

**Towers Watson
Monthly Regulatory Round-Up**

December 2009

- - Health and Group Benefits - -

The Monthly Regulatory Round-Up is a high-level summary of legal and regulatory developments that occurred during December 2009 that may be relevant to large employers. Developments are sorted according to

- federal legislative developments,
- federal regulatory guidance
- other developments (e.g., significant litigation, studies, select state law developments).

The Monthly Regulatory Round-Up is prepared by Towers Watson's Technical Services staff, located in Valhalla, NY. This material is not a substitute for legal, accounting, actuarial or other professional advice.

LEGISLATIVE

1. ***Comprehensive health care reform bill passed in the Senate.*** The U.S. Senate passed the Patient Protection and Affordable Care Act (H.R. 3590) by a vote of 60 to 39. The Senate-approved version of H.R. 3590 incorporated a 383-page Manager's Amendment introduced by Senator Harry Reid (D-NV) that modified the existing 2,074-page Senate bill. With the House of Representatives having passed its health care reform bill, the Affordable Health Care for America Act (H.R. 3962) in November, the stage is now set for the two bills to be combined into a final compromise version of health care reform legislation. The compromise version will have to be approved by each chamber in order for President Obama to sign a bill into law in late January or February 2010.
2. ***Federal COBRA premium subsidy extended; new notice requirements.*** President Barack Obama signed into law a Department of Defense appropriations bill (H.R. 3326; P.L. 111-118), which includes a provision extending the federal government's COBRA subsidy (initially created by the American Recovery and Reinvestment Act of 2009; ARRA) from 9 months to 15 months, and extending the deadline for qualifying for the subsidy from December 31, 2009 to February 28, 2010. The new law did not, however, change the amount of the federal subsidy, which remains at 65% of the COBRA premium that an "assistance eligible individual" (AEI) would otherwise pay. In a noteworthy change from prior law, the new law provides that, to be eligible for the subsidy, the involuntary termination must occur during the period September 1, 2008 through February 28, 2010, but the individual's COBRA eligibility does not have to begin during this time period. Under prior law, both the involuntary termination and the COBRA eligibility date must occur during the period from September 1, 2008 through December 31, 2009. The law also imposes new notice requirements on group health plan administrators (e.g., employers). Specifically, a plan administrator must provide information regarding the new law to any individual who qualified as an AEI at any time on or after October 31, 2009, or who experiences a qualifying event consisting of termination of employment on or after October 31, 2009. Such notice must be provided within 60 days after December 19, 2009, or in the case of a qualifying event occurring after December 19, within the general timeframe for distributing COBRA subsidy-related notices. In addition, a plan administrator must provide notice to an AEI who did not timely pay the COBRA premium, or who paid the premium at the unsubsidized rate, for any period of coverage during such individual's "transition period". An AEI's transition period is any period of coverage that begins before December 19, 2009, if the AEI was eligible for the extended federal COBRA subsidy (i.e., months 10 to 15) during that period of coverage. Such notice must be provided within the first 60 days of the individual's transition period, and must include information regarding the ability to make retroactive premium payments in order to maintain COBRA coverage.

REGULATORY

1. ***IRS Publication 502 for 2009.*** The IRS released Publication 502, entitled *Medical and Dental Expenses (Including the Health Coverage Tax Credit)*, for use in preparing 2009 individual tax returns. The updated Publication 502 includes a new section regarding the federal government's 65% COBRA premium assistance subsidy, reflects legislative enhancements to the Health Coverage Tax Credit (HCTC), updates the definition of tax dependent for purposes of claiming medical care expenses, and provides further details on the types of dental treatments that qualify as medical care expenses. While Publication 502 is used for purposes of determining which medical expenses are tax deductible, it can also be useful for purposes of determining whether specific medical expenses are reimbursable from a flexible spending account (FSA), a health savings account (HSA), or a health reimbursement arrangement (HRA). Note, however, that not every tax deductible medical expense is reimbursable from an FSA,

HSA or HRA, and vice versa. A copy of the 2009 version of IRS Publication 502 can be located at: <http://www.irs.gov/pub/irs-pdf/p502.pdf>

2. **IRS Publication 503 for 2009.** The IRS released Publication 503, entitled *Child and Dependent Care Expenses*, for use in preparing 2009 individual tax returns. Publication 503 is useful in preparing 2009 tax returns that involve dependent care expenses, and may be useful in the design, administration and communication of employer-provided dependent care FSAs under IRC Section 129. The 2009 version is substantively similar to last year's version. A copy of the 2009 version of IRS Publication 503 can be located at: <http://www.irs.gov/pub/irs-pdf/p503.pdf>
3. **IRS Publication 969 for 2009.** The IRS released Publication 969, entitled *Health Savings Accounts and Other Tax-Favored Health Plans*, for use in preparing 2009 individual tax returns. Publication 969 summarizes information regarding health savings accounts (HSAs), health reimbursement arrangements (HRAs), health flexible spending arrangements (health FSAs), and Archer and Medicare Advantage MSAs, and includes brief descriptions of benefits, eligibility requirements, contributions limits, and distribution rules with respect to each account. Other than updating the HSA indexed numbers, including further details on the HSA comparability rules, and providing updated information on the use of debit cards for medical care expenses. The 2009 version is substantively similar to last year's version. A copy of the 2009 version of IRS Publication 969 can be located at: <http://www.irs.gov/pub/irs-pdf/p969.pdf>
4. **IRS Publication 15-B for 2010.** The IRS released the 2009 version of IRS Publication 15-B, entitled *Employer's Tax Guide to Fringe Benefits*, which contains information for employers on the employment tax treatment of various fringe benefits, including accident and health benefits, health savings accounts (HSAs), transportation benefits, adoption assistance, dependent care assistance, group-term life insurance coverage, educational assistance, and working condition benefits. Publication 15-B includes the 2010 indexed limits for certain benefits, such as HSAs and qualified transportation benefits (e.g., parking, mass transit passes). The 2010 version is substantively similar to last year's version. A copy of the 2010 version of IRS Publication 15-B can be located at: <http://www.irs.gov/pub/irs-pdf/p15b.pdf>
5. **IRS Form 8889 for HSAs for 2009.** The IRS released Form 8889 ("Health Savings Accounts (HSAs)"), along with its accompanying Instructions, for use in preparing 2009 individual tax returns. Form 8889 is filed with Form 1040 to report HSA contributions (including employer contributions), figure the amount of an individual's above-the-line tax deduction, report distributions from HSAs, and figure the amount that must be included in income and additional 10 percent tax owed if an individual fails to be HSA-eligible during any applicable testing period. The Form 8889 for 2009 is substantively similar to last year's version, and its accompanying Instructions contain only a few revisions, including the removal of instructions on how to report contributions and distributions of 2008 economic stimulus payments, which is no longer relevant. A copy of the 2009 Form 8889 can be located at: <http://www.irs.gov/pub/irs-pdf/f8889.pdf> A copy of the 2009 Form 8889 accompanying Instructions can be located at: <http://www.irs.gov/pub/irs-pdf/i8889.pdf>
6. **DOL Form M-1 for 2009.** The DOL's Employee Benefits Security Administration (EBSA) issued the 2009 Form M-1 annual report for multiple employer welfare arrangements (MEWAs). The annual filing deadline for the 2009 Form M-1 is March 1, 2010, although plan administrators can request an automatic 60-day extension to May 3, 2010. The 2009 Form M-1 is substantively identical to last year's form. The Instructions reflect the same filing exemption that has applied in prior years for any of the following "inadvertent" MEWAs:
 - an entity that provides coverage to the employees of two or more trades or businesses that share a common control of at least 25% at any time during the plan year;
 - an entity that provides coverage to the employees of two or more trades or businesses due to a change in control, such as a merger or acquisition, that is temporary in nature (i.e., it

does not extend beyond the end of the plan year following the plan year in which the change in control occurs); or

- an entity that provides coverage to persons who are not employees or former employees of the plan sponsor, such as non-employee board members or independent contractors, and the number of such persons does not exceed 1% of the total number of covered employees or former employees.

Plan administrators may use EBSA's Internet-based online filing system to expedite processing of the Form M-1. A copy of the 2009 Form M-1 and accompanying Instructions can be located at: <http://www.dol.gov/ebsa/pdf/2009M1Package.pdf>

7. **Mileage rates for 2010.** The IRS announced in Revenue Procedure 2009-54 that the standard mileage rate for business miles driven in 2010 will be 50 cents per mile, *down* from the rate of 55 cents in 2009. In addition, the standard mileage rate for medical or moving miles driven in 2010 will be 16.5 cents per mile, *down* from the rate of 24 cents in 2009. Finally, the standard mileage rate for service of charitable organizations miles driven in 2010 will remain at 14 cents per mile.
8. **IRS again delays effective date for rules on electronic cards for transportation benefits.** In Notice 2009-95, the IRS delayed (for a third time) the effective date of Revenue Ruling 2006-57, which provides guidance on the use of smartcards, debit or credit cards, or other electronic media to provide qualified transportation fringe benefits under IRC §132(f). According to the IRS, the effective date is being delayed until January 1, 2011 in order to provide relief to mass transit providers that need additional time to complete the process of adapting their technology to achieve compatibility with the requirements for vouchers set forth in Revenue Ruling 2006-57. The effective date of Revenue Ruling 2006-57 had previously been delayed until January 1, 2009 in Notice 2007-76, and again until January 1, 2010 in Notice 2008-74.
9. **DOL issues semi-annual regulatory agenda.** The DOL published its semi-annual regulatory agenda. The agenda provides insight into the agency's current and anticipated regulatory activity for the coming 12-month period. Forthcoming regulations affecting employer group health plans will include interim final regulations regarding the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), and final regulations on the Genetic Information Nondiscrimination Act of 2008 (GINA). A copy of the DOL's Employee Benefits Security Administration (EBSA) semi-annual regulatory agenda can be located at: <http://www.dol.gov/ebsa/regs/unifiedagenda/ebsafall2009/main.html>

OTHER

1. **District of Columbia approves legislation legalizing same-sex marriages.** The Council of the District of Columbia approved a bill authorizing same-sex marriages. However, under the D.C. Home Rule Act, Congress has a month to review the bill and potentially block implementation of the bill. In May 2009, the Council approved a bill in recognizing same-sex marriages legally performed in other jurisdictions. Same-sex marriages have been approved in Connecticut, Iowa, Massachusetts, New Hampshire, and Vermont. In California, only same-sex marriages entered into between 6/17/2008 and 11/4/2008 are currently valid.