

## CONTENTS

<b>Case Study</b> .....	<b>3</b>
Insurance Coverage Aimed at Minimizing Identity Theft Headaches	
<b>Washington Alert</b> .....	<b>4</b>
New Law Includes Hikes in PBGC Premiums Long-Term Care Partnership Provision Adopted Groups Speak Out Against 'Double-Dipping'	
<b>Expert's Forum</b> .....	<b>5</b>
For More Effective Employee Appraisals, Link Pay to Company Performance	
<b>From the Courthouse</b> .....	<b>6</b>
Lack of Mailing Procedure Comes Back to Haunt Employer	
<b>Benefits Corner</b> .....	<b>7</b>
Spanish Enrollments Need More than Translation	
<b>Case Study</b> .....	<b>8</b>
Public Employees Find Ways to Compete in Expensive Cities	
<b>Industry Trends</b> .....	<b>10</b>
U.S. Chamber Discourages Healthcare Mandates 401(k) Participation Rates Continue Decline Prescription Costs Trending Down	
<b>Tax Alert</b> .....	<b>11</b>
Employers Should <i>Carefully</i> Consider Whether to Offer Roth 401(k)s	
<b>By the Numbers</b> .....	<b>12</b>



## Bridging the Rewards Gap: Offer Employees the Best 'Bait'

Visualize a fisherman relaxing in a boat on a lazy afternoon, his line dangling in the water. What you don't see is the preparation, all of the decisions he made before he left home. Would he fish in a river or a lake? What type of lure should he use? How heavy does the line need to be? All of these questions can only be answered after he addressed the most important question: What kind of fish does he want for dinner?

While we're not suggesting that you start serving worms in the company cafeteria, we are suggesting that you begin to think of your employees as fish. What kind of 'bait' are you offering, and does it attract the kind of fish you need?

We also realize that a good analogy, like fish, can begin to stink after awhile ....

We spoke to Lynne C. Lancaster who, with David Stillman, co-founded BridgeWorks ([www.generations.com](http://www.generations.com)), a consulting firm specializing in generational issues. "[David and I] both noticed that the workplace was changing," Lancaster says about the origin of the company. "The messages that were being crafted for audiences were having to change because the generations weren't persuaded by the same things. David, being a Generation Xer, and I, being a Baby Boomer, had some great dialogues about this, and realized that he and I clashed on some things. We just did not see the world from the same point of view."

### WHO'S WHO IN THE WORKFORCE?

We asked Lancaster to brief us on the generations currently in the workforce, and some of the programs that may appeal to them.

#### Traditionalists—Born Pre-1946

"This is the generation that was more focused on lifetime careers with one company, with tenure, the gold watch, a good retirement plan," Lancaster explains. "Of course, retiree medical is going to be a huge issue for them. Perks like a drug plan, eye glasses, dental coverage, things like that, are going to see them through as they're aging and retiring."

#### Baby Boomers—Born 1946-1964

"This group is the largest population born in U.S. history," Lancaster says. "Because there are 80 million competing for the same jobs and the same promotions, they've been very driven by competitiveness and really value benefits that help them stand out from the crowd. So even things like a better title, a corner office, parking space in the front, attending the important meeting [will appeal to them]."

"If you are in the middle of the Baby Boomers, you probably had trouble finding a job at some point because there were so many of us looking for a job. So we also have been very identified by title and by money. Salary, bonuses, compensation packages have been really important, and we were willing to work however hard it took to earn that compensation that would make us feel like we were getting ahead."

#### Generation X—Born 1964-1982

"Generation Xers have looked at the Boomers and said, 'Many of you are unhappy. You've been workaholics. A lot of you have ended up divorced. You don't seem to have a lot of balance.' They want to have a great career, but don't want to do it the way the Boomers did. They say,

*(continued on page 2)*

'My parents weren't around as much,' or 'I came from a divorced household,' or 'I was in a latchkey program after school because both my parents were working. And then the recession hit, and my parents were both out of a job the minute the economy took a nosedive.'

"GenXers saw the employer/employee contract disappear during their formative years," Lancaster explains. "So while they do want to get ahead and be well compensated, they are much more geared toward wanting flexibility, balance, and personal time. And they're more interested in being compensated for what they do now—performance-based compensation—rather than accruing that over a lifetime, because they don't assume they're going to be around forever."

### Generation Y—Born post-1982

"We call these the 'Millennial' generation," Lancaster says. "They are the next great boom, 76 million people. The leading edge [of Millennials] is already in professional school, trade school, college, and starting to come into the workplace.

"They are a little bit challenging. They expect a lot. Many of them have been raised with a lot, and they have had their pick of jobs because, as teenagers, they've had a lot of jobs available to them. Even burger stands and Starbucks often provide health care, paid vacations, for someone who's not even necessarily full time.

"It's critical that we help them understand what their compensation and benefits packages are actually worth; many of them have no idea," Lancaster continues.

"Companies are really going to have to paint that picture. Boomer parents have not been nearly as good with

financial education as we should have been. And these young people are often coming in with very high expectations, but an unsophisticated approach to understanding what they're really getting."

## BRIDGING THE GAP

Lancaster reminds us that ideas of what is important are always viewed through our own generational lens.

"For example," she says, "a Traditionalist would see job-hopping as a bad thing, even a failure. GenXers might see it as a survival strategy—something they need to do to have a successful career and to land on their feet if something bad happens.

*"Organizations need to take a look at who they need to attract over the next 5 or 10 years and then take a look at who you do have .... Do you have the right mix of people for the next decade?"*

"That's a classic clash point, where they're both coming at it from a perfectly defensible point of view, and they completely disagree. So if a Traditionalist is reviewing résumés, he or she might throw out all of the résumés from the job-hoppers. They're eliminating a pool of people who might be very multifaceted, entrepreneurial, talented, creative."

So, while these varying viewpoints may all have validity, they can make it difficult to pull together a cohesive benefits/compensation package. Not to worry, says Lancaster, recommending a three-step process:

### 1. Workforce assessment.

"Organizations need to take a

look at who they need to attract over the next 5 or 10 years and then take a look at who you do have," Lancaster says. "Do you have the right mix of people for the next decade? That includes skill set, age, potential to move forward. It even includes how your own technologies might be evolving."

2. **Environment.** Once you assess your workforce and understand your future hiring needs, you can determine if those people are available in your area. Lancaster talks about a client of hers who recently relocated a call center to Eugene, Oregon.

"One of the reasons is that they found Eugene has a very high proportion of educated people who are underemployed. So that was a combination of figuring out who they need making their calls and evaluating a population."

3. **Internal assessment.** Finally, ask whether your employees, in their various generations, understand and appreciate their compensation and benefits.

Lancaster recommends surveys to find out. Try to cut the data generationally—or at least by tenure, or age, or length of service—so you can see if there are demographic differences. Sometimes, we see all the older employees saying their programs are great, and the younger ones saying they would leave in a heartbeat if they could get more flexible hours.

"Review your exit polls, or ask compensation and benefits peers for surveys they've used on their employees. Questions like, 'What would you value more—\$1,000 or being able to leave at noon on Fridays?' will reveal a lot."

Robert L. Brady, J.D., *Publisher*; Peggy 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*; Marianne Graham, *Product 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. © 2006 Business & Legal Reports, Inc.

Issued monthly. Subscription price: \$298.00 annually for complete service. Periodicals postage paid at Old Saybrook, CT 06475-9998, Standard Mail enclosed.

Authorization to photocopy items for internal or personal use, or the internal or personal use of specific clients, is granted by Business & Legal Reports, Inc., provided that the base fee of U.S. \$0.50 per copy plus U.S. \$0.50 per page is paid directly to Copyright Clearance Center, Customer Service, 978-750-8400, or check CCC Online at: <http://www.copyright.com>. For those organizations that have been granted a photocopy license by CCC, a separate system of payment has been arranged. ISSN #1097-511X.

## Insurance Coverage Aimed at Minimizing Identity Theft Headaches

Frontier Management LLC provides a benefit to department heads and managers that Chief Operating Officer Matthew Dunham hopes they'll never need.

Two years ago, Frontier ([www.frontiermgmt.com](http://www.frontiermgmt.com)) started paying the monthly premiums for an identity theft insurance package that educates covered employees about ways to minimize the risks of identity theft and, if someone does try to steal their identity, helps them restore their credit and resolve other related problems.

Frontier manages retirement, assisted living, and Alzheimer's care communities in 17 properties throughout the country. About eight department heads and managers are employed at each property, and the company pays the \$12.50 per month premium for each of them. "It's not a high-dollar-amount program, but we thought it was a nice benefit to offer department managers and key department staff at each of the properties we manage," says Dunham.

"The amount of time that identity theft takes away from normal daily activities and the mental anguish that goes along with it" were two of the reasons Frontier decided to offer identity theft coverage, Dunham explains. Frontier was concerned about the well-being of its department heads and managers, and it also wanted to help minimize the potential impact of identity theft on their jobs in terms of time away from work and productivity.

### How It Works

Frontier's insurance broker helped educate the company about identity theft insurance and the various options available. Frontier purchased a package offered by Identity Safeguards. The package includes weekly credit monitoring, an annual credit report, fraud alerts, a risk assessment and protection plan, and

educational information available online, Dunham says.

In addition, the package provides recovery services. If a covered employee becomes a victim of identity theft, a personal recovery advocate will be assigned to manage the victim's case until the related problems are resolved and to "monitor the status of the victim's identity for 6 months" after that, he says.

Covered employees are eligible for up to \$20,000 in total reimbursements for costs incurred as a result of identity theft and up to \$5,000 weekly for lost wages. Dependents (up to age 24), spouses, and domestic partners of the department heads and managers are also covered if the employee upgrades to a family package.

Eligible employees enroll in the identity theft insurance package online and complete an online educational seminar about identity theft. The seminar includes a tool that assesses how their daily habits and personal transactions impact their exposure to identity theft and that suggests ways to minimize their exposure, explains Dunham.

He says department heads and managers appreciate being offered this benefit, especially since reports of identity theft are so prevalent in the news. Only one employee has reported an identity theft issue (credit card cloning) since this benefit was first offered at Frontier, according to Dunham. He says employees are now less likely to become victims of identity theft because they know how to protect their personal information at work and at home. However, if they do become victims, they have resources at their disposal to resolve related problems, he says.

### Tips to Consider

Dunham says identity theft insurance is a "nice added-value benefit" that

**Who:** Frontier Management LLC

**What:** Pays the premiums for an identity theft insurance package provided to department heads and managers

**Result:** Covered employees are better educated about protecting personal information at work and at home.

employers should consider offering, especially since the cost is so low. He provides the following advice:

**Choose a vendor and program carefully.** "There are a lot of different programs out there, and it is difficult to select one," he says. He recommends looking for a program that is associated with one of the big three credit monitoring services and getting referrals from your benefits broker. He also says the program you select should offer more than credit monitoring; make sure customer support and recovery services are available so that your employees can talk to a "live" person and get the help they need if they become victims of identity theft.

**Educate your staff.** Even if you don't plan to offer an identity theft insurance package to employees, take proactive steps to help them minimize their exposure. For example, you might sponsor a class about ways to reduce the risks at work and at home. "No matter how conservative you are with your personal identity-related items, there's always going to be risk," Dunham says.

**Drive your message home.** When rolling out identity theft coverage, consider showing a video or asking an identity theft victim to speak to employees about how the experience has impacted his or her life. This will help employees understand how devastating identity theft can be and how their daily behavior can impact their exposure level.

## New Law Includes Hikes In PBGC Premiums

Sponsors of defined benefit pension plans insured by the Pension Benefit Guaranty Corporation (PBGC) must pay higher premium rates for plan years beginning on or after January 1, 2006.

Under the Deficit Reduction Act of 2005, which was enacted earlier this year, flat-rate premiums for single-employer pension plans rise from \$19 to \$30 annually per plan participant, according to the PBGC. Multi-employer plans must pay \$8 per participant—up from \$2.60—per year. Beginning in 2007, the new rates will be indexed for wage inflation.

The new law requires that underfunded pension plans continue to be subject to an additional variable-rate premium of \$9 per \$1,000 of unfunded vested benefits, PBGC reports.

A company that transfers its underfunded pension plan to PBGC must pay a new annual termination premium of \$1,250 per participant for certain terminations that occur on or after January 1, 2006. The premium is payable for 3 years after plan termination.

## Long-Term Care Partnership Provision Adopted

The Deficit Reduction Act also includes a provision aimed at encouraging more consumers to purchase long-term care partnership insurance policies and stay off Medicaid, according to the American Council of Life Insurers (ACLI).

Individuals without long-term care insurance must exhaust their personal assets in order to qualify for Medicaid. However, the new law enables individuals to buy long-term care insurance policies in a partnership program and protect at least some of their assets. "In effect, it says that a person who has prepared wisely for retirement by purchasing long-

term care insurance will not have to exhaust their entire nest egg to qualify for Medicaid," said ACLI President and CEO Frank Keating.

The provision allows such individuals to protect their personal assets on a dollar-for-dollar basis. For example, if a consumer has \$100,000 in benefits through a long-term care partnership policy, and he or she exhausts those benefits, then the consumer may protect \$100,000 in assets before accessing Medicaid, the ACLI explains.

Long-term care partnership policies are currently offered in California, Connecticut, Indiana, and New York, according to the ACLI.

## Groups Speak Out Against 'Double-Dipping'

At least three organizations are urging the U.S. Supreme Court to rule in favor of an employer-provided health plan that wants to be reimbursed for the benefits it paid because the employee's medical expenses were later paid through an auto insurance settlement. The National Association of Manufacturers (NAM) said it filed an amicus brief with the Court, along with the American Benefits Council and American's Health Insurance Plans, Inc., in *Sereboff v. Mid Atlantic Medical Service, Inc.*

According to NAM Vice President for Litigation Quentin Riegel, the health plan paid for the plaintiff's medical expenses incurred after a non-work-related accident. "Subsequently, an auto insurance settlement duplicated the payment for those medical expenses, and the employer health plan made a reasonable request to the plaintiff for reimbursement."

"An estimated \$1 billion are properly recouped and recycled by health plans each year through these types of reimbursements," said Neil Trautwein, NAM vice president for human resources. "Considering how quickly health coverage costs are skyrocketing as is, we can't afford such egregious misallocation of resources. It's a

## IRS UPDATE

### Don't Be Duped by Employment Tax Scam

There's an adage that if something sounds too good to be true, it probably is. Yet some employers still fall prey to illegal schemes that claim employers don't have to withhold federal income tax or other employment taxes from employees' wages, the Internal Revenue Service (IRS) reports [IR-2006-025].

In fact, employment tax evasion was ranked 11th on the IRS's 2006 "Dirty Dozen" list of tax scams. The annual list identifies the most notorious tax scams for a given year.

In this scam, some employers are advised not to withhold taxes from the wages paid to their employees based on an incorrect interpretation of the Internal Revenue Code, including Section 861, "Income from sources within the United States."

The IRS warns employers not to be duped by such erroneous advice. It reports that more than 50 individuals received 30-month prison sentences, on average, for employment tax evasion during fiscal year 2005. According to the IRS, employers who participate in such scams can also be found liable for back payments of employment taxes, as well as penalties and interest.

classic case of double-dipping, and the courts simply should know better."

"Our brief makes clear to the high court that billions of dollars are at stake and urges the justices to find for Mid Atlantic and health plan providers everywhere," Riegel said.

## For More Effective Employee Appraisals, Link Pay to Company Performance

by Wil Naylor, the Elite Group

It has been proven that the key to achieving maximum employee productivity and satisfaction is to provide employees with factual, candid, and objective feedback. One of the most effective methods for accomplishing this goal is through formalized performance appraisal processes. According to research by Watson Wyatt, effective performance management programs can increase a company's "shareholder" value by nearly 50 percent.

The benefits of a legally compliant—and effectively executed—employee appraisal process include:

- Enhanced employee motivation
- Identification and reward of top performers—so a firm can truly "pay for performance"
- Reduction in unwanted turnover
- The ability to better identify and document performance problems, thus supporting discipline and potential termination or reduction in force actions
- A possible defense against lawsuits
- Enhanced compensation and salary planning
- Increased ability to identify training needs and competency gaps, establish behavioral change goals, and provide an opportunity to discuss with employees potential career options and establish agreed-upon milestones

Still, for varied reasons, many companies have not established a formal appraisal process. The absence of such a program raises issues of employee dissatisfaction and leaves a company vulnerable to litigation and at a disadvantage in terms of defending its program in the event of an official complaint.

In fact, in the event the employer fails to show that its performance

appraisal program was designed and administered on the basis of the Uniform Selection Guidelines established under the authority of the Title VII of the Civil Rights Act of 1964 as amended, the court may render the employer liable for back pay, court costs, specific management training programs, and/or promotion of the protected group employees as part of the case settlement.

In addition, both state and federal legislation exists regarding privacy issues that mandate that an effective privacy protection policy must provide employees access to records relating to their qualifications for promotion, pay raises, or to records relating to discipline and potential termination. The bottom line is that, regardless of size or industry, companies are well-served to establish and maintain an appraisal process.

### Elements of Effective Performance Management

There are many elements that must be included in a legally compliant and effective performance management and feedback program. These include, but are not limited to:

- Periodic interviews with employees regarding their career progress,
- Recording of systematic measure of an employee's overall value to the organization,
- Documenting information regarding the strengths and weaknesses of all employees as they relate to career development, and
- Well-defined expectations that allow employees to establish goals that align with corporate goals.

Perhaps the most important benefit of a formalized process is the recognition that the appraisal process is a part of the corporate culture supported and encouraged by management, communicated to all

employees, and accepted by the company as a whole. When this happens, managers understand that their primary responsibility is to help develop the skills and talents of those who work for them, and employees feel confident in the support of their managers.

Merit pay increases are the reward for reaching common goals and reward employees for performance through increases to base pay. Too often, however, salary increases are perceived by employees as an entitlement. Employees assume that if the company annually reviews their salaries and is in the financial position to award salary increases, they will receive an increase. This perception is, of course, entirely counter to the intent of a merit increase and an effective appraisal process.

It is important to note, too, that as difficult as it may be to avoid, "rating inflation" can undermine an employee appraisal process. If a pay-for-performance system is truly working effectively, not every employee can receive an "exceptional" or "excellent" rating. This is not easy—especially for kind-hearted managers, but it's necessary and important.

Formal appraisal processes are not easy to implement or maintain. The benefits in terms of employee performance, however, are significant. And, when the appraisal processes are based on corporate goals and objectives, the benefits can be dramatic in terms of both individual and corporate performance.

*✍ Wil Naylor is co-owner and executive vice president of the Elite Group. Based in Exton, Pennsylvania, the Elite Group provides a coordinated approach to addressing the challenges of managing employee benefits, benefits administration, human resources, risk management, and payroll services. For more information, call 610-423-4129 or visit [www.elitegrp.com](http://www.elitegrp.com).*



## From the Courthouse

### Lack of Mailing Procedure Comes Back to Haunt Employer

An employer that had no written procedure for mailing COBRA notices could not establish that a notice was mailed when an ex-employee denied receiving the notice. In addition, because the office manager who would have mailed the notice could not remember doing so, there was no presumption that the notice was received. As a result, circumstantial evidence showing that there were problems with the employer's COBRA procedures was enough to allow the court to rule that the ex-employee did not in fact receive the notice and that the employer had to pay his post-termination medical bills.

**Facts.** Robert Tufano worked for Riegel Transportation, Inc. (RTI) until June 28, 2002. He had health insurance coverage provided by Group Health Incorporated (GHI). He claims that following his termination, he was not provided notice of his rights under COBRA.

On December 6, 2002, Tufano was diagnosed with a condition that required surgery. Believing that he was still covered, he submitted claims to GHI and the insurer initially paid the claims until January 1, 2003, when it informed Tufano that his coverage had ended on October 1, 2002. Dawn Salerno, RTI's office manager, testified that it took three or four notifications before the insurance company terminated Tufano's coverage.

RTI employees received information regarding their health insurance by various methods, including meetings, information placed in employee mailboxes or distributed with payroll, from an insurance broker, and by mail directly from the insurance companies.

Although Salerno was responsible for mailing COBRA notices, there was no written policy for providing COBRA notices or any written procedures for handling office documents.

Instead, RTI relied on oral policies derived from informal conversations between company President Robert Riegel and Salerno. Neither Salerno nor Riegel knew if the initial COBRA notice was given to employees at the time of their enrollment in the health plan, or what information was required to be given to employees about their COBRA rights.

Salerno's procedure for mailing out COBRA notices was opening a form letter in her computer; inserting the employee's name, address, and applicable premium; and printing two copies, one on company letterhead to be mailed and the other on plain paper for the file. The letterhead copy would be signed, placed in an envelope, and run through a postage meter. The envelope would then be placed on her desk until she put it in a U.S. mailbox. The file copy would then be placed in a file marked "COBRA" in a locked filing cabinet in the hallway.

The file copy of the COBRA notice allegedly sent to Tufano contained typographical errors, was not signed, and had no indication of having been mailed. Salerno testified that she did not specifically remember mailing or typing the COBRA notice. Although it looked like the COBRA notices she sent out, she was unable to identify it as the letter she sent to Tufano.

**Ruling.** Under established legal precedent, there is a presumption that a letter properly addressed and mailed is received. But for this presumption to arise, office practice must be geared to ensure the likelihood that a notice is always properly addressed and mailed. The presumption of mailing can be created "either by offering the testimony of the person who actually mailed the letter or through indirect evidence; that is, by offering proof that mail is sent pursuant to office procedures, followed in the regular course of business." The addressee has the

## The LAW

A plan administrator must provide notice to the individuals losing coverage for specified reasons of their COBRA rights. (ERISA Sec. 606(a)(4), DOL Reg. Sec. 2590.606-4). These notices are to be furnished in accordance with DOL Reg. Sec. 2520.104b-1 using means reasonably calculated to ensure actual receipt of the notice. Notices may be sent by first-, second-, or third-class mail, but distribution by second- or third-class mail is acceptable only if return and forwarding postage is guaranteed and address correction is requested. Any material sent by second- or third-class mail that is returned with an address correction must be sent again by first-class mail or personally delivered to the participant (DOL Reg. Sec. 2520.104b-1(b)).

COBRA contains no specific requirements as to how notice must be given. Courts have ruled that a "good-faith" effort to notify the plan beneficiary is sufficient (*Phillips v. Saratoga Harness Racing, Inc.*, 233 F.Supp.2d 361 (NDNY 2002)). In general, "[a]n employer or plan administrator who sends proper notice to the covered employee's last known address is deemed to be in good-faith compliance with COBRA's notification requirements" (*Hubicki v. Amtrak National Passenger Railroad Company*, 808 F.Supp. 192, 196 (EDNY 1992)).

burden of presenting evidence to establish non-receipt and of showing "some proof that the regular office practice was not followed or was carelessly executed so that the presumption ... becomes unreasonable."

RTI's evidence failed to establish the presumption that the notice was mailed and therefore received by Tufano. RTI

(continued on page 9)

## Conveying the Value of Benefits

Nelson L. Griswold III of Cornerstone Enrollment Services has seen an increase of interest in his company's services by insurance carriers in recent months.

"Carriers are going out of their way to accommodate Spanish-speaking employees," he says. "Some of them provide informational material on their products in Spanish, and in some cases, they even provide insurance policies in Spanish. That's remarkably important.

"Research shows that a lot of Hispanic employees, even if they enroll in a benefit, are underutilizing them, because they don't know how. That's because, often, the policy or the follow-up information the company is providing after enrollment is in English.

"It's one thing to buy some life insurance and not have the policy come in Spanish. If it's life insurance, if you die, your beneficiary collects. But other products, like critical illness, short-term disability, long-term disability—not knowing how long the elimination periods are, or how long the benefit period is, those things are important.

"If employees don't understand the value of their benefits or what is available to them, then HR has wasted a lot of time. A solid benefits communication and enrollment process, in English or Spanish, is essential to conveying the value of the benefits."

### 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](mailto:equayle@blr.com).*

# Benefits Corner

## Spanish Enrollments Need More than Translation

The benefits are fabulous, the carriers are helpful, and you've prepared catchy brochures to entice people into your benefits fair. You've arranged for representatives to be stationed at a table, ready to help employees make their choices. Everything is in place. In fact, you've even had the enrollment materials translated into Spanish to make things easier for a growing segment of your employee population.

So why didn't they come?

Nelson L. Griswold III, of Cornerstone Enrollment Services ([www.CornerstoneVB.com](http://www.CornerstoneVB.com)) knows. The problem is not at the enrollment table, where you may have materials available in Spanish, and even Spanish-speaking enrollers. The problem is in the days leading up to the enrollment.

"If you have Spanish-speaking employees with little or no English," Griswold says, "they tend to stay away from the enrollment. You can tell people you have Hispanic enrollers, and it's a bit like telling them that you've got somebody handing things out without telling them what the things are. If they don't know what an enrollment is, and the value it would have to them, they won't show up. No one wants to go up to the table and appear ignorant about what's being offered."

The lesson came home when Cornerstone worked with an electrical contracting company on an enrollment, says Griswold. "Some of the employees knew zero English, but the company felt they didn't need any Spanish language materials because they had bilingual supervisors. But try to get an electrician who happens to be bilingual to explain employee benefits. He might be able to read something, but then again, his English may not be sufficient to explain and understand benefits.

"We ended up doing conference calls back to our offices, and our native Spanish-speaking employees, to explain what was being offered. As soon as they understood the nature of the benefits, they got in line—they wanted them. But they would have passed by the entire enrollment."

"We have a rough idea of how many Hispanic employees there are in the U.S.," Griswold continues, "but we don't know how many don't speak English. Hispanics are the largest minority in the U.S., and they are playing an increasingly large role in our economy. If Spanish-speaking employees with little or no English are to be included in an enrollment, they need to be provided with information about the offerings in Spanish. And it doesn't work to have a couple of bilingual employees who will hopefully pass the information on to their co-workers.

"So in fairness to the employees, who are clearly valued employees because they continue to be employed, they need to be provided with all of the information HR considers worthy of communicating in the first place, in Spanish."



affordable housing that allows us to attract high-quality faculty.”

That’s important, says Parker, because UC competes with other quality universities for its faculty. Living in Southern California is more pricey than most other areas. “We can offer housing comparable to other parts of the country, at comparable prices,” says Parker. “If new faculty had to go into the open market here in Irvine, a 2,000-square-foot home might cost \$900,000. We can sell a 2,000-square-foot home for \$400,000—and it’s within walking distance. You couldn’t even find a location like this on the open market.”

### Play Up Your Attributes

While most public employers are not in a position to be able to offer on-site housing in an expensive market, most have other attributes they can advertise to potential recruits. There is more to the UC than housing, says Van Nyhuis. “What attracts an applicant to us could be any number of intangible factors. We try to look at every possible advantage, and one of them is the location. A lot of people want to live in California. It’s an extremely desirable place to live—

that’s part of the reason it’s so expensive to live here.”

“People come to work at the University of California not just for the money. I think many people could make more money in the private sector. But peoples’ motivations for working for UC go beyond cash compensation. There are many intangible values, and what people want to do with their lives. Let’s be honest—some people don’t want to work for an insurance company. They want to be public servants, and work for the benefit of educating people in California, and being part of the economic engine that drives the state.”

“The way to attract somebody is to offer an interesting job,” agrees Watson Wyatt’s Beal. “That’s the first order of business for any employer. The most effective way for a public employer to recruit is to offer programs that are consistent with their mission. If you’re a hospital or a healthcare-oriented organization, make sure your employees know that they have the very best health programs available to them. If you can tie it to your core mission, it makes a much stronger impression.”

*continued from page 6*

could have established this presumption by the testimony of the person who mailed the letter or by evidence that the mail was sent pursuant to office procedures, but could do neither. Specifically, the evidence established that RTI did not maintain any written office procedures for mailing COBRA notices and that the copy of the alleged mailing had neither any indication of having been mailed nor anything else to support the proposition that Salerno followed her own mailing procedure.

With the presumption no longer in play, Tufano only had to prove by a preponderance of the evidence that he did *not* receive the notice.

First, the fact that he made benefit claims to GHI corroborated his denial that he received any notice that his coverage had terminated.

Second, the testimony of a former RTI employee suggested that RTI’s system for providing notice, such as it was, was prone to error. (*Tufano v. Riegel Transportation, Inc.*, Eastern District of New York, No. CV 03-0977(JO), (2/11/06).)



**Q: We are a small agency with a 403(b) plan. How much can our employees contribute to the plan for 2006?**

**A:** The Internal Revenue Service (IRS) has increased the deferral limit for 403(b) plans to \$15,000 in 2006. But keep in mind that employees may be allowed to contribute more if they meet certain age or service requirements.

If an employee will attain age 50 or more during 2006, he or she is allowed to make a catch-up contribution of \$5,000.

If you, as the employer, are also making contributions, IRS allows a maximum contribution of the lesser of 100 percent of earned income or \$44,000 on behalf of the employee in 2006.

So, if the employee contributes \$15,000, the employer can contribute as much as \$29,000 on his or her behalf if the employee earns at least \$44,000 a year. If the employee is allowed the additional \$5,000 catch-up contribution, the maximum employer and employee contribution is \$49,000.

Employees who have more than 15 years of service with an educational, hospital, home healthcare, or church organization are also allowed to make additional contributions to their 403(b) plan.

The formula for the additional contribution is complicated, and becomes even more so if the employee attains the age of 50 and wants to coordinate the extra catch-up contributions just described.

See your tax advisor for more information.

# INDUSTRY TRENDS

---

## U.S. Chamber Discourages Healthcare Mandates

You've heard the proposals. Large employers like Wal-Mart and Target should pay for their employees' health care or cough up money so the government can do it. In a statement released in February 2006, the U.S. Chamber of Commerce cried foul, calling the labor-backed proposals bad public policy.

"Targeting big companies with politically motivated healthcare mandates on a state-by-state basis is not only unfair, it is illegal," said Chamber

President and CEO Tom Donohue. "These bills may prompt other states to try their hand at setting national policy, but they do nothing to address our nation's mounting healthcare crisis."

Legislators in 29 states are being pressured to require large employers to earmark a percentage of payroll for healthcare costs, or to place the money directly into their state's healthcare fund for low-income individuals. Similar legislation ultimately

passed in Maryland, after a veto by Governor Robert Erlich and a subsequent override by the Legislature.

The U.S. Chamber believes such legislation does not fix the ongoing problems in health care. They may even result in businesses moving out of the affected states, they say. Instead of this kind of legislation, says the Chamber, lawmakers at the state and the federal levels should be exploring ways to lower existing healthcare costs, and to help small business owners gain access to affordable, quality care.

---

## 401(k) Participation Rates Continue Decline

A down economy has apparently combined with corporate malfeasance to contribute to the ongoing decline in 401(k) plan participation rates. In 1999, says the Spectrem Group, four out of five—or 80 percent of—eligible employees invested in their company plans. That number has fallen dramatically, to 70 percent in 2005, according to Spectrem Group's study, *2005 Defined Contribution Market Needs*.

This represents a 6-year decline of 13 percent. Meanwhile, employees are also more hesitant than they used to be about deferring their pay into a 401(k) plan. The average deferral rate fell from 8.6 percent of pay in 1999, to 6.9 percent in 2005, or a decline of 20 percent overall.

"Workers appear to be losing their taste for 401(k) retirement savings, with participation in these tax-

deferred plans declining 13 percent the past 6 years and the percentage of salary put into them dropping 20 percent," said George H. Walper, Jr., president of Spectrem Group. "Whether due to decreased enthusiasm for market exposure following the burst of the Internet bubble, generally poor market performance since that time, or other factors, declines of this magnitude could mean that many of today's workers will find themselves ill-prepared for retirement."

---

## Prescription Costs Trending Down

Finally, some good news about the cost of medicine! Buck Consultants keeps a sharp eye on the costs of health care and pharmaceuticals, and in its latest survey, released in February 2006, the trend in prescription drugs appears to be downward.

Buck's *15th National Health Care Trend Survey* asked insurers and administrators to predict increases in health-care benefit costs for 2006.

The survey was conducted during the fourth quarter of 2005, and then compared with the survey conducted in the third quarter of 2005. Survey results showed that trends for most kinds of healthcare plans remain about the same. However, prescription drug benefit programs appear to be declining.

For example, while respondents to the most recent survey predict an increase

of 12.7 percent in 2006 Preferred Provider Organization costs, up from 12.4 percent in the earlier survey, all respondents revised their predictions downward for prescription drug programs, nearly 2 percentage points in some cases.

"The survey shows a gradual decrease in drug trends that began about 4 years ago," said Michael Jacobs, Buck Consultants's national pharmacy practice leader. "Drug trends, which have traditionally been higher than medical trends, are now almost the same. However, we anticipate drug trends to grow again in the next several years due to the introduction of new innovative therapies into the marketplace."

Harvey Sobel, FSA, is a Buck principal and consulting actuary, and the

individual who directed the survey. He said, "Some insurers cite reduced utilization and improved provider contracting as the main reasons for declines in their trends.

"This is good news, considering that there are inflationary pressures as a result of the increase in energy prices that will affect hospitals and doctors."

Medical trends, including medical, prescription drugs, dental, and vision, are tracked by insurers, and used to calculate future premium rates.

Large self-funded employers also use trend factors to budget for their future healthcare costs.

In general, trend factors provide for price increases that may result from such variables as inflation, utilization of services, technology, changes in the mix of services, and mandated benefits.

## Employers Should *Carefully* Consider Whether to Offer Roth 401(k)s

Under a Roth 401(k) plan, available as of January 1, 2006, employee contributions are made with *after-tax* dollars, the contributions grow tax-free, and everything in the account may be distributed without triggering any income tax liability (subject to some serious restrictions involving the employee's age and the length of time he or she has held the account). So, one does not have to worry about what the tax rates will be at the time one withdraws the money.

Employees can contribute to a Roth 401(k) only until December 31, 2010, unless Congress decides to make this retirement savings approach permanent. Proposed regulations regarding Roth 401(k) plans were issued by the Internal Revenue Service (IRS) in March 2005; final regs were issued in December.

Proposed regs on the taxation of distributions from Roth 401(k) plans were issued in late January 2006.

How do Roth 401(k) plans benefit employees? What problems might employers face if they offer such plans? Here, we'll take a look at both of these questions. As we shall see, although a Roth 401(k) plan provides significant savings opportunities for employees, it creates considerable compliance and record-keeping costs for employers.

### Employee Contributions

As previously noted, employee contributions to a Roth 401(k) plan are made with *after-tax* dollars. This is also true of contributions to a Roth IRA.

Unlike employee contributions to a Roth 401(k) plan and Roth IRA, contributions to a traditional 401(k) plan are made with *before-tax* dollars. Employees are permitted to make, in the same year, *before-tax* contributions to a traditional 401(k) as well as making *after-tax* contributions to a Roth 401(k).

The contributions may be made in any proportion the employee chooses. However, the combined amount contributed in any one year is limited to \$15,000 for 2006 (plus an additional \$5,000 in catch-up contributions if the employee is aged 50 or older).

An employee's election to make designated Roth contributions is irrevocable. Once the employee's contributions are designated as Roth contributions, they cannot later be changed to pre-tax elective contributions. So, an employee who starts making designated Roth contributions at the beginning of the year cannot later change his mind and have them treated as pre-tax elective contributions to a traditional 401(k) plan.

### Employer Responsibilities

An employer may start placing employee-designated contributions in the employee's Roth 401(k) account as of January 1, 2006, but the employer must first amend its traditional 401(k) plan to add the Roth feature.

This must be done in compliance with the Employee Retirement Income Security Act (ERISA). ERISA requires employers adding the Roth 401(k) option to provide employees with a new Summary Plan Description or a Summary of Material Modifications. Employers are required to establish and maintain new and completely separate Roth 401(k) accounts for each participant.

Gains and losses to each Roth 401(k) account must be allocated by the employer on a reasonable and consistent basis.

At the time the employee would have received the amount of his contribution in cash had he not made the Roth contribution, the employer

must treat the employee's Roth contribution as includible in the employee's gross income. That is, the employer must treat the contribution as wages subject to applicable withholding requirements.

In the March 2006 issue of *Practical Tax Strategies*, Clay M. Grayson, Esq., illustrates the difficulties employers face when adopting Roth 401(k)s:

"The transition costs of amending the plan, notifying and educating employees of the plan revisions, adapting payroll systems, and handling the new recordkeeping chores going forward—combined with the uncertainty of the Roth 401(k)'s longevity and the risks associated with failing the annual discrimination testing—make the implementation of a Roth account to an existing 401(k) plan a potentially high-cost endeavor."

### Matching Contributions

Employers are not permitted to put any matching contributions directly into a Roth 401(k) account.

The employer can, however, make contributions that match employee Roth 401(k) contributions but the employer's contributions will be treated as pre-tax contributions subject to taxation when distributed to the employee.

### Hardship Withdrawals

Just because an employee's designated contributions to a Roth 401(k) plan are made with *after-tax* dollars does not mean the employee can make withdrawals on account of hardship from his Roth 401(k) account at any time and without paying further taxes.

The same restrictions that apply to withdrawals from a traditional 401(k) plan also apply to withdrawals from a Roth 401(k) plan. So, if the employee's traditional 401(k) plan permits distributions from his 401(k) account on account

(continued on page 12)

*continued from page 11*

of hardship, he may choose to receive a hardship distribution from his Roth 401(k) account.

But such a distribution will consist of a pro-rata share of earnings and basis. The earnings will be included in gross income unless the employee has had the Roth 401(k) account for 5 years and is either disabled or over age 59 1/2.

### No Tax Liability upon Withdrawal of Contributions

Withdrawals of contributions to Roth 401(k) accounts and the investment growth of such accounts are not

taxed, provided that, prior to withdrawal, the recipient is at least age 59 1/2 and the recipient has held the account for at least 5 years.

These requirements make the Roth 401(k) not such a good deal for younger employees who may need the money, tax free, in the near future.

The Roth 401(k) is only good for such employees if they can afford to basically forget about their investment until they hit retirement age, according to Brett Goldstein, pension administrator and president of the Pension Department, Inc. (New York).

Goldstein also warns Roth 401(k) participants who are considering changing jobs any time soon that contributions from their former employer's Roth 401(k) can only be rolled into the new employer's Roth 401(k) (assuming it is being offered) or Roth IRA.

In addition, warns Goldstein, so much paperwork is required to determine which contributions are qualified and which ones are unqualified that the slowdown in the rollover process could lead to lost earning opportunities as well as the employee-funded fees associated with a Roth 401(k) rollover.

## By the numbers...

	Latest Period	Current	Prior Report	A Year Ago	12-Month % Change
CPI-U	Feb/06	198.7	198.3	191.8	3.6%
CPI-W	Feb/06	194.2	194.0	187.3	3.7%
<b>ECI EMPLOYMENT COST INDEX</b>					
Total Compensation	4Q/05	180.2	179.3	174.7	3.1%
Wages and Salaries—Metro	4Q/05	170.7	169.9	166.6	2.5%
Wages and Salaries—Nonmetro	4Q/05	168.0	167.2	163.8	2.6%
Benefits	4Q/05	206.9	206.4	198.7	4.1%
Average Weekly Gross Wages*	Feb/06	\$555.04	\$555.00	\$536.17	3.5%
Average Hourly Wages					
All*	Feb/06	\$16.47	\$16.42	\$15.91	3.5%
Construction	Feb/06	\$19.58	\$19.51	\$19.18	2.1%
Manufacturing	Feb/06	\$16.71	\$16.78	\$16.44	1.6%
Trade/Transp./Utilities	Feb/06	\$15.25	\$15.20	\$14.84	2.8%
Wholesale Trade	Feb/06	\$18.66	\$18.64	\$17.96	3.9%
Retail	Feb/06	\$12.48	\$12.46	\$12.35	1.1%
Financial Activities	Feb/06	\$18.44	\$18.45	\$17.72	4.1%
Other Services	Feb/06	\$14.52	\$14.56	\$14.23	2.0%
Unemployment Rate*	Feb/06	4.8%	4.7%	5.4%	-0.6%

\*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 relate 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.