

*September*



INNOVATIVE **B**ENEFIT  
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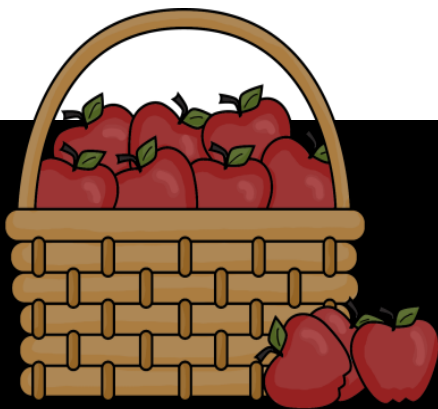
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## Did You Know?

Consider your HSA beneficiaries carefully. Many employers have added Health Savings Accounts (HSA) to their employer sponsored health plan offering. Most everyone knows an individual can use these dollars later to pay for medical expenses tax-free or take it out after age 65 for any reason with tax consequences.

To keep the tax savings going after your death, only list your spouse as your beneficiary. He or she can take control of the account and continue to use the tax benefits. However, if you name anyone else as either sole or co-beneficiary, the account value will be taxable income for the beneficiary in the year of your death.

That taxable amount may be reduced if you have any outstanding qualified medical expenses. Your beneficiary can use the HSA funds to pay those off. Make sure they know this and have access to your account.

*Randall B. Marking*  
*President*



Healthy Living



# Avoid Common Employer Lawsuits

Here is a friendly reminder of the top ten pitfalls associated with class action lawsuits. Here are ten practices that land employers in class action lawsuits:

1. Lack of audit agreements and payroll practices to review whether corporate separation is being maintained that include employee handbooks, paychecks, W-2 forms, non-competition agreements, non-disclosure agreements, and invention agreements.
2. Arrests versus criminal convictions on an employee's resume or work history can be two separate subjects. Criminal convictions are reliable evidence of criminal conduct, while arrests alone are not evidence of criminal conduct. A criminal conviction requires proof beyond a reasonable doubt, and arrests cannot be used to exclude an individual from employment except under very rare circumstances, according to the U.S. Equal Employment Opportunity Commission (EEOC). Many states take the position that an employer cannot automatically exclude an employee or applicant with a criminal conviction.
3. An employer must keep records of all the time employees worked that the employer knows about or has reason to know about, regardless of the time an employee is required, or is asked to work. Keeping accurate track of all time a non-exempt employee works each workday and each workweek will deter unpaid work discrepancies.
4. The salary basis rule requires that exempt employees must receive a pre-determined amount of pay for every workweek in which they perform any work. Improper deductions can include deduction for absence to attend a family matter, when the employer was closed due to weather, because the employee was absent from work for jury duty, and absence due to minor illness when the employer does not provide wage replacement benefits for each absence.
5. There is no bright light rule regarding who is an independent contractor. These tests include the IRS twenty-point test, the economic realities test, and the rights of control tests.
6. Many states have created marijuana-related employment protections such as private causes of action that prohibit employment discrimination or require reasonable accommodation of marijuana users under the ADA and many medical marijuana users can claim to be disabled within the meaning of the ADA. It is no longer safe to assume that marijuana's illegal status under federal law will prevent an employer from being sued under state law.
7. The Pregnancy Discrimination Act prohibits pregnancy-based discrimination and requires that pregnant employees are treated the same as other employees who are not so affected.
8. The Genetic Information Non-Discrimination Act (GINA) prohibits employers from discriminating against employees, applicants, and former employees based on genetic information. GINA forbids discrimination by genetic information in any aspect of employment including hiring, firing, pay, job assignment, promotions, layoffs, training, fringe benefits, and any other condition of employment.
9. Americans with Disabilities Act (ADA) accommodation: Areas of the ADA as enforced by the EEOC that have led employers to lawsuits are inflexible leave policies, transfer & reassignment, working from home, drug testing, medical exams, failure to allow an employee to return on a part-time basis, additional leave, and inflexible attendance policy.
10. Employers shall not discriminate employees on the basis of sex for equal work on jobs that require equal skill, effort, and responsibility. Exceptions are allowed where such payment is made pursuant to seniority, merit system, measures earnings by quantity or quality of production, or differential based on any factor other than sex, according to the Equal Pay Act.

## 2018 Medical Cost Increase

PricewaterhouseCoopers is projecting a 6.5 percent growth rate for 2018. Factors influencing this increase are:



- \* Increasing inflation in the economy that will affect the labor-intensive health sector, driving up wages and medical prices;
- \* The movement to higher deductible health plans will lose steam. Employers are letting off the gas pedal on high deductible health plan cost shifting;
- \* Fewer brand drugs going off patent with less generic opportunity;
- \* Continued hospital system consolidations;
- \* Aging population.

The research also showed that from 2011 to 2016, the average health premium for family coverage was up twenty percent. In the same period, wages increased just eleven percent.

## Health Care Plans

It is anyone's guess on what will happen with Obamacare, but it does look as though we will see some movement on health care regulation. The Trump administration has plans to green-light insurance payments for treating chronic conditions, such as diabetes and heart disease, before patients have to meet increasingly steep High Deductible Health Plans (HDHP) deductibles.

A pending executive order from the White House would change IRS rules that pertain to what can be covered by high deductible plans linked to Health Savings Accounts (HSA). Under current IRS rules, HDHPs linked to an HSA are permitted to cover only preventive care that falls outside the deductible. Other services cannot be covered until the deductible has been paid in full. This change will be a welcome relief for millions of insured Americans.

## Contact Lenses

Here is a great topic to include in your next employee wellness communication. In a report from the Centers for Disease Control and Prevention, the majority of teens and adults who wear contact lenses admit to at least one habit that can put them at risk of eye infection. The CDC recommends the following safety tips:

- ✓ Replace your contact lens case regularly;
- ✓ Visit your eye doctor every year;
- ✓ Buy your contact lenses from a trusted source;
- ✓ Do not sleep or nap while wearing contact lenses;
- ✓ Do not swim or shower while wearing contact lenses;
- ✓ Don't ever share contact lenses;
- ✓ Never use tap water to clean and rinse lenses.



*From the President***MEDICARE FOR ALL?**

Alan Grayson (D) Florida, recently introduced a bill that would allow people of any age to buy into the Medicare program. This idea is likely a good deal for sick people. Medicare can adjust the buy-in premium to take account of this, but then next year people are going to be looking at new higher premiums. With the high price, who is likely to opt-in?

Yes, our old friend adverse selection pops up whenever you build an insurance market without underwriting. Medicare is a government program, so it cannot death spiral out of existence.

However, there will be considerable political pressure to set the premiums well below the expected actuarial expenditure on care for beneficiaries. So instead of a death spiral, you get a fiscal crisis in Medicare. However, adverse selection is not even the biggest problem!

Medicare controls its costs by offloading them on to private insurers. Medicare pays significantly less than private insurers. There is some evidence that Medicare reimbursements do not quite cover the average cost of having a patient in the hospital. The hospital's fixed costs are mostly covered by higher reimbursements from private payers.

What will happen to rural hospitals that are valuable to Wisconsinites when commercial revenue is removed? Perhaps they all can become an Amazon distribution center.

**BIOSIMILAR DRUGS**

Merck & Co and South Korea's Samsung Bioepis Co Ltd have begun selling the anti-inflammatory drug Renflexis in the U.S. The new drug is the second non-branded version of Johnson & Johnson's blockbuster drug Remicade and Renflexis will sell for one-third below Remicade's list price. One would think that a product that does the same would fly off the shelves, but that is not the case.

Biosimilars are fairly new to the U.S., and unlike traditional generics, are not exact copies of the prescription drugs. That could limit enthusiasm among doctors and patients for switching treatments.

A much bigger obstacle is the complex U.S. system of rebates and discounts from the sticker price. A recent paper in the *Journal of the American Medical Association* said that rebates offered by drug companies to payers such as insurance companies could cut the price of the branded drug for a patient in half.

However, if the payer does use a biosimilar drug, the drug maker could pull its rebates for all of its patients. That means if some but not all patients switch to the cheaper drug, the payer's total drug expense could rise.

Perhaps someday we will pull the veil off rebates and other efforts by drug makers to expose how much their products cost.



## HRAs are Valuable

Employers need to think creatively when it comes to building and administering their health plans. While consumer driven plans and Health Reimbursement Accounts (HRA) are not new, they are becoming much more commonplace, and their importance is now greater than ever.

One of the many changes we have seen over the past few years is a growth in the self-insured marketplace. More small to mid-size employers are looking into self-funding to cut cost and regain control of their benefits. For organizations that cannot self-fund, are not yet ready to move to a self-insured plan, or are looking for a way to just dip their toe in the water, HRAs are a great alternative and option. HRAs allow organizations to self-insure only a small portion of the health care plan (*copays, deductibles, pharmacy benefits, etc.*) while still seeing substantial savings and having access to detailed claims information.

**Example:** *An employer decides it is spending too much on health care and seeks a way to offer the same benefits while lowering the annual cost. The employer currently offers a rich benefit plan with twenty-dollar office copay with a specialist copay and a \$1,000 deductible. The employer pays \$1,500,000 annually for the benefit.*

**Action:** *The employer buys a \$4,000 deductible plan that has a fifty-dollar office visit/specialist visit copay, which reduces the annual premium by thirty-percent or \$500,000 annually. The employer then implements an HRA to reimburse employees for the difference in copays and deductibles. Based on the last three years, the employer predicts their HRA claims to be \$100,000 to \$150,000. Therefore, using an HRA translates into a \$350,000 savings for the same benefit plan.*

There are some pitfalls in administering an HRA, and because an HRA is a self-funded plan layered over a fully insured plan, all self-insured guidelines apply. For example, self-insured employers, as well as all insurance issuers, must help fund the PCORI fee. Employers must also abide by nondiscrimination rules for the HRA when administering the plan.

IBSI has been using the HRA tool for years and brings the necessary administration tools for a successful program.

## Trump Whacks Obamacare

Trump recently slashed millions of dollars from the government's budget to promote the open enrollment season. Grants to non-profits that supply navigators will fall by forty percent and advertising will drop by ninety percent.

In a background briefing for reporters, HHS officials said too much money was spent in past years with too little to show for it. They cite a navigator group in one state last year that enrolled only one person in an insurance plan, but received \$200,000 which they said could have paid insurance premiums for three people in that state for the entire year.

They noted that the advertising budget doubled last year, but despite the increase, enrollment fell by forty-two percent or about 500,000 people.

Since Wisconsin runs its own program, it will not be affected by these cuts, and is business as usual for now.



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We are a privately owned insurance benefits firm specializing in the development, delivery, and implementation of employee benefits. Our primary focus is tailoring health care solutions for active and retiree populations. These solutions include our proprietary programs wrapped within a complete package of employee benefits and administration. We are a one-stop shop.

IBSI is on the cutting edge of providing benefits to active employees as well as both pre- and post-65 retirees for major employers nationwide. We offer Medicare Supplement, Major Medical, Life, Dental, Vision, and Prescription Drug Benefits on both a fully insured and self-funded basis. We integrate HMO Risk contracts and PPO's with our core solutions for the retiree segment.

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