

NIXON

BENEFITS

Industry Notes, June 2013

■ **IRS Proposed Regulations Provide Additional Guidance For Compliance With the PPACA Employer Shared Responsibility Rules**

- The proposed regulations clarify that the offer of insurance must include dependent children under age 26. Coverage is not required to include spouses.
- Affordability is determined with respect to the employee's cost for **self-only** coverage under the lowest cost option providing minimum value.
- Employers may rely on the proposed regulations pending issuance of final regulations or other guidance and will be provided sufficient time to comply with any future guidance that is more restrictive.

Drinker Biddle Health Care Reform Update 4/2013

- The Equal Employment Opportunity Commission (EEOC)...settled its first lawsuit alleging violations of the Genetic Information Nondiscrimination Act (GINA). Under GINA, it is illegal for employers with 15+ employees to discriminate against employees or applicants on the basis of genetic information. Specifically, GINA makes it unlawful for employers to inquire about (1) an individual's genetic tests; (2) the genetic tests of an individual's family members; and (3) the manifestation of a disease or disorder in the family members of such an individual. The law allows for some exceptions, including ...where the employer offers health or genetic services as part of a wellness program, so long as no individually identifiable information is provided directly to the employer.

Patterson Belknap Webb & Tyler LLP May 2013

- Beginning October 1, 2013, employers subject to FLSA (at least one employee and \$500,000 in annual business) must notify their employees of the existence of the Exchange (now called Marketplace) under health reform. Notices must include:
 - The existence of the Marketplace, the services it offers, and how employees can contact it;
 - If the plan fails to provide "minimum value" the employee may be eligible for a premium tax credit through the exchange.
 - If the employee obtains coverage through the exchange, the employee will lose the employer's contribution.

More information and model notices can be found at <http://www.dol.gov/ebsa/newsroom/tr13-02.html>

Health Affairs Blog 5/9/2013

- More doctors are prescribing the Diabetes Prevention Program, a 12 week regimen, to ward off Type 2 diabetes. The regimen "may soon become the blockbuster prescription medicine you've never heard of... It is poised to become the envy of pharmaceutical companies. The Diabetes Prevention Program is not rocket science. In 12 weekly sessions, a coach teaches subjects at high risk of developing diabetes to: set goals for losing 5% - 7% of their body weight, limit the fat and calories they consume, track their food intake, get at least 150 minutes of exercise each week, and devise strategies to avoid gaining back lost pounds. In trials, subjects who attended the tightly scripted sessions and followed the regimen were far more likely than those who were on their own to reach their weight-loss goals in three months — and to keep that weight off for more than a year. By doing so, they drove down their risk of developing Type 2 diabetes by 58%."

Los Angeles Times 1/9/2013

- On June 26, 2013, the United States Supreme Court issued a decision in *United States v. Windsor* relating to same-sex marriage. The case relies on the old-sounding philosophy of states' rights to support a modern concept. Persons in same-sex marriages will now be governed by the same federal rules that apply to heterosexual marriages. The federal Defense of Marriage Act (DOMA), which only recognized heterosexual marriages for federal benefits and entitlements, is now determined to be unconstitutional. In addition to joint income tax rates and lower estate taxes, health insurance and flex plans can be available on a tax-free basis to same-sex

spouses, not just those who meet the special tests for Section 105(b) dependent status. Same-sex spouses will be entitled to ERISA retirement plan rights that were previously required only for heterosexual spouses.

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The Windsor decision does not proclaim same-sex marriage to be the “law of the land.” The Court simply held that it is not the business of federal government to define marriage. If a marriage is legal under local law, federal law should recognize it without discrimination.

Guidance from federal agencies can be expected in the near future.

Davis Malm & D’Agostine PC June 28, 2013

- The Summary of Benefits and Coverage (SBC) employer’s must provide to employees will change slightly for plan years beginning on or after 1/1/2014. New SBCs must state whether the plan or coverage provides Minimum Essential Coverage (final definition still pending) and whether the plan or coverage meets the Minimum Value (MV) requirements. MV requirement: the plan’s share of the total allowed costs of benefits provided is not less than 60 percent of such costs.

DOL.gov ACA FAQs Part XIV

- For all the discussion about the ROI of wellness programs, there’s no debate that a healthier workforce is more productive and less costly than a less-healthy one. Many factors may hinder employers’ efforts to nudge workers toward healthy behaviors, one being that **workers seem to be delusional about how healthy they are**, new research suggests.

Among 2,800 employees at a wide range of companies with more than 1,000 workers, 87% said their health was at least good. **Only 23% said they were overweight or obese. Yet almost three times that many (66%) reported height and weight suggesting a body mass index (BMI) that would classify them as overweight or obese** according to standard definitions.

That means more than half (53%) of those who reported being in good health actually had a higher BMI than is thought to be consistent with good health.

CFO.com January 2013