

# Employee Benefits Report

The  
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## Benefits: Employees Value Them More Than You Think

Now that a majority of employees (51 percent) obtain most of their financial products through the workplace, it's not surprising that workplace benefits play an important role in their decisions about whether to remain with their employer.

The most recent study of employee benefit trends by MetLife found a significant gap between employee and employer perceptions of how benefits contribute to loyalty. For example, health, retirement and all other benefits contribute more to employee loyalty than employers realize.

Employer and employee perceptions showed a gap particularly in the area of "other" benefits—the non-retirement, non-medical benefits that include life, disability, dental, vision, etc. A large majority, or 69 percent, of employees said these non-medical benefits were

an important contributing factor to their loyalty, while only 41 percent of employers agreed. This trend has continued for the past several years, with the importance of these benefits in contributing to loyalty increasing among employees from 51 percent in 2007 to 69 percent in November 2008.

This change in employee attitudes toward their benefits creates opportunities for your company's benefit planning. Companies already face a complex mix of competing challenges, such as the need to retain skilled employees with the need to reduce or restructure costs. However, many of these non-medical

benefits are available through voluntary programs, which employers can provide at absolutely no cost to themselves.

This much is clear: Employees who are engaged in benefits programs at work and who participate fully in the benefits offered tend to have a greater sense of connection that often translates into increased loyalty and greater job satisfaction. And employers who experience high degrees of employee participation in benefits may receive a higher return on their benefits spending through economies of scale, greater productivity and employee retention.

## This Just In

Fewer employees are electing COBRA continuing health coverage, found the Spencer's Benefits Reports 2009 COBRA Survey. While 16.87 percent of employees became eligible for COBRA in the 2008 plan year at companies surveyed, only 9.69 percent of those eligible signed up for coverage. That's the lowest rate of election for COBRA coverage since Spencer's first conducted a COBRA survey in 1989.

The reason? Cost. Employee COBRA costs in the 2009 survey averaged \$10,988 per year per participant, about 32 percent higher than five years ago. Average COBRA costs are 54 percent higher than the health coverage cost for active employees, which currently averages \$7,190.

Preliminary data indicate the COBRA premium subsidy included in the American Recovery and Reinvestment Act (ARRA) did little to boost participation rates. The ARRA makes a 65 percent premium subsidy available for those who lose health coverage due to involuntary termination between Sept. 1, 2008, and Dec. 31, 2009. This subsidy phases out for individuals whose modified adjusted gross income exceeds \$125,000, or \$250,000 for those filing joint returns. Taxpayers with modified adjusted gross income exceeding \$145,000, or \$290,000 for joint returns, do not qualify.



# Legal Aspects of Telecommuting

Today, more than 34 million US adults telecommute at least occasionally, according to a recent survey for Forrester Research. Fueled by broadband adoption, better collaboration tools, and growing management experience, the US telecommuting ranks will swell to 63 million by 2016. At least some of your employees might be among them.

**L** leading the surge are occasional telecommuters and regular telecommuters who work from home between one and four days a week. This expansion of the remote workforce is forcing organizations to expand their digital footprints, harness new social software, redefine their organizational culture, examine their real estate and energy policies, and create telecommuting policies that protect the organization.

The potential legal minefields associated with telecommuting span a wide array of topics. Here's a brief overview of a few that might affect your company's human resource policies and procedures:

## **Tracking Wages and Hours Worked.**

Now that more non-exempt employees are joining the telecommuting ranks, companies need to establish a mechanism to track

the hours telecommuting employees actually work. As you may be well aware, it's the actual work performed, not where it is performed, that determines overtime pay.

If job duties cause an employee to be classified as non-exempt under the Fair Labor Standards Act (FLSA), your company is legally required to pay the employee for all hours worked. Where the employee works more than 40 hours in a single workweek, her or she is due overtime pay, even though that work may have been performed from the employee's office at home or on the employee's laptop or PDA while sipping coffee at a local coffee shop. To avoid liability for substantial overtime payments, develop and uniformly apply a method for tracking and accounting for all hours actually worked by telecommuting employees.



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## The Many Benefits of Telecommuting

### Employer Benefits

- \* Greater worker productivity due to fewer interruptions and distractions, and ability to work during most productive hours
- \* Fewer unscheduled absences resulting from unforeseen events
- \* Continuity of operations during weather-related or other emergency situations
- \* Employees better able to respond to unforeseen/unscheduled workload
- \* Reduced real estate costs due to less, or more flexible, need for office space
- \* Lower employee-relocation costs, because work is not location-dependent
- \* Enhanced employee satisfaction and morale

- \* Less labor turnover and lower recruitment costs
- \* Better customer service because employees stay longer and become more proficient
- \* Access to larger labor pool—regional, national, international, physically challenged
- \* Easier compliance with Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA)

### Employee Benefits

- \* Less, or no, commuting time
- \* Better work/life balance
- \* Less stress
- \* Increased productivity due to fewer interruptions and distractions
- \* More flexibility to work during most

### productive hours

- \* Increased ability to respond to unforeseen/unscheduled workload
- \* Ability to design and control work environment
- \* Increased job satisfaction
- \* Reduced commute-related costs—gas, tolls/tickets, parking, maintenance and depreciation
- \* Reduced personal expenses, including clothing, grooming and food cost
- \* Reduced child- and elder-care costs due to later drop-offs and/or earlier pick-ups, and ability for teenagers and elderly dependents to be at home pursuing their own activities





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### Low-Cost Action Plan

Retirement benefits can also help build employee loyalty. To ensure you get the most from your company's investment in retirement benefits, you can take several practical low-cost or no-cost steps in both plan design and communication to help address this critical employee need. Here are a few worth considering:

- ★ Implement automatic enrollment and automatic escalation programs to encourage saving and overcome employee saving inertia.
- ★ Add income annuities as an allocation, partial 401(k) distribution option, or both, inside the plan.
- ★ Explore opportunities for providing flexible programs geared to an older workforce by instituting phased retirement and return-to-work programs.
- ★ Provide education to help employees realize and prepare for the costs associated with retirement, as well as how to cre-

ate guaranteed income for life. Recognize that there may be an appetite for this type of information earlier than traditional "pre-retiree" ages.

- ★ Communicate your plan's features that encourage participation, such as employer match and tax savings.
- ★ Offer retirement education programs that help employees realize and prepare for the costs associated with retirement, such as healthcare, prescription drug costs and long-term care.

The largest single generation in American history—those born between 1946 and 1964—is relying on the much smaller generations behind it to fund its Social Security and Medicare benefits, which have traditionally been financed on a pay-as-you-go basis. These trends, coupled with the economic realities of the past year, explain why retirement benefits are receiving unprecedented attention, and why your employees view them as increasingly important. ■

*TELECOMMUTING*—continued from Page 2

**Ensuring Home Office Safety.** The Occupational Safety and Health Administration (OSHA) has stated that it will not hold employers ultimately responsible for ensuring telecommuters maintain safe home offices. Likewise, OSHA will not require employers to inspect home offices of telecommuters. However, because of workers' compensation concerns, you may want to require telecommuting employees to agree to periodic inspections of their home work area.

**Preventing Work-Related Injuries at Home.** Workers' compensation generally covers employees injured while working from home. Many employers also opt to carry employers liability insurance in addition to workers' compensation insurance to provide additional coverage for lawsuits filed by employees or their families for injuries. You will also want to check your commercial liability policy to ensure it provides coverage to protect your company if a third party is injured while visiting an employee's home office.

**Complying with HIPAA.** If a telecommuting employee handles information protected under HIPAA privacy laws, make sure you provide training and resources to secure protected information. This may mean providing a locking file cabinet and secure file-sharing software.

**Complying with the Americans with Disabilities Act (ADA).** Telecommuting may be an attractive alternative for disabled employees who are unable to work in a traditional office setting. Although the ADA does not list telecommuting as a "reasonable accommodation," a number of courts have suggested that employers must not automatically rule out telecommuting as a reasonable accommodation. If you offer a telecommuting option to other employees, you cannot discriminate against employees with disabilities when selecting who may telecommute.

Bottom line: Telecommuting offers benefits, but some pitfalls. We can help ensure you have the proper insurance coverages in place. Please contact us for more information. ■

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### Reform Proposals

Several times over the past decade, federal lawmakers have advanced legislative tort reform proposals.

Typical proposals have included:

- ★ A cap of \$250,000 on awards for non-economic damages;
- ★ A cap on awards for punitive damages of \$500,000 or two times the award for economic damages, whichever is greater;
- ★ Modification of the "collateral source" rule to allow evidence of income from such sources as health and life insurance, workers' compensation and automobile insurance to be introduced at trials or to require that such income be subtracted from awards decided by juries;
- ★ A statute of limitations—one year for adults and three years for children—from the date of discovery of an injury; and
- ★ Replacement of joint-and-several liability with a fair-share rule, under which a defendant in a lawsuit would be liable only for the percentage of the final award that was equal to his or her share of responsibility for the injury.

The CBO estimates that if a package of proposals such as those described above were enacted, it would reduce total national healthcare spending by about 0.5 percent (about \$11 billion in 2009). That figure is the sum of the direct reduction in spending of 0.2 percent from lower medical liability premiums and an additional indirect reduction of 0.3 percent from slightly lower utilization of healthcare services.

Because many states have already implemented some of the changes in the package, a significant fraction of the potential cost savings has already been realized, according to CBO estimates.

The CBO concluded, "Policies that reduce expected malpractice costs are unlikely to have a major impact on health care spending for the average patient, and are also unlikely to be cost-effective over conventionally accepted ranges for the value of a statistical life." ■



# Will Medical Malpractice Reform Lower Healthcare Costs?

Policymakers and the public may exaggerate the role of medical malpractice liability in the rising cost of medical care. That's the conclusion of two recent studies on healthcare tort reform, one by the Congressional Budget Office (CBO) and the second by the National Bureau of Economic Research (NBOE).

For years, the American Medical Association has claimed that eliminating defensive medicine could save upwards of \$200 billion in healthcare costs annually. Others argue that this is one reform Washington will not seriously consider because trial lawyers (who are big campaign donors) thrive on the current tort system. Under this system, 54 cents of the malpractice dollar go to lawyers and administrative costs, according to a 2006 study in the *New England Journal of Medicine*.



Of course, medical providers pass their malpractice costs on to their patients. How much exactly does medical malpractice cost? The CBO report estimates that providers' direct 2009 costs for medical malpractice liability—which consist of malpractice insurance premiums, settlement awards, and administrative costs not covered by insurance—will equal approximately \$35 billion, or about two percent of total healthcare expenditures. The study found lowering premiums for medical liability insurance by 10 percent would reduce total national health care expenditures by about 0.2 percent.

The NBOE study reports that the effect of malpractice on medical costs over the last decade has been “relatively modest” in absolute terms, contributing no more than five percent of total real growth in medical expenditures, which topped 33 percent over this period. However, malpractice does have some indirect costs. These include “defensive medicine,” where healthcare providers order unneeded tests and diagnostic procedures to avoid the possibility of malpractice lawsuits. For example, the Centers for Disease Control reported that in 2007 ce-

sarean sections accounted for 31.8 percent of all births, an increase of more than 50 percent over the last decade. The U.S. has a much higher rate of cesarean births than other developed nations, possibly due to providers' fear of malpractice lawsuits for negative infant health outcomes. However, c-sections have their own risks, including a higher risk of maternal death.

## Tort Reform and Health Coverage

There is less evidence, however, about the effects of tort reform on people's health than about its effects on healthcare spending—because many studies of malpractice costs do not examine health outcomes. Both studies found that limiting the right to sue for damages from negligent health care might have a negative impact on health outcomes.

The CBO study found that a 10 percent reduction in costs related to medical malpractice liability would increase the nation's overall mortality rate by 0.2 percent. A competing report concluded that tort reform generated no significant adverse outcomes for patients' health.

MALPRACTICE—continued on Page 3

## Medical Malpractice: Reforms that Would Really Matter

A study published in *The New England Journal of Medicine* in 2006 found that most medical malpractice claims have merit. In evaluating 1,452 closed medical malpractice claims, researchers found no evident adverse outcome from medical care in only 3 percent. An additional 4 percent involved psychological or emotional injury, and fewer than 1 percent involved only alleged breaches of informed consent. “The remaining claims involved physical injury, which was typically severe. Eighty percent of claims involved injuries that caused significant or major disability (39 percent and 15 percent, respectively) or death (26 percent),” reported the study authors.

Of the claims involving injury or death, nearly two-thirds (63 percent) resulted from error. Researchers determined that of these cases, most claimants received compensation (73 percent) and that compensation tracked the claim's merit.

However, that's not to say that malpractice suits are the

most efficient way to ensure quality healthcare or to compensate the injured. In 16 percent of claims, claimants with injuries caused by error did not receive compensation. Of those that did, most waited an average of five years before their claim resolved, and one-third of these claims took six or more years to resolve.

A recent editorial in *USA Today* suggests that the U.S. could learn from other countries' malpractice claims systems. Kevin Pho, a primary care physician, said Great Britain, Germany and most of Canada use “health court” judges who decide medical malpractice cases more quickly and consistently than the U.S. jury trial system can. Other countries, such as Sweden and New Zealand, take a no-fault approach to medical malpractice claims and pay claimants based on the severity of their injuries. These systems provide more timely payment to those suffering legitimate injuries, more consistent decisions, and greater transparency than our adversarial system. ■