

Employee Benefits & Workers' Comp News

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Health Benefits

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How FSAs Help Employers and Employees Save Money

If your organization doesn't already offer healthcare flexible spending accounts, year-end is the perfect time to start one for 2012. And if your organization does offer employees this valuable benefit, now is the time to re-educate them.

Flexible spending accounts or arrangements (FSAs) are accounts offered and administered by employers that allow employees to set aside, out of their paycheck, pretax dollars to pay for qualified medical expenses. These can include insurance premiums, vision or dental care, or any other medical expenses not covered by the employer's health plan.

These accounts are allowed under Section 125 of the Internal Revenue Code and are also referred to as "cafeteria plans" or "125 plans." Typically, employees must use FSA funds within the given benefit year or lose the money. Flexible spending accounts can also be provided to cover childcare expenses, but those accounts must be established separately from medical FSAs.



This Just In

A new healthcare research organization, called the Health Care Cost Institute (HCCI), will provide access to anonymous cost and utilization data from private and government insurers. Professor Martin Gaynor of Carnegie Mellon University, who leads the HCCI, said "...for the first time, there will be comprehensive data on the privately insured who make up the majority of health consumers in the United States."

HCCI currently has agreements to access data from plans operated by Aetna, Humana, Kaiser Permanente and United-Healthcare, as well as from Medicare fee-for-service and Medicare Advantage plans. The data represent more than \$1 trillion in spending from 2000 to present; HCCI expects updates twice a year.

Researchers at the nonprofit, nonpartisan institute hope to use the data to improve understanding

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Employers may contribute to FSAs as well as employees. Currently, healthcare FSAs have no statutory contribution limit, although some employers limit contributions, usually somewhere between \$2,000 and \$3,000. Beginning on January 1, 2013, however, contributions will be capped at \$2,500 per year.

FSA Advantages

Reducing their taxable income can save your employees an average of 30 percent on eligible medical expenses paid out of the FSA. And your organization can save approximately 7 to 10 percent for every dollar your employees place in an FSA on reduced employer state and FICA taxes. For many employers, these savings exceed the costs of administering employees' FSAs.

To get the most out of this low-cost benefit, you will need to invest time and energy in educating your employees. Some pointers:

- ✱ Educate your employees on the tax advantages of FSAs. If you allow employees to deposit \$2,500 in an FSA, the tax savings translate into an average savings of approximately \$750.
- ✱ Encourage employees to make a deferral decision. Automatic re-enrollment makes sense for a lot of benefits, but with an FSA, the default election is zero. If your employees do not make a deferral election by the deadline, they will forfeit this benefit for an entire year.
- ✱ Remind employees participants lose any funds remaining after the spending deadline, so encourage them to elect their deferral carefully. Under previous law, partici-

pants had to spend their FSA funds by the end of the company's benefit year, usually December 31. In 2005, however, the Internal Revenue Service added a grace period, allowing plans to let participants use their contributions to pay for healthcare expenses incurred as late as two and a half months after the end of the plan year. Employers do not have to allow a grace period, however.

- ✱ Send employees a reminder before year-end that they need to use their FSA balances. Provide a list of eligible expenses as a prompt. Suggestions include scheduling routine preventive care appointments, such as vision and dental exams, stocking up on prescription drugs, getting flu and other vaccines, starting a smoking cessation program, and applying for reimbursement for mileage to eligible medical, dental and vision appointments.
- ✱ Remind employees that the Patient Protection Act changed the rules on using funds from an FSA or health reimbursement arrangement to pay for over-the-counter drugs. Employees can no longer use pre-tax dollars to pay for over-the-counter drugs, unless they have a doctor's prescription for them.
- ✱ Consider offering an FSA debit card. Without a debit card, employees must pay their healthcare expense out of pocket, fill out a form and wait for reimbursement. With a debit card linked to their flexible spending account, they can access funds immediately. Most vendors limit FSA debit card use to certified healthcare providers, such as pharmacies, clinics, etc. Even with a debit card,

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of healthcare costs and utilization and to help policymakers develop effective solutions to the long-term problems facing the healthcare system. HCCI's governing board will work to broaden the list of participating health plans and add more data from government payers, including Medicaid. Beginning in 2012, HCCI plans to publish its own "scorecards" and supporting analysis on aggregate trends of healthcare costs and utilization.

employees must keep their receipts to document that their expenses are FSA-eligible.

For information on FSAs, FSA debit cards and other administrative services that can simplify your benefits administration, please contact us. ■

Note: Employees covered by a high-deductible health plan (HDHP) cannot contribute to a health savings account (HSA) if they have other health coverage, including a health FSA. IRS Code makes an exception for a limited purpose FSA, which can pay or reimburse items not considered medical coverage, but "other health coverage." These eligible expenses include premiums for insurance that covers a specific disease or illness (such as cancer or critical illness insurance) or indemnity policies, which pay a fixed amount per day of hospitalization. They also include benefits for accidents, vision, dental and disability.

Employees covered by an HDHP can also make contributions to an HSA if they have a post-deductible health FSA. These arrangements do not pay or reimburse any medical expenses incurred before the minimum annual deductible amount is met. The deductible for these arrangements does not have to be the same as for the HDHP, but benefits may not be provided before the minimum annual deductible amount is met.

FMLA Administration

The good news is employers are doing a better job of complying with the Family and Medical Leave Act (FMLA). Between 2001 and 2008, the number of complaints the U.S. Department of Labor received dropped by one-third, as did the number of violations found. And back wages paid by employers dropped by nearly half. Still, many employers find FMLA compliance confusing. To help your organization avoid the common pitfalls of FMLA compliance, a review of the basic provisions of the law and strategies for effective leave management follow.



FMLA Fast Facts

- ✱ Which employers must comply? The FMLA applies to any employer that employs 50 or more workers in a 75-mile radius each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.
- ✱ Which employees are eligible? Employees can take FMLA leave if they have worked for an FMLA-qualified employer for at least 12 months and have worked at least 1,250 hours over the previous 12 months.
- ✱ How much leave can workers take? Eligible workers can take up to 12 weeks of leave per year for serious health conditions; to care for a family member (spouse, child or parent) with a serious health condition; or for childbirth, adoption or foster care. Workers can take leave consecutively or intermittently. Leave may run concurrently with workers' compensation, short-term disability and salary continuation.
- ✱ What is "a serious health condition"? The FMLA defines this as incapacity or treat-

ment that involves inpatient care (an overnight stay) in a medical care facility, as well as subsequent treatment related to inpatient care. It also includes any period of incapacity due to pregnancy, a chronic serious health condition or a health condition lasting more than three days that requires treatment by a healthcare provider. The FMLA also applies to absences to receive multiple treatments to address serious conditions.

- ✱ What other responsibilities do employers have? The FMLA requires employers that provide health benefits to continue them during an employee's leave. Following the 12 weeks of unpaid leave, employers must reinstate the employee in the same job or an equivalent one. Employers that deny or restrict an employee's rights under FMLA may be liable for lost wages and benefits, as well as damages and legal fees.

Keep in mind that medical privacy rules apply to FMLA, and safeguard any medical information. The employer has the ultimate responsibility of designating FMLA-eligible leave

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as FMLA leave based upon information furnished by the employee. You may not wait to designate FMLA leave after the leave has been completed and the employee has returned to work, unless you are: (1) awaiting medical certification to confirm a serious health condition, (2) unaware that leave was for an FMLA reason, and later receive employee requests for additional leave or (3) unaware of the situation and the employee notifies the company of the FMLA leave within two days after returning to work.

Many states have their own family or medical leave laws. Check to make sure that your leave policies comply with state law, which may be more generous in certain areas, including: (1) employee hours requirement (1,000 vs. 1,250 hours), (2) the minimum number of employees required for the law to apply (15 vs. 50 workers) and (3) the definition of family member (to include inlaws).

- ✱ What are employees' obligations? To qualify for FMLA leave, an employee must provide sufficient information to substantiate the need for leave. For medical leave, they do not have to have their health care provider supply a specific diagnosis, but merely certify the need for medical leave. Once an employee qualifies for FMLA leave, he or she does not have to provide advance notice if the leave is not foreseeable — for example, a migraine sufferer could leave work every time he gets a headache.
- ✱ Should we outsource FMLA administration? Some employers use outside companies to manage their leave programs. Their reasons include avoiding potential litigation and fines, adding a layer of privacy regarding personal health information and reducing administrative burdens and the need for additional training. Carefully evaluate an administrator's experience and qualifications. Outsourcing FMLA administration might not completely insulate your company from liability if there is a violation. However, you can require indemnification from vendors for negligence related to their administration of your company's FMLA program.

Whether you choose to outsource your FMLA administration or handle it in-house, you'll want a tracking process to ensure consistency and integration of FMLA with other benefits, including appropriate documentation and state-leave requirements. For more information on FMLA compliance, go to www.dol.gov/dol/topic/benefits-leave/fmla.htm ■

Improve Your Eye-Q: Avoid Eye Injuries

Each day about 2,000 U.S. workers have a job-related eye injury that requires medical treatment. About one-third of the injuries are treated in hospital emergency departments, and more than 100 of these injuries result in one or more days of lost work. Men experienced far more eye injuries than women, and men age 25 to 44 suffered more eye injuries than men in other age groups.

Potential eye hazards are found in nearly every industry. However, workers who were most at risk of incurring an eye injury included those in the manufacturing, construction, and trade industries; and those in the production, installation, maintenance and repair, construction, extraction and service occupations.

The majority of eye injuries result from small particles or objects striking or abrading the eye. Examples include metal slivers, wood chips, dust, and cement chips that are ejected by tools, blown by wind or fall from above a worker. Some of these objects, such as nails, staples or slivers of wood or metal, penetrate the eyeball and result in a permanent loss of vision. Large objects may also strike the eye/face, or a worker may run into an object causing blunt force trauma to the eyeball or eye socket. Chemical burns to one or both eyes from splashes of industrial chemicals or cleaning products are common. Thermal burns to the eye occur as well. Among welders, their assistants, and nearby workers, UV radiation burns (welder's flash) routinely damage workers' eyes and surrounding tissue.

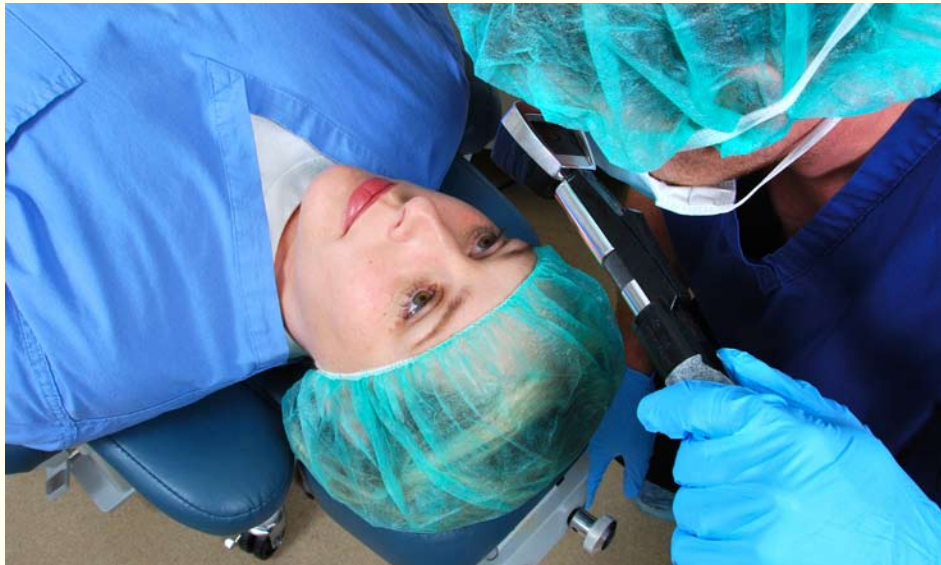
In addition to common eye injuries, healthcare workers, laboratory staff, janitorial workers, animal handlers and other workers may be at risk of acquiring infectious diseases via ocular exposure. Infectious diseases can be transmitted through the mucous membranes of the eye as a result of direct exposure

(e.g., blood splashes, respiratory droplets generated during coughing or suctioning) or from touching the eyes with contaminated fingers or other objects. The infections may result in relatively minor conjunctivitis or reddening/soreness of the eye or in a life threatening disease such as HIV, Hepatitis B, or possibly even avian influenza. If a worker can prove his/her disease stems from work-related causes, workers' compensation may apply.

In some states, the workers' compensation system presumes that certain diseases, such as HIV and hepatitis, are work-related for healthcare and public safety workers. This means that if an eligible worker contracts a condition specified by workers' comp law, he/she is automatically eligible for lost time and medical expense benefits under workers' compensation without having to prove the disease is work-related.

Occupational Safety and Health Administration (OSHA) standards require that employers provide workers with suitable eye protection.

To be effective in preventing injury, the eyewear must be of the appropriate type for the hazard encountered, and it must be properly fitted to the individual or adjustable to provide appropriate coverage. It should be comfortable and allow for sufficient peripheral vision. Selection of protective eyewear appropriate for a given task should be made based on a hazard assessment of each activity, including regulatory requirements when applicable.



If affected employees wear prescription lenses while engaged in hazardous operations, the employer must ensure that their eye protection incorporates the prescription in its design, or that eye protection can be worn over prescription lenses without disturbing the proper position of the prescription lenses or the protective lenses.

The employer must ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation. If a hazard from flying objects exists, eyewear must also provide side protection. Detachable side protectors (such as clip-on or slide-on side shields) are acceptable.

Employers should also use engineering controls, such as screens, to reduce eye injuries and to protect against ocular infection exposures. Personal protective eyewear, such as goggles, face shields, safety glasses or full face respirators must also be used when an eye hazard exists. The eye protection chosen for specific work situations depends upon the nature and extent of the hazard, the circumstances of exposure, other protective equipment used, and the employee's personal vision needs.

We can help you evaluate eye safety at your worksite. For more information, please contact us. ■

Claims Management

Every year, lost productivity due to chronic pain costs U.S. employers between \$297.4 billion and \$335.5 billion. Chronic pain affects some 116 million Americans—some of whom might be your employees.

The following ideas can help your organization reduce the frequency or severity of chronic pain claims:

- ✦ In cases of chronic pain, consider seeking treatment from a holistic center or pain specialist. Seek referrals from occupational health specialists—pain specialists vary widely in training and approach. Some use primarily noninvasive techniques, such as drugs, physical therapy and counseling, while others specialize in invasive techniques, such as surgery. Ask pain specialists for information on outcomes.

- ✦ If your workers' compensation

insurer will not cover so-called alternative treatments, take a look at your state's workers' comp laws. Some states require workers' compensation to cover specified alternative treatments, such as chiropractic, acupuncture and massage, when prescribed by a treating physician. Others, such as California, allow certain alternative providers to treat industrial injuries without a physician's referral.

- ✦ If an injured employee has exhausted alternative treatment benefits, see if your group medical program will pay for such treatments. The savings you realize by returning an injured worker to the job free of pain could outweigh any cost to your medical program.

- ✦ Focus on prevention. Fitter employees are less likely to experience painful or degenerative conditions such as arthritis. Fit individuals also recuper-

ate more quickly from surgery and injuries. A wellness or health promotion program can encourage employees to become fitter.

- ✦ Look at ergonomic conditions. Poor ergonomics can contribute to or worsen conditions such as muscle strain, headache and other pain-causing conditions.

- ✦ Don't neglect the mind-body link. If depression and/or anxiety might be playing a role in chronic pain claims, ensure the injured worker gets the needed treatment. If your workers' compensation insurer will not provide coverage, check whether your group medical plan or employee assistance plan will provide benefits.

For more suggestions on preventing injuries and illness, please contact us. ■

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