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	The HR resource every business needs The "Total" Advisor October 2011
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Brought to you by: Total Insurance Services, Inc.

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Required Employer Notices Now Available for Download: NLRB Poster and Updated Model CHIP Notice

Keep Track of Required Benefit Plan Notices with Our All-in-One Compliance Calendar



Have you had a chance to check out the new [Benefits Compliance Calendar](#) available in the Employee Benefits section of your HR library? The convenient all-in-one calendar allows you to quickly review key benefit plan reporting and notice requirements, and you can even download model notices and agency guidelines right from the calendar!

With the [Benefits Compliance Calendar](#), it's simple and easy to keep track of the many different required notices related to employee benefit plans-including who must provide them, who must receive them and when disclosures are due. The calendar includes:

- Benefits compliance checklist
- SPDs and general ERISA disclosures
- COBRA notices
- HIPAA notices and disclosures
- Affordable Care Act notices
- Special health care notices
- Form 5500
- Retirement and pension plan notices

To access the [Benefits Compliance Calendar](#), simply click on the **first link** in the left-hand menu in the Employee Benefits section of your HR library. It's a great way to help your company stay compliant!

IRS Guidance Clarifies Tax Treatment of Cell Phones

Employee Rights Under the National Labor Relations Act

The National Labor Relations Board (NLRB) enforces the right of employees to organize and represent themselves with their employers. For a list of NLRB regional offices, visit www.nlrb.gov. For more information on the NLRB, visit www.nlrb.gov. The NLRB also provides information on the National Labor Relations Act, including the rights of employees and employers under the Act. For more information on the NLRB, visit www.nlrb.gov.

Under the NLRB, you have the right to:

- Organize or join a union to represent you in dealing with your employer.
- Bargain with your employer over wages, benefits, and other terms and conditions of your employment.
- Take action, such as strikes, to address your concerns with your employer.
- Refuse to join a union if you do not want to.
- Be free from employer interference, restraint, or coercion in exercising your rights.
- Be free from employer discrimination for exercising your rights.
- Be free from employer retaliation for exercising your rights.

Under the NLRB, it is illegal for your employer to:

- Interfere, restrain, or coerce employees in exercising their rights.
- Discriminate against employees for exercising their rights.
- Retaliate against employees for exercising their rights.
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Employer-provided cell phones: If you believe your rights of free speech and privacy are being violated by your employer, you may wish to contact the NLRB. For more information on the NLRB, visit www.nlrb.gov.

This is an advertisement notice and must not be displayed by employers.

Employers should take note of two mandatory notices that are now available for download.

New Employee Rights Poster

The poster that most employers will be required to display to notify employees of their rights under the National Labor Relations Act is available by [clicking here](#). Employers may print out the notice in color or black-and-white on one 11-by-17-inch paper or two 8-by-11-inch papers taped together.

Under the [final rule](#) issued by the National Labor Relations Board (NLRB), employers are required to post the notice where other workplace notices are typically posted **beginning November 14, 2011**. [Click here](#) for more information on this new requirement and visit our [Federal Poster Requirements](#) page for other federal notices required to be displayed in the workplace.

Updated Model CHIP Notice

New guidance issued by the Internal Revenue Service (IRS)

explains that, where employers provide cell phones to their employees or where employers reimburse



employees for business use of their personal cell phones, tax-free treatment is available without burdensome recordkeeping requirements.

The guidance does not apply to the provision of cell phones or reimbursement for cell-phone use that is not primarily business-related, as such arrangements are generally taxable.

Employer-Provided Cell Phones as Excludible Fringe Benefit

[Notice 2011-72](#) explains that when an employer provides an employee with a cell phone primarily for noncompensatory business reasons, the business and personal use of the cell phone is generally nontaxable to the employee.

- An employer will be considered to have provided an employee with a cell phone primarily for noncompensatory business purposes if there are substantial reasons relating to the employer's business, other than providing compensation to the employee, for providing the employee with a cell phone.
- For example, the employer's need to contact the employee at all times for work-related emergencies, the employer's requirement that the employee be available to speak with clients at times when the employee is away from the office, and the employee's need to speak with clients located in other time zones at times outside of the employee's normal work day are possible substantial noncompensatory business reasons.
- A cell phone provided to promote the morale or good will of an employee, to attract a prospective employee or as a means of furnishing additional compensation to an employee is not provided primarily for noncompensatory business purposes (and so would be generally taxable).

The U.S. Department of Labor's Employee Benefits Security Administration has released an [updated model notice](#) for employers to provide information on eligibility for premium assistance under [Medicaid](#) or the [Children's Health Insurance Program](#) (CHIP), current as of July 31, 2011.

Employers that provide health coverage in states with premium assistance through Medicaid or CHIP must inform employees of potential opportunities for assistance in obtaining health coverage annually before the start of each plan year. Our section on [CHIPRA](#) (the Children's Health Insurance Program Reauthorization Act) contains additional information on employer responsibilities related to the state Children's Health Insurance Program.

Medicare Open Enrollment Begins Oct. 15; New Deadline to Provide Part D Creditable Coverage Disclosures

As a reminder, the Medicare fall [Open Enrollment Period](#) now begins on October 15 and ends December 7. This means that **plan sponsors of group health plans (including employers) that provide prescription drug coverage must distribute required creditable coverage disclosure notices to Medicare eligible participants prior**

The IRS will *not require recordkeeping of business use* in order to receive this tax-free treatment.

Reimbursements for Work-Related Use of Personal Cell Phones

The IRS also announced in a [memo to its examiners](#) a similar approach that applies with respect to arrangements common to small businesses that provide cash allowances and reimbursements for work-related use of personally-owned cell phones.

- Under this approach, employers that require employees, primarily for noncompensatory business reasons, to use their personal cell phones for business purposes may treat reimbursements of the employees' expenses for reasonable cell phone coverage as nontaxable.
- This treatment does not apply to reimbursements of unusual or excessive expenses or to reimbursements made as a substitute for a portion of the employee's regular wages.

For More Information

You may read the guidance contained in Notice 2011-72 in its entirety by [clicking here](#). For more on the tax treatment of various types of employer-provided fringe benefits, please visit our section on [Fringe Benefits](#).

New Enforcement Efforts Aimed at Employee Misclassification; Employers May Avoid Payroll Tax Penalties with Voluntary Reclassification

The U.S. Department of Labor (DOL) has [entered into a series of agreements](#) with the Internal Revenue Service (IRS), as well as several state labor commissioners and other department leaders, which will enable those agencies to share information and coordinate law enforcement to end the business practice of misclassifying employees in order to avoid providing employment protections.

Voluntary Classification Settlement Program

At the same time, the IRS has [launched a new program](#) that will enable many employers to resolve past worker classification issues and achieve certainty under the tax law at a low cost by voluntarily reclassifying their workers. The [Voluntary Classification Settlement Program](#) (VCSP) will allow employers the opportunity to come into compliance by making a minimal payment

to October 15.

The [Medicare Modernization Act](#) requires entities whose policies include prescription drug coverage to notify Medicare eligible policyholders whether their prescription drug coverage is creditable coverage, which means that the coverage is expected to pay, on average, as much as the standard Medicare prescription drug coverage. For such an entity, there are two disclosure requirements:

- A [written disclosure notice](#) to all Medicare eligible individuals annually who are covered under its prescription drug plan, prior to October 15th each year and at various specified times, including when an individual joins the plan. This disclosure must be provided to Medicare eligible active working individuals and their dependents, Medicare eligible COBRA individuals and their dependents, Medicare eligible disabled individuals covered under the prescription drug plan and any retirees and their dependents.
- The [Online Disclosure to CMS Form](#) to report the creditable coverage status of its prescription drug plan. The Disclosure should be completed annually no later than 60 days from the beginning of a plan year, within 30 days after termination of a prescription drug plan, or within 30 days after any change in creditable coverage status.

For further information regarding Medicare Open Enrollment, please [click here](#).

covering past federal payroll tax obligations rather than waiting for an IRS audit.

Who is eligible to participate in the program?

The VCSP is available to many businesses, tax-exempt organizations and government entities that currently erroneously treat their workers or a class or group of workers as nonemployees or independent contractors, and now want to correctly treat these workers as employees.

To be eligible, an applicant must:

- Consistently have treated the workers in the past as nonemployees.
- Have filed all required Forms 1099 for the workers for the previous 3 years.
- Not currently be under audit by the IRS, the DOL or a state agency concerning the classification of these workers.

How does the program work?

Employers accepted into the program will pay an amount effectively equaling just over 1% of the wages paid to the reclassified workers for the past year. No interest or penalties will be due, and the employers will not be audited on payroll taxes related to these workers for prior years. Participating employers will, for the first 3 years under the program, be subject to a special 6-year statute of limitations, rather than the usual 3 years that generally applies to payroll taxes.

How can employers apply for the program?

Interested employers can apply for the program by filing [Form 8952, Application for Voluntary Classification Settlement Program](#), at least 60 days before they want to begin treating the workers as employees.

Where can I find more information?

Full details on the Voluntary Classification Settlement Program, including [FAQs](#), are available on IRS.gov by [clicking here](#), and in [Announcement 2011-64](#). To read more about the latest enforcement efforts by DOL and the IRS, please [click here](#). Our section on [Independent Contractors - How to Classify](#) features important information and tips on how to properly classify your workers.

Proposed Rules Regarding Insurance Exchanges May Impact Employers

[Affordable Insurance Exchanges](#) are state-based

You can also visit our section on [Medicare](#) to learn more about the program and the employer notice requirements under Part D (including model notices).

Interim Guidance on Electronic Disclosure of Retirement Plan Fee Disclosures

The U.S. Department of Labor's [Employee Benefits Security Administration](#) has issued an [interim policy regarding the use of electronic media](#) to satisfy disclosure requirements under the previously published [final participant-level fee disclosure regulation](#), which requires employers to disclose more information about plan and investment costs to workers who direct their own investments in ERISA-covered 401(k) and other individual account retirement plans.

Under the [final rule](#), plans generally have until at least **May 31, 2012** to begin providing such information and disclosures.

Electronic Disclosure Allowed Under Certain Conditions

The [interim policy](#) allows plan administrators to furnish the required information and disclosures electronically (including through the use of continuous access websites), provided that specific requirements are met and the administrator complies with the conditions and safeguards included in

competitive marketplaces, established under the [Affordable Care Act](#), where individuals and small businesses are expected to be able to purchase private health insurance beginning in 2014. Below are highlights of select provisions of recently proposed rules that may be relevant to employers.

Standards for Employer Participation in a SHOP (Small Business Health Options Program)

[Proposed rules](#) issued by the [U.S. Department of Health and Human Services](#) (HHS) outline the basic standards employers must meet to voluntarily participate in a SHOP. The Affordable Care Act directs each state that operates an Exchange to provide for the establishment of a SHOP to assist qualified employers and facilitate the enrollment of certain employees into qualified health plans.

- Under the [proposed rules](#), a small employer (less than 100 employees) is generally eligible to purchase coverage through a SHOP if the employer elects to offer, at a minimum, all full-time employees coverage in a qualified health plan through the SHOP.
- The standards proposed for small employer participation in a SHOP include requirements that employers provide certain information - both to employees about the methods for selecting and enrolling in a qualified health plan, and to the SHOP about employee eligibility to purchase coverage - as well as rules regarding when an employer must permit employees to seek enrollment in a qualified health plan and when the employer may change its employee offerings for a plan year.

The Health Insurance Premium Tax Credit

The [Internal Revenue Service](#) (IRS) issued [proposed regulations](#) relating to the [health insurance premium tax credit](#), which is designed to reduce certain individuals' out-of-pocket premium costs for enrolling in qualified health plans through Affordable Insurance Exchanges.

The [proposed regulations](#) provide that a taxpayer is generally eligible for the credit for a taxable year if:

- The taxpayer's household income for the year is between 100% and 400% of the federal poverty level (\$22,350-\$89,400 for a family of four in 2011);
- The taxpayer or a member of the taxpayer's family is enrolled in one or more qualified health plans through an Affordable Insurance Exchange; and

[Technical Release 2011-03.](#)

- The taxpayer or a member of the taxpayer's family is not eligible for other qualifying coverage, such as Medicare, Medicaid, or affordable employer-sponsored coverage.

Proposed Affordability Safe Harbor for Employers

Beginning in 2014, employers with 50 or more full-time employees that do not offer affordable health coverage to their full-time employees may be required to make a "[shared responsibility payment](#)" if any of the employer's full-time employees obtains coverage through an Exchange and receives a premium tax credit.

To assist employers in determining whether the coverage they are offering is affordable to certain employees, the Treasury Department and IRS are [requesting public comment](#) on a [proposed safe harbor](#) permitting employers that offer coverage to their employees to measure the affordability of that coverage by using wages that the employer paid to an employee as reported on Form W-2 (instead of the employee's household income, which is generally unknown to the employer). This safe harbor would only apply for purposes of the employer shared responsibility payment, and would not affect employees' eligibility for health insurance premium tax credits.

To read more about these proposed rules and other employer responsibilities under the Affordable Care Act, please visit our section on [Health Care Reform](#).

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