Employee Benefits Report

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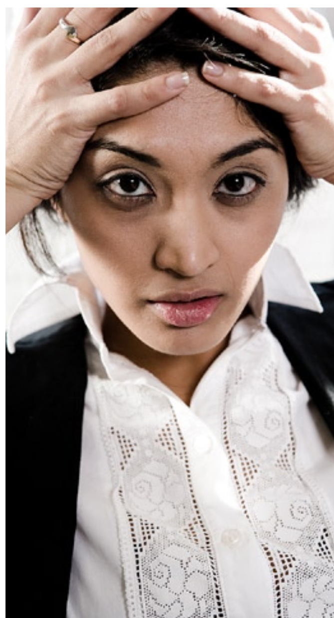

Are Your Sick Leave Policies Causing Headaches?

In November, Reps. George Miller and Lynn Woolsey (D-Calif.) introduced HR 3991, the Emergency Influenza Containment Act (EICA), which provides up to five days of paid sick leave for employees whose employers have directed them to leave work or not to come in to work due to contagious illness.

Regardless of whether the EICA becomes law, the threat of pandemic should prompt employers to examine their sick leave policies. Sick leave does no good if employees aren't using it. "Presenteeism"—when sick employees come to work—can spread disease, affect productivity and contribute to accidents. In fact, a 2004 study by the Cornell University Institute for Health and Productivity Studies found that presenteeism might account for 18 to 60 percent of employers' health costs.

Evidence suggests the recession has worsened the presenteeism problem. In a 2008 poll by NPR, the Kaiser Family Foundation and the Harvard School of Public Health, "…about half the people reported that in at least a number of cases they go to work when they're sick and believe they should stay at home because of the financial issues that are involved," said researcher Robert Blendon, of the Harvard School of Public Health.

Are your paid leave programs working for your firm and its employees? Options include:

- **Traditional plans.** For years, employers have provided workers a set number of paid sick leave and vacation days per year. The amount varies by company and industry, but new employees get an average of 17 or 18 paid days off per year, allocated evenly between sick and vacation days. Professional, long-term employees may accrue 30 or more days off annually.

  This type of leave plan is easy to administer. Simply decide how many sick and vacation days to give employees per year, put it in writing—your employee manual is a good place to start—and let everyone know. This system works well for many companies, but alternatives can give your employees more respect and autonomy, without costing your company considerably more.

- **Paid time off programs.** Some companies combine different types of leave into one unified bank of "paid time off" (PTO) hours. A recent survey of employers with 100 or

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This Just In

A Congressional bill would require all employers to provide paid sick leave for contagious illnesses such as the H1N1 flu. Introduced in November, HR 3991, the Emergency Influenza Containment Act (EICA), would provide up to five days of paid sick leave for employees whose employers have directed them to leave work or not to come in to work due to contagious illness.

Currently, 66 percent of American workers have access to some form of paid sick leave, according to the Department of Labor's Bureau of Labor Statistics 2009 National Compensation Survey. The U.S. Department of Labor says, "Generally, federal labor laws do not require employers to provide sick leave or pay sick time off. However, if employers do provide sick leave, the Family and Medical Leave Act (FMLA) permits an eligible employee to substitute paid leave for the unpaid leave to the extent the employer's usual requirements for the use of sick/medical leave are met and the sick leave qualifies as FMLA leave. Employers are also permitted to designate paid leave as FMLA leave assuming all the conditions are met."

Five Retirement Plan Problems and What You Can Do About Them

Low enrollments and low contributions not only mean that you're not getting your money's worth out of your administrative dollars, they can also translate into decreased employee loyalty and failure of nondiscrimination tests. Following are five common retirement plan problems and how you can solve them.

Problem 1: Lack of Participation

One study reports that 56 percent of private sector workers had access to a defined contribution (DC) plan in 2006, but only about 40 percent participated. Younger workers and low-income workers are less likely to participate.

Solution: Automatic Enrollment

Several experts interviewed by the U.S. Governmental Accountability Office (GAO) noted that automatic enrollment increases participation because workers who fail to make an active decision will participate by default. Many plan sponsors have adopted automatic enrollment features over the last few years.

The Pension Protection Act of 2006 has made it easier for employers to adopt an automatic enrollment arrangement. You can decide which classes of employees will be subject to auto-enrollment: for example, you can auto-enroll all employees, all full-time employees or only non-union employees. Plans must adopt an amendment and provide affected employees with proper notice describing the features of the plan, including default elective deferrals, or the percentage of the employee's pay that will be contributed to his/her account. Your plan must also give participants an opportunity to make (or change) a cash or deferred election at least once during each plan year.

Other Solutions: Information and Education

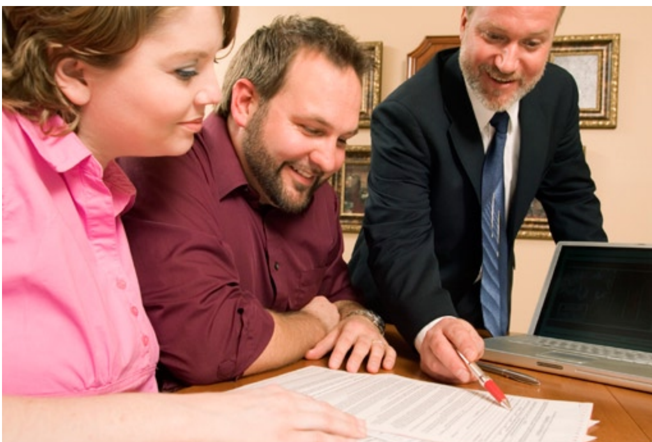
Do you promote participation in your DC plan? Do employees have easy access to information on the plan, as well as to general information on retirement savings, such as retirement calculators? If not, please contact us for suggestions.

Problem 2: Inadequate Contributions

Pension experts say it takes contributions between 12 and 20 percent of pay to achieve adequate retirement income from a DC plan. However, many workers contribute much less. A study by an investment management firm found the median worker contribution in 2007 was 6 percent among the plans it managed, and many employers made no contributions to these plans.

Solution: Automatic Escalation of Contributions

Combining automatic enrollment in DC plans with automatic escalation of contribution rates can help solve this problem. Without automatic escalation, automatic enrollment may lead to insufficient retirement income because employers may set a low default contribution rate for workers, such as 3 percent or less, and many workers will remain at the default level.



As with automatic enrollment, plan sponsors implementing automatic escalation provisions must provide notice to employees and give them adequate opportunities to opt out or change contribution percentages.

Problem 3: Inadequate Investment Returns

In a DC plan, the employer must provide participants with a range of investment options and workers allocate funds among those options according to their individual situations. If investments do not perform well, workers will have less money in their DC plans to provide retirement income.

Solution: Use Life Cycle Funds as a Default Investment

Standard financial theory recommends that individuals shift investments from riskier assets, such as stocks, to more stable assets, such as bonds, as they near retirement. However, one study shows that nearly one in four individuals between the ages of 56 and 64 had more than 90 percent of their 401(k) account balance invested in stocks at the end of 2007. A sharp drop in the stock market, such as the 37 percent fall in the S&P 500 in 2008, can be devastating for these workers, who have few years before retirement to recoup losses.

Life cycle funds automatically adjust the allocation of stocks and bonds according to the individual's age and expected retirement date. However, experts caution they are not a complete solution and are still evolving.

Problem 4: Overinvestment in the Employer's Stock

FINRA, the independent securities firm regulator, says, "…an adequately diversified portfolio should have no more than 10 to 20% of total investment assets in company stock. If you concentrate much more than that in company stock, especially in a 401(k) plan where there are trading restrictions, you may expose yourself to more company risk than it is wise to incur."

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more employees found that 42 percent of respondents offered paid time off "banks." Instead of a set number of vacation and sick days per year, these employers provide an equivalent amount of PTO hours for workers to use as they see fit, whether vacation, personal time or illness. Leave accounts can be more equitable: childless employees won't feel cheated out of parental leave, and those with elderly dependents can use time off to care for them.

PTO banks can reduce unscheduled absences by allowing employees to use paid time off, rather than sick leave, to take care of personal business. You can make them more flexible by allowing employees to redeem unused days off for cash or to accumulate unused sick days from year to year, or match it with a short-term disability program.

In constructing your program, consider whether it encourages employees to take leave when needed. Cash-out programs and attendance incentives could send the wrong message about taking time off, which has become increasingly important in today's high-stress work environment. If workers perceive that the employer discourages using leave, employers risk increased presenteeism and encouraging employees to overwork to the point of serious illness.

The bottom line: Examine current policies, leave trends and your firm's management style, and then establish a program that meets your needs. For questions about leave policies that make sense for your employees and your business, please contact us.

The Emergency Influenza Containment Act And Your Sick Leave

A sick worker will infect one in ten co-workers, estimates the Centers for Disease Control (CDC). "To help control the spread of the H1N1 flu virus, workers who are sick should stay at home," said Rep. Lynn Woolsey. "This bill [HR 3391] will ensure that workers who are directed to stay home by their employers can do so without paying a financial penalty."

The Emergency Influenza Containment Act, HR 3391, would require employers to provide paid sick leave to employees whom they direct to leave work or not to come in to work because they have symptoms of a contagious illness or because they have been in close contact with an individual who has symptoms. The law would provide up to five days of paid sick leave per 12-month period for absences meeting these conditions.

No federal law requires employers to provide paid sick leave, although legislators have introduced other bills that would mandate paid sick leave. San Francisco became the first jurisdiction to require employers to provide paid sick leave in 2007.

The much narrower EICA is less likely to be abused than other sick leave proposals, since it applies only to workers whose employers direct them to take sick leave. However, the EICA would require most employers—even those with existing sick leave policies—to create new policies. First, paid time off plans, which allow employees to use a set number of paid days off for any reason, would not qualify as sick leave under the EICA. And any sick leave policy that require employees to request leave from their supervisors or to show a doctor's note would not qualify, because the EICA only exempts employers that provide paid sick leave "that may be used at the employee's discretion."

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Solution: Education

While the Employee Retirement Income Security Act of 1974 (ERISA), restricts defined benefits plans from investing more than 10 percent of assets in company stock, there is no similar restriction on 401(k) plans. Employees can benefit from education that alerts them to these and other investment risks.

Problem 5: High Fees

Investment fees, charged by companies managing mutual funds and other investment products, account for the largest portion of 401(k) plan fees. Workers typically pay these fees. A September 2009 report by Morningstar, Inc., found the average mutual fund fees vary widely, from 0.19 percent to 1.82 percent, a difference of 163 basis points.

Administrative fees, which cover the cost of activities carried out to maintain participant accounts, generally account for the next largest portion of plan fees. Although employers often pay the administrative fees, workers bear them in a growing number of plans.

Over the course of a worker's career, fees may significantly decrease retirement savings by lowering the net investment returns. Although seemingly insignificant, a 1 percentage point difference in fees can substantially reduce the amount of money saved for retirement. An individual 45 years old who leaves $20,000 in a 401(k) account for 20 years would have an ending balance of about $70,500 with an average annual investment return of 7 percent minus a 0.5 percent charge for fees. However, if returns remain 7 percent but fees increase to 1.5 percent annually, that $20,000 will grow to only about $58,400 over 20 years—a difference of about 17 percent.

Solution: Opt for Low-Fee Plans

The fee information employers are required to disclose is limited and does not provide workers with easy comparisons between fees charged for different investment options. Employers can assist their employees by comparison shopping and selecting a plan provider that charges low administrative fees and a variety of low-fee investment options. Other solutions include educating employees on the impact high fees can have on their account balances.

For an evaluation of your company's retirement benefit plan administration, please contact us.

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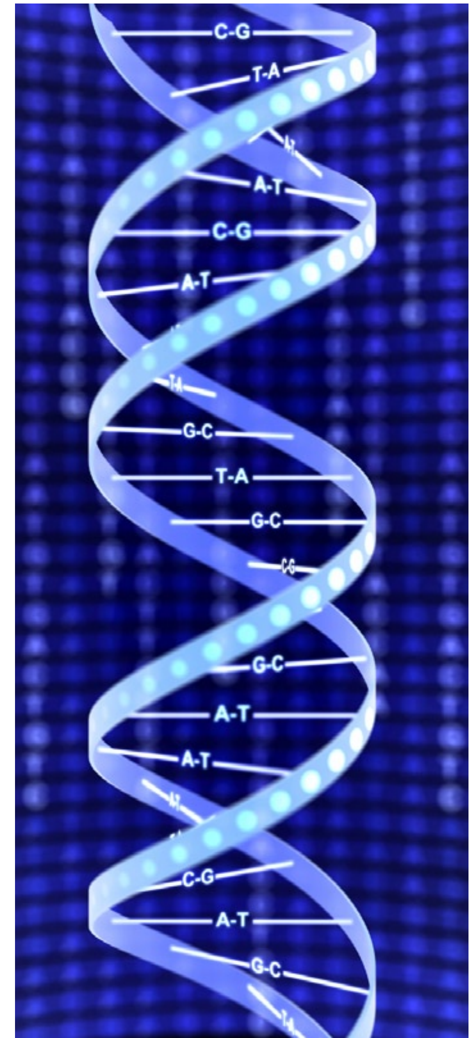
Discrimination Law Now Affects All Group Health Plans

After January 1, 2010, group health plans of all sizes must comply with the Genetic Information Nondiscrimination Act of 2008—or GINA. Plan sponsors that offer incentives for wellness should pay particular attention to GINA.



GINA prohibits group health plans and health insurers from using genetic information to adjust premium or contribution amounts for the group covered under the plan. Plans and issuers in the group market can still increase the premium rate for an employer based on the manifestation of a disease or disorder of an individual enrolled in the plan, but they cannot use the manifested disease or disorder of one individual as genetic information about other group members to further increase the premium.

The law includes genetic information under the privacy provisions of HIPAA, the Health Insurance Portability and Accessibility Act. This requires group health plans, health insurers and Medigap policy issuers to treat genetic information as protected health information.

In general, GINA also prohibits collecting or using genetic information for underwriting purposes. This means plans should not collect genetic information on a health plan participant or his/her family members prior to enrollment. Check your plan's enrollment documents to make sure they do not include questions involving genetic illnesses or family history of genetic illnesses.

Many wellness programs or disease management programs ask employees to complete health risk assessments (HRAs). If your company has wellness or disease management programs, check whether they comply with GINA. A HRA can collect genetic information only if no rewards are involved and if information is collected after plan enrollment.

GINA's health coverage non-discrimination protections do not extend to life insurance, disability insurance and long-term care insurance. If you have questions on how GINA might affect your company's health insurance, wellness and disease management programs, please contact us.

GINA Definitions

Family member: GINA defines family members as dependents and any other first-degree, second-degree, third-degree or fourth-degree relative, fetuses carried by a pregnant woman and embryos held by an individual or family member using assisted reproductive technology.

Genetic information: Includes information about genetic tests on an individual or on any of the individual's family members, as defined above, along with the manifestation of a disease or disorder in family members (family history) and any request for, or receipt of, genetic services or participation in clinical research that includes genetic services (genetic testing, counseling, or education) by an individual or family member. Genetic information does NOT include information about the sex or age of any individual.

Genetic test: Means an analysis of human DNA, RNA, chromosomes, proteins or metabolites that detects genotypes, mutations or chromosomal changes. The results of routine tests that do not measure DNA, RNA or chromosomal changes, such as complete blood counts, cholesterol tests, and liver-function tests, are not protected under GINA. Also, under GINA, genetic tests do not include analyses of proteins or metabolites that are directly related to a manifested disease, disorder or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.