



HR and Benefits Update

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Rethinking Your Organization's Employee Communications Strategy

Most benefits and HR professionals would agree that there are many obstacles for an organization to overcome to remain competitive in today's marketplace. These obstacles include attracting and retaining key employee talent, improving the rank and file's understanding and appreciation of company-sponsored benefits, and aligning the rank and file's performance with company initiatives. Several recent studies have shown that an effective employee communications strategy can have positive quantitative (e.g., return on investment) and qualitative (e.g., employee perception and word-of-mouth) effects on achieving employers' initiatives.

In recent years, a paradigm shift has taken place with respect to the philosophy behind an organization's employee communications strategy. Under the old paradigm, employers took a more passive approach by simply providing their employees with information on a range of topics, from benefits programs to compensation programs, via various mediums. The old paradigm of employee communications did not have substantive measures or criteria that linked information or communications with company initiatives. Instead, employers simply believed that providing their employees with information would yield desired outcomes, such as increased engagement and/or lower attrition rates.

The new paradigm of employee communications has shifted away from information and toward results. Employee communications programs are now designed to modify and link employee behavior to company initiatives. An example of the new paradigm of employee communications is an employer implementing a health and wellness initiative (including tools and resources) to share the costs for its benefits package with its employees.

Personalized communications offer employers a means to provide targeted communications to their employees. Some examples of personalized communications include:

- Financial and retirement planning services specific to an employee's life stage (e.g., pre-retirement vs. new workforce entrant)
- Total compensation statements that graphically summarize the total value of a benefits package specific to each employee
- Assistance and wellness resources that provide information and services geared to an employee's needs

The notion of personalization also fits very nicely with the paradigm shift from providing information to results. For example, successful organizations consistently incorporate specific performance measures into their compensation and rewards strategies at all levels. Therefore, providing each employee with guidance on how they can positively impact their compensation package relative to an organization's initiatives creates a "win-win" strategy for employees and employers alike. Employees win by being rewarded for those initiatives that most affect the organization at all levels. Employers win with better financial results and engaged employees.

Organizations looking to foster higher retention rates, attract new talent and increase employee engagement need to have an effective communications strategy in place that targets each employee. Several studies have demonstrated that organizations with effective communications strategies, especially ones that link company initiatives with employee behavior, yield positive outcomes. Lee Iacocca, the former CEO of Chrysler Corporation, was once quoted as saying, "You can have brilliant ideas, but if you can't get them across, your ideas won't get you anywhere."

What Is the Real Purpose of a 401(k)?

Most plan sponsors, as well as participants, think of 401(k) plans as tax-advantaged savings vehicles. Lately, however, we are hearing more talk about the concept of "retirement income" with regard to 401(k) plans. Retirement planning tools are starting to emphasize income replacement and not just account balances.

A recent bulletin from Reish & Reicher titled "401(k) Account Balances as Monthly Retirement Income" addressed this fundamental shift in the purpose of a 401(k) plan. While historically participant statements have been the resource to show an account balance, statements in the future may be expanded to show what level of monthly retirement income their balance could potentially purchase. At the end of their careers, participants need a "paycheck" to pay their monthly expenses, which may include rent, mortgage, automobile, utilities, food, clothing, etc. Their 401(k) disbursements must adequately satisfy those expenses for the remainder of the participant's life.

As future retirees, we ask a lot of our 401(k) plans. A typical participant will plan to retire at about age 65. This means that the accumulation phase of the 401(k) should have taken place over about 40 years, from age 25 to 65. But remember that during the distribution phase, a married participant would likely have at least one spouse who will live to age 95 — which means that 40 years' worth of contributions, plus earnings, needs to provide income for perhaps 30 years or longer.

In our conversations with participants, we find that few of them have considered much beyond what their balance is today. They often don't see the plan as a savings vehicle to provide income or, more importantly, that they may outlive what it can realistically provide. Sustainable withdrawal programs are typically in the 4–5 percent range, although market conditions and investments can affect that as well. Thus for every \$100,000 that participants may have accumulated in their accounts, the amount of income may only be about \$4,000 to \$5,000 per year, or about \$333 to \$417 per month. Understanding what his or her true retirement income will be may lead to increased contributions (including catch-up), a change in the retirement/withdrawal date or even the taking of a part-time job.

The Department of Labor and the Department of the Treasury are requesting more information on the topic of retirement income. The method of reporting this information within a participant statement, if required, may be complex due to the types of assumptions that will need to be made. However, as your plan consultant and partner, we will be with you every step of the way to keep you up to date as the issue develops. As always, contact us for more information.

GINA and PPACA

Signed into law last year by President Obama, the Patient Protection and Affordable Care Act (PPACA) – also called the Affordable Care Act or Health Care Reform Act – is comprehensive health care legislation that enhances consumer protections in the private health insurance market. Both the Genetic Information Nondiscrimination Act (GINA) and PPACA affect certain elements of health insurance, as well as employment-based wellness programs. Neither law references the other’s requirements. But, according to the Congressional Research Service, while there are no explicit contradictions between the two acts, their potential interaction should be analyzed.*

	GINA	PPACA
Premium Setting	<p>Prohibits adjusting a group or individual premium or contribution amount based on genetic information about an individual in the group, an individual seeking individual coverage, or an individual’s family members</p> <p>Applies to health insurance issuers in the individual and small group markets, self-insured group health plans or insurers in the large group market, plus all “covered entities,” which include private and state and local government employers with 15 or more employees, employment agencies, labor unions and joint labor-management training programs; also covers Congress and federal executive branch agencies</p>	<p>Establishes new rating requirements that allow self insurers and large group insurers to vary premiums based only on certain key characteristics: individual or family enrollment in a plan or coverage; rating area; sex; age; tobacco use (to be implemented in 2014; note different requirement for individual and small group insurers to set premiums based on adjusted community rating rules)</p> <p>Prohibits individual and group health insurers from imposing preexisting condition exclusions on enrollees who are under 19 years of age for plan years beginning on or after six months after enactment (September 23, 2010); this prohibition becomes applicable to other enrollees in 2014</p> <p>Requires individual and group health insurance issuers to guarantee issue and renewal of coverage (subject to exceptions such as nonpayment of premiums, or an act or practice of fraud)</p> <p>Applies only to premium amount</p>
Genetic Information Use	<p>Prohibits requesting, requiring, or purchasing genetic information for the purposes of underwriting or prior to an individual’s enrollment or in connection with enrollment</p>	<p>Prohibits group health plans and health insurance issuers in the individual and group markets from excluding coverage based on preexisting health conditions.</p>
Genetic Testing	<p>Prohibits requesting or requiring that individuals or their family members undergo a genetic test (does not limit the authority of a healthcare professional to request that an individual undergo genetic testing as part of his or her course of healthcare). The act provides for a research exception, by allowing a group or individual insurance issuer to request, but not require, an individual to undergo genetic testing if specific conditions are met</p>	<p>No comparable provision</p>
Wellness Programs	<p>Relevant provisions are limited to the conditions under which an employer might lawfully collect genetic information pursuant to an employer wellness program</p> <p>Broadly prohibits both the acquisition of genetic information as well as the use of genetic information by employers in employment decisions</p> <p>Provides for several exceptions to the prohibition on employer acquisition of this information. For example, Title II allows acquisition of genetic information for the purposes of offering health or genetic services, including services offered as part of a wellness program, but ONLY if certain requirements are met:</p> <ul style="list-style-type: none"> – The employee must provide prior, knowing, voluntary, written authorization – Only the employee and licensed healthcare professionals or board-certified genetic counselors involved in providing such services may receive individually identifiable information – Any individually identifiable genetic information provided in connection with the health or genetic services provided under this exception is only available for the purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees 	<p>Provisions are broader, encouraging the use of wellness programs, and contain specifics about these programs, including the extent of financial incentives that an employer may use to encourage participation in wellness programs. Highlights:</p> <ul style="list-style-type: none"> – Specifies that wellness programs that do not require meeting a health standard and are made available to all similarly situated individuals are not considered discriminatory – Wellness programs that condition a reward on meeting a health-factor-related standard must also <ul style="list-style-type: none"> • be reasonably designed to promote health or prevent disease and not be a subterfuge for discriminating based on a health status factor; • provide eligible individuals the opportunity to qualify for the reward at least once a year; • be available to all similarly situated individuals; and • disclose in all plan materials the availability of a reasonable alternative standard or the possibility of a waiver. – Rewards such as a premium rebate for meeting a health-factor-related standard (such as a blood pressure measurement) are capped at 30 percent of the cost of the employee-only coverage under the plan (this cap is effective January 1, 2014, however, in addition, the Secretaries of Health and Human Services, Labor and Treasury have the discretion to increase this reward to up to 50 percent) – Most significant relative to GINA are these amendments to the Public Health Services Act (PHSA), which <ul style="list-style-type: none"> • mandate new reporting requirements for group health plans; • prohibit discrimination on the basis of health status; and • make provisions for Centers for Disease Control grants for employer-based wellness programs.

Sources

*Congressional Research Service 7-5700, R41314, “The Genetic Information Nondiscrimination Act of 2008 and the Patient Protection and Affordable Care Act of 2010: Overview and Legal Analysis of Potential Interactions,” Amanda K. Sarata, Nancy Lee Jones and Jennifer Staman, July 8, 2010.



Compliance FAQ

Question: Is an employer required to offer COBRA to domestic partners?

Answer: There are currently two interpretations that should be considered when determining whether to offer COBRA to employees' domestic partners. The first interpretation is that when an employee terminates employment, domestic partners are not offered COBRA. This is because only qualified beneficiaries are offered COBRA, and a domestic partner would not meet the definition of a qualified beneficiary under COBRA regulations. A qualified beneficiary under COBRA regulations is defined as the employee, the employee's spouse or the dependent child of the employee.¹ A domestic partner generally does not meet this definition.

The second interpretation is that a plan should permit an employee to cover a domestic partner if the domestic partner was covered on the day before the qualifying event. This is in line with the requirement that the employee be allowed to continue the identical coverage they had before termination.²

Generally then, a plan is not required to provide COBRA to domestic partners. However, a plan may choose, with carrier approval, to offer COBRA coverage to them anyway. A plan sponsor should always consult with legal counsel concerning the decision of whether to offer COBRA or not. Additionally, there may be state laws to consider. This Q&A only addresses the federal implications and does not take into account state continuation or states that have implemented same-sex marriage.

¹ ERISA 607(3)

² 6 CFR 54.4980B-5, Q/A 1

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