



January 2010

LEGISLATIVE UPDATE

by Jennifer Lunski, Esq.

At Woodruff-Sawyer, we offer a monthly update on legislative changes that impact employee benefit plans. Employers should review the update to ensure their plans and policies are revised and in compliance with the new legislation and regulations. This month includes articles on the following topics:

1. 2010 Dates to Remember
2. California State Disability Insurance Benefits 2010
3. Department of Labor 5500 E Fast System
4. California Rules Limit HMO Wait Times
5. New York COBRA Law

2010 DATES TO REMEMBER

We would like to provide you with a comprehensive list of important dates to keep track of and remember for 2010. The following two charts will assist with keeping in compliance.

- [Annual notice chart](#)
- [Major compliance deadlines for welfare plan administrators beginning in 2010](#)

CALIFORNIA STATE DISABILITY INSURANCE BENEFITS 2010

California State Disability Insurance law requires employers in California to make provision for payments to employees who are disabled due to non-occupational sickness or injury. The benefits are paid prior to recovery or for up to 52 weeks. The benefits must be paid on the eighth day of the disability. Employers must provide the coverage through the state fund or, upon approval, can substitute their own disability plan called a Voluntary Disability Insurance (VDI).

The following benefit payment provisions were announced by the California Employment Development Department for 2010:

- The employee contribution rate maximum under SDI has increased to 1.1%.
- The maximum employee contribution for 2010 will increase to \$1,026.48.
- The wage ceiling will increase to \$93,316.
- The maximum weekly benefit will increase to \$987.

Those employers offering VDI programs must match or exceed these benefits.

DEPARTMENT OF LABOR 5500 E FAST SYSTEM

The Department of Labor (DOL) has introduced EFAST2, a new set of 5500 filing procedures including a mandate that all 5500s for the 2009 plan year (beginning with those filings due on 7/31/2010) must be filed electronically. Plan Sponsors or their vendors (Filers) have two new methods for filing Form 5500s for 2009:

- a Filing directly with the DOL using the "iFile" alternative. Plan Sponsors can find this option on the DOL website; or,
- b Using commercial software approved by the DOL (Sungard Relius, for example), or using third party preparers who use the approved software.

Woodruff-Sawyer clients will receive an email notifying that the Form 5500(s) and appropriate Schedule(s) are available. The email will contain access information to our secure website. The following are step by step instructions you will need to follow once you receive your 2009 Form 5500 from Woodruff-Sawyer.



1. Log in to the secure website to view the Form 5500(s) and appropriate Schedule(s) following the instructions in the email notice. We recommend that you use the print function ("Print" from "Plan Books" page) to review and save a pdf copy of the Form 5500 with schedules.
2. From "View Forms" select the 5500 form and enter your signing credentials for the Plan Sponsor and Plan Administrator lines. This will electronically sign the 5500. **NOTE:** If you have not obtained signer credentials, please see the separate attachment on how to obtain filing credentials.
3. From the "Plan Books" page, select "E-File" to submit the Form 5500(s) electronically to the DOL via IFAS (Internet Filing Acceptance System). IFAS will provide an acknowledgement ID and advise the filer of the filing status of the submitted Form 5500(s). The possible filing status results are:
 - a **Filing Unprocessable** – indicates that the DOL was unable to open the electronic file. Causes could be a virus, unreadable format, or file corruption. Determine the cause, correct and resubmit.
 - b **Filing Error** – indicates the DOL opened the file, but something within the filing is missing or incorrect. You will automatically receive an email that details the errors, omissions or warnings. We will coordinate with you to prepare an amended filing that will correct the omissions. This amended filing will then need to be filed.
 - c **Filing Stopped** – indicates the file opened, but the DOL did not complete processing it because of an error. You will automatically receive an email that details the errors, omissions or warnings. We will coordinate with you to prepare an amended filing that will correct the omissions. This amended filing will then need to be filed.
 - d **Filing Received** – If there are any warnings, take the appropriate actions. If no warnings are noted, than the filing is received, and considered complete.
4. Once the filing receives a status of "filing received", print a hard copy of the Form 5500(s) with the appropriate Schedule(s) and attachments. Sign the hard copy and retain that signed copy of the form for your files for at least 6 years.

Note regarding Amended Filings: We will prepare any amended filings at no additional charge. There is no penalty or negative connotation from the DOL for amended filings. The DOL recognizes that amended filings will become a common occurrence.

CALIFORNIA RULES LIMIT HMO WAIT TIMES

On January 20, 2010 The California Department of Managed Health Care (DMHC) announced that California has become the first state in the nation to shorten the time a patient has to wait to see a doctor.

Examples of the new standards include:

- 48 hours for urgent care appointments that do not require prior authorization
- 96 hours for urgent care appointments requiring prior authorization (including specialists)
- 10 business days for non-urgent primary care appointments
- 15 business days for non-urgent appointments with specialists
- 10 business days for non-urgent appointments with a mental health care provider

According to the DMHC, "Compliance with the new rules places the burden of compliance on the health plan, not the doctor. A health plan must have contracts with a sufficient number of doctors in each geographic area to serve its members. This means that plans must have a strong and varied provider network to ensure that appointments can be made within the specified timeframes. Each health plan must submit a proposal to the DMHC for complying with the required time standards, receive approval, and begin using the standards within one year of the effective date of the regulation [January 20, 2011]."

NEW YORK AMENDS COBRA EXTENSION LAW

As we discussed in our [August 2009 legislative update](#), New York State passed legislation in July 2009 that extended state COBRA coverage to 36 months, regardless of the qualifying



event. The law was made effective retroactive to July 1, 2009 and applies only to New York situated contracts.

However, under the original version of the law, the 36-month coverage continuation provision did not go into effect until the group contract's renewal date. If the group insurance contract had not yet renewed, coverage could not be extended. For example, coverage could not be extended for the additional 18 months if the initial continuation coverage ended in August 2009, but the group's contract did not renew until September 2009.

New York State amended the law to account for this situation. Continuation coverage can now be extended for all individuals who exhausted their initial 18 months of continuation coverage after July 1. They will now be eligible for an additional 18 months of coverage.

There will also be a one-time special enrollment period for individuals who could not extend their continuation coverage for the additional 18 months because their continuation of coverage ended between July 1, 2009, and November 1, 2009 but their group insurance contract had not yet renewed. Coverage obtained through this special enrollment period is prospective only and takes effect no later than 30 days after an individual elects coverage and pays the first premium. (Please note that any coverage gap will be disregarded for the purposes of determining whether a pre-existing condition waiting period is applicable, and will not be counted against the 36 months of continuation coverage.)

The information provided in this Legislative Update should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

Woodruff-Sawyer is one of the largest independent insurance brokerage firms in the nation, and is an active partner of International Benefits Network and Assurex Global. For over 90 years, Woodruff-Sawyer has been partnering with clients to implement and manage cost-effective and innovative insurance, employee benefits and risk management solutions, both nationally and abroad. Headquartered in San Francisco, Woodruff-Sawyer has offices throughout California and in Portland, Oregon.

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All notice requirements are imposed on insurers, who were supposed to make a reasonable effort to notify those entitled to the special enrollment period between November 19, 2009 and December 19, 2009. Individuals have 60 days after they receive the notice to elect coverage prospectively for an additional 18 months. If an individual does not receive a notice, he or she may enroll through May 19, 2010.

The New York Department of Insurance provides a summary of the NY COBRA extension to 36 months law, including the recent amendment, at:

http://www.ins.state.ny.us/cobra/cobra_ext_36.htm.

About Jennifer

Jennifer is Vice President, Compliance Officer in the Benefits practice at Woodruff-Sawyer & Co. She consults directly with our Employee Benefits clients on all matters of compliance and leads both internal and external trainings. She has also conducted numerous trainings on ERISA, COBRA and HIPAA to Department of Labor employees, the Department of Justice and to employers that sponsor ERISA-covered plans. A published expert on ERISA, COBRA and HIPAA rules and regulations, Jennifer has investigated a broad spectrum of company employee benefit plans and has extensive experience negotiating with industry fiduciaries and service providers.

Before joining Woodruff-Sawyer, Jennifer was a Senior Investigator at the US Department of Labor (DOL), Employee Benefits Security Administration in San Francisco. Jennifer can be reached at 415.402.6577 or jlunski@wsandco.com.