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5500 Deadline for 403(b) Plans: Ready or Not, It's Almost Here

Editor's note: For purposes of this article, we are going to assume you know the basics.

If you don't, read BLR's previous news coverage at compensation.blr.com/news.aspx?id=156243 and compensation.blr.com/news.aspx?id=158811.

Sponsors of 403(b) plans, we really, really hope that by now you know whether or not you need to file Form 5500 for the 2009 plan year and whether or not you need an audit. The 5500 deadline for calendar years plans, July 31, marches closer each day.

Believe us, we feel your pain. For a long time now you may have felt relieved that unlike your counterparts sponsoring 401(k)s or defined benefit plans, you didn't have to tackle this responsibility.

However, along came new oversight, and now you've joined the privileged class who get to enjoy the challenges of the 5500.

Violations Resulted in New Rules

Unfortunately, some of the new rules are complex to implement, says Jennifer Elder, a CPA and manager at Perkins & Co. (www.perkinsaccounting.com), a CPA firm in Portland, Oregon. The rules may be justified, though, no matter how uncomfortable they are.

The U.S. Department of Labor found that since 2002, 78% of plans examined by the Department had violations of one kind or another, Elder says.

"Some of the violations are less severe than others, but there are definitely a lot of things plans are doing wrong," she explains.

"If regularly audited plans, which are heavily scrutinized, have that many problems, one can only imagine how many things these previously unregulated 403(b) plans are doing wrong."

Does that make you feel any better? We thought not. But in our effort to help you meet the new requirements, we spoke with Elder about some of the things you should take a close look at as you go down the 5500/audit path for the first time.

Make sure you know the plan's assets and how to value them. If the assets are held by some of the large vendors, you're probably fine, but caution about where monies are invested is warranted, Elder says.

"Often, plan investments are in readily identifiable and marketable investments like common stock, bonds, and registered investment companies. However, plans trying to obtain more favorable returns in the recent unpredictable markets have started to invest in less-traditional investments or hard-to-value assets.

"These could include real estate, mortgages, common/collective funds, private equity, hedge funds, and limited partnerships, to name just a few. These hard-to-value investments make it more challenging for the plan sponsor to determine the assets' fair market value."

Make sure your vendors have an SAS 70. The SAS 70 is a statement on auditing standards, and most of the larger vendors should be able to provide it. "It is basically a report on the controls the vendor has in place for a stated period," Elder says.

"As auditors, we get year-end reports from vendors telling us how much the

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plan has in assets, but how do we know that it's right, or that distributions to terminated participants were calculated correctly?

The SAS 70 is the documentation, evaluation, and testing of the vendor's processes and system, so it gives us more reassurance that the transactions are being processed correctly. It provides reassurance to the plan sponsor, too, because if the vendor they choose has an SAS 70, they know things are happening the way they should be."

Get to know the rules about partial plan terminations. This is an area where you need to rely on your ERISA attorney for guidance. As a very general rule of thumb, the Internal Revenue Service considers a partial plan termination to mean that 20% of your workforce has been laid off or let go.

"The regulation is vague, though," says Elder. "This economy has been very tough on a lot of companies, and we're seeing this happen a lot. If your population has decreased by 20%, then you need to understand how your plan is affected."

Vesting is one area that will be impacted by a partial plan termination, she says. If your plan has a vesting schedule where participants earn a percentage of their account for each year of service, you'll need to fully vest everyone if your plan has a partial termination.

"It's a big deal to make sure that the people you laid off are 100% vested," she says. "Let's say you pay someone out who is 60% vested. You forfeit the remaining 40% and later find out the plan should have been considered partially terminated, and everyone should have been 100% vested.

"You have to find the person and reissue the payment, and that could be a big mess to correct. And if you've used the forfeitures for other reasons, you could have more problems. The effect can really snowball."

Be aware that you can pay certain expenses from your plan. You are allowed to pay reasonable plan expenses necessary for the operation of the plan using plan funds. These might include general plan administrative fees, recordkeeping service fees and, yes, plan audit and 5500 preparation fees.

If the plan has forfeitures, you can accumulate them in a participant-type account and use them to pay fees. Or, you can use the forfeitures to reduce the employer-matching contribution.

"It all depends on how the plan is designed," says Elder. "It's really important to make sure that everything is being done as specified in the plan document."

Ask yourself: Do I really need an audit? The answer is a clear 'yes' if your plan had more than 120 people in it on January 1, 2009 (for a calendar year 2009 plan). If you count between 80 and 120 people in the plan, says Elder, things are a little trickier.

"If you were between 80 and 120 on the first day of the plan year, and you were not required to have an audit in the prior plan year, you can elect to continue filing as a small plan, without an audit. Once you hit 121, you'll need an audit because you'll have to file as a large plan.

"If the count drops below 121 in a subsequent year, you'll still have to audit the plan until the time your count drops below 100."

Assign oversight responsibility. Choose someone within your organization to be in charge of the audit and filing process. This person does not need to do the audit and prepare the filing, but someone should be the point person.

"Make sure somebody has responsibility for it so all the reporting deadlines happen timely," Elder advises.

Perhaps the most important advice Elder can offer to new 403(b) 5500 filers is this: Don't wait. If you haven't done so already, she recommends bringing all your help together in one room to map out a game plan.

"Coordinate a meeting with all the parties involved: your record keeper, your auditor, your investment manager, your payroll service provider, maybe even your ERISA counsel. Have a meeting of the minds and make sure that everyone knows their responsibility, and make sure that things are starting to take place.

"Get the ball rolling, because it will take a while, once you put in requests for information to your 403(b) vendors. Don't wait until a month before the deadline."

1 in 4 Employers Cut Match to DCPs in 2009

A new survey has found that about one in four (26%) employers cut their contribution or eliminated their match to their defined contribution plans (DCPs).

The *Retirement Plan Survey,* conducted by Grant Thronton LLP, Drinker Biddle & Reath LLP and Plan Sponsor Associates also found that more than half (53%) of employers who cut or eliminated contributions haven't yet decided whether to return to previous levels in 2010, while another third (33%) aren't planning to reinstitute the benefits.

Meanwhile, 33% of plan sponsors surveyed reported that their plan participants had decreased their contributions, 56% saw an increase in loan requests, and 34% of plans had increased hardship withdrawals in 2009, according to the survey.

Robert L. Brady, J.D., *Publisher;* Margaret A. Carter-Ward, *Editor in Chief;* Chris Ceplenski, *Managing Editor;* Elaine Quayle, *Editor;* Lisa Higgins, Karen Barretta, Martin Simon, J.D., Peter Knopp, J.D, *Contributing Editors;* Sandra Fisher, Corinne Weber, *Proofreaders;* Agnes D. Franks, *Marketing Manager;* Rebecca MacLachlan, *Graphic Designer;* Sherry Newcomb, *Layout Production.* Contact Customer Service for reprints at 800-727-5257, ext. 2301. *Best Practices in Compensation & Benefits* is issued by BUSINESS & LEGAL REPORTS, INC. Editorial and business offices are located at 141 Mill Rock Road East, P.O. Box 6001, Old Saybrook, CT 06475-6001. © 2010 Business & Legal Reports, Inc.

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Firm Aligns Its Benefits Program With Family-Friendly Culture

Who: Healthpoint, Ltd.

What: Made significant changes to its benefits program by introducing new family-friendly benefits

Results: High employee retention

Healthpoint, Ltd., has created a family-friendly culture throughout the years by encouraging employees to bring their spouses to holiday parties, their families to an annual spring picnic, and their children to "Take Your Sons and Daughters to Work Day."

"All of those things help build that overall culture," says Micky Shepherd, manager, Compensation & Benefits, with Healthpoint (www.healthpoint.com), a pharmaceutical company based in Fort Worth, Texas.

Over the past few years, the firm has made some significant changes to its benefits program by introducing several new family-friendly benefits that are aligned with its culture.

Adoption Assistance

"Healthpoint started offering an adoption assistance program for employees that provides for reimbursement of up to $7,000 toward qualified expenses related to the adoption of a child. Those expenses include legal fees and adoption application fees. The reimbursement can also be used to make changes to the employees' home, if the changes are necessary to accommodate a handicapped child," Shepherd explains.

As an employee incurs qualified expenses, he or she submits the proper documentation to Healthpoint, and the company cuts a check to the employee within a couple of weeks, says Shepherd. "We provide reimbursement as costs are generated and paid for."

Both part-time and full-time employees are eligible for this benefit from the day they start working at Healthpoint, he says. Perry Christensen, Healthpoint's vice president of Human Resources, says two employees have already received adoption assistance.

Although "this is a unique benefit that obviously not everyone is going to use," Shepherd says employees appreciate the fact that the company has taken the initiative to offer adoption assistance.

Parental Leave

A new parental leave benefit that was just introduced this January also has been well received by employees, Christensen says. In addition to the 2 to 3 weeks of paid vacation that employees are eligible for, any employee (male or female) is entitled to take 5 paid days off within 60 days of the birth or adoption of their child, he says. "It's just like an extra week of vacation."

A "handful" of employees have already taken parental leave, Shepherd says. And more are "lined up to use it," says Christensen. With a relatively young workforce, Healthpoint typically has 15 to 25 births per year, and he expects as many employees to take parental leave.

Benefits for Part-Timers

Healthpoint pays approximately 85 percent of healthcare premiums for its full-time employees, and more than a year ago, it started offering the same medical benefits to part-timers—at a slightly higher cost. "They pay a little more to maintain full-time benefits, but it's not a large percentage," Christensen says.

Healthpoint has only a few part-time employees. All four part-timers who have medical benefits are working mothers, and three of them had previously left Healthpoint due to family obligations. "We attracted back some great employees who only left because they wanted to spend time with their families," Christensen says, referring to this as an "unexpected" but positive result of introducing this benefit.

"Prior to having this policy in place, they wouldn't have been eligible for our health and wellness benefits, but now they are," says Shepherd. "It is the same exact plan that everyone else is on."

Other new family-friendly benefits include job sharing, enhanced flexibility, and the inclusion of in vitro fertilization services in the medical plan.

Offering family-friendly benefits has helped Healthpoint retain top talent, according to Christensen. "People like working here and the opportunities, and they like our culture, so they stay here."

Healthpoint received "pretty phenomenal" scores in an employee survey conducted for the Best Companies to Work for in Texas 2010 ranking, he says. The company, which ranked #20 on the list, received "exceptionally high scores" in how employees view the mission and direction of the company and development opportunities. "The family-friendly culture has been kind of the icing on the cake."

What to Do

A family-friendly culture takes time to cultivate, so Christensen recommends using a "two-pronged, bottom-up approach" for gaining input and support. He suggests identifying who in senior management supports a family-friendly culture and then building on that support.

If it is unclear how supportive senior management is for such an endeavor, Christensen says you should seek input from a cross-section of employees—about their work/life needs and the types of family-friendly benefits that would be helpful to them—and then take that feedback to senior management.

To help ensure the success of new benefits, Shepherd recommends soliciting ongoing feedback from employees after implementation.

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Experts' Forum

Twitter: All You Need to Know

By Jennifer Benz, Benz Communications

If you're not yet using Twitter, you may think the ubiquitous site—that asks "what are you doing?" and gives you only 140 characters to answer—is just a bunch of nonsense and online noise.

But, before you dismiss Twitter as just an Ashton Kutcher—and Oprah Winfrey-inspired fad, read on to learn why Twitter is valuable for benefits professionals—and how to get started.

What Is Twitter Anyway?

Twitter is a simple, public platform that lets you exchange information with people through short notes called "Tweets." Anyone can read your Tweets by "following" you (essentially, subscribing to your page) or viewing your profile page.

You can also use countless search tools and third-party applications to search through all the Tweets based on key words or topics of interest.

What makes Twitter interesting is that the millions of people using it are having short, ongoing conversations, ranging from simply entertaining or silly to detailed and thought-provoking, depending, of course, on the people and the topics.

Many people describe Twitter as an online cocktail party or a crowded room: On first glance, there's just a bunch of noise, but if you listen a little more closely, you'll see that people are exchanging all kinds of interesting and valuable information—or, just having a good time.

Why Is It Valuable?

Twitter has many valuable applications—especially for business. SmartPulse, a weekly reader poll in Smartbrief on Social Media, tracks feedback from leading marketers about social media practices and issues.

A recent poll asked, "What is the primary way you use Twitter?", and these were the responses:

- Staying on top of breaking news/trends, 42%
- Broadcast messages and announcements about your company, 23%
- Staying in touch with friends and family, 13%
- Prospecting and lead generation, 9%
- Monitoring what's being said about you or your company, 8%
- Customer service, 5%

Those are all very relevant for benefits and HR professionals—particularly staying on top of news and trends and understanding what's being said about your company.

Twitter is also a great source for entertainment news (there are countless celebrities to follow) or to follow your passion or a hobby.

How to Get Started

Using Twitter and observing the interactions is the best way to understand the value. All you have to do is sign up and you'll be started in no time.

Sign up. Simply go to www.twitter.com to sign up. Use your real name or something close to it if you can. Post a good photo. Put some thought and detail into your brief profile description.

Learn the Lingo

Twitter has a language all its own.

@replies and DMs and RT

You can direct a Tweet at another person using the @reply. This lets your reader know that you're responding to or directing that comment at someone specific—and the person you're talking to will see it in his or her browser.

It is an easy way to "converse" on Twitter—but remember that it is all public. A DM, or Direct Message, is a private Tweet—you send it only to one person and only he or she can see it. It is kind of like Twitter's version of e-mail, but with a character limit, of course.

You'll also see "RT" show up often on Twitter. That is short for "Re-Tweet," and it just means that you're passing along information that someone else posted. The original poster will likely thank you for the Re-Tweet, and that is a good way to grow followers.

You'll see that the Twitter community is very gracious and, in general, very polite; most people are generous with their "thank yous" and very conscientious to acknowledge where they get information.

#Hashtags

Hashtags are a way to tag a Tweet with a specific topic. The hashtags evolve and change quickly depending on what topics are hot on any given day.

Many conferences send out a specific hashtag for attendees to use when Tweeting. It allows anyone to easily follow a conversation or specific topic through search applications.

You can also see what topics are trending up—or being talked about a lot—on any given day by following the hashtags on the side of your Twitter profile. When big news events are taking place, whether it is the swine flu or politics or an election, you can use hashtag searches to watch the conversation in real time.

Strange URLs

You'll also see a lot of crazy looking URLs in Tweets. Never fear, those are just from many of the third-party applications like TinyURL that shorten long Web addresses so they don't take up so much precious space in your posts.

Some Do's:

Get Followers (or Not)

Many people strive to gain new followers and attract attention from the Twitter community. This is the

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trickiest part of Twitter, and there is no magic formula for gaining followers. And it may not be something you need to worry about at all.

Whether you want to get droves of followers or prefer to stick to a close group of friends, my advice is to be authentic and be yourself. Don't overthink it, but posts that are specific, relevant, and have some personality will be most interesting to other people (including your friends!).

You can post what you're reading, working on, doing, or observing. It is true, no one really cares that you're buying a coffee or eating an apple, but if doing one of those things puts you in an interesting place with interesting people, then it just may be worth a Tweet.

Or, don't worry about posting frequently or luring followers at all. You can identify people or topics that you're interested in and observe the conversation and post when you have something to contribute.

There are no set rules for how to use Twitter, and there is no reason you need to get a lot of followers (but I would recommend you read the "don'ts" so that you get the most out of your experience).

Join Twitter Chats

Twitter chats are a scheduled "meet-up" on Twitter to discuss a particular topic. You can follow the discussion through hashtags or a search. They are a great way to maximize the value of your time on Twitter and connect with individuals in your field.

Organize with Twitter Applications

There are hundreds, if not thousands, of Twitter applications. These are tools or websites or mobile phone applications that let you interact with and use the information in Twitter in different ways.

A quick search online will generate an overwhelming number of potential applications to use. But, they will make a huge difference in how you experience Twitter.

Hootsuite and TweetDeck are two examples of essential applications that let you organize your Twitter world.

Some Don'ts:

- Don't have long conversations using the @reply feature–take it to e-mail or phone or in-person
- Don't aggressively market yourself—or anything else. Social media is most effective for the individuals and brands that are authentic. If you add value, people will appreciate your contribution.
- Don't post anything you don't want your boss, employees, kids, mom, or whomever to see—remember, it is all public!

In next month's issue, we're going to teach you how to use Twitter to broadcast messages and announcements about your company's benefits—and even use it for employee service.

Meanwhile, Benz Communications recently launched a Twitter profile to reinforce how much you can say about benefits. You can access it at http://twitter.com/benefitstip. It just might inspire you to dip your toe into the Twitter waters.

Jennifer Benz is the founder of Benz Communications (www.benz-communications.com). Benz Communications is a Human Resources communications strategy boutique creating integrated employee benefits communications programs that increase employee understanding, engagement, and satisfaction and enhance employee recruitment and retention. Its clients include Fortune 500 companies, Fortune 100 Best Companies to Work For, and small- to mid-size companies.

Jennifer can be reached at jen@benzcommunications.com or on Twitter @jenbenz.

Healthcare Reform: Dependent Coverage To the Age of 26

Effective for plan years beginning on or after September 23, 2010, the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 requires group health plans and health insurers that offer group or individual coverage that cover dependents to cover dependents on a parent's plan until the dependent's 26th birthday.

For plan years beginning before January 1, 2014, a group health plan that was in existence on March 23, 2010, does not have to make coverage available to an adult child if the child is eligible to enroll in another employer-sponsored group health plan.

There is no requirement to make coverage available to a grandchild, even if that child's parent is covered as a dependent.

Regulations are to be issued defining which dependents to whom coverage must be made available because of this requirement. The definitions of a dependent under existing law, however, remain unchanged.

Employers will likely have to cover additional dependents because of this provision. Keeping track of the coverage eligibility of dependents has always been a problem for employers.

Employers are advised to obtain all the information needed for determining dependents' coverage eligibility before this provision impacts their plan and keep it up to date to minimize paying for ineligible dependents.

Many states have existing laws that require insured plans to provide similar or more expansive coverage of dependents. These provisions still apply to insured plans in those states.

Along with this provision regarding extended coverage for dependent children, several other crucial provisions of the Patient Protection and Affordable Care Act will become effective September 23, 2010.

You can get ready for the changes by ordering BLR's exclusive webinar recording, "Healthcare Reform: What the New Legislation Means for Employers; Get Prepared Now," specifically designed around all the new changes that employers need to know about.

Learn from two experts what the changes mean, when they're taking effect, and what you should do right now to prepare your organization (and your employees) for what lies ahead.

Go to http://catalog.blr.com/product.cfm/product/30579515 to learn more or order now!

Healthcare Reform Overview

The landmark healthcare reform bill signed into law this March will result in many changes in the compensation and benefits arena, although certain provisions do not apply to group health plans that are "grandfathered" under the new law.

Key components of the new law include the following:

- **Employer responsibilities.** Starting in 2014, an employer with more than 50 full-time employees must pay $2,000 per employee if the employer fails to offer health coverage and has at least one full-time employee receiving a premium assistance tax credit or cost-sharing reduction created by the legislation. However, the first 30 employees are excluded from the calculation of the penalty.
- **Dependent coverage.** Beginning 6 months from enactment of the law, health plans that provide dependent coverage will be required to provide it to dependents up to the age of 26.
- **Ban on lifetime limits.** Also starting on September 23, 2010, insurers will no longer be able to impose lifetime limits on benefits.
- **Ban on annual limits.** The use of annual limits will be banned for new plans in the individual market and all employer plans starting in 2014.
- **Ban on discrimination based on pay.** Effective September 23, new group health plans are prohibited from establishing any eligibility rules for healthcare coverage that have the effect of discriminating in favor of higher wage employees.
- **Breaks for breastfeeding.** The legislation amends the Fair Labor Standards Act to require employers to provide unpaid breaks and a private location for employees to express breast milk.
- **Adoption assistance.** Under the new law, the adoption tax credit and adoption assistance exclusion will increase by $1,000 this year, and the credit will be refundable and will be extended through 2011.
- **Tax on "Cadillac" plans.** Starting in 2018, there will be a 40 percent excise tax on any "excess benefit" of employer-sponsored coverage. An "excess benefit" is defined as one that exceeds $10,200 for individual annual coverage and $27,500 for family coverage. The thresholds will be indexed to inflation.
- **Automatic enrollment.** Employers with more than 200 employees will be required to automatically enroll full-time employees in health coverage. However, employees may later opt out of the coverage.
- **Insurance exchanges.** States will create insurance exchanges that will be operational by 2014. The exchanges will be open to eligible individuals and to some employers (i.e., those with 100 or fewer employees before 2017 and larger employers beginning that year).
- **Tax credits for small employers.** Starting in 2010, tax credits of up to 35 percent of premiums will be available to small businesses that choose to offer healthcare coverage to employees. The full credit will be available to businesses with 10 or fewer employees with average annual wages of $25,000, while larger small employers will see smaller tax credits. In 2014, the smallest employers will be eligible for a 50 percent tax credit.

In an analysis of the legislation, The ERISA Industry Committee (ERIC) highlighted several other key provisions, including:

- No preexisting condition exclusions,
- No cost-sharing for certain preventive services,
- A $2,500 annual limit on contributions to health flexible spending accounts,
- Required annual reporting of the value of employer-provided health benefits on an employee's Form W-2,
- Higher rewards for participation in wellness programs,
- An increase in the penalty for nonmedical withdrawals from health savings accounts,
- Elimination of the deduction for the Medicare Part D drug subsidy for employers that maintain prescription drug plans for Part D eligible retirees, *and*
- An increase in the employee's share of Medicare Hospital Insurance tax on wages over $200,000 for individuals and $250,000 for married couples.

IRS Update

Hiring Incentive Approved

Employers that hire unemployed workers after February 3, 2010, and before January 1, 2011, may qualify for a 6.2-percent payroll tax incentive, which, in effect, exempts them from their share of Social Security taxes on wages paid to such workers after March 18, 2010, according to the Internal Revenue Service (IRS).

That incentive was included in the Hiring Incentives to Restore Employment (HIRE) Act, which was enacted in March 2010.

The HIRE Act also offers a general business tax credit (up to $1,000 per worker) for retaining such workers for at least 1 year, according to the IRS.

At press time, the IRS was revising the federal employment tax return (usually filed quarterly) that will be used to claim the payroll tax incentive and developing a new required form to certify that each eligible new hire was unemployed during the 60 days before beginning work, or that each worked less than a total of 40 hours for another employer during that period.

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Self-Awareness Promotes Succession Planning

Adequate financial education can have an impact on succession planning, says Nancy Anderson of Financial Finesse.

The company's research indicates that just 12 percent of near-retirees say they are on target to retire.

"Some of those people may actually be in a position to retire, either now or in a few years," Anderson says.

"But they aren't sure, so they aren't going to take a chance and retire." That can have an effect on the next tier of employees in your company.

"If you have 45-year-old upwardly mobile employees who would like to advance in the company, it may not appear that there is any opportunity.

"If the near-retirees know their true financial status, they can create a mentor/mentee relationship within the organization, knowing that a transition is near.

"That could change the tone for a lot of key people that employers would want to maintain."

ABOUT THIS NEWSLETTER

This newsletter is devoted to sharing compensation and benefits ideas that have worked for HR professionals striving to make a strategic difference in their companies. If you have a story you'd like to share, send us a fax at 860-510-7224.

If you have a question about one of the newsletter stories or want more information, call 800-727-5257, ext. 2194, or e-mail equayle@blr.com.

Benefits Corner

Recession Reveals Gaps In Financial Planning

As providers of financial education, Financial Finesse (www.financialfinesse.com) experts are in tune with real world economics. The recession of the last 2 years has, of course, impacted large, faceless corporations. But we have all felt a decided 'trickle down' impact. Even those who are still employed are not immune from the stress and worry that comes from uncertainty about finances and the future.

In fact, when Financial Finesse asked employees a series of questions through an online survey, 96 percent of them reported feeling stressed about their finances, says Nancy Anderson, director of the company's Think Tank. "And these are employed people," she emphasizes.

The good news is that the troubled economy may be changing the way people think about money. But it also reveals a gap in the way we have collectively thought about it in the past. "I think this economy is like a double-edged sword in some respects," Anderson says. "We have noticed a trend of people focusing on their short term finances. Debt has been a big focus for the last 3 years, and we've seen an increase in budgeting and saving calls."

Of course, paying off debts and saving money is great, but it comes at a cost in terms of long-range saving. While many people now see the need to rid themselves of debt and save for emergencies, that focus ties up money they could be investing for their retirement.

"Having an emergency fund is a very fundamental part of a financial plan that many people have been missing for years," Anderson says. "It sounds simplistic, but it's very important because it creates financial stress when people have to live month to month." The financial stress results in a less-productive workplace, when worried employees focus on answering (or avoiding) calls from creditors and wonder how they're going to pay the bills. Some may even be distracted by the demands of a second job.

The lessons of this economy will be felt for a long time. Anderson says, "People have been using their home equity line of credit as an emergency fund or as their college planning, instead of having money saved. But we've been hearing people saying 'I never want to be in this position again.' If employees take this as a lesson and continue on the habits they have developed in the last year, it may be a real help in the long run."

Providing personal financial tools to your employees can help. Anderson recommends finding a provider that does not sell products to employees, and is, therefore, in a position to provide unbiased advice. Make sure the provider offers up-to-date topics, like *Investing in Today's Market*, and that they can include your company's own benefits package into their financial workshops. "Doing that can increase employee appreciation for the benefits you're providing, and may help in retention."

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CASE Study Study Study Study

Bank Saves Time, Money by Not Following 'The Paper Trail'

Who:	Union Bank
What:	Implemented automated compensation system, along with employee self-service
Result:	Cut transaction time by about 80 percent, resulting in significant savings of time and money

Part 1: The Problem with Paper

When our saga begins, the paper is new. It is made into a three-part form: one pink, one canary, and one the palest of blues. No one really knows why it has three parts, but everyone who sees it appreciates its delicate hues.

After a few months in a folder in the manager's desk drawer, the paper comes out of the dark and is placed on the desk. The manager draws her pen gently across the surface.

Using ink that appears iridescent in the light from a nearby window, the manager checks some boxes and writes a few words. After removing one part, she places the paper in an interoffice envelope bound for her manager on the fourth floor.

The journey of the paper should continue to that level, but by sticking to another envelope and failing to be noticed by a mail sorter wearing headphones, it travels, instead, to the branch office on the west side of town. It sits for a few weeks in the inbox of someone in one of the departments located there.

Once discovered, the paper makes its way to the correct manager, where it eagerly awaits the needed approvals. But in a twist of fate, it drops behind the credenza where it waits … and waits … and waits. Discovered at last, the paper makes its way to its final destination—Human Resources.

As you'll note in Part 1 of The Paper Trail, time, circumstances, and people being what they are, paper does not always reach its intended destination as quickly as we might like. While you may be taken with the beauty of our little tale, we hope you don't recognize your organization within its words.

Part 2: The Sad (Expensive) End

A compensation manager reaches for the paper, carefully smoothing it and reviewing the instructions it contains. Unfortunately, some of the words are unclear, and the manager must consult others to try and decipher its meaning. Sadly, none of the team understands and so must contact the original manager.

"Can you tell us what you meant by this notation?," they ask. "No," she replies. "The ink has faded on the canary copy, and I can no longer read it. And the employee mentioned on the paper no longer works in my department. I will make some calls to find out where he is now." But she gets busy, and the paper must wait some more.

While this story illustrates an extreme, it does make the point: Paper often is not efficient. Like most fiction, it does contain an element of truth. Stephen Kennedy, vice president of Corporate Compensation at Union Bank, admits that his organization would at one time have recognized itself in some elements of this story.

"Five years ago, everything we were doing in terms of salary or other changes for employees was done on a triplicate form," he explains. "The form had been around for so long that people really didn't know what the third part of it was used for. So if there was a salary increase, or even a change to a last name or an address, the manager had to fill out that form, sign it, and then send it to our HR records area."

As in our story, sometimes the journey took much more time than it should have. "The input of those forms was a nightmare," Kennedy continues. "There were mistakes, people didn't know where to send the form, and anything that [was] rejected out of the system had to come back to our department to fix, balance and make corrections.

"There were a lot of phone calls and faxes back and forth to get the information corrected. It sometimes took hours to make a correction that would not have been necessary with the right technology.

"We had well-paid people sitting there trying to figure out the problem on a paper profile that was rejected. It was expensive, and not a good use of their time."

Part 3: Technology to the Rescue

What comes to the rescue in our little tale, and for Union Bank, is technology. "Our employee software vendor approached us about using their compensation planning tool, and employee self-service was a part of it. Managers in particular were hungry for this kind of change. The process we had was extremely frustrating for them, and for the employees.

Often, the employees knew what a hassle it was to change their information, so they wouldn't even bother. We had a lot of outdated information."

"When you use paper, there is always the infamous 'black hole.' The manager fills out the paper and sends it to get the second required signature, but they never have any idea where it actually is. With the automated system, if it sits at the second-level manager's desk because they haven't signed off on

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it yet, at least you know its status and you can track it down."

Union Bank's software vendor, Workscape (www.workscape.com), provides a compensation planning tool that has been proven invaluable, Kennedy says. Before, there were times that salary reviews were significantly delayed or even missed entirely, he sheepishly admits.

And even though the bank had merit increase guidelines, it had limitations that could be costly.

"The guidelines might show that an employee was eligible for a 3 percent merit raise. The manager might not even realize that their request for 4 percent was outside the guidelines, and the increase would go through," says Kennedy.

With an automated system, those kinds of oversights just don't happen. "Around September or October, the tool gives us the ability to enter potential salary increases for the following quarter," he says.

"That way you can start to see how your budget looks. Then, as you get into March, unless there are any changes, you can go ahead and flip the switch allowing those ratings and increases to occur.

If a request is made that is outside the guidelines, the system will flag it. The manager would likely come back and ask about it.

"That falls into the category of allowing managers to spend their time managing dollars and not just processing dollars," he explains.

If you see too much of your own situation within our story and decide to pursue employee self-service, Kennedy would like you to learn from his experience.

The first step, he says, is to really think through your existing practices. Changing to an automated system is more than simply, well, automating what you're already doing.

"Really start to challenge some of your existing methods and processes," he says, "because it will be very cumbersome to build a system based on the processes that have existed for many years.

"If you challenge some of those ideas and decide whether you really need to keep doing them, you can simplify the processes even more."

Another tip: "I think in hindsight we could perhaps have had more involvement with our business units, allowing them to look closely at what we did before moving forward at each step," Kennedy explains.

"They were involved, but I think I would have them even more involved. You never want to make the mistake that HR knows exactly what the tool should look like.

"It's better to get the perspectives and opinions of your business units ahead of time than after the fact."

And be prepared for an extraordinary amount of testing, Kennedy says.

"You have your day jobs to do, but you still need to make sure everything is correct. It is worth the money to hire a third party tester, and we did. They were a great additional set of eyes to look at everything and raise questions. It is really worth the investment."

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Q: An employee recently quit and moved out of the country.

Our health insurance is a regional HMO.

How do we handle COBRA coverage for him?

A: According to Susan E. Prince, J.D., BLR® legal editor, a COBRA beneficiary must be given the opportunity to continue the coverage he or she had before the qualifying event—in this case, his termination of employment.

That's true even if the coverage would no longer be of value to the former employee.

If your HMO is limited to the region in which your company is located and the former employee is moving outside that region, you still need to offer the coverage continuation.

Make sure you provide the proper forms, as you would for any COBRA beneficiary.

However, cautions Prince, if the coverage would have no value where the ex-employee is relocating and your company offers active employees coverage that can extend to the relocation area—an indemnity plan, for example—the same opportunity must be offered to the former employee.

"If none of the group coverage offered by the employer may be extended to the relocation area, the employer does not have to provide the opportunity to elect alternative coverage," she says.

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Retirement Confidence Stabilizing While Retirement Savings Decline

A new survey reveals that Americans are beginning to feel more confident about their retirement, even while their retirement savings decline.

"Americans' attitudes toward retirement have clearly tracked the economy the last couple of years, and that seems to be the case in 2010," said Jack VanDerhei, Employee Benefit Research Institute (EBRI) research director and co-author of the survey. "Unfortunately, while their attitudes are stabilizing, their preparation for retirement is not. A distressing number of people have no savings at all."

One of the survey's key findings was that the number of workers who are very confident about having enough money to retire comfortably remained steady since last year at 16%. That figure was statistically equivalent to the 2009 figure of 13%, a 20-year low in worker retirement confidence.

Retirees expressed similar sentiments, with 19% saying they feel very confident about having a financially secure retirement, also stable from the prior year. The retiree confidence figure reflects a sharp decrease from the 2007 survey, when 41% of retirees felt very confident.

A return to confidence is positive, but it does not appear to be supported by actual savings. Sixty percent of workers say they and/or their spouse are saving for retirement, down from 65% in 2009, and more workers report that they have no savings or investments.

Meanwhile, 27% of respondents say they have less than $1,000 in savings, compared with 20% the year before. More than half of the responding workers, or 54%, report that their total household savings and investments, not counting their primary home and any defined benefit plans, is under $25,000.

One result of this lack of saving and lack of confidence is that more workers are expecting to delay their retirement. In fact, the percentage of workers who expect to retire after the age of 65 has tripled in the last 20 years, from 11% in 1991 to 33% in 2010. Twenty-four percent of workers said they have delayed their planned retirement in the past year, with 29% of those citing the poor economy as a reason for their decision.

Retirement delays ripple throughout the job market. When older workers remain on the job, there is less room for those advancing their careers, which leaves less room for entry-level workers.

Read the results of the 20th annual Retirement Confidence Survey, conducted by EBRI in conjunction with Matthew Greenwald and Associates at www.ebri.org.

Watch for These Common Wage and Hour Traps

Wage and hour laws can be complicated— as if you didn't know that. Here are a few common traps that companies may fall into when determining pay, gleaned from the U.S. Department of Labor's website at www.dol.gov/compliance/topics/wages.html.

- **Improperly categorizing employees as exempt.** Of course, whole articles have been written on this topic alone. But in particular, make sure you don't automatically treat salaried employees as exempt from the overtime rules under the Fair Labor Standards Act (FLSA). Job descriptions, job titles, and salaried status have very little bearing on whether an employee is considered to be exempt. Carefully examine the rules to make sure you're categorizing correctly and paying overtime when you should.
- **Improperly agreeing to overtime waivers and comp time.** FLSA rules are specific about paying overtime to nonexempt hourly workers. If an employee works more than 40 hours in a week, you must pay overtime for any additional hours worked during that 7-day week, even if the employee waives his or her right to the overtime pay.

  And don't substitute comp time for cash; you risk problems under the FLSA if you do, even if the employee agrees to the arrangement.
- **Improperly averaging working hours over more than 1 week.** Don't try to average the number of hours worked for a period longer than one 7-day week. Even if an employee works 80 hours in a 2-week period, you still can't get around the overtime rules.

  The FLSA requires that each week stand alone, even if the employee works 25 hours in 1 week and 55 hours the next week, for example.
- **Improperly docking pay for salaried employees**. If an employee is salaried, you must pay him or her the same amount each pay period, even if the hours worked are less than the normal 40 per week.

  By docking the pay of an exempt salaried employee, you may be jeopardizing the FLSA exemption.

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Expert and Employee Testimony Can Establish 3-Day 'Period of Incapacity'

The Family and Medical Leave Act of 1993 (FMLA) requires covered employers to grant eligible employees up to a total of 12 workweeks of unpaid leave for, among other things, medical leave taken when the employee is unable to work because of a "serious health condition."

Under FMLA regulations, a "serious health condition" means, among other things, an "illness, injury, impairment, or physical or mental condition" involving either: (1) an overnight stay in a medical care facility and subsequent treatment in connection with this overnight stay, or (2) "continuing treatment by a healthcare provider" that must include "a period of incapacity lasting more than 3 consecutive, full calendar days."

What has never been clarified, even under the revision to FMLA regulations in 2009, is exactly what the employee must do to establish there actually was "a period of incapacity lasting more than 3 consecutive, full calendar days." Is only the testimony of the healthcare provider sufficient? This was the issue in a recent case.

What Happened

"Shera" began work as a medical receptionist for Lehigh Valley Health Services, Inc., in December 2002. On Wednesday, September 21, 2005, before the start of her work shift, Shera felt ill and sought treatment from "Dr. Weaving," a co-employee at Lehigh. She complained of low back pain, fever, nausea, and vomiting.

Dr. Weaving diagnosed Shera as having a "urinary tract infection," fever, and accompanying low back pain. He advised her to stay on a clear diet and prescribed an anti-inflammatory for the back discomfort, as well as an antibiotic for the infection. The antibiotic was to be taken once a day over a period of at least 3 days.

Shera then prepared to leave the office and go home, but first she asked Dr. Weaving for a note to give to her supervisor. Dr. Weaving obliged and authored a note stating that Shera was under his care "for febrile illness and will be unable to perform duties at work today [Wednesday] or tomorrow [Thursday]." Since her supervisor was unavailable, Shera taped the note to her door and went home.

As a result of this note, even though Shera had not invoked any FMLA rights and was not obligated to, the employer was arguably on notice that she would be incapacitated for 2 days and possibly a third day, and, therefore, it might subsequently have FMLA obligations. So, at this point, an employer in Lehigh's position must be careful not to interfere with the operations of the FMLA.

Shera stayed home and felt unable to report to work for the rest of that day, the next day (Thursday), as well as her following 2 scheduled work days—Friday and the following Monday. As chance would have it, she had previously scheduled vacation days for both of these days. She returned to work the following Tuesday.

Upon returning to work, Shera told her supervisor that she had been sick all weekend. At this point, she had neither requested FMLA leave nor asked Lehigh to convert her 2 paid vacation days into paid sick days. Six days later, on October 3, 2005, Lehigh terminated Shera, alleging t hat she violated its policy that employees must call in on sick days. Lehigh also alleged that Shera had made several mistakes in the performance of her job.

Shera sued Lehigh, claiming it had willfully violated FMLA by interfering with her rights under FMLA and impermissibly terminating her employment in retaliation for her exercising her FMLA right to take leave.

Lehigh, in a motion for summary judgment, asked a Pennsylvania district court to throw out Shera's case. It argued that Shera had no FMLA rights to begin with, since she had failed to establish there actually was "a period of incapacity lasting more than 3 consecutive, full calendar days," and thus had failed to provide evidence of a "serious health condition."

The employer further argued that only a healthcare expert can make the determination of incapacity, and the doctor's note was insufficient because it covered only a period of 2 days. Shera's testimony regarding her own medical condition was irrelevant because she was not a medical expert, Lehigh further asserted. The district court agreed with the employer, and Shera appealed to the 3rd Circuit, which covers Delaware, New Jersey, and Pennsylvania.

What the Appeals Court Said

The 3rd Circuit, disagreeing with the district court, held that an employee seeking to establish a "serious health condition" in an FMLA action may satisfy her burden of proving 3 days of incapacitation through a combination of expert and lay testimony.

Therefore, the doctor's note reporting that Shera was incapacitated for 2 days, combined with Shera's testimony that she was incapacitated for 2 additional days, raised a material issue of fact as to how long she was incapacitated, an issue that must be determined by the district court.

The court noted, "Many district courts, including those in the 3rd Circuit, have held that a healthcare provider's professional medical opinion is the only evidence that can establish incapacity." On the other hand, "The Courts of Appeals for the 5th and 9th Circuits hold that lay testimony is sufficient, by itself, to establish incapacitation."

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continued from page 11

In the 3rd Circuit's view, allowing unsupported lay testimony, based solely on the employee's self-diagnosed illness, would place too heavy a burden on employers to inquire into the employee's eligibility for FMLA leave. So, it held that an employee may satisfy her burden of proving 3+ days of incapacitation through a *combination* of expert medical and lay testimony. *Schaar v. Lehigh Valley Health Services, Inc.*, U.S. Court of Appeals for the 3rd Circuit, No. 09-1635 (3/11/10).

Point to Remember

Employers subject to FMLA are prohibited from interfering with, denying, or restraining the exercise of an employee's FMLA rights and from retaliating against workers for the exercise of those rights. In cases such as this one, where the employer seeks to terminate the employee returning to work after an alleged "serious medical condition," the employer had better be very sure that the employee has no rights under FMLA. Otherwise, a court may find that the employee's termination was in retaliation for her exercise of FMLA rights—and that the employer has serious legal liability.

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By the numbers...

	Latest Period	Current	Prior Report	A Year Ago	12-Month % Change
CPI-U	Mar/10	217.6	216.7	212.2	2.3%
CPI-W	Mar/10	213.5	212.5	206.7	3.0%
ECI EMPLOYMENT COST INDEX					
Total Compensation	4Q/09	110.2	110.0	108.9	1.2%
Wages and Salaries—Private Industry	4Q/09	110.9	110.6	109.4	1.4%
Wages and Salaries—Civilian Workers	4Q/09	111.2	110.9	109.6	1.6%
Benefits- Private Industry	4Q/09	110.7	110.6	109.1	1.5%
Average Weekly Gross Wages*	Mar/10	$629.37	$626.25	$613.01	2.7%
Average Hourly Wages					
All*	Mar/10	$18.90	$18.92	$18.52	2.1%
Construction	Mar/10	$23.18	$23.17	$22.61	2.5%
Manufacturing	Mar/10	$18.45	$18.46	$18.14	1.7%
Trade/Transp./Utilities	Mar/10	$16.79	$16.79	$16.40	2.4%
Wholesale Trade	Mar/10	$21.46	$21.47	$20.57	4.3%
Retail	Mar/10	$13.21	$13.21	$12.95	2.0%
Financial Activities	Mar/10	$21.37	$21.25	$20.66	3.4%
Other Services	Mar/10	$16.83	$16.89	$16.43	2.4%
Unemployment Rate*	Mar/10	9.7%	9.7%	8.6%	1.1%

*seasonally adjusted
(**Source:** Bureau of Labor Statistics, Washington, D.C.)
All figures are national.

CPI-U: Consumer Price Index for all urban consumers; the newer index representative of the buying habits of about 87% of the total U.S. population. (1982–84=100)

CPI-W: Consumer Price Index for urban wage earners and clerical workers; the older index covering only about 32% of the U.S. urban population.

ECI: Measures change in compensation per hour worked, including wages, salaries, and employer costs of benefits. (6/89=100)

Average Weekly Gross Wages and Average Hourly Wages: Data related to production workers in manufacturing and mining; construction workers; nonsupervisory workers in transportation, public utilities, and wholesale/retail trade; also finance, insurance, real estate, and other services. Accounts for approximately 80% of the total employees on private, nonfarm payrolls.

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