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Affordable Care Act's Annual Limit Restrictions Do Not Apply to Stand-Alone HRAs in Effect Prior to Sept. 23, 2010

New Federal Poster Requirement for Employers Effective November 14, 2011



The [National Labor Relations Board](#) (NLRB) has issued a [final rule](#) that will require employers to notify employees of their rights under the National Labor Relations Act by posting a notice **as of November 14, 2011**. The 11-by-17-inch notice is similar in content and design to a notice of NLRA rights that must be posted by federal contractors under a Department of Labor rule.

Which employers are subject to the new posting requirement?

Private-sector employers whose workplaces fall under the National Labor Relations Act, including both union and non-union workplaces, will be required to post the employee rights notice where other workplace notices are typically posted. Very small employers whose annual volume of business is not large enough to have more than a slight effect on interstate commerce may not be required to comply with the posting requirement, including:

- Certain retail employers with gross annual volume of business under \$500,000;
- Certain non-retail employers with *direct or indirect* annual outflow (goods sold or services provided by the employer out of state) or inflow (goods or services purchased by the employer from out of state) below \$50,000; and
- Certain other small employers whose gross annual volume of business meets certain standards as provided in the [final rule](#) (see pages 54047-54048).

What information will be included in the notice to employees?

The notice states that employees have the right:



The Center for Consumer Information & Insurance Oversight has [issued guidance](#) that exempts stand-alone Health Reimbursement Arrangements (HRAs) in effect prior to Sept. 23, 2010 from having to comply with the Affordable Care Act's [annual limit requirements](#) for plan years beginning before Jan. 1, 2014.

Background

The [Affordable Care Act](#) generally prohibits group health plans from [imposing lifetime or annual limits](#) on the dollar value of health benefits, but allows "restricted annual limits" with respect to essential health benefits for plan years beginning before January 1, 2014. Restricted annual limits [may be waived](#) if compliance with the rules would result in a significant decrease in access to benefits or a significant increase in premiums.

Exemption for Stand-Alone HRAs

An HRA is a self-insured medical reimbursement plan funded solely by employer contributions

- To act together to improve wages and working conditions;
- To form, join and assist a union;
- To bargain collectively with their employer; and
- To choose not to participate in any of the preceding activities.

The notice also provides examples of unlawful employer and union conduct and instructs employees how to contact the NLRB with questions or complaints.

How can employers obtain the required notice to be posted in the workplace?

The NLRB will provide copies of the notice on request at no cost to employers beginning on or before Nov. 1, 2011. These can be obtained by contacting a [NLRB regional office](#). Employers can also download the notice from the NLRB website (<http://www.nlr.gov/>) and print it out in color or black-and-white on one 11-by-17-inch paper or two 8-by-11-inch papers taped together. Translated versions will be available, and must be posted at workplaces where at least 20% of employees are not proficient in English.

What about electronic communication?

In addition to the physical posting, the [final rule](#) requires every covered employer to post the notice on an internet or intranet site if personnel rules and policies are customarily posted there. Employers are not required to distribute the posting by email, Twitter or other electronic means.

Can an employer be fined for failing to post the notice?

The NLRB does not have the authority to impose fines. Failure to post the notice may be treated as an unfair labor practice. The NLRB investigates allegations of unfair labor practices made by employees, unions, employers, or other persons, but does not initiate enforcement action on its own.

Where can I find additional information about this new requirement?

The NLRB has provided a [fact sheet](#) with further information about the rule that may be viewed by [clicking here](#). You may also read the final rule in its entirety [here](#). Other federal notices required to be displayed in the workplace are featured in the HR360 [Federal Poster Requirements](#) section.

Tips for Protecting Your Business Against Natural Disasters

and not through salary reduction that:

- Reimburses some or all of the medical care expenses of participating employees, spouses and dependents up to a maximum dollar amount for a coverage period; and
- Allows participants to carry forward unused amounts remaining at the end of the coverage period for use in subsequent coverage periods.

According to the [guidance](#), all HRAs set limits on the amount that can be spent and those limits would always be less than the applicable restricted annual limit amounts, so applying the annual limit restrictions would result in a significant decrease in access to HRA benefits.

As a result, the [guidance](#) exempts all stand-alone HRAs that were in effect prior to Sept. 23, 2010 from having to apply individually for an annual limit waiver for plan years beginning on or after Sept. 23, 2010 but before Jan. 1, 2014. If an employer that maintains an HRA also maintains other coverage, whether or not that coverage is integrated with the HRA, that other coverage must comply with the annual limit restrictions or obtain a waiver.

Record and Notice Requirements Still Apply

Natural disasters such as floods or hurricanes can happen suddenly at any time. It is prudent to take special precautionary steps to protect your company in the event of a natural disaster. The following actions are recommended by the [Federal Emergency Management Agency](#) (FEMA).



Most businesses keep on-site records and files (both hardcopy and electronic) that are essential to normal operations. Some businesses also store raw materials and product inventory. The loss of essential records, files, and other materials during a disaster is commonplace and can not only add to your damage costs but also delay your return to normal operations. The longer your business is not operating, the more likely you are to lose customers permanently to your competitors.

Protecting Company Documents and Equipment

To reduce your vulnerability, determine which records, files, and materials are most important; consider their vulnerability to damage during different types of disasters (such as floods, hurricanes, and earthquakes) and take steps to protect them, including the following:

- Raising computers above the flood level and moving them away from large windows;
- Moving heavy and fragile objects to low shelves;
- Storing vital documents (plans, legal papers, etc.) in a secure off-site location;
- Regularly backing up vital electronic files (such as billing and payroll records and customer lists) and storing backup copies in a secure off-site location;
- Securing equipment that could move or fall during an earthquake; and
- Prior to hurricanes, covering or protecting vital documents and electrical equipment from potential wind driven rain, which may breach the building envelope through windows, doors, or roof systems.

Additional Tips to Secure Your Business

- Make sure you are aware of the details of your flood insurance and other hazard insurance policies, specifically which items and contents are covered and under what conditions. Check with your insurance agent if you have questions about any of

An HRA that is exempt from applying for an annual limit waiver still must comply with the record retention and annual notice requirements to participants and subscribers included in [previous guidance](#).

Additional Information
To read the guidance in its entirety, please [click here](#). For more on HRAs, visit the HR360 section on [HSAs, FSAs & Other Tax-Favored Plans](#).

Expanded Preventive Services for Women Under the Affordable Care Act

The [U.S. Department of Health and Human Services](#) (HHS) has adopted additional [Guidelines for Women's Preventive Services](#) requiring new health insurance plans to cover women's preventive services such as well-woman visits, breastfeeding support, domestic violence screening, and contraception without charging a co-payment, co-insurance or a deductible starting in August 2012. The guidelines were recommended by the independent Institute of Medicine (IOM).

Coverage of Recommended

your policies.

- When you identify equipment susceptible to damage, consider the location of the equipment. For example, equipment near a hot water tank or pipes could be damaged if the pipes burst during an earthquake, and equipment near large windows could be damaged during hurricanes.
- Assign disaster mitigation duties to your employees. For example, some employees could be responsible for securing storage bins and others for backing up computer files and delivering copies to a secure location.
- You may want to consider having other offices of your company or a third party service provider perform some administrative duties, such as maintaining payroll records or providing customer service.
- Estimate the cost of repairing or replacing each essential piece of equipment in your business. Your estimates will help you assess your vulnerability and focus your efforts.
- For both insurance and tax purposes, you should maintain written and photographic inventories of all important materials and equipment. The inventory should be stored in a safety deposit box or other secure location.
- Periodically evaluate the building envelope to make sure that wind and water are not able to penetrate the building. Do regular maintenance and repairs to maintain the strength of the building envelope.

For guidelines on developing an emergency action plan to protect your employees and business during a disaster, visit the HR360 section on [Planning for Workplace Emergencies](#).

Guidance on Summary of Benefits and Coverage to Be Provided by Group Health Plans

The U.S. Departments of Labor, Health and Human Services, and the Treasury have [proposed new rules](#) that establish [standards for group health plans](#) to provide, without charge, a summary of benefits and coverage (SBC), as well as a uniform glossary of terms commonly used in health insurance coverage, as required under the [Affordable Care Act](#). The new requirements would be applicable **beginning March 23, 2012**.

The Departments also issued a [proposed template](#) for the SBC (with instructions and sample language for completing the template), and a [proposed uniform glossary](#) that may be used to comply with the disclosure requirements.

Summary of Benefits and Coverage (SBC)

Under the [proposed rules](#), a group health plan and a health

Preventive Services Under the Affordable Care Act

Last summer, HHS released new rules under the [Affordable Care Act](#) requiring all new private health plans to cover several evidence-based preventive services like mammograms, colonoscopies, blood pressure checks, and childhood immunizations without charging a copayment, deductible or coinsurance. Note that these required preventive services do not apply to [grandfathered plans](#).

New Guidelines Expand Required Preventive Services for Women

As a result of the new guidelines, additional women's preventive services that must be covered without cost sharing requirements include:

- Well-woman visits;
- Screening for gestational diabetes;
- Human papillomavirus (HPV) DNA testing for women 30 years and older;
- Sexually-transmitted infection counseling;
- Human immunodeficiency virus (HIV) screening and counseling;
- FDA-approved contraception methods and contraceptive counseling;
- Breastfeeding support, supplies, and counseling; and
- Domestic violence

insurance issuer offering group health insurance coverage must provide the SBC to participants and beneficiaries as a stand-alone uniform document which uses terminology understandable by the average plan enrollee, and which does not exceed 4 double-sided pages in length with print no smaller than 12-point font. The SBC may be provided in paper form, or electronically if certain requirements are met.

The information that must be provided in the SBC includes:

- Descriptions of coverage, premiums, and any cost-sharing requirements for specific categories of benefits;
- Exceptions, reductions, and limitations of coverage;
- Renewability and continuation of coverage provisions;
- Coverage examples that illustrate benefits provided under the plan or coverage for common benefits scenarios (such as pregnancy); and
- Contact information for questions and obtaining copies of plan documents.

The SBC must be provided to participants and beneficiaries:

- As part of any written application materials that are distributed by the plan or issuer for enrollment; and
- Upon request by a participant or beneficiary, as soon as practicable, but in no event later than 7 days following the request.

Additionally, if any material modification is made to any of the terms of the plan or coverage that would affect the content of the SBC, the plan or issuer generally must provide notice of the modification to enrollees **not later than 60 days prior to the date on which such modification will become effective**.

Uniform Glossary

The [proposed rules](#) also require that a group health plan, and a health insurance issuer offering group health insurance coverage, make available to participants and beneficiaries a uniform glossary which provides specified definitions of certain health-coverage-related terms, such as "deductible" and "co-pay," in terminology understandable by the average plan enrollee.

- A plan or issuer must make the uniform glossary available upon request, in either paper or electronic form (as requested), within 7 days of the request.

For More Information

You can read more about the Affordable Care Act in the HR360 [Health Care Reform](#) section. The links below contain

screening and counseling.

New health plans will need to include these services without cost sharing for insurance policies with plan years beginning on or after August 1, 2012.

Additional Information

For more on the requirements for coverage of recommended preventive services under the Affordable Care Act, please visit the HR360 [Health Care Reform](#) section. The links below contain additional information on the HHS guidelines for expanding women's preventive services.

- [HHS News Release](#)
- [Fact Sheet](#)
- Women's Preventive Services: Required [Health Plan Coverage Guidelines](#)

Coming Next Month: Proposed Rules Regarding Insurance Exchanges May Impact Employers

Proposed rules relating to state-based Affordable Insurance Exchanges were recently issued. Stay tuned for our coverage of the proposed standards for employer participation in SHOPs (Small Business Health Options Programs) and guidance on the health insurance

additional information relating to the summary of benefits and coverage and uniform glossary requirements.

- [News Release](#)
- [Fact Sheet](#)
- [Proposed Regulations](#)
- [Templates, Instructions, and Related Information](#)

Mercer Survey Reveals Expected Salary Increases for Employees in 2012; Employers Increasingly Tie Pay Raises to Performance

Employers are planning to increase employees' base pay in the upcoming year, according to the [2011-2012 U.S. Compensation Planning Survey](#) released by Mercer. The industry groups surveyed included consumer goods, durable and nondurable, energy, finance/banking, high tech, insurance, retail/wholesale trade, and services.

Of the more than 1,200 organizations participating in the survey, 97% anticipated awarding base pay raises to employees in 2012, with the average increase expected to be 3.0% (compared to 2.9% in 2011 and 2.7% in 2010). Employers reported higher competition for workers and expected labor shortages as the key reasons behind expected pay raises.

Additionally, the Mercer *2011 Next Generation of Pay for Performance Survey* revealed that employers are paying more attention to the relationship between employee performance and compensation. Sixty-nine percent of employers surveyed reported they are working to increase differentiation of pay based on performance.

To read about other highlights from the surveys, you may view the Mercer press release by [clicking here](#). For help with building a compensation package that fits your company's needs, check out the HR360 [Total Compensation Package](#) interactive chart.

premium tax credit in
next month's newsletter.
You can also read about
the proposed rules now
in the HR360 [Health
Care Reform](#) section.

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