

## **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT**

On December 19, 2005, final regulations interpreting USERRA were published. USERRA applies to virtually every private and public employer, regardless of their size. The law requires certain employment and reemployment rights be extended to employees who have been activated in the “uniformed services” for 31 or more days.

USERRA established minimum requirements for offering continuation of group health plan coverage, including Health FSAs, up to the lesser of 24 months or the date the employee returns to work (or should have returned to work).

In many cases, an employee’s military leave may constitute a qualifying event under COBRA *AND* a triggering event under USERRA. USERRA and COBRA are separate and distinct continuation requirements and the two periods may run concurrent with one another. If so, the employee will receive the best treatment afforded by the two regulations.

Employers are required to establish “reasonable” election procedures, similar to those established under COBRA, and may not charge more than 102% of the total costs. Dependents do not have separate election rights under USERRA, but they do under COBRA.

There are no triggers to extend USERRA beyond the 24 month maximum period.

If health benefits are lost during the leave, the benefits must be reinstated upon reemployment without any exclusion or waiting period other than for injuries or illness sustained during active duty.

## **HIPAA PORTABILITY AND ENFORCEMENT**

On December 30, 2004, HIPAA Portability rules were published to address limitations on a plan’s ability to impose a preexisting condition exclusion, to clarify notice obligations for these exclusions, and to clarify the six-month look back period. The rule imposed additional requirements for Certificate’s of Creditable Coverage, including the addition of an educational statements in the plan’s Certificate; a model notice was included in the regulation. The rule also added two new categories of health coverage that qualify as HIPAA creditable coverage: State Children’s Health Insurance Plan (SCHIP) coverage and coverage received under a foreign national plan. The rule also added the definition of a dependent based upon the plan’s definition and clarified special enrollment rights. This rule was effective for plan years beginning on or after July 1, 2005,

On February 16, 2006, another Final Rule was published on HIPAA Administrative Simplification enforcement. The existing rules imposed civil penalties only for violations to the Privacy Standards. The new rule applies the penalties for noncompliance to all of the HIPAA Administrative Simplification rules. It also clarifies and elaborates on the investigation process, bases for liability, determination of penalty amounts, grounds for waiver, conduct of hearings and the appeals process.

## **PART D CREDITABLE COVERAGE**

The Centers for Medicare Services (CMS) has updated its website for online submissions of Part D Creditable Coverage disclosure. This disclosure must be made by all group health plans at least 90 days prior to the plan year. For more information, go to: [www.cms.hhs.gov/apps/ccdisclosure](http://www.cms.hhs.gov/apps/ccdisclosure)

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