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KW&W Kastner Westman & Wilkins LLC

kwwlaborlaw.communicator

3480 West Market Street • Suite 300 • Akron, Ohio 44333 • Phone: (330) 867-9998 • FAX: (330) 867-3786 • E-mail: kww@kwwlaborlaw.com

Governor Taft Signs Senate Bill Seven

Amendments to Ohio Workers' Compensation Act on the Horizon

By James W. Ellis

On March 28, 2006, Governor Taft signed Senate Bill Seven (S.B. 7), which makes thirty-two changes to the Ohio Workers' Compensation Act. Although most of the changes are minor, there are some significant ones, all of which will have an effect on how both state-fund and self-insuring employers manage their workers' compensation coverage and claims.

Highlights of the new law include the allowance of purely psychological claims under limited circumstances, changes to the standards used for the allowance of aggravation of preexisting injury claims, increases in penalties for overdue assessments and premiums, changes to the wage loss statute, and the addition of provisions for the use of debit cards and direct deposit by the BWC.

Psychological Conditions

Under the present law, psychological conditions are not recognized as an injury for purposes of workers' compensation coverage unless the psychological condition is accompanied by an underlying physical injury. Based on this general rule, Ohio courts have denied workers' compensation coverage to employees alleging purely psychological conditions resulting from sexual assaults in the workplace (such as post traumatic stress disorder).

The new law amends the definition of "injury" under the Workers' Compensation Act to recognize purely psychological claims which result from sexual conduct in which an employee was forced to engage or participate by threat of physical harm. Accordingly, the General Assembly has carved out the first exception to the general rule that purely psychological conditions are not recognizable as compensable work-place injuries.

James W. Ellis Joins KWW'S Workers' Compensation Practice

KWW is pleased to welcome Jim Ellis to its Workers' Compensation practice. Jim joins KWW with six years of experience in handling workers' compensation matters and employment litigation on behalf of employers throughout Northeast Ohio and statewide.

Jim has practiced extensively before every level of the state of Ohio workers' compensation tribunals as well as trial and appellate courts. Jim also has defended numerous employment intentional tort claims, workers' compensation retaliation claims, and alleged violations of specific safety requirements (VSSR).

Jim earned his undergraduate degree from Bowling Green State University and his law degree from Cleveland-Marshall College of Law. He is admitted to practice before all Ohio courts and the U.S. District Court for the Northern District of Ohio. Jim is a member of the Ohio State Bar Association, the Akron Bar Association, and the Self-Insurer's Group of Ohio.

Preexisting Conditions

Generally speaking, an employer takes its employees as it finds them and runs the risk of an employee aggravating a preexisting condition while in the course and scope of his/her employment. Under present law, an aggravation does not have to be of any specific magnitude to qualify as a work-related injury as long as there was some adverse effect, however slight.

The new law requires that a preexisting condition be "substantially aggravated" to qualify as a work-related injury. To establish a substantial aggravation, the employee must support an alleged aggravation with objective diagnostic findings, objective clinical findings or objective test results. Moreover, the new statute specifically notes that subjective complaints of increased pain/symptoms are insufficient to establish a substantial aggravation.

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The new statute also states that no compensation or benefits are payable once the preexisting condition has returned to a level "that would have existed without the injury."

Untimely Premiums and Assessments

Under current law a state-fund employer incurs a 3 percent penalty for an untimely premium, together with a required additional 2 percent penalty for each thirty-day period a premium remains outstanding up to 12 percent.

The recent amendment increases such penalties to an immediate $30 late fee plus an additional permissive penalty based on the amount of time a premium remains past due. The additional penalty is calculated based on the prime interest rate times the overdue premium. The prime interest rate also is increased every 30 days by 2 percent each month up to 8 percent, with a cap on the additional penalty of no more than 15 percent of the premium due.

Senate Bill Seven (S.B. 7) makes thirty-two changes to the Ohio Workers' Compensation Act. Although most of the changes are minor, there are some significant ones, all of which will have an effect on how both state-fund and self-insuring employers manage their workers' compensation coverage and claims.

With regard to self-insuring employers, the amended law creates similar penalties for the untimely payment of assessments. Under the new law, the Bureau now will add a $500 late fee once an assessment becomes overdue, plus an additional penalty based on the amount of time an assessment remains past due. Like a state-fund employer's penalty for past due premiums, the additional penalty for overdue assessments is based on the prime interest rate plus 2 percent to 8 percent, times the total assessment due, depending on the length of time the assessment remains outstanding. The amended law also allows for the appeal of assessment penalties to the Bureau.

Wage Loss

When a claimant is unable to return to his/her former position of employment due to job restrictions, he/she may be entitled to wage loss, either nonworking or working, payable at 66 2/3 percent of his/her weekly wage loss, up to a maximum of 200 weeks.

Under the new law nonworking wage loss is capped at 52 weeks, but the first 26 weeks of **nonworking** wage loss is in addition to the 200 weeks allowed for "working wage loss." If the claimant received more than 26 weeks of nonworking wage loss up to 52 weeks, the number of weeks of working wage loss he/she is eligible for is reduced by that same number of weeks. A claimant may not receive more than a combined total of 226 weeks of working and nonworking wage loss.

Therefore, as a general rule, a claimant gets 26 "free" weeks of **nonworking** wage loss prior to the start of his/her "200 weeks." After 26 weeks of nonworking wage loss, his/her 200 week entitlement starts to run (226 in aggregate). And if a claimant has not transferred to working wage loss within 52 weeks, his/her entitlement to wage loss is suspended, unless/until he/she meets the requirements for working wage loss, at which time the 226 weeks continue to run.

Finally, any week(s) a claimant receives living maintenance wage loss as part of a prescribed rehabilitation program (OAC 4123-18-21) now counts toward his/her 200 week working wage loss entitlement.

Electronic Transfer of Funds

The amended Workers' Compensation Act grants the BWC authority to utilize direct deposit for any and all disbursements of funds. Accordingly, the BWC may require that a claimant provide a written authorization designating an institution and an account for the disbursement of benefits. Moreover, the amended Act requires the BWC to provide debit cards, and instructions for their use, "as appropriate."

Other Senate Bill 7 amendments include:

- Statutory factors which preclude receipt of permanent total disability benefits;
- Reduces the waiting period for filing for permanent partial disability benefits from 40 to 26 weeks;
- Prohibits a claimant from dismissing an employer's appeal to the court of common pleas pursuant to Civil Rule 41(A);
- Expands fraud provisions for both employers and claimants; and
- Allows the Bureau to request the total amount of compensation paid by an employer, as reported by the employer on its annual tax return.

The amendments to the Workers' Compensation Act go into effect on June 26, 2006, and apply only to claims arising on or after the effective date. Our office will closely monitor the application of these amendments by the Bureau of Workers' Compensation, Industrial Commission of Ohio and Ohio courts. Should you have any questions or concerns about the recent amendments to the Ohio Workers' Compensation Act or how these changes may effect your coverage or claims management, please feel free to contact our office.

Sixth Circuit Allows Trial of Equal Pay Case Filed by Female Nurses

By Harley M. Kastner

Seventeen female nurse practitioners ("NPs") can proceed to trial on their claims against their employer, the Department of Veterans Affairs ("VA") at the Cleveland Veterans Affairs Medical Center in Brecksville, Ohio. The NPs brought suit under the Equal Pay Act, alleging that the predominately female NPs are paid a significantly lower rate compared to the predominately male position of Physician Assistants ("PAs"). Although the U.S. District Court found that the pay disparity did not violate the Equal Pay Act, the Sixth Circuit Court of Appeals reversed the lower court in its March 17, 2006 decision, stating that there was an issue of material fact that should be decided by a jury.

Under the Equal Pay Act, an employer may not pay employees of opposite sexes different rates when they work under similar working conditions which require equal skills, effort, and responsibility. The employees do not have to prove or even allege that the employer intentionally created or maintained the pay disparity in order to prevail. An employer can defend the differences in pay by proving that they are based on (1) a seniority system, (2) a merit system, (3) a system measuring earnings by quantity or quality of production, or (4) a factor other than sex.

NP + $ = PA

While the academic and certification qualifications for each profession are very different, the lower court found that NPs and PAs essentially perform the same job duties. The VA's criteria for NPs, a traditionally female dominated profession, requires them to have a master's degree and advanced training beyond that of registered nurse. PAs, on the other hand, were historically trained as field assistants for doctors in military service and are not required to have a bachelor's degree or a master's degree. They only must graduate from an approved allied health program where they are trained in patient assessments, histories and physicals, treatments, and technical skills.

The NPs introduced statistical evidence showing that comparable PAs at the Cleveland VA Medical Center were paid an average of $4,655 per year more than NPs. In some cases, the annual disparity was as high as $10,000. The Court of Appeals found that NPs and PAs perform essentially the same job functions and share the same responsibilities. In most cases, the VA's notices for employment opportunities listed both NPs and PAs as acceptable applicants for the same position.

The VA prevailed on its motion for summary judgment at the District Court level finding that a factor other than sex was the reason for the pay disparity. The VA argued that it lacked authority to change the pay scales and rates of the groups because the levels of pay are mandated by federal statute. VA also argued that it was required to maintain the higher wage for PAs because of past difficulty in recruiting and maintaining qualified personnel whereas there had been no similar difficulty in the retention of NPs.

Employers must be aware even if some positions involve substantially different professional qualifications, they may need to have the same rates of pay if the employees perform substantially the same job functions and are dominated by opposite sexes.

While the Court of Appeals recognized these arguments as persuasive, it did not find them sufficient to warrant summary judgment. The Court concluded that the VA had the statutory authority to increase the NPs rate and would only need a proper justification, such as remedying the pay inequality. The Court also determined that there was sufficient evidence to suggest that because an average of two NPs left each year for higher paying job opportunities and that the VA would often pay to encourage registered nurses to continue training to become a NP, there could be a similar problem of recruiting and retention that would warrant an equivalent increase in pay for NPs. The Court of Appeals concluded that the NPs had submitted enough evidence to suggest that a reasonable jury could find that the VA's refusal to increase their wages to an equivalent special pay scale was merely a pretext for sex discrimination and therefore the case should be decided at trial instead of through summary judgment.

This case raises several issues concerning the employer-employee relationship. Employers must be aware even if some positions involve substantially different professional qualifications, they may need to have the same rates of pay if the employees perform substantially the same job functions and are dominated by opposite sexes. Employers may need to review their employees' current job qualifications and job responsibilities to ensure that different positions are truly different and distinct if differing pay rates exist and one job is occupied primarily by females compared with another job occupied predominately by males.

Retaliation Claim Yields $2.6 Million Jury Verdict

By Dean E. Westman

As a result of a recent jury trial in the United States District Court for the Western District of Tennessee, Procter & Gamble was hit with a jury verdict of approximately $2.6 Million. Demonstrating once again the inherent risk presented by jury trials in employment cases, the multi-million dollar verdict far exceeded the plaintiff's back pay and lost fringe benefits, which totaled approximately $110,000.

This case demonstrates the importance of proceeding with extreme caution when taking disciplinary action or terminating employees who have previously filed a charge of employment discrimination, or who have engaged in other protected activities under federal or state law.

The suit was filed by Dan Long, an employee who worked at a Procter & Gamble manufacturing site in Jackson, Tennessee. Long was hired by Procter & Gamble in August of 1995. Over the course of his six and one-half years of service, Long worked as a Technician in a production facility that manufactured Pringles potato chips. Long was terminated on January 28, 2002 for falsification of quality control records. In his suit, Long denied that he had falsified records, contending instead that he was fired in retaliation for having filed a charge of race discrimination with the Equal Employment Opportunity Commission and the Tennessee Human Rights Commission. Long's charge of discrimination was filed approximately eleven months prior to this termination.

After being fired, Long filed a retaliation charge with the EEOC. Long's lawsuit followed on April 9, 2003. In his suit, Long alleged that, after he filed his initial EEOC charge, he was subjected to constant scrutiny by his White coworkers, was isolated and excluded from group decisions and was terminated for falsification of documents, even though he had not engaged in any such conduct. Long's claims were founded upon Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1871 and Tennessee state law.

Procter & Gamble sought the dismissal of Long's suit by filing a motion for summary judgment, but that motion was denied by United States District Court Judge James D. Todd on October 5, 2005. As a result, the case proceeded to trial in late January 2006. After a five day trial, the jury returned a verdict against Procter & Gamble, finding that Long had been fired in retaliation for filing a charge of race discrimination, and that Long had exercised reasonable diligence to mitigate his back pay damages. The monetary award to Long consisted of $500,000 for emotional pain and mental anguish, $29,000 for lost medical insurance benefits, $81,000 in back pay, and $2,000,000 in punitive damages. The jury deliberated for less than six hours before reaching their verdict.

Of particular significance is the fact that Long's termination occurred nearly a full year after the date on which he filed his race discrimination charge. The charge was filed in February 2001, and he was terminated in January 2002. Despite this delay, the jury concluded that Procter & Gamble had terminated Long in retaliation for the earlier charge filing.

Long has also sought attorney's fees, costs, expenses, prejudgment interest and an award of front pay in court filings made subsequent to the jury verdict. Thus, the total judgment against Procter & Gamble may far exceed the $2.6 million verdict.

This case demonstrates the importance of proceeding with extreme caution when taking disciplinary action or terminating employees who have previously filed a charge of employment discrimination, or who have engaged in other protected activities under federal or state law. This case also underscores the importance of reviewing any such disciplinary actions or termination decisions in advance with employment law counsel.

Revisit Your Vacation… (…policy, that is)

By John W. McKenzie

When was the last time your employee handbook's vacation policy was reviewed and/or revised? Does vacation accrue (i.e., is it earned) at your Company? Do you even understand your vacation policy's accrual formula or what right to unused vacation days your employees may have upon termination?

A recent March 2006 Cuyahoga County appeals court decision serves as a good reminder that your Company's vacation policy may not be what you think it is. An employer's vacation pay policy may create contractual liability to pay employees some or all unused vacation upon termination. In *Fridrich v. Seuffert Construction Co.,* the court reiterated the Ohio standard that vacation pay based on length of service and time worked is not a "gratuity" but is a form of "compensation" for services rendered.

In *Fridrich,* the plaintiff resigned from Seuffert Construction after twenty-one years of employment. He sued his former employer to recover the value of 56.5 days of unused vacation allegedly accrued but not used over that period of time. The vacation claim was based on a company memorandum evidencing that vacation was earned after certain threshold years of employment. The company defended the plaintiff's claim on the basis that vacation was not earned but a gift. In addition, the company had never allowed yearly "carryover" or payment of unused vacation to a departing employee.

The court held that because the company's policy awarded a certain number of weeks based on years of service, the vacation was indeed earned. The plaintiff was entitled to unused vacation because payment of same as compensation merely had been "deferred." The *Fridrich* court also recognized that even pro rata vacation (which generally speaking by its nature is not earned in advance) must be paid upon termination where the employer's policy provides that vacation is pro rata for use during the following year, it then takes on the form of deferred compensation.

Interestingly, despite the foregoing holdings, the *Fridrich* court did not find that the plaintiff's unused vacation automatically carried over from year to year. The Court looked to the employer's past practice in this regard.

Given Ohio law, when revisiting your vacation policy be sure that the policy specifically addresses whether and in what instance(s) accrued but unused vacation will be paid upon termination, if paid at all.

Given Ohio law, when revisiting your vacation policy be sure that the policy specifically addresses whether and in what instance(s) accrued but unused vacation will be paid upon termination, if paid at all. Will you pay out unused vacation for instances of layoff but not terminations? What about resignations as in *Fridrich?* Unless your policy states otherwise, employees will be entitled to be paid for that year's unused vacation days. And while the *Fridrich* court looked to Seuffert Construction's past practice in determining that the plaintiff was ineligible for multiple years of unused vacation by virtue of carry over, another court might find otherwise. It is suggested that your vacation policy also address whether days may "carry over" to the next calendar or anniversary vacation year.

Town May Be Liable for Inadequate Remedial Measures Following Sex Harassment Complaint

By Thomas Evan Green

The Connecticut town of New Canaan must go to trial against a former administrative assistant's claim that its assistant town planner sexually harassed her. *Papay v. New Canaan,* February 8, 2006.

This case arose out of the employment of Keely Papay, who worked for New Canaan from April 1999 until she walked off the job in March 2003. Papay alleged that throughout her employment the assistant town planner engaged in persistent harassment. She alleged that he physically pressed himself against her and made a wide variety of sexually explicit and unwanted comments. Papay alleged that she first complained informally to the planner's supervisor and the town's "first selectman," whom she said "walked away."

The law requires that the steps taken by an employer upon receiving a sexual harassment complaint must be reasonably calculated to make the harassment stop.

In December 2002, Papay complained to the town through a letter from her attorney and requested the town planner's discharge. In response, the town conducted an investigation, and subsequently moved the planner's office down the hall from Papay's. When he returned to work following the investigation, Papay quit and filed a charge with the Equal Employment Opportunity Commission. Litigation followed.

Following discovery, the town sought dismissal of Papay's claim of hostile work environment sex harassment. The Court denied New Canaan's motion for summary judgment, sending the case to trial. In its ruling, the Court stated that if a jury believed Papay's testimony, it could reasonably find that the town planner engaged in a pattern of behavior that was more than offensive or boorish. Furthermore, the Court found that his behavior was attributable to the town because he acted as Papay's supervisor. Therefore, New Canaan had to prove that it took reasonable measures to remedy any sexually harassing behavior. The Court found, however, that the town's decision to move the planner's office may not be enough to satisfy its burden. The Court also noted that Papay received no relief at all when she initially complained to his supervisor and the first selectman.

This case is an important reminder to employers that the law requires that the steps taken by an employer upon receiving a sexual harassment complaint must be reasonably calculated to make the harassment stop. In this case, New Canaan allegedly ignored Papay's first two complaints, and then implemented what the Court found may be an inadequate remedial measure after it finally investigated her complaints. As a result, the Town is facing significant exposure to liability and expense with the prospect that Ms. Papay's claims will be heard by a jury and a verdict rendered in her favor.

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Sixth Circuit News

By Keith L. Pryatel

"Draconian" Termination Not Tantamount to Unlawful Discrimination

In a decision reiterating the narrow circumstances in which courts should intervene in employment-related decisions, the Sixth Circuit recently ruled that even a "draconian" discharge from employment will not raise suspicions that statutory discrimination has occurred *(Scott v. First Merit Corp.)*.

Jacqueline Scott, African-American, had worked for First Merit in a variety of clerical and cashier positions for 28 years prior to her termination. Ms. Scott also suffered from a permanent, painful condition known as reflex sympathy dystrophy, which prohibited her from lifting objects with her right hand. After a customer had asked Ms. Scott to remove an erroneous $34.00 charge from his account, requiring Scott to prepare an affidavit to correct the bank's admitted mistake, Ms. Scott had inadvertently typed in the name of "Cindy Smith" as the preparer of the affidavit because she was talking to Ms. Smith while preparing it. First Merit's Security Department eventually looked into the transaction, and discovered the misrepresentation on the affidavit. Eventually, Scott was terminated for "falsification of bank records."

Ms. Scott subsequently sued, alleging race and disabilities discrimination. A trial court summarily dismissed Ms. Scott's case, and that decision was affirmed by the Sixth Circuit. The Circuit reasoned: "First Merit's reason for discharging Scott has uniformly been that she was guilty of falsifying a bank document." The Court also stated: "Viewed in isolation, First Merit's decision to discharge Scott seems unmercifully draconian-given Scott's lengthy tenure with First Merit, the small amount of money involved, and the fact it remains unclear how she could have benefited financially from her actions." Nevertheless, the Court stated: "The fact remains that Scott worked for a bank, which has ample reason for requiring that its employees insure the accuracy of bank documents for which they are responsible." Since Ms. Scott had offered no evidence to prove First Merit's discharge reasons were "pretextual" or otherwise false, the court affirmed summary dismissal of her discrimination claims.

This case reinforces the notion that courts should be loath to flyspeck or second-guess personnel decisions. "Unfair," "harsh," or even "draconian" business decisions are altogether different from discriminatory ones, and are left unprotected by this country's employment statutes.

Arbitral Award Prohibiting Changes to "No-Smoking" Policy Vacated

The United States Court of Appeals for the Sixth Circuit recently set aside an industrial arbitrator's award that prohibited the employer from unilaterally altering its work rule with respect to "no-smoking" at its plant. *(Spero Electric Corp. v. IBEW, Local 1377)*. The decision is significant not only because it is rare for a federal court to second-guess industrial arbitration decisions, but also because the court's analysis relied upon a broad "zipper clause" that Spero Electric had successfully negotiated with its union.

Spero Electric had promulgated three different versions of its plant-wide "no-smoking" policy: one which treated violators under a 4-step disciplinary process; a second, which was prepared in letter form by the IBEW, purporting to represent a different "agreement" the parties allegedly reached; and a third version calling for immediate discharge for first offenders. The latest version was promulgated "in order to reduce high property insurance premiums caused by the fire risk to the building and its contents." The underlying Spero/IBEW labor contract contained a sweeping management's right clause, and a zipper clause which provided: "This agreement shall be subject to amendment at any time by mutual consent of the parties hereto. Such amendment shall be reduced to writing, state the effective date of the amendment, be executed in the same manner as in this agreement, and be approved by the international office of the union."

> ***The decision emphasizes the need for employers to not only collectively bargain for strong management rights provisions, but to review their contract's "zipper clause" as well.***

An industrial arbitrator ordered the reinstatement of a discharged worker who had violated Spero's one-strike version of its no-smoking policy. According to the arbitrator, the second version that had been promulgated by the IBEW had all the trappings of labor "negotiations," and therefore it was deemed binding on the company, requiring a 4-step disciplinary process.

In reversing the arbitrator the Sixth Circuit determined that the arbitrator's rationale directly violated the "zipper clause" in the contract since the IBEW's submitted version of the no-smoking policy was not executed by the employer, or even approved by the International IBEW office. As such, the court determined that the arbitrator had, in effect, dispensed his own brand of industrial justice by adding to, subtracting from, or modifying the parties' underlying contract.

The decision emphasizes the need for employers to not only collectively bargain for strong management rights provisions, but to review their contract's "zipper clause" as well. Such can provide a viable and valuable avenue to reverse a patently erroneous arbitral award in spite of the federal court's general reluctance to intervene in this area.

Benefits Update

Qualified Retirement Plans on New Schedule for IRS Determination Letter Applications

By Kenneth M. Haneline

The Internal Revenue Service recently overhauled its program for issuing determination letters to qualified retirement plans such as profit sharing, 401(k), and defined benefit pension plans. A favorable IRS determination letter is desirable because the letter certifies that the plan's written document satisfies the Internal Revenue Code's qualification requirements. A favorable determination letter also allows a plan to participate in the IRS' voluntary and self-correction programs. All plan documents, except for the prototype documents, need to be restated for recent tax law changes and should be submitted to the IRS for a new determination letter. A prototype plan document is an IRS pre-approved plan document that does not allow the employer to change any of the plan document language.

The IRS recently announced that it began reviewing plans and issuing determination letters for plans on February 1, 2006. The IRS also announced several revisions to its determination letter program. First, the IRS will no longer require all plans to file for a determination letter by the same date. The revised program now consists of a five-year staggered restatement cycle for plans, which means that not all plans will need to be restated this year. When your plan needs to be restated depends on the last digit of the company's federal identification number. The following chart shows the restatement and filing dates depending on the last digit of the company's federal identification number:

Last Digit of Plan Sponsor's EIN	Plan's Cycle	Last Day for Filing Determination Letter Applications
1 or 6	A	January 31, 2007
2 or 7	B	January 31, 2008
3 or 8	C	January 31, 2009
4 or 9	D	January 31, 2010
5 or 0	E	January 31, 2011

As you can see on the chart, the first set of plans must be restated and submitted to the IRS no later than January 31, 2007. Multiple employer plan documents fall under the January 31, 2008 deadline.

The program also was changed to provide a six-year amendment/approval cycle for plans. In other words, after submitting your plan for an IRS determination letter, you will not have to restate the plan document for another six years. However, during that six-year interval, the plan document must still be maintained with appropriate plan amendments for any tax law changes.

Please let me know if you have any questions about the IRS' new determination letter program or need any assistance with the restatement of your qualified retirement plan.

CMS Issues New Models for Medicare Part D Disclosure Notices

Centers for Medicare & Medicaid Services ("CMS") released updated guidance regarding disclosure notices to Part D eligible individuals. The updated guidance is effective May 15, 2006, and the model notices are intended for use on or after that date.

With respect to the new model notices, the creditable and non-creditable coverage disclosure notices (generic notices) have been substantially revised to clarify numerous items and add new language. There is also a new personalized disclosure notice that should be provided upon an individual's **request** and can also be provided in lieu of the generic notices.

The CMS guidance also reminds us that the creditable coverage notices are to be sent to Medicare beneficiaries who are "active employees, disabled, on COBRA and those individuals who are retired," as well as Medicare beneficiaries who are covered as spouses or dependents (including spouses or dependents who are disabled or on COBRA) under active employee coverage and retiree coverage.

Plan sponsors providing disclosure notices after May 14, 2006 will want to review the updated guidance and model notices. Employers may receive many requests for copies of generic notices (as well as the new personalized notices) in part because many Part D eligible individuals who were overwhelmed with information have been throwing their generic notices away. If you have any questions, please call.

Copies of the Guidance and Model Notices are available at:

http://www.cms.hhs.gov/CreditableCoverage/02_CCafterMay15.asp

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