

## **Legislative Blast January 2014\***

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### **N.Y. MINIMUM WAGE & SALARY BASIS INCREASES EFFECTIVE DECEMBER 31, 2013**

The New York State minimum wage increased to \$8.00 per hour effective December 31, 2013. An updated minimum wage poster is located at <https://labor.ny.gov/formsdocs/wp/LS207.pdf>. The New York State Department of Labor website contains further information as well as updated minimum wage order regulations which, among other things, increased the salary basis minimums for executive and administrative exemptions to \$600.00 per week effective December 31, 2013. (Source: NYSDOL)

### **U.S. INTERNAL REVENUE SERVICE INFORMATION FOR FORMS W-2 AND W-4**

- IRS Form W-4 for 2014 can be found at <http://www.irs.gov/pub/irs-pdf/fw4.pdf?portlet=3>.
- IRS guidance for Form W-2 reporting of employer-sponsored health coverage is as follows:

The Affordable Care Act requires employers to report the cost of coverage under an employer-sponsored group health plan. Reporting the cost of health care coverage on the Form W-2 does not mean that the coverage is taxable. The value of the employer's excludable contribution to health coverage continues to be excludable from an employee's income, and it is not taxable. This reporting is for informational purposes only and will provide employees useful and comparable consumer information on the cost of their health care coverage.

Employers that provide "applicable employer-sponsored coverage" under a group health plan are subject to the reporting requirement. This includes businesses, tax-exempt organizations, and federal, state and local government entities (except with respect to plans maintained primarily for members of the military and their families). However, federally recognized Indian tribal governments are not subject to this requirement.

### **Transition Relief**

For certain employers, types of coverage and situations, there is transition relief from the requirement to report the value of coverage beginning with the 2012 Forms W-2. This transition relief applies to the 2013 Forms W-2 and will continue to apply to future calendar years until the IRS publishes additional guidance. (Note: employers generally are required to provide employees with the 2013 Forms W-2 in January 2014.) Any guidance that expands the reporting requirements will apply only to calendar years that start at least six months after the guidance is issued. See the "Optional Reporting" column in the below chart for the employers, types of coverage, and situations eligible for the transition relief.

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## **Reporting on the Form W-2**

The value of the health care coverage will be reported in Box 12 of the [Form W-2](#), with Code DD to identify the amount. There is no reporting on the Form W-3 of the total of these amounts for all the employer's employees.

In general, the amount reported should include both the portion paid by the employer and the portion paid by the employee. See the chart, below, and IRS [questions and answers](#) for more information.

An employer is not required to issue a Form W-2 solely to report the value of the health care coverage for retirees or other employees or former employees to whom the employer would not otherwise provide a Form W-2.

The chart below illustrates the types of coverage that employers must report on the Form W-2. Certain items are listed as "optional" based on transition relief provided by [Notice 2012-9](#) (restating and clarifying [Notice 2011-28](#)). Future guidance may revise reporting requirements but will not be applicable until the tax year beginning at least six months after the date of issuance of such guidance.

The chart reviews the reporting requirements for Box 12, Code DD, and has no impact on requirements to report these items elsewhere. For example, while contributions to Health Savings Arrangements (HSA) are not to be reported in Box 12, Code DD, certain HSA contributions are reported in Box 12, Code W (see [General Instructions for Forms W-2 and W-3](#)).

<b>Form W-2 Reporting of Employer-Sponsored Health Coverage</b>			
<b>Coverage Type</b>	<b>Form W-2, Box 12, Code DD</b>		
	<b>Report</b>	<b>Do Not Report</b>	<b>Optional</b>
Major medical	X		
Dental or vision plan not integrated into another medical or health plan			X
Dental or vision plan which gives the choice of declining or electing and paying an additional premium			X
Health Flexible Spending Arrangement (FSA) funded solely by salary-reduction amounts		X	
Health FSA value for the plan year in excess of employee's cafeteria plan salary reductions for all qualified benefits	X		
Health Reimbursement Arrangement (HRA) contributions			X
Health Savings Arrangement (HSA) contributions (employer or employee)		X	
Archer Medical Savings Account (Archer MSA) contributions (employer or employee)		X	
Hospital indemnity or specified illness (insured or self-		X	

funded), paid on after-tax basis			
Hospital indemnity or specified illness (insured or self-funded), paid through salary reduction (pre-tax) or by employer	X		
Employee Assistance Plan (EAP) providing applicable employer-sponsored healthcare coverage	Required if employer charges a COBRA premium		Optional if employer does not charge a COBRA premium
On-site medical clinics providing applicable employer-sponsored healthcare coverage	Required if employer charges a COBRA premium		Optional if employer does not charge a COBRA premium
Wellness programs providing applicable employer-sponsored healthcare coverage	Required if employer charges a COBRA premium		Optional if employer does not charge a COBRA premium
Multi-employer plans			X
Domestic partner coverage included in gross income	X		
Governmental plans providing coverage primarily for members of the military and their families		X	
Federally recognized Indian tribal government plans and plans of tribally chartered corporations wholly owned by a federally recognized Indian tribal government		X	
Self-funded plans not subject to Federal COBRA			X
Accident or disability income		X	
Long-term care		X	
Liability insurance		X	
Supplemental liability insurance		X	
Workers' compensation		X	
Automobile medical payment insurance		X	
Credit-only insurance		X	
Excess reimbursement to highly compensated individual, included in gross income		X	
Payment/reimbursement of health insurance premiums for 2% shareholder-employee, included in gross income		X	
<b>Other Situations</b>	<b>Report</b>	<b>Do Not Report</b>	<b>Optional</b>
Employers required to file fewer than 250 Forms W-2 for the preceding calendar year (determined without application of any entity aggregation rules for related employers)			X

Forms W-2 furnished to employees who terminate before the end of a calendar year and request, in writing, a Form W-2 before the end of that year			X
Forms W-2 provided by third-party sick-pay provider to employees of other employers			X

The chart was created at the suggestion of and in collaboration with the IRS' Information Reporting Program Advisory Committee (IRPAC). IRPAC's members are representatives of industries responsible for providing information returns, such as Form W-2, to the IRS. IRPAC works with IRS to improve the information reporting process.

(Source: IRS)

## **INTERNAL REVENUE SERVICE MODIFIES FLEXIBLE SPENDING ACCOUNT RULES**

Health flexible spending accounts (FSAs) are becoming more flexible now that the IRS has modified its "use it or lose it" rule.

New federal guidance permits employers to allow workers to carry over unused amounts of up to \$500 for expenses in the next year and still contribute up to \$2,500 annually.

FSAs are voluntary account-based plans that enable millions of Americans to use pretax dollars to pay for eligible out-of-pocket health care expenses like prescription drugs, co-pays, and vision and dental costs. FSAs are often funded by employees, although companies can also make contributions. However, for nearly 30 years, employees eligible for health FSAs have been subject to the use-or-lose rule, meaning that any account balances left at the end of the year were forfeited, usually to the employer.

Although an estimated 14 million American families participate in health FSAs, the use-it-or-lose-it rule has often been identified as the biggest deterrent for those considering whether to sign up for an FSA.

In 2012, the U.S. Internal Revenue Service requested comments regarding possible modifications to the year-end forfeiture of FSA balances. However, the announced change -- coming in the middle of the fall 2013 open-enrollment season -- caught plan sponsors and the benefits community by surprise.

### **Cafeteria Plan Amendment Required**

On October 31, 2013, the U.S. Treasury Department and the IRS issued a notice and fact sheet announcing the change. According to the guidance:

- Effective in plan year 2014, employers that offer FSA programs will have the option of allowing participants to roll over up to \$500 of unused funds at the end of the plan year.
- Effective immediately, employers that offer FSA programs that do not include a grace period will have the option of allowing workers to roll over up to \$500 of unused funds at the end of the 2013 plan year.

The notice states that an amendment to the Section 125 cafeteria plan document must be adopted by the last day of the plan year from which amounts may be carried over, provided that plan informs participants of the carryover provision. However, a plan may be amended to adopt the carryover provision for a plan year that began in 2013 “at any time on or before the last day of the plan year that begins in 2014.”

(Source: SHRM/Stephen Miller, CEBS)