

# Employee Benefits Report



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## Time to Update Your Benefit Plans

Here's only a partial list of some of the new laws, updated regulations and other changes that might affect your company's benefit plans. Unless otherwise noted, changes go into effect January 1.

**1 Mental health parity:** Previous mental health parity rules were set to expire on December 31, 2008; the emergency economic stimulus package signed into law on October 3 removed the automatic sunset provisions and expanded parity requirements.

Previous law required group health plans to provide the same annual and aggregate lifetime limits, "financial requirements" (such as deductibles, co-payments and out-of-pocket expenses), and treatment limitations (such as number of office visits) to mental health benefits as they did to medical and surgical benefits. The requirements now extends to substance abuse benefits.

**2 Retirement plan rules for military reservists:** The HEART Act became law in

June, expanding benefit protections for military reservists injured or killed in qualified military service on or after January 1, 2007.

The HEART Act requires plans to treat a military reservist as if they had returned to work and terminated employment due to death or injury for purposes of receiving benefits. The Act does not require plans to pay benefits that would have accrued during military service, although plan sponsors may elect to do so. It also requires plans to pay survivors any benefits (such as accelerated vesting, ancillary life insurance benefits) that would have been provided by the plan had the participant returned to work and then terminated employment due to death.

The Act changes 401(k) administration by allowing participants called to active service for more than 30 days to receive distributions of their pre-tax contributions from their 401(k) plans and allowing participants to contribute make-up contributions to their 401(k)s.

The law also requires employers to treat "military differential pay," or the difference between military pay and the employee's regular pay, as wages for purposes of calculating make-up contributions and employer matching contributions.

**3 Family and Medical Leave Act (FMLA) changes:** Effective January 16, 2009, the FMLA will expand to allow a spouse, son, daughter, parent or next of kin to take up to 26 workweeks of leave to care for

## This Just In

**E**mployee health costs will increase an average of 6.3 percent in 2009, less than in recent years. According to a Mercer consulting survey released in November, group health costs will reach an average of \$8,482 per employee. The survey also found that 59 percent of companies intend to pass increases on to workers by raising deductibles, copayments and/or out-of-pocket spending limits. Average deductibles will exceed \$1,000 for the first time this year.

**B**icyclists will be eligible for tax-free commuter benefits for the first time in 2009. The \$700 billion Wall Street bailout bill, HR 1424, included a provision to redefine qualified commuter benefits to include expenses related to bicycle commuting. Although bikers won't get anywhere near \$700 billion, they will be eligible for up to \$20 tax-free reimbursement of bicycle commuting-related expenses for every month in which they "regularly" use their bike to commute to work. For more information on bicycling and other commuter benefits, please see the article on Page 2.



# Transit Benefits

The Bureau of Labor Statistics found a typical household spent nearly 18 percent of income on transportation in 2006—more than it spent on food. A transit benefit plan gives employers a low-cost way to help employees reduce their monthly expenses, particularly in light of healthcare cost increases and stagnating salaries. Even better, transit benefits can qualify for tax breaks and enhance your reputation as a “green” employer.

**I**RS Code Section 132(f) allows employers to provide employees certain transportation benefits on a tax-qualified basis, either directly or through a reimbursement program.

**1** Direct benefits. Employers provide benefits directly to their employees in the form of parking benefits, rides in company-provided van pools or as vouchers or passes given directly to employees. Employees receive qualified benefits tax-free.

**2** Reimbursement. To be eligible for tax benefits, the employer must structure a “bona fide” reimbursement program, where employees receive cash reimbursement when they present documentation of qualified work-related commuting expenses. Under this type of plan, employees can set aside pre-tax dollars to pay toward their commuting expenses. The tax benefits can save employees 30 to 40 percent on eligible transportation costs, while employers pay no FICA tax on money workers set aside.

Typical costs to administer a transit re-

imbursement plan run \$4 or \$5 per employee per month, with companies saving roughly 7.5 percent on every dollar put into the plan due to FICA savings.

For 2009, employees can receive reimbursements up to \$120 for mass transit and \$230 for parking per calendar month from their pre-tax contributions. If an employee’s monthly expense exceeds that amount, he or she can make additional contributions on an after-tax basis.

## What transportation expenses count as “qualified”?

The IRS defines qualified transportation benefits as:

- ✦ Van pooling, or transportation to and from the workplace in a commuter highway vehicle that seats at least six adults (not including the driver). Vans may be company-owned and operated, or operated by a public or private entity. For a company-operated vehicle, at least 80 percent of vehi-

cle mileage will be for transporting employees between their homes and workplace, with employees occupying at least one-half the vehicle’s seats (not including the driver’s).

- ✦ Mass transit benefits, which can include any pass, token, fare card, voucher or similar item allowing a person to ride free of charge or at a reduced rate on bus, rail, ferry or commuter van, whether publicly or privately operated.

- ✦ Parking benefits, including free or reduced-cost parking near the work site or near a commuter station.

- ✦ Bicycle commuting benefits, new for 2009! Employers can reimburse employees on a tax-free basis for up to \$20 times the number of months during the year in which he or she “regularly uses” a bicycle for a “substantial portion” of travel between the employee’s home and place of work. Employees can use these benefits toward the purchase, improvements, repair and storage of a bicycle regularly used for travel between his/her residence and workplace. The IRS has not yet clarified the terms “regularly uses” or “substantial portion.”

## Commuter benefits help employees

- ✦ They save money.
- ✦ They encourage safety. Those who ride public transit are much less likely to die or become injured while commuting than those who drive themselves to work.

- ✦ They promote health. Public transit riders tend to walk more, improving their physical health.

- ✦ They cut taxes. When employers provide benefits directly (such as vouchers or passes), employees receive them income tax-free. If your firm administers a transit benefit account, employees can contribute pre-tax





# Keeping It SIMPLE: Retirement Plans for Small Businesses

Small businesses continue to lag behind mid-sized and larger companies in offering retirement plans to their employees. If yours is a small company, consider offering one of the SIMPLE retirement plans created specifically for small employers.

## The Simplified Employee Pension (SEP)

Any employer with one or more employees may establish a SEP plan, an IRA-based plan funded solely by employer contributions. To qualify, your company cannot have any other retirement plan. These plans appeal to employers with variable income, as SEP contributions are discretionary. However, contributions vest 100 percent immediately.

To establish a SEP, the employer adopts a trust for plan assets and sets up a separate account for each employee within the trust. Employers can contribute to each employee's account the lesser of \$49,000 or 25 percent of pay for 2009. SEP plans do not permit participant loans, but do allow in-service withdrawals, subject to income taxes and early withdrawal penalties.

Filing requirements include completing IRS Form 5305-SEP or using an IRS-approved "prototype" available through many financial institutions. The deadline for establishing the SEP is the employer's tax filing deadline, including extensions. Once the plan is in place, the employer has no other filing responsibilities.

## SIMPLE IRAs

Businesses with 100 or fewer employees who each earned at least \$5,000 during the preceding year can establish Savings Incentive Match Plan for Employees (SIMPLE) IRAs. With a SIMPLE IRA, an employer cannot have any other retirement plan. Employer contributions to SIMPLE IRAs are usually mandatory for the years the plan is maintained.

Employers contribute either a dollar-for-dollar match up to 3 percent of pay or a 2 percent non-elective contribution for each eligible employee. Employees can also contribute pretax dollars to their SIMPLE IRA, up to \$11,500 for 2009. These contributions are made on a pretax basis from their paycheck. Employees aged 50 and over can make an additional "catch-up" contribution of up to \$2,500. Payments go directly into an IRA set up for each employee.

As with SEPs, all contributions to the SIMPLE IRA are immediately 100 percent vested. While participant loans are not permitted, SIMPLE IRAs do allow in-service withdrawals, subject to income taxes and early withdrawal penalties, depend-



ing upon the owner's age at the time of distribution. Each participating employee must receive an annual statement of the contribution amounts to their account for the year.

To establish a SIMPLE IRA, employers must file either IRS Form 5304-SIMPLE or 5305-SIMPLE, depending upon whether or not the employee selects the financial institution to receive plan contributions. Once the initial paperwork is done, there are no annual filing requirements for a SIMPLE IRA plan.

For IRS plan information packets on SEPs and SIMPLE IRAs, go to [www.irs.gov/retirement](http://www.irs.gov/retirement), or contact us for more information about these and other simple retirement plan options. ■

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"a member of the Armed Forces or National Guard...for a serious injury or illness." It will also permit employees to take FMLA leave for "any qualifying exigency" due to a spouse, son, daughter, or parent being called to active duty.

The changes also clarify other aspects of the FMLA, specifically:

**a)** extending an employer's deadline

to respond to an employee's request for leave to five days from two, except in emergency situations.

**b)** clarifying intermittent leave situations by requiring only one designation notice for each FMLA leave-qualifying reason per year.

**c)** requiring employers to provide employees an accounting of their hours of

leave that count against FMLA entitlements only upon the employee's request, and not more than every 30 days.

**d)** requiring employers to provide a list of "essential functions" of the job if the employer will require the employee to provide fitness for duty certification upon return to work.

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e) allowing workers' compensation leave to count against FMLA entitlement.

f) clarifying an employee's obligation to pay his or her share of group health plan premiums while on FMLA leave by deleting the word "unpaid" from the regulation, because an individual who is simultaneously taking FMLA leave and receiving payments as a result of a workers' compensation injury is not on unpaid leave.

g) clarifying that an employer must reinstate an employee's health insurance when the employee returns to work, if the employer let it lapse due to the employee's nonpayment of premiums, and that the employer may be liable for harm suffered by the employee if it fails to do so. Another section explains what an employ-

er may do to recoup insurance premiums from an employee who does not return from leave in certain circumstances.

**4 Dependents who qualify for tax-free employer benefits:** Title V of HR 6893, which dealt primarily with adoptions, clarified the definition of "child" for the purposes of taxes and benefits to specify a child "is younger than the taxpayer," "must be unmarried," and not claimed as a qualifying child by anyone else who has filed a return, unless they file only for a claim of refund.

**5 Health coverage for college students:** Most group health plans will provide coverage for dependent children up to age 21 or 25, depending on the plan, while they are enrolled full-time at a postsecondary institution. "Michelle's Law," which becomes effective for plan years beginning

on or after October 9, 2009, will prohibit a group health plan from terminating the coverage of a dependent child when a medically necessary leave causes the child to lose full-time student status before the earlier of: (1) one year after the first day of the leave of absence or (2) the date on which coverage would otherwise terminate under the terms of the plan.

Ordinarily, a student who loses coverage in this situation would qualify for up to 36 months of COBRA continuation coverage. At this point, it is unclear how Michelle's Law will interact with COBRA.

Not only do federal laws change, changes in state laws can also affect your benefit plans. For this reason, we recommend an annual review of your benefit plans and policies. For assistance, please call us. ■

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dollars, thus reducing their taxable income. However, the IRS specifically prohibits "double-dipping," or providing employees tax-free reimbursement of parking expenses already paid out of a salary reduction account.

**Commuter benefits help employers**

- ★ They reduce parking costs. When employees use mass transit, you need fewer parking spaces, reducing real estate costs.
- ★ They can increase your applicant pool, particularly for low-wage or service jobs in urban areas.
- ★ They make employees more pro-

ductive. Employees who use mass transit arrive at the job less stressed than those who have battled rush-hour traffic.

- ★ They reduce health insurance costs by promoting safer modes of transport.
- ★ They save taxes. Employers can exclude transportation fringe benefits from an employee's wages. Instead of giving pay raises, consider giving employees transportation benefits, which will not raise employment taxes.
- ★ They enhance your reputation. By providing benefits for using mass transportation, you enhance your company's employee-friendly image, while taking a pro-

active approach to reducing pollution.

★ They are easy to administer. Unlike other qualified benefit programs, Section 132(f) transit plans do not require employers to file written documents, perform complicated non-discrimination tests or file annual reports. However, we do recommend putting your plan in writing to ease administration and employee communications.

For more information on setting up a qualified transit reimbursement program or other low-cost benefits, please contact us. ■

## San Francisco Requires Commuter Benefits

**E**ffective January 1, the city of San Francisco became the first municipality to require employers to provide commuter benefits to employees. The ordinance requires employers with 20 or more employees within the city to provide one of three kinds of transit benefits to any employee who works 10 or more hours per week:

- ★ Direct benefits, or providing mass transit passes to employees
- ★ Setting up accounts to allow employees to pay their commuting expenses with pre-tax dollars
- ★ Setting up van pools for employees.

Unlike the IRS code, the San Francisco ordinance

applies only to mass transit, bicycle and van pool expenses, in order to encourage employees to use more environment-friendly modes of transport. According to the ordinance, "[t]he city's Department of the Environment administers an Emergency Ride Home Program, which removes a major barrier to using public transit or van pools by reimbursing transit/van pool users for taxi fares, car rental or similar expenses they incur to return home for a family emergency or other urgent, unanticipated situation."

San Francisco often sets trends for other large municipalities. Look for other cities to consider requiring some sort of transit benefits to help meet their clean air goals. ■