

SPECIAL
REPORT

BUSINESS INSURANCE AND EMPLOYEE BENEFITS



PREPARATION IS KEY FOR DEPARTMENT OF LABOR AUDIT

‘There is a very long list
the DOL is looking for’

By CYNTHIA SWEENEY
Business Journal Staff Reporter

PETALUMA – If you are an employer and your group health plan has never been audited, you’d better prepare for it like you’re going to be.

That’s the advice of Arrow Benefits Group, which recently created a report called “Don’t Roll the Dice on Department of Labor Audits.” It’s a resource guide meant to walk employers through the process of an audit from the U.S. Department of Labor (DOL) and includes information about how to prepare for an audit, the best way to acclimate staff to the audit process, what the DOL wants, and the most important elements of complying with requests.

“These (labor) laws were passed, and the DOL assumes you’ve read them and are in compliance. Your chances of being audited over “X” amount of years of being in business are pretty high, and you need to be prepared,” said Jordan Shields, partner, Arrow Benefits Group. “When it comes to a DOL audit, prevention is certainly warranted.”

Shields said he normally sees audits of

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New California law requires employers to provide sick leave

HR expert warns: ‘Don’t think this doesn’t apply to you’

By CYNTHIA SWEENEY
Business Journal Staff Reporter

SANTA ROSA – While some employers are still wrestling to comply with the Affordable Care Act, which requires companies with more than 50 employees to provide healthcare benefits, beginning July 1, most employers in California must also now provide paid sick leave to employees, regardless the size of the company.

Known as the Healthy Workplace Healthy Family Act of 2014 (AB 1522), large and small employers who hire full-time, part-time or temporary employees must provide sick leave to those employees within 90 days of employment. Qualifying employees must work at least 30 days within a year.

This mandate applies to all employers with few exceptions.

“Don’t think this doesn’t apply to you. Businesses need to look at people that didn’t qualify before, and look at their existing policies and determine who is eligible,” said Jennifer Scott, human resources associate, The HR Matrix, LLC in Santa Rosa.

Scott noted that although her firm has

helped many clients to bring their policies into compliance. The law comes as some employers are still struggling to come into compliance with the Affordable Care Act.

Karen Alary, managing partner at The Personnel Perspective based in Santa Rosa, agrees.

“On the one hand it shows the economy is strong. On the other hand employers and employees are struggling,” she said. “There are challenges all the way around, no doubt about it.”

Employers are trying to do the right thing, Alary said, noting the amount of employers who are calling her with questions about compliance.

“It’s quite a financial impact. Companies are having to write new policies and change their payroll and present it to employees. It’s just crazy,” she said.

The impact is more than just financial. One of the terms of the mandate is that if an employee calls in sick, they can now be asked, but not held responsible for finding someone else to fill their shift. In the

restaurant industry this has previously been common practice.

“That in and of itself is going to be a huge challenge,” Alary said.

An employer may limit the amount of paid sick leave an employee can use in one year to 24 hours or three days. Accrued paid sick leave may be carried over to the next year, but it may be capped at 48 hours or six days.

According to the mandate employers must do several things to comply:

- An employee may use accrued paid sick days beginning on the 90th day of employment.
- An employee may request paid sick days in writing or verbally. An employee cannot be required to find a replacement as a condition for using paid sick days.
- An employee can take paid leave for employee’s own or a family member for the diagnosis, care or treatment of an existing health condition or preventive

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Brokers say ACA compliance remains biggest issue

Business Journal Staff Report

NORTH BAY – North Bay insurance brokers remain focused on business compliance with the Affordable Care Act after the U.S. Supreme Court ruling last week that upheld the availability of subsidies for those enrolled in federal health exchanges.

The petitioners in the case claimed that the language of the Patient Protection and Affordable Care Act (ACA) does not allow for federal tax credits to be provided to enrollees in public health insurance exchanges established by the federal government.

The ruling against that claim means that enrollees can continue to receive federal tax credits if enrolled in health exchanges established by the state or the federal government.

California has its own exchange, Covered California, and insurance brokers around the Bay area agreed that the decision

will have minimal effect on group employers.

“We’re still working with employers to become compliant with the ‘play or pay’ of the ACA so we’re not that affected,” said John Fradelizio, managing director, Wells Fargo Insurance Services in Petaluma. “It’s just one more Supreme Court ruling to keep track of.”

The Supreme Court’s upholding of the availability of subsidies in any type of marketplace means the application of the employer “play or pay” rules will move forward unchanged.

“It doesn’t really change anything, it’s pretty much business as usual. Had it gone the other way there would have been a lot more analysis,” said Keith McNeil, partner at Arrow Benefits in Petaluma.

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DOL AUDIT

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companies with more than 100 employees, but that is changing, with companies with 10 or less being audited more frequently.

"It's very difficult. The problem is there are a lot of labor and benefit rules for employers with more than 50 and more than 100 employees, with state and federal documents, and dispersing them to employees so they are clear about it," he said. "There's a very long list of what the DOL is looking for; benefit plan documents on medical, dental, disability, flexible spending plan, cobra procedures, the Health Insurance Portability and



Jordan Shields,
Arrow
Benefits
Group

Accountability Act (HIPPA), and more."

In 2013, DOL audits resulted in more than \$1.6 billion in fines. With a budget of close to \$200 million for enforcement (and growing), DOL audits are on the rise for firms as small as two employees. DOL's 2015 budget requested an additional \$10 million earmarked for an additional 300 enforcement agents.

Insurance brokers agree they are seeing more audits. Jeff Hadden, principal with Arrow's partner firm LHD Benefit Advisors based in Indiana, said 12 of his clients have received DOL audits of their group health plans in the past 20 years. Of those 12, nine went through the audit process in the last two years.

"That's a significant increase and a harbinger that more audits are likely to come from the DOL," Hadden said in a statement.

The department can audit employers at random, although the most common

"It takes approximately one to two weeks to properly prepare for a DOL audit, depending on the size of the business and how well organized it is."

reason for a DOL audit is a complaint from an employee. The DOL has also targeted employers in low-wage industries for wage and hour violations, particularly in the areas of agriculture, day cares, restaurants, garment manufacturing, guard services, health care, hotels and motels, janitorial services, and temporary help.

Similar to an IRS audit, DOL agents have the discretion to issue a warning, or turn your business upside down for two weeks. Penalties vary with the violation. If a business has not been in compliance for two years, for example, the fine could be \$110 for every day in the last two years, or \$110 per person, per violation in the last two years.

According to Shields, it takes approximately one to two weeks to properly prepare for a DOL audit, depending on the size of the business and how well organized it is. Part of that preparation is building an audit binder with known documents.

Arrow's report states that by planning ahead, conducting a self-audit, educating appropriate staff, and resolving any issues, an employer should be able to face a DOL

audit with confidence.

If you've been selected to be audited the report recommends the following steps be taken:

1. Call the DOL: Call the phone number listed on the audit letter and request an extension. If granted, this additional time is vital and should be used to your advantage to help prepare.

2. Get specific information about the audit: Find out what the focus of the investigation will be. While it will usually review an organization's entire history, there will often be one thing of particular focus (e.g. the claims and appeals process). Important questions to ask include: What are the time periods of the review? What are the names of any people who the auditor wants to interview?

3. Call your attorney and your broker and give them a heads up.

Contact Shields at 707 992-3780 or JordanS@arrowbenefitsgroup.com or download the report at lhdbenefits.com/wp-content/uploads/2015/05/DOLAudit_WhitePaper_May2015_lock.pdf.

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care or for specified purposes for an employee who is a victim of domestic violence, sexual assault or stalking.

- Display poster on paid sick leave where employees can read it easily.
- Provide written notice to employees with sick leave rights at the time of hire.
- Allow eligible employees to use accrued paid sick leave upon reasonable request.
- Show how many days of sick leave an employee has available. This must be on a pay stub or a document issued the same day as a paycheck.

- Keep records showing how many hours have been earned and used for three years.

There are a few exceptions to the law and they include employees covered by qualifying collective bargaining agreements, in-home supportive services providers, and certain employees of air carriers.

"Having employees is getting even more complex. It used to be having a mom and pop (type business) you could bare bones it. Unfortunately, employment laws have gotten so complicated that employers need someone with expertise to keep them up to date on all the rules and regulations," Scott said.

THE NORTH BAY BUSINESS JOURNAL'S

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