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# The Kinloch Link

## Your Link to Employee Benefits News and Information

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### COMPLIANCE LINK



#### COBRA Subsidy Reminder

As a reminder, the Consolidated Omnibus Budget Reconciliation Act (COBRA) Subsidy was not extended beyond May 31, 2010. However, anyone eligible for COBRA up to May 31, 2010 was eligible for the COBRA coverage premium reduction for up to 15 months. While the majority of COBRA participants have most likely exhausted their subsidy, the last day for anyone to receive a subsidy is August 31, 2011 (end of the 15-month period).

#### Form 5500 Filing Reminders

Form 5500 filings are due seven months after the end of the plan year (July 31 for calendar year plans). As a reminder, Form 5500 must be filed electronically using the EFAST2 system. Since the system is already in place, you should already be registered online and have your electronic filing credentials.

For more information on electronic filing, visit the DOL's website at [www.efast.dol.gov](http://www.efast.dol.gov).

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### Affordable Care Act: Recent Repeals



The passage of the Affordable Care Act brought many changes to health care...many of which were implemented for plan years beginning September 2010. Organizations were busy implementing and communicating the immediate basics such as dependents to age 26, elimination of lifetime maximums and the coverage of preventive care services at 100%, no deductible.

While there is a laundry list of other provisions to become effective between now and 2014, two of them were repealed last month through President Obama's Appropriations Act and the general consensus is that this is good news for employers.

### Free-Choice Voucher Rule

The Free-Choice Voucher Rule was to take effect in 2014. This provision would have meant that employers would need to offer "vouchers" to employees who meet certain income level requirements to purchase coverage on their own through state health insurance exchanges as an alternative to employer-sponsored coverage.

Its repeal comes as a relief to employers for two reasons. First, it is apparent that there would be an impact on administering this provision as well as an overriding cost implication. Ultimately, it could have potentially had a third impact on employers. Younger, healthier employees might prefer to obtain lower cost voucher-subsidized state health insurance rather than participate in their employer's plan, which may be more costly. The end result would be more employees opting out of employer-sponsored plans creating a lower risk pool. In turn, it would mean higher premiums for employer health plans.

**Keep in mind** that the Appropriations Act does not repeal the employer responsibility penalty – the free-rider penalty. This applies to employers with over 50 full-time employees. It will be imposed beginning in 2014 and applies if just one employee purchases coverage through a state health insurance exchange and receives a federal tax credit subsidy to buy that coverage.

### Form 1099-Misc

Another small victory in the repeal of Affordable Care Act provisions is the elimination of the Form 1099 requirements for reporting any purchase of goods or services over \$600 per year. This provision, which would have been effective in 2012 would have had an impact on small business growth.

There was great opposition to this provision sighting a tremendous compliance burden affecting millions of businesses not to mention the impact it would have on the IRS who would be receiving the influx of 1099s.

As we look ahead, we foresee that health care reform will be a frequent topic in our newsletters. We will continue to keep you apprised of changes in the law as the information becomes available.

## New ADA Rules Clarified

The Americans with Disabilities Act Amendments Act (ADAAA) was passed in 2008. The Equal Employment Opportunity Commission (EEOC) proposed some significant regulations in 2009 that had many employers preparing for the worst.

On March 24, 2011, the EEOC issued their final regulations, which remains consistent with the statute. The final regulations answer most of the questions that surfaced in 2009. These regulations:

- Retain the broad focus of “disability” and provide guidance to help employers determine whether a disability status exists.
- Indicate that an impairment does not have to last at least six months to be considered an actual disability. The EEOC has expressed that an impairment that lasts at least a few months can be a disability; those that last only a short period of time will not be considered a disability unless “sufficiently severe”.
- Reinstate the “condition, manner and duration” concepts for evaluating the disability determination from the previous regulations. In determining whether an employee substantially limited in a major life activity, employers should compare them to “most people in the general population” based on the condition and manner in performing the major life activity; how long it takes them to perform it as well as difficulty, effort and time required.
- Confirm that all impairments require an individualized assessment to determine whether they are considered a “disability”.
- Reinstated the test which clarifies that an individual would need to be restricted from a “class or broad range” of jobs in order to trigger protection in rare circumstances.
- Make it somewhat easier for employees to establish coverage under the “regarded as” portion of the disability definition and make clear that the focus in such cases would be on how the employee was treated by his/her employer, rather than on what his/her employer believed about the worker’s condition.

In summary, if your company adapted the changes two years ago, then these final regulations will not have much impact but rather provide clarification and offer guidance. Keep in mind that as an employer, the following tips may help you in complying with the new regulations:

- Review job descriptions to ensure that they track the essential functions of each position.
- Review disability discrimination policies. They should include a zero-tolerance against disability discrimination, provide notice requirements in the case of accommodation requests and outline procedures for making discrimination complaints.
- Provide refresher training for management and HR on the interactive process and reasonable accommodations obligations.
- Develop resources and a protocol to respond to requests for accommodations and review with counsel before deciding that an employee is not entitled to an accommodation.
- Maintain records of disability claims, accommodation requests, and accommodations provided and/or denied, along with the rationale for the decisions made.

If you have any questions regarding the final regulations on ADAAA, you can visit [www.ada.gov](http://www.ada.gov) or contact a Kinloch consultant.

## WELLNESS TIP

**Spring Has Sprung... so don't forget to put a spring in your step! Warmer weather can mean stepping outside and taking those steps to a healthier you. Encourage employees to do the same. There are plenty of ways to take some extra steps this Spring: park further away from the office entrance, take the stairs rather than the elevator, or get a walk in at lunch. **Every step counts!****

## ASK KINLOCH

### • **Question:**

**Now that the first wave of health care reform provisions has passed, what is on the horizon?**

### • **Answer:**

**Two provisions that will not need to be implemented is the Free-Choice Voucher and the Form 1099 reporting for goods or services over \$600.**

However, due up by March 2012 is the requirement for employers (regardless of whether they are fully-insured or self-insured) to provide all employees with a uniform coverage summary (no longer than four pages and print larger than 12-pt font), which needs to include a description of coverage, exclusions, standard definitions, and cost sharing. Employers who do not comply face a penalty of up to \$1,000 per participant for each failure.

In addition, there is also a 60-day notice requirement when a health plan or issuer modifies the terms of the plan or the coverage under the plan. The deadline to provide a summary of benefits to comply with the new standards is March 24, 2012. It must be given to new hires, current employees prior to enrollment or re-enrollment and to a policy holder / certificate holder at the time of issuance.

