

HR Newsletter

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FLSA Permits Automatic Meal Break Deductions

A nurse who failed to use a hospital's internal reporting procedures, preventing the facility from becoming aware of its obligation to compensate her for working during her lunch break, [did not violate the Fair Labor Standards Act \(FLSA\)](#) according to the Sixth U.S. Circuit Court of Appeals. The nurse, employed in the emergency department at Baptist Memorial Health Care Corporation, was able to take meal breaks during her shift as work demands allowed. The hospital's employee handbook stated that employees working shifts of six or more hours received an unpaid meal break that was automatically deducted from their paychecks. The handbook also provided that if an employee's meal break was missed or interrupted due to a work-related reason, the employee would be compensated for the time worked during the meal break. Employees were instructed to record all time spent performing work during meal breaks in an "exception log," whether the meal break was interrupted partially or entirely. The nurse alleged there were occasions when she missed meal breaks entirely or partially and was not compensated, although she did not produce a record of when this occurred. She did not consistently report missed meal breaks in the exception log nor did she always report payroll mistakes to her supervisor. She contended, however, the hospital violated the FLSA by failing to compensate her for working during her lunch breaks. The district court held that Baptist's policy for compensating hourly employees for missed meal breaks was lawful under the FLSA and the Sixth Circuit affirmed. The Circuit Court found that each time the employee followed the hospital's procedures, she was correctly compensated.

DOL Auditing Group Health Plans for PPACA, GINA and Wellness Program Compliance

The Employee Benefits Security Administration (EBSA), a division of the U.S. Department of Labor that enforces Title I of ERISA, is responsible for conducting compliance audits of group health plans. The EBSA has updated its audit protocols to include a review of plans' compliance with the Patient Protection and Affordable Care Act (PPACA), the Genetic Information Nondiscrimination Act (GINA), and wellness programs. An increase in PPACA enforcement activities is underway, resulting in plan sponsors receiving [EBSA audit notices](#). EBSA audits also check compliance with other federal statutes and regulations including ERISA, HIPAA, COBRA, and the Women's Health and Cancer Rights Act. The EBSA audit letters seek information and documentation concerning aspects of the PPACA including the plan's grandfather status, coverage for adult children, lifetime and annual limits, and claims and appeals procedures. Documents typically subject to review under an EBSA audit are listed in the letter.

HHS Proposes Fee to Help "Stabilize Individual Health Insurance Market" from 2014 to 2016

The Department of Health and Human Services (HHS) has issued [proposed rules](#) (Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014) which establish a three-year transitional reinsurance program under the Affordable Care Act to help stabilize premiums in the individual health insurance market during the period 2014 through 2016. The fee for 2014 has been set at \$5.25 per month (\$63 per year) for each health care plan participant, including employees and dependents. For fully-insured plans, this fee will be paid by carriers and incorporated into the rates for 2014. For self-funded plans, third-party administrators will be responsible to remit the fee on behalf of the plan sponsor. It is anticipated the fee will decrease in the second and third years. Only "major medical" plans are required to pay this reinsurance contribution fee. Stand-alone dental and vision coverage, most health flexible spending accounts, health savings accounts (HSAs), health reimbursement arrangements (HRAs) that are integrated with major medical plans, and hospital indemnity coverage are exempt from the fees, as are employee assistance plans, wellness programs, and disease management programs, provided the plan does not include major medical benefits.

Fiscal Cliff Avoided: Implications for Human Resources Professionals

On January 1, 2013, Congress passed the American Taxpayer Relief Act of 2012 (H.R. 8), avoiding the so-called "fiscal cliff." President Obama signed the bill into law the following day. H.R. 8 contains a number of provisions important to employees and human resources professionals:

- Permanently extends employer-provided education assistance (Section 127 of the Internal Revenue Code), which allows an employee to exclude from income up to \$5,250 per year in educational assistance at the undergraduate and graduate level regardless of whether the education is job-related.
- Permits participants in 401(k), 403(b) and similar defined contribution retirement plans to elect to transfer amounts to a designated Roth 401(k) account, if available in their plan, at any time, with the transfer treated as a taxable qualified rollover contribution.
- Does not include an extension of the 2 percent payroll tax cut of the Social Security (FICA) employee tax on the first \$113,700 of wages. The employee-paid portion of the Social Security FICA tax increased on all wage earners from 4.2 percent to 6.2 percent beginning January 1, 2013. The taxable wage base also increased from \$110,100 to \$113,700 on the same date.

Form W-2 for 2012 Must Include Information on Cost of Certain Employer Provided Health Benefits

Under the Patient Protection and Affordable Care Act (PPACA), employers are required to begin informational reporting on the "aggregate reportable cost" (employer and employee contributions) of certain health plan benefits provided in the 2012 tax year. The IRS has [issued guidance](#) in the form of FAQs to assist employers in such reporting. For the 2012 tax year, employers who issued fewer than 250 W-2's for the 2011 tax year are excused from mandatory reporting, but may choose to report such amounts. For those who issued 250 or more W-2's in 2011, reporting is required. The Internal Revenue Service has published a [chart](#) that details the type of coverage that must be reported.

Two Healthcare Unions Agree to Affiliate

The California Nurses Association and the National Union of Healthcare Workers (NUHW) are [affiliating](#) to help NUHW in its campaign to defeat rival Service Employees International Union-United Healthcare Workers West in an upcoming election for the right to represent 43,500 Kaiser Permanente service and technical workers in California. That election will be a repeat of a 2010 election, which was the largest union election in the private sector in nearly 70 years. In 2010, Kaiser workers voted to remain with SEIU. SEIU garnered 62 percent of the vote but the National Labor Relations Board overturned the election after agreeing with NUHW that SEIU engaged in unfair practices. A second vote will be held within the next few months. NUHW currently has approximately 10,000 members.

Hospital Council of Western Pennsylvania is a strategic partner with health care providers and affiliated organizations, enabling them to realize their mission while maintaining their status as economically viable entities.

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