



# Employee Benefit News



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**CGI Employee Benefits Group, Inc. (CGI)** is a diversified full service employee benefits brokerage and consulting firm dedicated to providing the highest level of personalized service and objective advice.

Our goal is not to meet expectations but to exceed them in ways our clients have never experienced before. Creativity is the hallmark of our approach. At CGI we strive to develop innovative solutions to meet the demands of an ever changing and increasingly complex employee benefit and Human Resources landscape.

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## CHIP Reauthorization Act Creates New Special Enrollment Rights, Notice and Disclosure Obligations for Employers

**N**ew special enrollment rights, along with notice and disclosure requirements for employers, are among the provisions in the Children's Health Insurance Program (CHIP) Reauthorization Act of 2009, signed into law by President Obama on February 4, 2009. CHIP is the federal program that gives matching funds to states in order to provide health insurance to low income families with children. The Reauthorization Act expands the program, but is also including new special enrollment rights and notice and disclosure requirements for employers.

The law creates special enrollment rights for employees and their dependents who are "eligible but not enrolled for coverage" under an employer's group health plan in two situations: the employee's or dependent's Medicaid or CHIP coverage is terminated as a result of loss of eligibility, or the employee or dependent becomes eligible for a subsidy (see next paragraph) under Medicaid or CHIP. An employee exercising one of these special enrollment rights must do so within 60 days of Medicaid/CHIP termination or becoming subsidy-eligible. (Note that this special enrollment rights period is twice as long as that under the HIPAA special enrollment rights situations.) These special enrollment rights become effective April 1, 2009.

States can provide health care coverage directly to CHIP-eligible individuals, but the law also allows them the option of paying a premium assistance subsidy so that low-income employees can cover CHIP-eligible children under an employer group plan. The subsidy can be provided

to the employee as a reimbursement for premiums paid to the group plan, or to the employer sponsoring the plan. Employers can opt out of receiving the subsidy payment, in which case it will be paid to the employee. The subsidy can only be offered for what the law refers to as "qualified employer-sponsored coverage"—a plan for which the employer contributes at least 40% of the cost, and not including health care flexible spending accounts and high deductible health plans.

In states that provide a premium assistance subsidy, employers will be required to give employees notice of the potential opportunity for the subsidy. Such a notice will need to be provided when notifying the employee of plan eligibility, when open enrollment materials are distributed, or when providing the summary plan description (SPD). The Department of Health and Human Services (HHS) is to develop a model notice by February 4, 2010; this notice

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# Communicating with 401(k) Participants During Tough Economic Times

**T**oday's economic climate is a scary one for investors. Steep market declines, though tempered by occasional rallies, have been brutal on investors' portfolios, including the account balances of 401(k) plan participants. And because 401(k) participants are not investors by trade, those who have invested in stock funds, and who may be seeing their retirement nest eggs quickly shrink, are likely anxious and scared. Many will consider moving what's left in their account to non-stock-fund investments, perceiving them to be safe from market volatility (though overlooking the risk of low returns not keeping up with inflation). Some will scale back their contributions, or stop participating in the plan all together.

The time has never been more important for effective 401(k) communications to dissuade employees from taking rash, of-the-moment actions that can have a negative impact on their long-term savings.

What kinds of messages are appropriate for 401(k) participants during these challenging economic times? Consider these—

- A 401(k) remains one of the smartest, most efficient ways to save for retirement. Because contributions are made on a pre-tax basis, more savings and investment potential is achieved from every dollar set aside. And, if the plan provides for an employer match, the savings and investment potential increases dramatically. Not contributing, when an employer match is involved, basically amounts to passing up free money.
- Regardless of recent investment results, the pre-tax and employer match advantage make a 401(k) plan an ideal way to make savings grow, important considerations in assessing "How well did my investments perform?" For example, remember that, for every \$100 contributed, the entire \$100\* is invested in the plan, not reduced for taxes as it would be for other types of investment, or if it were paid to the employee in wages. Plus, if the employer matches, that \$100 contribution is worth even more. So, what could have been perhaps \$75 (\$100 reduced by taxes at a 25% rate) can actually be \$106 (an unreduced \$100 contribution plus a typical 6% employer match). That's a \$31 difference—or 41%! So even if performance is off, the loss is not so great in a 401(k) plan as it would be in most other types of investments.
- A change in the outside investment environment, such as that which has occurred with the stock market decline, presents an opportunity to reassess one's investment strategy and asset allocation. Market shifts have had significant impact on many individuals' asset allocation, resulting in a portfolio that may be inappropriate for their age, retirement horizon and degree of comfort with risk. Though financial advisors typically suggest an annual rebalancing to maintain appropriate investment risk, most peo-

ple ignore this advice. Recent market developments could prompt them to do this.

- For employers that make financial counseling services available to employees, now is a good time to remind employees of this resource. Employee assistance programs (EAPs) frequently offer financial counseling, a service that may be overlooked by employees. Or these types of services may be available through a voluntary benefit plan. An employer also may be able to secure investment advisers to come in and meet with employees, through the 401(k) plan vendor. Just remember not to directly give financial advice to employees through individuals who work for your organization.



- Make sure employees know that the 401(k) plan operates according to federal regulations and that while the value of their accounts may be affected by market ups and downs, it won't be affected by the company's ups and downs, as plan assets are not commingled with company funds.
- Finally, remind employees that the current market downturn and accompanying weak economy will eventually resolve itself. 401(k) plans are part of a long-term retirement savings and investment strategy. The economy moves in cycles, and if an employee is invested appropriately for his or her age, currently challenged investments will eventually rebound, including 401(k) account values.

\*401(k) contributions are subject to FICA taxes.

## Wage and Hour Law – Misclassification Under the Fair Labor Standards Act (FLSA)

**M**any times employers have difficulty with wage and hour compliance because they simply misclassify non-exempt jobs as exempt. A basic element employers misinterpret is that it is not the employee, but the job that is classified as non-exempt or exempt. If a job is incorrectly classified as exempt, and the job does not meet the federal requirements under the FLSA, then an employee may make a claim for past wages for overtime. There is indication that many employers have unintentionally misclassified their employees under the FLSA.

Generally, if an employee makes a wage claim, the Department of Labor (DOL) will conduct an audit of employee files and payroll records. The DOL will come to your worksite and interview employees, examine time keeping records and review payroll practices. Investigators may review up to three years of records in an attempt to determine if any violations have existed in how employees have been paid.

There are a number of steps that employers can take to mitigate potential liability of misclassification:

1. Understand the requirements of the FLSA and what the requirements are for jobs to be classified as exempt. The main categories of exemptions include executive, administrative, professional, outside sales and computer professional.
2. Conduct an internal audit which includes a review of job descriptions to ensure accuracy and reflect actual duties.
3. Check all overtime calculations for non-exempt positions.
4. Ensure that all employees in jobs classified as non-exempt record all hours worked.
5. Exempt employees should not be recording hours worked, however they may record time worked on specific assignments for billing purposes if the employer bills clients in this fashion.

6. Make sure that all job openings are posted and visible to your employees.
7. Determine if state laws include any different or additional requirements for overtime pay or exempt classifications.

Employers in New Hampshire sometimes struggle with the state requirements of paying employees on either an hourly or salary basis. Keep in mind that these are NH specific and are different than non-exempt and exempt classification under the FLSA. For example, an individual paid on a salary basis could be in a job that is non-exempt under federal law which would mean the employee is eligible for overtime. Another individual paid a salary may be in a job classified as exempt and therefore would not be eligible for overtime. There are also specific state and federal restrictions as to when a salaried employee in a job classified as exempt can be docked pay. Employers are well served to be aware of what these requirements are.

Unlike New Hampshire, there are no provisions specific to Vermont that conflict with the federal requirements.

For additional information and to get answers to your questions on wage and hour law contact either Catharine Mirabile, PHR at [cmirabile@cgibenefitsgroup.com](mailto:cmirabile@cgibenefitsgroup.com) or Ron Page at [rpage@cgibenefitsgroup.com](mailto:rpage@cgibenefitsgroup.com).

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## IRA Minimum Distribution Rules Suspended for 2009

**S**eniors over age 70 will enjoy some much-needed tax relief this year. In late December 2008, President George W. Bush signed legislation to temporarily remove tax penalties for seniors who do not take a minimum withdrawal from their retirement accounts in 2009.

Called The Worker, Retiree and Employer Recovery Act (H.R. 7327), the bill will suspend for one year the IRS rule that forces account holders of 401(k)s and other similar retirement plans to withdraw a minimum amount of money every year after they reach 70 years of age.

Most years, seniors over 70 are required to take a minimum distribution, which is calculated against their end-of-year balance the previous year. Taking the distribution can push you into a higher income tax bracket, resulting in more income taxes. However, if you don't

take the required distribution, you pay a whopping 50 percent penalty on the amount you were supposed to withdraw.

The government hopes this one-year suspension will offer some relief to seniors whose retirement portfolios have dwindled due to the economic downturn. Because seniors will not be forced to take money out of their accounts this year, they will hopefully rebuild some of their asset values. This suspension applies to everyone, regardless of your current retirement account balance.



requirement will become effective for employers beginning with the plan year after issuance of the HHS model notice.

The law also creates a disclosure requirement for group health plans. The purpose of disclosure will be to help states determine eligibility for the subsidy and its cost-effectiveness. HHS and the Department of Labor (DOL) will form a working group to develop a model disclosure form, and employers will be required to disclose information upon request beginning with the plan year following issuance of the model disclosure form.

The law provides for penalties of up to \$100 a day for failure to comply with either the notice or disclosure requirements.

So what should employers be doing now to get up to speed on this new law?

- Identify all states where employees reside and determine whether the state provides a premium assistance subsidy.
- Review health plan documents and amend them as necessary to provide for the new special enrollment rights. As noted above, employees are able to exercise these special enrollment rights effective April 1, 2009.
- Review any health insurance contracts' coordination of benefits (COB) provisions, because states will be the secondary payer for services provided under employer group health plans for which a premium assistance subsidy is provided.
- Stay alert to developments from the DOL and HHS concerning this law, and be prepared to take compliance steps as soon as the model notice and disclosure forms are released.

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