



HR News Alert

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February 2013 Issue

[Deadline Postponed for Employers to Provide Notice Regarding Health Insurance Exchanges](#)

The [U.S. Department of Labor](#) (DOL) has **delayed the original March 1 deadline** for employers to comply with the new requirement under Health Care Reform to provide employees a [written notice](#) explaining certain information related to Exchanges. The timing for distribution of the notices is now expected to be **late summer or fall of 2013**.

Notice Delayed Pending Further Guidance

The law originally contemplated that employers would need to begin providing the notice to new employees at the time of hire beginning on March 1, 2013, and to current employees not later than March 1. However, a [new set of FAQs](#) makes clear that **employers are not required to comply until further guidance is issued**.

Availability of Model Notice for Employers

The DOL is considering providing model, generic language that could be used to satisfy the notice requirement. As an alternative, employers may be allowed to comply by providing employees with information using an employer coverage template that would be available for download in connection with the application process for an Exchange, Medicaid, and the Children's Health Insurance Programs (CHIP).

Future guidance on complying with the notice requirement is expected to provide flexibility and adequate time to comply. For more information on Health Care Reform requirements taking effect this year, be sure to review our [2013 Health Care Reform Checklist](#).

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"Fiscal Cliff" Law: Key Highlights for Employers

The [American Taxpayer Relief Act of 2012](#) (ATRA) was signed into law last month to avert the "fiscal cliff." Key tax-related items that may be of interest to employers and employees include:

- **Adoption Assistance Benefits.** ATRA permanently extends the [federal tax rules](#) which allow an employee to exclude from gross income qualified adoption expenses paid by an employer, as well as the tax credit for qualified adoption expenses paid by an employee, for taxable years beginning after December 31, 2012.
- **Dependent Care Tax Credit.** The [dependent care tax credit](#) allows an employee a credit for a certain percentage of child care expenses for children under 13 and disabled dependents. ATRA extends the previous cap on the total expenses qualifying for the credit, at **\$3,000 for one child or \$6,000 for two or more children**, for taxable years beginning after December 31, 2012.
- **Qualified Educational Assistance Programs.** Under ATRA, an employee may continue to exclude from gross income **up to \$5,250** for income and employment tax purposes per year of [employer-provided education assistance](#) for taxable years beginning after December 31, 2012.
- **Transportation Benefits.** ATRA increased the monthly exclusion for [employer-provided commuter-highway transportation and transit passes](#) from \$125 to \$240 per participating employee (the same as the exclusion for qualified parking benefits), [retroactively](#) for the period of January 1, 2012 through December 31, 2012. (Note: The [inflation-adjusted](#) maximum monthly excludable amount for these benefits in **2013** is \$245.)



Employee Payroll Tax Cut Not Extended

ATRA [did not affect the payroll tax rates](#) for 2013. As a result, employers are required to **withhold Social Security tax at the rate of 6.2% of wages paid** (up to the first \$113,700 of earnings) following the expiration of the temporary two-percentage-point payroll tax cut in effect for 2011 and 2012.

Employers should correct the amount of Social Security tax withheld from employees' paychecks as soon as possible in 2013, but **not later than February 15**. For any Social Security tax under-withheld before that date, employers should make the appropriate adjustment in workers' pay as soon as possible, but not later than March 31, 2013.

Visit our section on [Fringe Benefits](#) to learn more about employer-provided transportation and other benefits.

3 Employee Pay & Attendance Issues When Bad Weather Strikes

It's that time of year again, when snow and slippery conditions may make it difficult for your employees to travel to work. Consider the following guidelines that can help your company be prepared when bad weather strikes.

1. When an employee misses work due to bad weather conditions, whether the employee is entitled to be paid for the absence may depend on the employee's exempt or non-exempt status.

Under the federal [Fair Labor Standards Act](#) (FLSA), employers are not required to pay non-exempt employees for hours they did not work, including when the office is closed due to bad weather.

[Exempt employees](#) generally must be paid their full salary amount if they perform any work during a workweek. However, an employer that remains open for business during a period of bad weather may generally make deductions, **for full-day absences only**, from the salary of an exempt employee who chooses not to report to work because of the weather. Deductions from salary for less than a full-day's absence are not permitted.

If the business is closed for the day as a result of inclement weather, the employer **may not deduct the day's pay** from the salary of an exempt employee. The general rule is that an employer who closes operations due to a weather-related emergency or other disaster for **less than a full workweek** must pay an exempt employee the full salary for that week, if the employee performs any work during the week. This is because deductions may not be made for time when work is not available.

2. Some states require employers to pay employees for showing up even if no work is available or there is an interruption of work and the employee is sent home.

Although payment for time not worked may not be required for non-exempt employees under federal law, some states do require that employees be paid for a minimum number of hours for reporting to work, even if there is no work that can be performed (such as when the office is closed) or the employee is sent home early, for instance, due to an impending storm.

Often called "reporting time pay," these laws may apply to specific industries (e.g., manufacturing) or certain employees only, so it is important to check with your [state labor department](#) for requirements that may apply to your company before implementing any policy.

3. Plan ahead so your employees know what is expected of them and to help minimize disruption to your business.

Make it a priority to notify all of your employees, both exempt and non-exempt, of your company's policy regarding employee attendance and pay during periods of inclement weather. Your policy should include information on how your employees can find out whether the office is open or closed, such as by email, radio broadcast, calling in to hear a recorded message, or other methods that all employees can access. Be sure to apply your policy consistently and fairly to all employees.

It's also prudent to remind employees to use their best judgment and not to put their safety at risk when it comes to traveling to work during or after a storm. If possible, see if you can arrange for

employees to work remotely from home on days when the weather makes travel dangerous.

For more issues related to employee compensation, including guidelines for determining the exempt or non-exempt status of your employees, visit our section on [Employee Pay](#).

Nearly 100,000 Employment Discrimination Charges Filed in Fiscal Year 2012

The [U.S. Equal Employment Opportunity Commission](#) (EEOC) received 99,412 private sector workplace discrimination charges during fiscal year 2012 (which runs from October 1 to September 30), down slightly from the previous year.

Retaliation, race, and sex discrimination (including allegations of sexual harassment and pregnancy discrimination) were the most commonly filed charges. **Termination** was the most frequently-cited discriminatory action under all the laws the EEOC enforces, followed by "terms and conditions" of employment and then discipline.

Nondiscrimination Laws Enforced by EEOC

The laws enforced by the EEOC apply to employers who meet the threshold number of employees for coverage. For example:

- [Title VII of the Civil Rights Act of 1964](#), the [Americans with Disabilities Act](#), and the [Genetic Information Nondiscrimination Act](#) apply to employers who have **at least 15 employees** in 20 or more weeks of the calendar year.
- The [Age Discrimination in Employment Act](#) applies to employers with **20 or more employees** in 20 or more weeks of the calendar year.
- The [Equal Pay Act](#) does not require a minimum number of employees for an employer to be covered.

More information about each of these laws is featured in our section on [Discrimination](#).

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