

# Employee Benefits & Workers' Comp News



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HSA's

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## Health Savings Accounts – One Key to a More Comfortable Retirement

Here's what your employees need to know about health savings accounts

**M**ost people know that a 401(k) plan is a valuable retirement tool. It's less well-known that a health savings account (HSA) also is a valuable retirement tool. Not only is an HSA a great way to save for medical expenses while employed, but the same savings account also can be used during retirement.

An HSA is a tax-advantaged savings account that employees can use to pay for out-of-pocket medical expenses. HSAs always are paired with qualified high-



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## Eye Strain on the Rise

**E**ye strain. Dry eyes. Headaches. Blurred vision. Twitching or red eyes. It all adds up to Computer Vision Syndrome (CVS). According to the Vision Council, 59 percent of people who routinely use computers and digital devices for two or more hours daily experience CVS.

Research by the University of Alabama Birmingham School of Optometry shows that vision problems can affect productivity and reduce job performance by 20 percent. If your office depends on daily computer use, here are things to do.

Group vision insurance makes

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deductible health plans (HDHPs). Qualified HDHPs have low premiums but high deductibles and when HSAs are used for qualified medical expenses, HSAs have a triple tax free benefit: pre-tax contributions; tax-free growth; and tax-free withdrawals for qualified medical expenses.

If you offer an HDHP at your company, make sure your employees understand that HSAs also have some great retirement benefits. According to Fidelity Investments' Retirement Health Care Cost survey, the cost of health care for the average couple throughout retirement is \$280,000. Even with Medicare coverage, retirees should expect to pay for premiums, co-pays, some drugs and other expenses not covered by insurance. Money deposited in an HSA and saved for retirement can help cover these costs.

Here's what your employees need to know:

**Who Can Open an HSA?** Any employee may open an HSA if they participate in a company HDHP and have no other health insurance; are not enrolled in Medicare; and cannot be claimed as a dependent on someone else's tax return.

**Benefits of an HSA.** An employee's account balance grows tax-free and any interest, dividends or capital gains earned are non-taxable, unless withdrawn for non-medical expenses. Also, any contributions you make to an employee's account are not counted as part of their taxable income.

Unlike a flexible spending account (FSA), the balance can be carried over from year

to year. Employees also take their HSA with them if they accept a position with another company or when they retire.

**How HDHPs Work.** In 2019, a qualified HDHP must have a deductible of at least \$1,350 for self-only coverage and \$2,700 for family coverage. Depending on the type of coverage offered, an employee's annual out-of-pocket expenses in 2019 could run as high as \$6,750 for individual coverage — or \$13,500 for family coverage.

High health care expenses are one reason HSA plans are most popular with healthy individuals who can afford the risk and would receive benefits from the tax breaks. However, a low-deductible plan such as a PPO could cost individuals more than \$2,000 annually in higher premiums regardless of whether they need medical attention. With an HDHP, spending more closely matches actual health care needs. In addition, HDHPs usually cover some preventive care services.

**HSA Contributions.** There are limits to how much individuals can contribute. For self coverage, the 2019 limit is \$3,500 annually while the family coverage limit is \$7,000. Account holders who are 55 or older at the end of the current tax year can contribute an additional \$1,000 annually as a "catch-up contribution". If you are married and both you and your spouse have separate HSA accounts, each of you are eligible for the \$1,000 catch-up contribution. Contribution limits are adjusted annually for inflation.

**Investing is Easy.** Employees can contribute up to the maximum regardless of their

it easier for employees to get comprehensive annual eye exams, which can detect serious eye and health conditions such as diabetes, high blood pressure, high cholesterol, glaucoma and cataracts. Your broker can help find a plan that's right for your employees.

Fluorescent or LED light bulbs can cause visual fatigue, so position workspaces so they're not in front of or behind a window, but at a 90-degree angle to reduce glare.

Encourage employees to follow the 20/20/20 rule and take a vision break every 20 minutes by looking at an object at least 20 feet away for at least 20 seconds.

Invest in LCD monitors and screen protectors to reduce glare.

income through payroll deduction or from their own funds until they reach age 65, even when they're self employed or not working.

While the employer chooses the administrator, the decision of where to put the money is the employee's. Encourage your employees to shop around for high-quality, low-cost investment options. Some providers only offer low interest-bearing investments, such as money market funds, that generally are very safe: while some HSAs offer multiple mutual funds that may provide higher expected returns over time but are more risky. In addition, some HSAs require a minimum contribution before investing the contributions into mutual funds within the HSA.

Here's an example of how saving money in an HSA and getting a good rate of return can pay off. If a 21-year-old makes the maximum allowable contribution every year to a self-only plan until age 65 and they earn an average annual return of eight percent on a plan with no fees, they will have \$1.2 million by the time they retire. For those who start saving later in life, a 40-year-old who saves \$100 per month and earns an average annual return of three percent could have as much as \$45,000 by retirement.

**Qualified Expenses.** Employees can take distributions from their HSAs before or during retirement. After retirement, HSA withdrawals get taxed in a way similar to Traditional IRA withdrawals, if retirees take distributions for non-medical expenses, but income tax-free if for medical expenses before retirement. If they take distributions on qualified medical expenses, the proceeds are not taxable. If they spend the money on anything else before they turn 65, they will pay a 20 percent penalty and also will pay income tax.

Qualified payments for which tax-free HSA withdrawals can be made include:

- ✱ Doctor office-visit co-payments
- ✱ Health insurance deductibles
- ✱ Dental expenses
- ✱ Vision care (eye exams and eyeglasses)
- ✱ Prescription drugs and insulin
- ✱ Medicare premiums
- ✱ A portion of the premiums for a tax-qualified long-term care insurance policy
- ✱ Hearing aids
- ✱ Hospital and physical therapy bills
- ✱ Wheelchairs and walkers
- ✱ X-rays

When an employee retires, they also can use their HSA funds to pay for expenses that will help with their long-term needs, such as in-home nursing care, retirement community fees, long-term care services and nursing home fees. Withdrawals also can be taken for the cost of meals and lodging when seeking medical care away from home and modifications to a home, such as ramps, grab bars and handrails.

For more information about HSAs, please contact us. ■

## Genetic Testing Protections and Limitations

When the federal government passed the Genetic Information Nondiscrimination Act (GINA) in 2008, the law provided a starting point and baseline to prevent insurance carriers from using genetic testing information to determine rates.



**T**oday, as genetic testing kits have become even more popular, experts are uncertain how these changes could affect the law.

Health providers often order genetic testing when they need certain information to reach a diagnosis. The patient goes to a lab where the technicians take a DNA sample. With direct-to-

consumer genetic tests, individuals purchase a test online or in a store and send the company a DNA sample. They receive their results directly from a secure website or in a written report. Individuals order these tests for a variety of reasons, ranging from making predictions about health to discovering a person's ancestry.

The question many people have is whether insurance carriers can use the information from the tests to set rates or deny coverage.

There are two parts to GINA. Title I makes it illegal for health insurers to use the results of any genetic test when making decisions about an individual's eligibility for health insurance, coverage terms or how much they'll pay in premiums. Title II makes it illegal for employers to use a person's genetic information when making decisions about hiring, promotion and other terms of employment.

GINA does not apply when an employer has fewer than 15 employees, and it does not cover people in the U.S. military or those receiving health benefits through the Veterans Health Administration or Indian Health Service. GINA also does not protect against genetic discrimination in life, disability or long-term care insurance. These insurance carriers can legally request medical information, including the results of any genetic testing, when making decisions about coverage and rates. The law is unclear whether genetic information, including the results of direct-to-consumer genetic testing, will become a standard part of the risk assessment process when making coverage decisions.

Another situation where GINA does not apply is when someone develops symptoms of a disease or is diagnosed

with a medical condition that results in a doctor ordering genetic tests. However, the Affordable Care Act (ACA) prohibits health insurers from denying coverage or charging higher rates because of a pre-existing condition. Short-term plans and self-funded plans are allowed to underwrite policies, meaning that the health insurance carriers can conduct research and assess the degree of risk before deciding to offer coverage.

### The Future of Genetic Testing Privacy

When GINA was passed, genetic testing was just beginning to gain popularity. Regulating the use of genetics by health insurance carriers seemed like a good start. Now consumer advocates would like to see its protections expanded to cover discrimination in life, disability, and long-term care insurance.

Many states already have enacted genetic non-discrimination laws. These laws vary widely in their approach, application and level of protection. For instance, California passed CalGINA in 2011 which expanded protections to employees of smaller employers and added housing and education protections.

The primary purpose of many of these laws is to ensure that the public feels comfortable in participating in genetic testing and can benefit from medical breakthroughs without losing their right to privacy ■

## Marijuana, Workers' Compensation and the Workplace

How does the use of marijuana affect workers' compensation benefits?



There are several workers' compensation issues related to marijuana:

- ✦ Does workers' compensation cover a workplace accident in which the injured employee tests positive for marijuana?
- ✦ Can workers' compensation reimburse injured workers for medical marijuana?
- ✦ Can workers use marijuana in the workplace if prescribed?

To answer the first question, let's first consider some facts about marijuana

### Measuring THC Impairment

Marijuana contains appreciable amounts of delta-9-tetrahydrocannabinol (THC), a psychoactive cannabinoid — it's the active chemical that induces a high in a user. The plant also contains several other, non-psychoactive cannabinoids such as "cannabidiol" (CBD).

A key issue that arises during discussions about marijuana and employment is “THC persistence.” Unlike alcohol, THC levels in a user’s body may not be an accurate indication of impairment.

Compared with marijuana, determining alcohol intoxication is relatively straightforward. The human body processes alcohol at a rate that allows blood alcohol concentration (BAC) to closely correlate with intoxication, making it an effective and accurate benchmark for measuring impairment.

The human body processes THC differently than alcohol. As the American Automobile Association (AAA) noted in a major 2016 study, THC can remain in a user’s blood or urine for weeks after someone has consumed marijuana, depending on various factors. It is not currently possible to accurately determine when a user consumed marijuana based on the THC levels in their body.

Furthermore, the length and intensity of intoxication depends not only on the strength of the marijuana product, but also on how the drug is consumed. Inhaling marijuana typically causes onset of intoxication within five minutes, with symptoms of intoxication lasting a couple of hours. On the other hand, ingesting marijuana (e.g. “special brownies”) can delay onset of intoxication between one to four hours, and intoxication can last much longer than that.

These and other reasons led the AAA to conclude that “simply detecting any THC does not therefore indicate impairment.”

A U.S. National Highway Traffic Safety Administration (NHTSA) report came to similar

conclusions, noting that most studies have found that levels of THC do not closely correlate to the degree of impairment — and that often peak impairment occurs when THC levels have already begun to decline.

The THC persistence feature of marijuana consumption has implications for employment issues and workers compensation, particularly if drug testing within the scope of employment fails to determine employee impairment.

THC persistence complicates this question, and state courts have differed on this issue, depending on the individual details of each case. For example, in 2015 the Ohio 5th District Court of Appeals found that an injured worker was eligible for workers’ compensation benefits despite failing a drug test after the accident. The court ruled, in part, that the worker was eligible unless his marijuana use was the proximate cause of injury.

**The second question:** Does workers’ compensation cover medical marijuana expenses incurred by an injured employee?

States differ on this question. Some say that medical marijuana reimbursement is permitted (for example: Connecticut, Iowa, Maine, Massachusetts, New Jersey); some say it is prohibited (for example: California and New Hampshire); and some are silent on the matter. Courts have also come to different conclusions — some have found that workers’ compensation can reimburse medical marijuana expenses, others that it can’t. For specific state information, see the American Bar Association document cited below.

## Medical Marijuana and the Workplace

When marijuana was illegal under both state and federal law, employers would typically prohibit employees or employment candidates from using marijuana off-duty as a condition of employment.

But as states have begun to permit medical marijuana, things have gotten a bit hazier.

No state requires accommodating on-duty marijuana use. As with recreational marijuana, no state that permits medical marijuana requires employers to accommodate on-duty marijuana use, possession, or impairment. States will often explicitly state that medical marijuana laws do not affect an employer’s drug-free workplace policy.

Some states have explicit protections for medical marijuana users for off-duty use. Regarding off-duty medical marijuana use, some states affirmatively protect a patient from an adverse employment action due to their off-duty use of marijuana. Usually the only exception to this is if the employer would lose federal benefits for permitting off-duty marijuana use.

But most states do not — and the courts have gotten involved. Most states with medical marijuana programs do not explicitly protect medical marijuana users from adverse employment actions. As such, courts have typically held that if a state does not explicitly protect medical marijuana use, then there is no protection from adverse employment action. This may change in the future. ■

*(Sources: Insurance Information Institute, Inc. and [https://www.americanbar.org/content/dam/aba/events/labor-law/2017/03/work/papers/up\\_in\\_smoke.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/events/labor-law/2017/03/work/papers/up_in_smoke.authcheckdam.pdf))*

# 5 Reasons You Need Employers Liability Coverage

There are types of injuries that may not be covered by workers' comp

In addition to including owners and officers as insureds under your policy, another important type of workers' compensation coverage that you may tend to overlook is Employers Liability. Employers Liability protects a business if it's sued for damages that fall outside of workers' comp coverage.

Here are five instances where this coverage can be valuable to have:

- 1 **Wrongful death:** The family of a deceased worker may file a common-law claim seeking damages in addition to the death benefit paid by workers' comp.
- 2 **Consequential bodily injury:** A family member may file a lawsuit for his or her own injury (for instance, a heart attack) that was caused by learning about or dealing with the injured employee.
- 3 **Loss of consortium:** The spouse of an injured worker may sue for loss of consortium, which means the spouse has lost the services — such as sexual relations or the ability to do household chores — of his or her spouse. Damages can be awarded even if the spouse is receiving disability payments.
- 4 **Third-party liability:** If an employee is injured while using equipment that malfunctioned, he or she may sue the manufacturer of the equipment for negligence. The manufacturer may in turn sue



the employee's company to recover damages. Depending on the specifics of the claim, either the employers' liability or a general liability policy can provide coverage.

- 5 **Employees excluded from workers' comp:** In some states, seasonal and temporary workers can be excluded from workers' comp. In other states some small employers do not have to buy comp. In those situations, an employers' liability policy can provide protection from employee lawsuits for bodily injury and illness. ■

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