Benefits BUZZ

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DID YOU KNOW?

The ACA requires non-grandfathered plans to comply with an overall annual limit—or an Out-Of-Pocket (OOP) maximum—on essential health benefits (EHB).

On March 1, 2016, the Department of Health and Human Services announced the release of the 2017 OOP maximums.

Under the ruling, the maximum the OOP limits for plan years beginning on or after January 1, 2017 are set at $7,150 for individual coverage and $14,300 for family coverage. This is up from $6,850 for an individual and $13,700 for a family in 2016.

The OOP maximum includes the annual deductible and any in-network cost-sharing obligations members have after the deductible is met.

Recent Court Rulings Raise Questions about FMLA

The Family and Medical Leave Act (FMLA) clearly states that when an employer knows that a worker taking leave qualifies for FMLA, it must designate the worker's absence as FMLA leave.

Despite this requirement, some employers let employees choose whether to designate their leave as FMLA leave. Two recent court cases have highlighted why this approach could cause problems for your company.

Both cases—*Escriba v. Foster Poultry Farms* and *Amstutz v. Liberty Center Board of Education*—involved workers who were terminated from their jobs. These employees later brought FMLA lawsuits against their former employers, claiming FMLA interference and retaliation, respectively.

In these cases, both employees requested **not** to use FMLA leave for medical-related absences and instead elected to take another type of paid time off—and both employers allowed them to do so.

In both cases, the courts ruled in favor of the employers because the workers had previously used FMLA leave on several occasions and understood their companies' FMLA processes. So when they declined to use FMLA leave, they knew what they were doing. Not having the leave designated as FMLA leave was their own choice, not a result of their employers' interference or retaliation.

While these employers were successful in defending against the FMLA claims, HR professionals should be wary of similar situations. Letting employees decide whether or not to apply FMLA could be dangerous for your company.

This approach could be seen by an employee, and a court, as the employer attempting to prevent employees from exercising their FMLA rights. Trying to make leave-designation decisions based on which employees understand FMLA procedures could expose your company to administrative and legal issues.

The easiest way to avoid an FMLA lawsuit is to always apply FMLA leave when an employee qualifies for it. Even if a worker chooses to use another type of leave, FMLA leave should run concurrently.

Applying FMLA right away avoids giving employees the option to decline FMLA leave, and can help protect you against future lawsuits while safeguarding your bottom line.

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IRS Clarifies ACA Rules for Employer-provided Coverage

The Internal Revenue Services (IRS) recently released Notice 2015-87, which clarified a number of ACA rules for employer-provided coverage, including employer shared responsibility penalties and ACA market reforms.

Significantly, the notice addressed how certain plan features, such as flex credits and opt-out incentives, affect whether an applicable large employer's coverage is affordable.

In the notice, the IRS clarified that the adjusted affordability threshold (9.56 percent for 2015 and 9.66 percent for 2016) applies for the affordability safe harbors for these employers.

The IRS also confirmed the adjusted employer shared responsibility penalty amounts ($2,080 and $3,120 for 2015 and $2,160 and $3,240 for 2016). The IRS anticipates that adjustments for future years will be posted on the IRS' website.

The notice also supplemented previous guidance on health reimbursement arrangements (HRAs) and employer payment plans. For more information, the notice can be viewed in its entirety here.