

Two New Reporting Requirements And An FLSA Requirement Update

New Reporting Requirements For Employer-sponsored Health Insurance

Legislation that would provide medical insurance to millions of currently uninsured Americans and penalize some employers that do not offer coverage was signed into law March 23, 2010 by President Obama.

Under the Patient Protection and Affordable Care Act (Pub. L.111-148), starting in 2011, employers will need to begin reporting on Form W-2 the value of employee health insurance coverage sponsored by the employer, and limit tax-free health flexible spending account amounts to \$2,500 per year. In 2013, an additional 0.9% tax on the employee's portion of the Medicare (HI) tax will go into effect when wages generally are more than \$200,000 in a year.

Employers with more than 50 employees that do not offer coverage will be charged \$750 per full-time worker if at least one employee qualifies for a premium subsidy in the exchange. The law increases the assessment to \$2,000 per employee but also subtracts the first 30 employees from the penalty calculation to ensure that the requirement does not create a hiring disincentive.

A provision added to the legislation allows businesses that have up to 25 employees with average annual wages of less than \$50,000 to be eligible for a sliding scale tax credit of up to 50 percent if employers buy insurance for workers. A 100% credit is available for employers who have fewer than 10 employees with average wages of less than \$20,000.

New 1099 Reporting Requirement for All Businesses

Beginning in 2012, all companies will have to issue 1099 tax forms to any individual or corporation from which they buy more than \$600 in goods or services in a tax year. This change radically alters the nature of 1099s and means businesses will have to issue millions of new tax documents each year.

New FLSA Requirements Regarding Nursing Mothers

Employers are required to provide "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

The FLSA requirement of break time for nursing mothers to express breast milk does not preempt state laws that provide greater protections to employees (for example, providing compensated break time, providing break time for exempt employees, or providing break time beyond one year after the child's birth).

Employers are required to provide a reasonable amount of break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from coworkers and the public.

Only employees who are not exempt from the FLSA's overtime pay requirements are entitled to breaks to express milk. While employers are not required under the FLSA to provide breaks to nursing mothers who are exempt from the overtime pay requirements of Section 7, they may be obligated to provide such breaks under State laws.

Employers with fewer than 50 employees are not subject to the FLSA break time requirement if compliance with the provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's business. All employees who work for the covered employer, regardless of work site, are counted when determining whether this exemption may apply.

Employers are not required under the FLSA to compensate nursing mothers for breaks taken for the purpose of expressing milk. However, where employers already provide compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the FLSA's general requirement that the employee must be completely relieved from duty or else the time must be compensated as work time applies.

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