

BGA LEGISLATIVE UPDATE



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Safe Harbor to Deposit Employee Contributions

The U.S. Department of Labor (DOL) published a final rule to protect employee contributions deposited to retirement and welfare plans (HSA and FSA) with fewer than 100 participants by providing a safe harbor period of seven business days following receipt of employee contributions or withholding by employers.

The final rule, "Definition of 'Plan Assets'-Participant Contributions," was published in the Jan. 14, 2010, edition of the Federal Register and is effective immediately.

Steps to Take

Suggested steps small employers should take to ensure they are in compliance include:

- ◆ **Employers whose plans have less than 100 participants** ensure that their payroll vendor (if payroll is done externally) or their internal payroll department is aware of the new final rule, and that all employee contributions and plan loan repayments are made by no later than the seventh business day if they wish to use the safe harbor.
- ◆ **Employers whose plans have 100 or more participants**, or employers with small plans electing not to use the safe harbor, should ensure that all employee contributions and plan loan repayments are deposited by the earlier of the date those contributions and/or loan repayments can be segregated from employer assets or the 15th business day of the following month.

2010 Amounts for Health Savings Accounts

The new levels are as follows:

Annual Contribution Levels for HSAs:

- ◆ For 2010, the maximum annual HSA contribution for an eligible individual with self-only coverage is \$3,050.
- ◆ For family coverage, the maximum annual HSA contribution is \$6,150.
- ◆ Catch up contribution for individuals who are 55 or older is \$1,000 (set by statute and unchanged from 2009).
- ◆ Individuals who are eligible individuals on the first day of the last month of the taxable year (December for most taxpayers) are allowed the full annual contribution (plus catch up contribution, if 55 or older by year end), regardless of the number of months the individual was an eligible individual in the year. For individuals who are no longer eligible individuals on that date, both the HSA contribution and catch up contribution apply pro-rata based on the number of months of the year a taxpayer is an eligible individual.

Amounts of Out-of-Pocket Spending on HSA-Compatible HDHPs:

- ◆ For 2010, the maximum annual out-of-pocket amounts for HDHP self-coverage increase to \$5,950 and the maximum annual out-of-pocket amount for HDHP family coverage is twice that, \$11,900.

Minimum Deductible Amounts for HSA-Compatible HDHPs:

- ◆ For 2010, the minimum deductible for HDHPs increases to \$1,200 for self-only coverage and \$2,400 for family coverage.

In addition, a fiscal year plan that satisfies the requirements for an HDHP on the first day of the first month of its fiscal year may apply that deductible for the entire fiscal year.

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Family Medical Leave Act

On October 28, 2009, President Obama signed the National Defense Authorization Act of 2010 (HR2647). Within the changes to this act are several advances to the rights of military personnel and their families related to FMLA. Section 565 of that legislation modifies FMLA in several important ways:

1. Eligible employees will be able to take military caregiver leave for veterans who served in the regular Armed Forces, Guard or the Reserves within 5 years of the date the veteran undergoes medical treatment, recuperation, or therapy.
2. Military caregiver leave is expanded to cover aggravation of existing or preexisting injuries incurred in the line of duty while on active duty.
3. Qualifying exigency leave is expanded to cover members of the regular Armed Forces who are deployed to a foreign country.
4. The legislation extends qualifying exigency leave to federal employees covered by Title II of FMLA. Currently, federal employees covered by Title II do not have the right to take qualifying exigency leave.
5. The changes imposed revise the provision of deployment of the military personnel need not be into an active war (combat) zone.

CHIP Notice Requirements - Medicaid/CHIP Premium Assistance

The Department of Labor's Employee Benefits Security Administration released their Model Notice for employers regarding eligibility for Premium Assistance with Medicaid or CHIP at <http://www.dol.gov/ebsa/>. This model notice is a product of last February's CHIP reauthorization act signed by President Obama. Premium Assistance programs may not be available in every state.

Employers are required to provide these notices by the date which is the later of (1) the first day of the first plan year after February 4, 2010; or (2) May 1, 2010. Accordingly, for plan years beginning between February 4, 2010 through April 30, 2010, the Employer CHIP notice must be provided by May 1, 2010. For employers whose next plan year begins on or after May 1, 2010, the Employer CHIP notice must be provided by the first day of the next plan year (January 1, 2011 for calendar year plans).

For more information:

Federal Register notice: <http://edocket.access.gpo.gov/2010/pdt/2010-2409.pdf>

Model Notice: <http://www.dol.gov/ebsa/chipmodelnotice.doc>