

# LISKOW & LEWIS

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## AEBP LEGISLATIVE UPDATE

### HEALTH AND WELFARE BENEFIT PLANS

February 9, 2009

#### **2009 Plan Years (and Beyond) – General Alerts**

**Section 125 Cafeteria Plan Regulations:** Significant proposed regulations intended to be final January 1, 2009. Final regulations not yet issued.

#### **ADA and FMLA:**

Effective January 2009: For the first time since it was enacted in 1989, the Americans with Disabilities Act has been amended, and for the first time since it was passed in 1993, Family and Medical Leave Act regulations have been modified.

Focus ADA Amendments: Any condition that substantially limits a major life activity will be considered a disability - even if the employee can compensate for the disability with mitigating measures (e.g., hearing aids or artificial limbs). New law prohibits consideration of mitigating measures (e.g., medical supplies) - but not eyeglasses and corrective lenses – when determining if an impairment substantially limits a major life activity.

FMLA Regulations: DOL issued the final rule, which provides for significant regulation updates. (Effective January 16, 2009). Changes are numerous, including notice requirements and new procedural requirements and certification requirements. Some of the more significant changes involve two new types of FMLA Military Family Leave.

**EESA:** More significant “mental health parity” than the current laws. Emergency Economic Stabilization Act (EESA) prohibits employer group health plans from adopting limitations on mental health financial requirements, treatment or out-of-network limits unless comparable limits apply to medical and surgical benefits.

Effective for Plan Years beginning more than one year after October 3, 2008, which will not be until January 1, 2010 for calendar year plans. In the interim, the sunset provision for the current mental health parity provisions effective January 1, 2009 are repealed. Therefore, the current mental health parity rules will remain in effect until the new ones come into play. (Generally applicable for employers with 50+ employees; different effective dates apply to collective bargained plans.)

Also included in EESA: employers may provide employees with a new qualified bicycle commuting reimbursement benefit under Code Section 132(f), beginning January 1, 2009. Permits employers to reimburse employees up to \$20 per month tax free for expenses related to the purchase of a bicycle and for bicycle improvements, repair and storage if the bicycle is regularly used for travel between the employee's residence and place of employment. (Not available if the employee receives other commuter benefits – transit pass, parking.)

**HEART Act:** Heroes Earnings Assistance and Relief Tax Act. Provides military employees with additional rights under employer-sponsored pension and welfare plans. Various provisions with effective dates ranging from 2007 – 2010 (with certain 2010 provisions, optional in 2009).

**“Michelle’s Law”:** Provides that health plans must continue coverage for seriously ill or injured college students who would otherwise lose coverage because they would no longer qualify as “full-time” students as a result of leave due to their illness or injury. Effective for Plan Years beginning one year after October 9, 2008 (January 1, 2010 for calendar year plans). ERISA Plans must continue coverage until the earlier of: (a) one year after the first day of the child's leave of absence due to the medical necessity; or the date on which coverage would otherwise terminate under the terms of the plan (e.g., attainment of age 23).

### **Medicare Secondary Payer Reporting Requirements**

Generally, when an employee on Medicare is covered by a group health plan through a current employment relationship, Medicare is the secondary payer of health benefits and the employer is primary. Starting in 2009, group health plans (including self-insured and self-administered group health plans) must start providing quarterly reports to the Centers for Medicaid and Medicare Services (CMS) to assist CMS in determining whether Medicare is the primary or secondary payer.

CMS has prepared a User's Guide that describes in detail the reporting requirements.

<https://www.cms.hhs.gov/MandatoryInsRep/Downloads/Section111GHPUserGuideV1510-15-08Final.pdf>

**Publication 969:** Issued end of December for use with 2008 Tax Returns and relates to:

- Health savings accounts (HSAs).
- Medical savings accounts (
- Health flexible spending arrangements (FSAs).
- Health reimbursement arrangements (HRAs).

**Children's Health Insurance Program Reauthorization Act of 2009:** Extends and expands the state children's health insurance program (CHIP). Allows states to subsidize premiums for employer-provided group health coverage for eligible children and families. It also amends the Code, ERISA, and the PHSA to provide additional special enrollment rights, as well as new notice and disclosure obligations for employers that maintain group health plans.

**Economic Stimulus Bill:** Monitor COBRA Changes