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Information Every Business Needs to Know

# The "TOTAL" Advisor

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## Limited Benefit Plans May Apply for Waivers of Annual Limit Rules Prior to New Plan Year

The U.S. Department of Health and Human Services (HHS) has [issued guidance](#) on the process for health plans to obtain waivers of the annual limit requirements under the Affordable Care Act (PPACA).

The Affordable Care Act restricts the use of annual limits in health plans. Generally, plans issued or renewed beginning September 23, 2010, will be allowed to set annual limits no lower than \$750,000. This minimum limit will be raised to \$1.25 million beginning September 23, 2011, and to \$2 million beginning on September 23, 2012. Beginning in 2014, plans may not impose annual limits on coverage.



## IRS Issues Guidance on Changes to Tax-Favored Health Arrangements



The Internal Revenue Service has [issued guidance](#) reflecting

However, the law recognizes that a class of group health plans and health insurance coverage, generally known as 'limited benefit' plans or 'mini med' plans, often has annual limits well below the restricted annual limits set out in [interim final regulations](#). These group plans and health insurance coverage often offer lower-cost coverage to part-time workers, seasonal workers, and volunteers who otherwise may not be able to afford coverage at all. In order to ensure that individuals with certain coverage, including coverage under limited benefit or mini-med plans, would not be denied access to needed services or experience more than a minimal impact on premiums, the interim final regulations contemplated a waiver process for plan or policy years beginning prior to January 1, 2014 for cases in which compliance with the restricted annual limit provisions of the interim final regulations 'would result in a significant

changes regarding the use of certain tax-favored arrangements, such as flexible spending arrangements (FSAs), to pay for over-the-counter medicines and drugs.

The Affordable Care Act established a new uniform standard that, effective Jan. 1, 2011, applies to FSAs and health reimbursement arrangements (HRAs). Under the new standard, the cost of an over-the-counter medicine or drug cannot be reimbursed from the account unless a prescription is obtained. The change does not affect insulin, even if purchased without a prescription, or other health care expenses such as medical devices, eye glasses, contact lenses, co-pays and deductibles. The new standard applies only to purchases made on or after Jan. 1, 2011, so claims for medicines or drugs purchased without a prescription in 2010 can still be reimbursed in 2011, if allowed by the employer's plan. A similar rule goes into effect on Jan. 1, 2011 for Health Savings Accounts (HSAs), and Archer Medical Savings Accounts (Archer MSAs). Employers and employees should take these changes into account as they make health benefit decisions for 2011.

Notice [2010-59](#) and Revenue Ruling [2010-23](#) further explain this change. For FAQs on the Affordable Care Act and over-the-counter medicines and drugs, please [click here](#). To learn more about tax-favored health accounts, please see the HR & Benefits Essentials [overview](#).

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## 2011 HSA Contribution Limits and Minimum

decrease in access to benefits' or 'would significantly increase premiums.'

A group health plan or health insurance issuer may apply for a waiver from the restricted annual limits if the plan or the coverage offered by the issuer was offered prior to September 23, 2010 for the plan or policy year beginning between September 23, 2010 and September 23, 2011. Plans must submit an application not less than 30 days before the beginning of the plan or policy year, or in the case of a plan or policy year that begins before November 2, 2010 not less than 10 days before the beginning of such plan or policy year.

To view the complete requirements for the waiver application, please see the [guidance here](#). For more on the Affordable Care Act, please visit the HR & Benefits Essentials [Health Care Reform Section](#).

## FTC Guides May Impose Employer Liability for Employee Comments Posted on Social Media Sites

The U.S. Federal Trade Commission ('FTC') has adopted revised Guides Concerning the Use of Endorsements and Testimonials in Advertising. The Guides, which became effective as of Dec. 1, 2009, seek to protect consumers against deceptive marketing schemes by, among other things, requiring the disclosure of certain 'material connections' between advertisers and endorsers. The Guides indicate that employers may be liable under the FTC Act for their employees' postings on social media - such as Facebook, LinkedIn, Twitter, and blogs - that comment on the employer's products or services without properly disclosing the employment relationship, or where such employee postings are otherwise misleading.

### Does an Employee Posting Constitute an Endorsement?

The FTC has advised that a speaker (e.g., an employee) who disseminates positive statements concerning an advertiser's (e.g., an employer's) products or services will be considered to have provided an endorsement under the Guides if he or she is 'acting on behalf of the advertiser or its agent.' According to the FTC, the factual circumstances to consider in determining whether a person was acting on behalf of the advertiser include whether the speaker is compensated by the advertiser. Consequently, where an employee receiving wages from an employer posts a comment on social media concerning the employer's products or services, such a comment will likely be considered an endorsement under the Guides.

### Employer Liability for Employee Endorsements on Social Media

The Guides indicate that employers may be subject to liability under the FTC Act for their employees' 'false or unsubstantiated statements made through endorsements' or for 'failing to disclose material connections between themselves and their endorsers.' In addition, employers may be liable for such unsubstantiated or deceptive statements posted by independent contractors or other service providers of the employer. While the FTC has advised that whether a particular endorsement is deceptive will depend on the specific factual circumstances of the advertisement at issue, the text of and examples in the Guides indicate that employers may incur liability as a result of their employees' postings on social media which are misleading or discuss the employers' services but fail to disclose the employment relationship - even where the employer had no knowledge of the employee's postings or blogging. Pursuant to the Guides employees themselves may also face liability stemming from misleading statements

## Deductibles to Remain Same as 2010



The IRS has released the 2011 contribution limits and minimum deductible amounts for [Health Savings Accounts](#) (HSAs), based on the Internal Revenue Code's cost-of-living adjustment rules. The amounts for 2011 are unchanged from 2010.

### High Deductible Health Plan

For calendar year 2011, a "high deductible health plan (HDHP)" remains defined as a health plan with an annual deductible that is not less than \$1,200 for self-only coverage or \$2,400 for family coverage.

### Contribution Limits

For 2011, if you have self-only HDHP coverage, you can contribute up to \$3,050. If you have family HDHP coverage you can contribute up to \$6,150.

### Annual Out-of-Pocket Limits

For 2011, the annual out-of-pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed \$5,950 for self-only coverage or \$11,900 for family coverage.

To view Revenue Procedure 2010-22, please [click here](#). For more information on Health Savings Accounts, please visit the [HR & Benefits Essentials HSAs, FSAs, HRAs and MSAs Section](#).

related to the employer's services or inadequate disclosure of material connections.

## Employers Should Protect Themselves by Enacting a Social Media Policy

In addition to providing employees with sufficient training and guidance, employers must consider enacting and evenly enforcing a clearly written social media policy in order to protect themselves from liability stemming from their employees' improper online postings. Although the FTC has rejected blanket immunity for employers that have adopted social media policies, it has advised that 'the establishment of appropriate procedures would warrant consideration in [the FTC's] decision as to whether law enforcement action would be an appropriate use of agency resources...' The FTC specifically noted that it has brought disciplinary action against companies that failed to establish or maintain appropriate internal procedures, resulting in consumer injury. Accordingly, employers may not rely on a rogue employee defense to avoid liability under the Guides, especially where the employer failed to implement an appropriate social media policy. For more on social media policies, please [click here](#).

If you have any questions regarding the Guides, social media policies, or other issues of employment law, please contact any of the following attorneys at Tannenbaum Helpert Syracuse & Hirschtritt LLP at (212) 508-6700: Joel A. Klarreich ([jak@thshlaw.com](mailto:jak@thshlaw.com)); Andrew W. Singer ([singer@thshlaw.com](mailto:singer@thshlaw.com)); Stacey A. Usiak ([usiak@thshlaw.com](mailto:usiak@thshlaw.com)); or Jason B. Klimpl ([klimpl@thshlaw.com](mailto:klimpl@thshlaw.com)).

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## Motivating Employees

Successfully motivating your employees will help you achieve and maintain business goals. Ultimately, you want to create an environment that allows your employees to meet or exceed expectations, do their best and feel valued. While employees are clearly motivated by tangible rewards such as salary and promotion, there are more intangible motivational factors such as mentoring, personal and professional growth and the ability to work on independent projects.



### Motivational Drivers

We are all individuals with different needs and aspirations, so what motivates one employee may not motivate another. Creating a work environment which includes a range of motivators can result in improved performance as well as increased retention and enthusiasm for the company. The following is a brief summary of different motivators:

- Opportunities for promotion
- Giving employees the freedom to work independently

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- Challenging and satisfying projects
  - Personal and professional growth, i.e. training and professional development
  - Status/power which can be represented in a job title
  - Responsibility and trust by allowing employees to work without unnecessary supervision
  - Promoting the building of relationships with colleagues and customers
  - Recognizing of employees' performance and contribution
  - Financial rewards and incentives
  - Flexible work arrangements that allow employees to accommodate personal needs

### **How to Motivate Your Employees**

The following strategies may motivate your employees to contribute to your businesses performance:

- When the jobs are more challenging and interesting, employees may find they feel more accomplished and satisfied.
- Consider lateral moves if you can't promote employees. Many times, people like to do different jobs to build their skills and knowledge.
- Get to know your employees--learn about their interests and what is important to them.
- Recognize employees' efforts and achievements by personally thanking them for a job well done.
- Publicly recognize your employees by highlighting achievements at meetings, and on the company intranet.
- Create opportunities for social interaction such as a company sports team.

### **Pay Issues Surrounding Reduced Work Schedules**

During these challenging economic times, some employers are opting to hire employees part-time, or reduce employees' hours. As a result, employers are wondering what their responsibilities are regarding reduced work schedules.



The federal [Fair Labor Standards Act](#) (FLSA) has no provisions regarding the scheduling of employees, with the exception of certain child labor provisions. Therefore, an employer may change an employee's work hours without giving prior notice or obtaining the employee's consent, unless otherwise subject to a prior agreement between the employer and employee, or collective bargaining agreement.

#### **Exempt Employees Must Be Paid Full Salaries to Keep Their Status**

According to the FLSA, exempt employees may not have their predetermined salary reduced for absences occasioned by the employer, or by the operating requirements of the business. Reducing an exempt employee's predetermined salary may result in the loss of the employee's exempt status under the FLSA. For FAQs regarding furloughs and other reductions in pay and hours worked issues, please view this [fact sheet](#) from the U.S. DOL's Wage and Hour Division.

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