

2009 and 2010 Required Changes to Health & Welfare Plans

Date	Requirement
<p>Effective for Plan Years Beginning on and after 12/31/2008</p>	<p>Fostering Connections to Success and Increasing Adoptions Act of 2008 (“Adoptions Act”) changes the definition of dependent</p> <p>This Act, among other things, makes three changes to IRC §152(c), the definition of dependent for federal income tax purposes, as follows:</p> <ol style="list-style-type: none"> 1. To meet the definition of “qualifying child,” a child must now be younger than then the taxpayer, 2. The child must be unmarried, and 3. The child may now be claimed as the qualifying child of the non-parent if (a) no parent claims the child as a qualifying child and (b) the non-parent has a higher adjusted gross income than any parent. (Previously, if a child was considered the qualifying child of both a non-parent and parent, the child was treated as the qualifying child of the parent.)
<p>Effective 1/1/2009</p>	<p>Centers for Medicare & Medicaid Services (CMS) Mandatory Reporting for Group Health Plans</p> <p>Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA Section 111) adds mandatory reporting requirements for purposes of determining whether an employer’s group health plan is responsible for paying primary to Medicare. The Mandatory Reporting is to be implemented in phases, but compliance is generally effective 1/1/2009 for group health plans (GHPs). Section 111 authorizes CMS and GHP responsible reporting entities (RREs) to electronically exchange health insurance benefit entitlement information. The RRE responsible for data sharing is the insurer (for a fully-insured plan), the TPA (for a self-insured plan administered by the TPA) or the Plan Administrator (for a self-insured, self-administered plan). GHP RREs are required to report information for Medicare beneficiaries who have GHP coverage that is primary to Medicare. New GHP RRE’s must register from 4/1/2009 through 4/30/2009.</p> <p>Only Active Covered Individuals (ACIs) need to be electronically reported. ACIs are an employee or employee’s spouse or child who is or may be Medicare eligible, as defined below:</p> <ul style="list-style-type: none"> • Eff. 1/1/2009 through 12/31/2010, ACIs to be reported include all individuals covered under the GHP age 55 – 64 who are covered under the employer’s GHP (by virtue of the employee’s current employment status). • Eff. on and after 1/1/2011, ACIs will include all individuals covered under the GHP age 45-64 with coverage based on their own or the family member’s current employment status. • ACIs also include any individual over age 65 (including the spouse of an employee who is age 65 or older) who are covered under the GHP because of the employee’s current employment status (not as a retiree), and • Any individual covered under the GHP (regardless of age) who is receiving kidney dialysis or has received a kidney transplant, despite their family’s current employment status (meaning someone on COBRA). <p>CMS is allowing a limited extension to the reporting requirement deadline for ACIs who are covered as dependents, since not all GHPs currently carry SSNs for spouses and family members.</p>

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<p>Effective 1/1/2009</p>	<p>Centers for Medicare & Medicaid Services (CMS) Mandatory Reporting for Group Health Plans <i>(continued)</i></p> <p>RREs must submit the SSNs for all spouses and family members who are ACIs, whose initial date of coverage under the GHP is 1/1/2009 or later in the initial file submission and subsequent quarterly submissions. However, RREs have until their file submission in the 1st quarter of 2011 to submit the SSNs for spouses and family members who are ACIs, whose initial date of coverage was prior to 1/1/2009.</p> <p>42 U.S.C. 1395y(b)(7)(B)(i) - a civil penalty of \$1,000 may be assessed against an entity, plan administrator or fiduciary for each day of noncompliance for each individual for which information should have been submitted.</p>
<p>Effective 4/1/2009</p>	<p>Children’s Health Insurance Program Reauthorization Act of 2009 creates 2 new HIPAA Special Enrollment Rights</p> <p>This Act extends and improves “CHIP,” the State Children’s Health Insurance Program established under title XXI of the Social Security Act. Title II, Subtitle B, Section 311 of the Act makes amendments to IRC Section 9801(f) and Section 701(f) of ERISA, relating to special enrollment periods.</p> <p>On and after April 1, 2009, a group health plan must permit an employee (or dependent of an employee) who is otherwise eligible for the group health plan, but not enrolled, to enroll in the group health plan provided the employee requests coverage (in writing) under the group health plan not later than 60 days after:</p> <ol style="list-style-type: none"> 1. the date the employee or dependent, if covered under Medicaid or a State child health plan, loses eligibility for such coverage; or 2. the date the employee or dependent is determined to be eligible for premium assistance through Medicaid or a State child health plan. <p>Not later than April 1, 2010 (one year after the date of enactment of CHIPRA), national and state-specific model notices shall be developed jointly by the Secretary of Labor and Secretary of Health & Human Services, and provided to employers to enable employers to comply with the provisions of this Act. Each employer shall then provide the initial annual notices to its employees beginning with the first plan year that begins after the date the initial model notices are first issued.</p>
<p>Effective for Plan Years Beginning On and After 10/9/2009</p>	<p>MICHELLE’S LAW</p> <p>Applicable to group health plans (GHPs), Michelle’s Law was enacted to prohibit seriously ill college students who must take a medically necessary leave of absence from losing their dependent status under the group health plan while on leave. See IRC § 9813. The law requires a group health plan to continue coverage for the medically ill student as a covered dependent under the GHP for up to one year after the first day of the medical leave. However, for purposes of paying the child’s GHP premiums on a pre-tax basis under a Section 125 plan, Michelle’s Law did not make any corresponding amendments to IRC §152. As a result, a student who takes a medical LOA may fail to continue to meet the definition of “qualifying child” under IRC §152. Note, however, that the student may still meet the definition of “qualifying relative” under IRC §152 while on medical LOA. Should the student no longer meet either definition under IRC §152, the cost of the student’s GHP premium will be required to be paid by the employee on an after-tax or imputed income basis.</p>

2009 and 2010 Required Changes to Qualified Retirement Plans

Date	Requirement
Beginning with the 2009 Plan Year	<p>New 5500 Filing Requirements</p> <p>Beginning with the 2009 plan years, the Department of Labor (DOL) will require all Form 5500 annual returns to be filed electronically (EFAST2). This electronic filing requirement also applies to all required schedules and the independent audit report. Plans that qualify as “small plans” will be able to file a Form 5500-SF (short form), also electronically.</p> <p>Schedule E and Schedule SSA will no longer be filed with the Form 5500. Certain Schedule E questions will be moved to Schedule R. The SSA will be a separate paper form filed directly with the IRS. Electronic filing is expected for 2011.</p> <p>Form 5500-EZ will continue to be filed in paper.</p>
2009	<p>Amendments under the Final Code Section 415 Regulations</p> <p>The final Code Section 415 regulations applicable to maximum plan benefits and contributions were effective for plan years beginning on and after July 1, 2008. Plans must be amended to comply with such final regulations by the due date of the employer’s tax return (including extensions) for the year in which the change is effective.</p>
Effective January 1, 2009	<p>403(b) Plan Changes</p> <p>The final regulations issued under Code Section 403(b) became effective January 1, 2009. Following is a list of the major requirements under these regulations;</p> <ul style="list-style-type: none"> • Plan must be embodied in a written plan document incorporating all the requirements of the final regulations . The deadline for adopting a document has been extended to <u>December 31, 2009</u>. • All employer contributions under a 403(b) plan (except for elective deferrals) are subject to the same nondiscrimination testing that applies to qualified plans. • The plan must permit changes to elective deferrals at least once a year. • Distributions from a 403(b) plan are permitted only upon the occurrence of a specific event such as severance from employment, attainment of a stated age, or completion of a fixed number of years. • Final regulations now permit a distribution from a 403(b) plan upon the termination of the plan. • The IRS has issued draft sample language for a 403(b) prototype program. Employers should review all plan documentation, including summary plan descriptions and custodial and service agreements to make sure that final regulations are complied with and discuss with their vendors whether a move to a prototype document is appropriate. • Effective with the 2009 plan year, 403(b) plans are subject to the same reporting requirements as qualified plans. Sponsors of 403(b) plans should take the time to familiarize themselves with all the requirements of the Form 5500 filing and if the plan has 100 or more employees, the sponsor needs to retain an independent qualified accountant in order to prepare the required independent audit. As mentioned above, all Form 5500 filings starting with the 2009 plan year must be electronic. • A 403(b) plan must be universally available to all employees including employees of collective bargaining agreements. The current exclusion of collectively bargained employees may continue however until the later of January 1, 2009 or the date of expiration of the bargaining agreement in effect on July 26, 2007, but not later than July 26, 2010.

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<p>Effective January 1, 2009</p>	<p>Heroes Assistance and Relief Tax Act of 2008 (HEART) Changes</p> <p>Amendments required under HEART must generally be made by the last day of the first plan year beginning on or after January 1, 2010. A list of changes follows:</p> <ul style="list-style-type: none"> • Plans must be amended so that survivors of service members receive the same benefits as survivors of other employees whose employment is terminated by death. This includes, if applicable, 100% vesting and any life insurance benefits. • Differential payments made to service members must be treated as wages under the plan if the service extends beyond 30 days and such wages represent wages the service member would have received had he or she continued to work for the employer. Differential payments are now also treated as wages for withholding purposes. Service members must be permitted to make elective deferrals to their plans from differential payments. • Service members who receive a distribution from their plan, will be suspended from making elective deferrals from differential payments for a period of six months following the date of distribution. • Under HEART, retirement plans are permitted to treat service members who die or are disabled during uniformed service as having returned to employment on the day before the date of death or disability which preserves the employee's service credit for benefit purposes.
<p>Effective January 1, 2008+</p>	<p>Pension Protection Act of 2006 (PPA '06) Amendments</p> <p>Under PPA '06, a plan amendment made pursuant to any changes made by PPA '06 may be retroactively effective if the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2009. Following is a list of some of the most common required amendments:</p> <ul style="list-style-type: none"> • Minimum vesting required for all employer contributions, equal to either 100% vesting after three years of service or a six year graded schedule. Mandatory. • Distributions received by a nonspouse beneficiary may be rolled over to an IRA provided such IRA is treated as an inherited IRA. Optional. • The notice of distribution options required to be provided to plan participants may be extended from 90 days to 180 days. Optional. • For plans with automatic enrollment, distributions to correct ADP/ACP failures may be made up to six months after the end of the plan year without incurring the excise tax or the 10% early withdrawal penalty. • For plans with automatic enrollment, the plan may provide for distribution of deferrals made under the automatic enrollment feature to be distributed to the participant, with earnings, provided that such election to withdraw is made no later than 90 days after the first automatic contribution. Such withdrawal will not be subject to the 10% early withdrawal penalty. • Corrective distributions made to plan participants due to ADP/ACP failures only need to include earnings calculated through the end of the plan year. Gap period income no longer applies to such distributions is eliminated January 1, 2008. • Gap period income is still applicable to distributions of excess deferrals for the 2008 and 2009 plan years. • Defined Benefit and Money Purchase Plans must provide for a Qualified Optional Survivor Annuity (QOSA) which is a joint and survivor annuity with 75% continuation if the plan currently provides for a joint and survivor annuity of less than 75% and a 50% QOSA if the plan currently provides for a joint and survivor annuity equal to or greater than 75%.

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Effective January 1, 2008+	<p>Pension Protection Act of 2006 (PPA '06) Amendments <i>(continued)</i></p> <ul style="list-style-type: none"> Active members of the military who receive a Qualified Reservist Distribution will not incur a 10% early withdrawal penalty. In order to be a Qualified Reservist Distribution, the distribution must be from an IRA or from elective deferrals to a 401(k) or 403(b) plan, the individual must have been called to active duty for a period of at least 179 days and such distribution must be made after the call to active duty and before the end of the period of active duty. Optional. Distributions from a qualified plan, a 403(b) plan or a 457(b) plan may be rolled over to a Roth IRA, effective January 1, 2008. Mandatory. Defined benefit and money purchase plans may permit in-service distributions to a participant who has reached age 62 even if the normal retirement age is greater than age 62. Optional. Hardship withdrawals from a 401(k) plan, a 403(b) plan or a 457(b) plan may be made under the plan due to a financial hardship or unforeseeable emergency of a primary beneficiary of the participant. Such primary beneficiary must be the named beneficiary of the participant under the plan. Optional.
Effective January 1, 2010	<p>Mandatory Nonspouse Beneficiary Rollovers</p> <p>Distributions received by a nonspouse beneficiary may be rolled over to an IRA provided such IRA is treated as an inherited IRA. The Worker, Retiree, and Employer Recovery Act of 2008 (WREERA) made this optional provision of the PPA mandatory rather than optional effective for plan years beginning on and after January 1, 2010.</p>
Effective July 1, 2010	<p>Change to Plan Loan Paperwork</p> <p>Plan loans made from qualified plans, 403(b) plans and 457(b) plans will be exempt from truth-in-lending disclosures.</p>

**For more information or assistance with your benefits needs,
contact Suzanne Bogdan at sbogdan@laborlawyers.com or 954.847.4705
or Callan Carter at ccarter@laborlawyers.com or 415.490.9020.**

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