five years, but income from this work still accounts for less than 1 percent of total income**

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- Fail to provide notice of employees' rights by not providing them with plan documents.
- Retaliate against an employee for raising issues about their benefits.

A law governing health care benefits, the Consolidated Omnibus Budget Reconciliation Act (COBRA), requires that employers with 20 or more employees offer employees who lose their jobs the option of continuing to have group health care plan coverage for a certain time period.

Title VII of the Civil Rights Act of 1964, also known as Equal Employment Opportunity (EEO) mandates, prohibits employers with 15 or more employees from discriminating against applicants and employees in all aspects of employment — including recruiting, hiring, pay, promotion, training and termination — on the basis of race, color, national origin, religion or gender. Parental leave benefits that do not relate to a pregnancy-related disability must be applied equally to men and women under Title VII and the FMLA. If an employer does not limit the availability of maternity leave to the period of disability, male employees must be granted paternity leave under the same terms and conditions as females.

The Health Insurance Portability and Accountability Act (HIPAA) makes it illegal to charge some employees more than other employees based on their medical conditions, claims experience, health services received, genetic information or disability.

All states have enacted at least one law pertaining to employment discrimination, but the law may only apply to companies of certain size. In addition, state laws may be broader in scope than the federal laws, with the result that protection is provided to groups in addition to individuals with a particular sexual orientation.

Please contact us if you have questions about how anti-discrimination laws might affect your health plan administration.

Five Exceptions to The Going and Coming Rule

It's not always easy to determine whether workers' compensation rules apply to job related travel and the rules vary from state to state.

The "going and coming" rule is not found in any Labor code. It is a case law rule that has developed over the years that says that workers' compensation benefits do not apply to injuries sustained while commuting to or from work.

But isn't driving to work coming and going? While you might think you could argue that commuting to work is job-related, the going and coming rule has traditionally ruled against that interpretation

However, there are a few exceptions to the going and coming rule:

Commuting in a Company Car

Of course, someone driving their own car is exempt by the going and coming rule. But what if it's a company car? In most states, this is covered as workers compensation.

Driving a personal car to work is exempted by the going and coming rule. But commuting in a company-owned vehicle is often covered (in most states). In some states, the worker needs to be commuting to and from a fixed location. But other states define this more broadly. For example, if the car has a company logo on it, it might be argued that it is always being used

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for work-related activity, since it's essentially a moving advertisement.

Traveling as Significant Part of the Job

If travel is just part of the normal job duties, then that person is basically always at the work site and in fact, they travel in and with it. This description fits pilots, truck drivers, bus drivers, state troopers, etc. As long as the injury occurred in the course of major job duties, as opposed to driving a personal car to the station for the worker's shift as a bus driver, it would be covered.

Traveling Between Multiple Job Sites

Using a personal vehicle to go to different job sites within one shift is considered job-related usage under most state workers' comp laws. For example, consider a computer technician driving from one office building to another or the employee of a landscaping company driving to different job sites.

Commercial Traveler

According to most laws, all of the time spent away on a business trip is considered to be within the scope of employment. So even though the traveling employee attends a conference for only eight hours each day, the entire time spent traveling is considered work-related.

Special Mission

This fits those situations where a manager asks an employee to do something on their behalf. For example, if a manager gives an employee money to stop somewhere and buy coffee and donuts for the staff before work tomorrow, the employee has been asked to perform a "special mission." Even if it's completely unrelated to work, such as walking the boss's dog, employers generally are liable for injuries related to these extra tasks.

529 Savings Plans: An Easy Way to Help Bring College Within Reach

Many parents start saving for college as soon as their children are born. It's little wonder. Tuition plus room and board costs put college out of reach for many high school graduates.

The College Board's Trends in College Pricing survey reports that 2018-2019 tuition fees and room and board for a four-year public college are $90,000. Costs for private non-profit colleges are about $200,000. Add in some of the costs NerdWallet says many students forget — like paying for laptops, social activities, study abroad, transportation and extra classes and the importance of starting to save early becomes more imperative. Unfortunately, according to Sallie Mae's study How America Saves for College, most parents only saved an average of $18,135.

As an employer, you can make your employees' saving efforts for their children's educational futures more successful by providing easy access to 529 college savings plans with payroll deduction and matching contributions.

A 529 plan is a tax-advantaged savings plan sponsored by states, state agencies or education and authorized by Section 529 of the Internal Revenue Code. Funds invested in the account grow on a tax-deferred basis and distributions are tax-free when used to pay for qualified expenses at any eligible public, private, two- or four-year college.

There are two types of 529 plans: prepaid tuition plans and education savings plans — although some states only offer one of them.

With a prepaid tuition plan, the account holder purchases units or credits at a participating public/in-state college or university to put toward future tuition and fees.

Prepaid plans are not guaranteed by the federal government, although some state governments guarantee the money paid into the prepaid tuition plans.

An education savings plan is an investment account that can be used to pay for future qualified higher education expenses, such as tuition, mandatory fees and room and board. The funds generally can be used at any U.S. college or university — and some non-

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U.S. college and universities also qualify. Education savings plans also can be used to pay tuition costs up to $10,000 each year at any public, private or religious elementary or secondary school.

A 529 Plan as an Employee Benefit

An employer-sponsored 529 plan is funded with after-tax money. When choosing a plan, it's important to review the fees and investment options offered by the employer-sponsored 529 plan before enrolling.

Remember, a 529 account is not just for parents whose children might go to college. Grandparents, aunts and uncles or anyone who wants to help a family save for an education can set up and contribute to a fund. An employee also can set up a personal 529 so they can return to school. Another perk is your employees will have access to their plans even if they leave their job.

Employees should know that if they receive matching contributions to their 529 plan, they will owe federal and state income taxes on the amount contributed. However, there is federal legislation pending that would allow employer 529 plan contributions to be excluded from the employee's gross income.

Tax Breaks for Matching Contributions

You can offer to tie payroll deductions to an employee-sponsored 529 plan and choose to match a portion of what your employees put into the account to help them reach their goal more quickly.

A new bill introduced in Congress, the 529 Expansion and Modernization Act of 2019 [S. 220], would allow an exclusion from income on federal income tax returns for employer contributions to 529 plans.

Six states already allow companies to earn a state income tax credit or deduction if they offer 529 plans and matching employee plan contributions. These states include Arkansas, Colorado, Illinois, Nevada, Utah and Wisconsin. Nevada, for example, offers companies a 25 percent tax credit for 529 plan contributions with an $800-per-employee tax credit per year.

For help setting up an employer-sponsored 529 plan, please contact us.

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Choosing a Vision Insurance Plan Your Employees Will Value

A good, quality vision plan is a valuable asset for your employees.

The National Eye Institute reports that 66 percent of adults need vision correction. Health care providers say that routine eye exams are essential for preserving vision and safeguarding eye health. Vision insurance and vision benefits plans can make routine eye care more affordable.

Vision insurance differs from health care coverage because it does not fall under Affordable Care Act rules and regulations. That gives you more leeway when choosing a plan that best fits your employees' needs and budgets. Group health plans, however, must include a provision for pediatric vision services. Insurance premiums usually are deducted directly from employees' paychecks.

The cost of vision insurance for your company will depend on plan design, the state where your business is located, and your company's size. Anthem data from 2018 pegs the cost of most vision plans – including eye exam and eyeglasses or contact lens coverage – at $10 or less per individual per month.

When you purchase vision insurance, you are purchasing two products:

- Access to a network of eye care providers, including optometrists or general ophthalmologists, who have agreed to provide services and/or products at reduced cost. According to a consumer study commissioned by EyeMed, employees are most interested in seeing the doctors they want and shopping where they want for frames.
- Basic eye care services and products, such as annual eye exams, eyeglasses frames and lenses and contact lenses.

Many group vision plans have a monetary cap on more expensive services such as eye surgery and advanced procedures, or provide a discount or don't cover them at all. Insurance providers usually pay up to a certain amount, and the patient pays the rest of the bill.

For more information on what type of vision benefit plan would be best for your employees, talk to your broker, benefits consultant or insurance plan carrier. ■

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