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## The "Total" Advisor

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Brought to you by: **Total Insurance Services, Inc.**

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### Positive Employment Outlook Reported Among Employers in Recent Manpower Survey

Results from the [Manpower Employment Outlook Survey](#) for the second quarter of 2011 indicate that employers are reporting a positive hiring outlook for April through June.



More than 18,000 U.S. employers in 13 industry sectors were asked about their anticipated total employment over the next three months. Of those surveyed:

- 16% of employers expect to increase their number of employees, compared to 6% that anticipate a decrease in employment.
- 74% of employers expect no change in their workforce.
- 4% of employers responded that they are unsure of their hiring plans for the upcoming quarter.

These figures produce a net employment outlook of +10%, or +8% when adjusted for seasonal variations.

Employers in each of the 13 industry sectors surveyed reported a positive employment outlook for April through June. The industries surveyed included Leisure & Hospitality, Professional & Business Services, Durable Goods Manufacturing and Wholesale & Retail Trade.

Manpower Inc. expects to release its Employment Outlook Survey for

<b>In this Issue</b>
<a href="#">Positive Employment Outlook</a>
<a href="#">Final Regs for the ADA Amendments Act</a>
<a href="#">Extension of Enforcement Grace Period for Select Internal Claims and Appeals Rules</a>
<a href="#">Changes to the Form 5500 Series</a>
<a href="#">Reporting Employer-Sponsored Health Coverage on Form W-2</a>
<a href="#">Guidance Clarifies Personal Protective Equipment Standards for Employers</a>
<a href="#">Tax Deductions for Employee Business Expenses</a>

#### New IRS Guidance on Reporting Employer-Sponsored Health Coverage on Form W-2



The Internal Revenue Service (IRS) has issued [interim guidance](#) on the requirement under the Affordable Care Act that employers report the value of the health insurance coverage they provide employees on each employee's annual Form W-2.

### Background

The Affordable Care Act provides that employers are required to report the cost of employer-provided health care coverage on the Form W-2. The purpose of the new reporting requirement is to inform employees of the cost of their health coverage. Employer-provided health coverage continues to be excludable from an employee's income, and the amount reported is not taxable for federal income tax purposes.

[Notice 2010-69](#), issued last fall, made this requirement optional for all employers for the 2011 Forms W-2 (generally furnished to employees in January 2012).\*

### Interim Guidance Provides Further Relief for Small Employers

In the new guidance, the IRS provides further relief for smaller employers (those filing fewer than 250 W-2 forms) by making this requirement optional for them *at least for 2012* (i.e., for 2012 Forms W-2 that generally would be furnished to employees in January 2013) and continuing this optional treatment for smaller employers until

the third quarter on June 14, 2011.

You may review the results of the full survey by [clicking here](#). For tips on building a successful recruitment and hiring strategy to add to your company's workforce, please visit the HR360 section on [Recruitment & Hiring](#).

## EEOC Issues Final Regulations for the ADA Amendments Act

The U.S. [Equal Employment Opportunity Commission](#) (EEOC) has issued its [final regulations](#) to implement the ADA Amendments Act (ADAAA). Like the law they implement, the regulations are designed to simplify the determination of who has a "disability" and make it easier for people to establish that they are protected by the Americans with Disabilities Act (ADA). The regulations are effective as of March 25, 2011.

### The ADA Amendments Act

The ADAAA overturned several Supreme Court decisions that Congress believed had interpreted the definition of "disability" too narrowly, resulting in a denial of protection for many individuals with impairments such as cancer, diabetes or epilepsy. The ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA. The ADAAA went into effect on Jan. 1, 2009.

### Definition of "Disability" Remains the Same

The ADAAA and the [final regulations](#) keep the ADA's definition of the term "disability" as a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. But the law made significant changes in how those terms are interpreted, and the regulations implement those changes.

### Changes to Interpretation of "Disability"

The [regulations](#) provide a list of principles to guide the determination of whether a person has a disability.

- For example, to be considered a disability, an impairment may not necessarily prevent or severely or significantly restrict performance of a major life activity.
- Additionally, whether an impairment is a disability should be interpreted broadly, to the maximum extent allowable under the law.
- The principles also provide that, with one exception (ordinary eyeglasses or contact lenses), "mitigating measures," such as medication and assistive devices like hearing aids, must not be considered when determining whether someone has a disability.
- Impairments that are episodic (such as epilepsy) or in remission



further guidance is issued.

Using a question-and-answer format, [Notice 2011-28](#) also provides guidance for employers that are subject to this requirement for the 2012 Forms W-2 and those that choose to voluntarily comply with it for either 2011 or 2012. The notice includes information on how to report, what coverage to include and how to determine the cost of the coverage.

*\*Caution:* Employers in certain states may be required to report the cost of employer-provided health insurance coverage for adult children on the employee's Form W-2 for 2011. This is because the income tax laws of some states have not been changed to conform with the federal rules, so expanded coverage provided for adult children under the Affordable Care Act may be treated as taxable income to the employee for state income tax purposes. Employers should contact their [state revenue department](#) for reporting requirements related to coverage for adult children.

#### Additional Information

To read the new guidance in its entirety, see [Notice 2011-28](#). You may also view the IRS press release by [clicking here](#). For more on the Affordable Care Act, please visit the HR360 [Health Care Reform](#) section.

### OSHA Enforcement Guidance Clarifies Personal Protective Equipment Standards for Employers

The [Occupational Safety and Health Administration](#) (OSHA) recently issued the [Enforcement Guidance for Personal Protective Equipment in General Industry](#), a directive for OSHA enforcement personnel and general industry that clarifies the type of personal protective equipment (PPE) employers must provide at no cost to workers, and when employers are required and

(such as cancer) are disabilities if they would be substantially limiting when active.

The regulations clarify that the term "major life activities" includes "major bodily functions," such as:

- Functions of the immune system,
- Normal cell growth, and
- Brain, neurological, and endocrine functions.

The regulations also make clear that not every impairment will constitute a disability. The regulations include examples of impairments that should easily be considered disabilities, such as:

- HIV infection,
- Diabetes,
- Epilepsy, and
- Bipolar disorder.

The [regulations](#) also make it easier for individuals to establish that they are "regarded as" having a disability. Under the new law, the focus is on how the person is treated rather than on what an employer believes about the nature of the person's impairment.

#### Additional Information

To read more about the ADA Amendments Act, please click on the EEOC links below. For more information on disability discrimination under the Americans with Disabilities Act, please visit the HR360 page on [Disability Discrimination](#).

- [Text of the ADAAA](#)
- EEOC's [Notice Concerning The Americans With Disabilities Act \(ADA\) Amendments Act of 2008](#)
- [Final Regulations Implementing the ADAAA](#)
- [Q&As on the Final Rule Implementing the ADA Amendments Act of 2008](#)
- [Q&As for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008](#)
- [Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA](#)

### Extension of Enforcement Grace Period for Select Internal Claims and Appeals Rules Until Plan Years Beginning On or After Jan. 1, 2012

The Affordable Care Act generally requires group health plans (except for grandfathered plans) and health insurance issuers in the group market to implement an effective internal appeals process for coverage determinations and claims, beginning with plan years starting on or after September 23, 2010. [Interim final regulations](#) released in July 2010 by the



not required to pay for PPE. The directive is effective as of February 10, 2011.

OSHA issued a final rule on *Employer Payment for Personal Protective Equipment* in November 2007. The rule required employers in general industry, shipyard employment, longshoring, marine terminals and construction to provide most types of required PPE at no cost to the worker. The agency also issued a [final rule](#) in September 2009 updating its PPE standards so that they are more consistent with current consensus standards.

The standards require employers to provide--at no cost to workers--protective equipment such as goggles and face shields that fit properly without restricting vision; earplugs and earmuffs when they will reduce noise to acceptable levels and are less costly than administrative and engineering controls; and respirators to protect workers from exposure to air contaminants. Additionally, the directive lists PPE and other items exempted from the employer payment requirements and includes questions and answers useful in clarifying PPE payment concerns.

To view the directive, please [click here](#). You may also visit OSHA's [Safety and Health Topics page on Personal Protective Equipment](#) for more information. For more on employee safety and employer responsibilities under the Occupational Safety and Health Act, please see the HR360 [Safety & Wellness](#) section.

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## Tax Deductions for Employee Business Expenses

An employee who itemizes deductions may be able to deduct certain work-related expenses. The IRS has [provided information](#) that can help an employee determine

Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury describe the new procedures, including seven new standards required for internal claims and appeals.

The Departments [previously delayed](#) the enforcement of certain standards set forth in the interim final regulations until July 1, 2011, regarding:

- The timeframe for making urgent care claims decisions;
- Providing notices in a culturally and linguistically appropriate manner;
- Requiring broader content and specificity in notices; and
- Substantial compliance.

### Extension of Enforcement Grace Period

[Technical Release 2011-01](#) further extends, with a few modifications, the enforcement grace period previously set forth. Specifically, the enforcement grace period is extended **until plan years beginning on or after January 1, 2012** with respect to the timeframe for making urgent care claims decisions, providing notices in a culturally and linguistically appropriate manner, and substantial compliance.

During the grace period, the Department of Labor and the IRS will not take any enforcement action against a group health plan with respect to these provisions. There is no requirement that plans be working in good faith to implement such standards for either the extended or the original enforcement grace period to apply.

### Original Enforcement Grace Period Applies to Certain Provisions

With respect to the requirement of broader content and specificity in notices, the Departments are extending the enforcement grace period *in part only*. Enforcement with respect to the following provisions will take effect on a rolling plan year basis, starting on the first day of the first plan year **beginning on or after July 1, 2011**:

- The disclosure of information sufficient to identify a claim (other than the diagnosis and treatment information);
- The reasons for an adverse benefit determination;
- The description of available internal appeals and external review processes; and
- For plans and issuers in states in which an office of health consumer assistance program or ombudsman is operational, the disclosure of the availability of, and contact information for, such program.

For more information and compliance assistance, please see [Technical Release 2011-01](#). To read more about the requirements related to the new internal claims and appeals procedures, please visit the HR360 [Health Care Reform](#) section and click on Claims and Review Processes in the left-hand navigation.

## Update on Changes to the Form 5500 Series: IRS Sets Filing Dates for New Form 8955-SSA

One of a number of changes made to the

Form **5500**

which expenses may be deducted as an employee business expense.

### **Qualifying Expenses for Itemized Deductions**

Expenses that qualify for an itemized deduction include:

- Business travel away from home
- Business use of car
- Business meals and entertainment
- Travel
- Use of your home
- Education
- Supplies
- Tools
- Miscellaneous expenses

### **Reimbursement of Expenses**

If an employer reimburses an employee under an accountable plan, the employee does not include the payments in his or her gross income, and may not deduct any of the reimbursed amounts. In an accountable plan, an employee must meet the following three requirements:

1. Must have paid or incurred expenses that are deductible while performing services as an employee,
2. Must adequately account to his or her employer for these expenses within a reasonable time period, and
3. Must return any excess reimbursement or allowance within a reasonable time period.

If the plan under which the employee is reimbursed by an employer is non-accountable, the payments received should be included in the wages shown on Form W-2. The employee must report the income and itemize deductions to deduct these expenses.

Only employee business expenses that are in excess of 2% of adjusted gross income can be deducted.

For more information, please see [IRS Publication 529, Miscellaneous Deductions](#). [Tax Topic 514](#) also discusses employee business expenses.

Form 5500 Series (used by employee benefit plans to satisfy certain annual reporting obligations) to accommodate electronic filing requirements, was the removal of Schedule SSA for plan administrators to report certain information relating to plan participants with deferred vested benefits. IRS [Announcement 2011-21](#) designates a new form to satisfy these reporting requirements and sets the due dates for filing this form for 2009 and subsequent plan years.

### **New Form 8955-SSA**

Form 8955-SSA, a stand-alone form to be filed with the IRS, has been developed as the successor to the Schedule SSA. For plan years beginning on or after January 1, 2009, the Form 8955-SSA should be used to comply with these reporting requirements.

### **Required Filing Dates**

In general, as with Schedule SSA, if a Form 8955-SSA must be filed for a plan year, it must be filed by the last day of the 7th month following the last day of that plan year (plus extensions). However, in order to provide plan administrators with additional time to complete and file the new Form 8955-SSA, the due date for filing the Form 8955-SSA for the 2009 and the 2010 plan years is the later of:

- The due date that generally applies for filing the Form 8955-SSA for the 2010 plan year, and
- August 1, 2011.

For example, in the case of a 2009 plan year or a short 2010 plan year, the Form 8955-SSA is not required to be filed before August 1, 2011.

### **Availability of Form 8955-SSA**

Form 8955-SSA for the 2009 plan year is expected to be available for filing by plan administrators shortly. Form 8955-SSA for the 2010 plan year is being developed and is expected to be available for filing later this year. The IRS has also developed a voluntary electronic filing system for filing Form 8955-SSA for the 2009 plan year and subsequent plan years.

In order to reduce the burden on plan administrators, the IRS will treat a Schedule SSA that is filed with the IRS for the 2009 or 2010 plan year **no later than April 20, 2011** as satisfying the applicable reporting requirements (and no Form 8955-SSA is required to be filed for the 2009 or 2010 plan year if a Schedule SSA for the applicable plan year is filed with the IRS by this date).

For more information on this change, please read [Announcement 2011-21](#).

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