Einstein
Advanced Health Insurance Solutions

NEWSALERT

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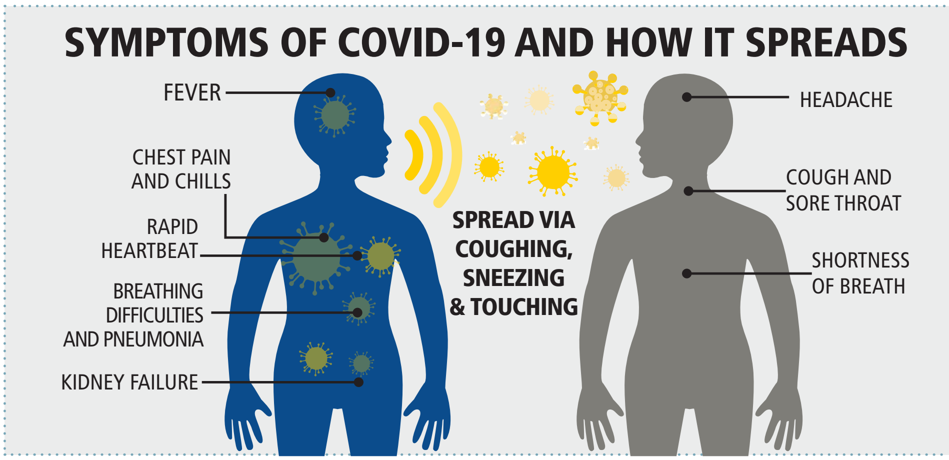
Safety and Compliance

Employer Guide for Dealing with the Coronavirus



AS THE outbreak of the coronavirus (COVID-19) grows and now begins to spread in North America, employers will need to start considering what steps they can take to protect their workers while fulfilling their legal obligations.

Employers are in a difficult position because it is likely that the workplace will be a significant source of transmission among people. And if you have employees in occupations that may be of higher risk of contracting the virus, you could be required to take certain measures to comply with OSHA's General Duty Clause.

Also, if you have workers who come down with the virus, you will need to consider how you're going to deal with sick leave issues. And workers who are sick, or have family members who have been stricken, may ask to take time off under the Family Medical Leave Act.

COVID-19 explained

According to the Centers for Disease Control, the virus is transmitted from coughing, sneezing and touching, and it enters through the eyes, nose and mouth.

Symptoms of COVID-19 are fever, cough, and shortness of breath and these symptoms may appear 2 – 14 days after a person has been exposed. People with underlying health conditions such as asthma and diabetes, as well as those who are immunocompromised should talk to their doctor about other ways to prevent illness.

Severe symptoms include a temperature of at least 100.4ºF, pneumonia, and kidney failure.

Employer concerns

OSHA – OSHA's General Duty Clause requires employers to protect workers against "recognized hazards" to safety or health which may cause serious injury or death.

According to an analysis by the law firm Seyfarth Shaw: If OSHA can establish that employees at a worksite are reasonably likely to be exposed to the virus (likely workers such as health care providers, emergency responders, transportation workers), OSHA could require the employer to develop a plan with procedures to protect its employees.

Protected activity – If you have an employee who refuses to work if they believe they are at risk of contracting COVID-19 at work due to the presence or probability that it is present there, what do you do?

Under OSHA's whistleblower statutes, the employee's refusal to work could be construed as "protected activity," which prohibits employers from taking adverse action against them for their refusal to work.

Family and Medical Leave Act – Under the FMLA, an employee working for an employer with 50 or more workers is eligible for up to 12 weeks of unpaid leave if they have a serious health condition. The same applies if an employee must care for a family member who has been stricken.

The virus would likely qualify as a serious health condition under the FMLA, which would warrant unpaid leave.

What to do

Here's what health and safety experts are recommending employers should do:

See 'Communicate' on page 2

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Penalties

IRS Continues Ramping Up ACA Compliance Efforts

THE IRS has continued to ramp up enforcement of the Affordable Care Act's mandate that large employers provide affordable health coverage to their full-time employees.

For the 2018 plan year, the IRS sent around 90,000 letters seeking to collect approximately $12 billion in employer shared responsibility payments (ESRPs), up from $4.4 billion and 30,000 letters in 2015.

Applicable large employers (ALEs) that fail to comply with the mandate are liable for ESRPs, which are essentially a penalty in the guise of a tax.

If the IRS, through a company's tax filings, concludes that an employer is skirting their responsibility under the law, it will send them Letter 226-J, which is essentially the agency's first step toward enforcing the ACA mandate and imposing liability for failing to secure coverage for their workers.

If you are one of the employers who receive this letter, you will need to brace yourself for compliance reporting if you want to prove that you are not in breach of the law. The key to coming out unscathed from this is to have solid evidence of compliance. Such evidence should be shared across departments in your organization.

The ACA large-employer mandate requires that any employer of 50 or more workers (or full-time equivalents) must offer at least 95% of its full-time employees health coverage that is affordable (a percentage of their family income) and provides certain essential benefits as prescribed by the law.

Sometimes Letter 226-J was generated because:

- An employee made a mistake and claimed a tax credit for the cost of their employer-sponsored health insurance.
- The IRS thinks you may not be offering enough of your employees health coverage.

Fines can vary depending on the infraction

Failure to offer minimum essential coverage: $2,500 per employee for the 2019 policy year. This penalty applies if in any

month in the tax year, the minimum coverage is not offered to at least 95% of a company's full-time employees (and their dependents), and if at least one full-time employee receives a premium tax credit (PTC) for purchasing coverage through the marketplace.

Failure to offer coverage that meets affordability and minimum value: $3,750 per employee in 2019. This penalty is assessed if IRS Section 4980H(a) does not apply for a given month.

Failure to file penalty: $270 per return in 2019. This applies to employers that do not file correct information returns for 2019.

What should you do if you receive Letter 226-J?

You will have to act fast. You have 30 days to develop a comprehensive response to the IRS's assertion of liability. The IRS will initiate a collection process if you fail to respond on time. ❖

TAKE THESE STEPS

Here's what health insureance compliance attorneys recommend:

1. Call the IRS number included on the response Form 14764 and request a 30-day extension to respond.
2. Contact your accounting or law firm (whichever you use to communicate with the IRS).
3. Contact us. We can help collect data necessary to respond to the IRS.

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Communicate with Suppliers about Possible Disruptions

- Consider restricting foreign business trips to affected areas for employees.
- Perform medical inquiries to the extent legally permitted.
- Impose potential quarantines for employees who have traveled to affected areas. Ask them to get a fitness-for-duty note from their doctor before returning to work.
- Train your staff about how to reduce the chances of contracting the virus, and what to do if they think they have caught it.

If an employee may have the virus, experts recommend that you:

- Advise them to stay home until symptoms have dissipated.
- Advise them to seek out medical care.
- Make sure they avoid contact with others.
- Contact the Centers for Disease Control and local health department immediately.
- Contact a hazmat firm to clean and disinfect the workplace.
- Grant leaves of absence and work-from-home options for anyone who has come down with the coronavirus.

If there is an epidemic, consider whether or not to continue operating. If you plan to continue, put a plan in place. You may want to:

- Set a plan ahead of time for how to continue operations.
- Assess your staffing needs in case of a pandemic.
- Consider alternative work sites or let staff work from home.
- Communicate with suppliers about possible disruptions.
- Consider alternative vendors should yours be unable to work. ❖

Pharmacy Spend

Accumulator Programs Can Shock Employees at Pharmacy Counter

AN ONGOING tense relationship between insurers and drug companies is spilling over and hitting enrollees in group health plans, by saddling them with additional out-of-pocket expenses.

Some insurers have started adopting copay accumulator programs – sometimes called accumulator adjustment programs – that change the way a patient's out-of-pocket medication costs are added up (accumulated) when there is some type of drug company financial assistance for the health plan enrollee.

These accumulator programs do not count the drug company assistance (in the form of coupons or copay cards) that defray the employee's out-of-pocket expenses.

Unfortunately, many group plan enrollees often do not know that their group health plan has changed its policy to be an accumulator program. This is because they did not read the plan summary when they renewed their policy during open enrollment, or they read about it and didn't understand how it works.

For most employees, the change will not make much of a difference, if any at all, if they are low users of their health benefits and rarely need prescription medications.

But, for heavy users and those with chronic health problems, the change could mean hundreds, if not thousands of dollars more out of pocket for their medicines.

How it works

To understand how an accumulator program works and how it may affect your employees, take the example of a patient who needs $15,000 worth of medications a year with a pharmaceutical out-of-pocket maximum of $7,000 on their health plan:

- **Traditional plan with no copay assistance:** Employee pays $7,000 and the insurer pays $8,000.
- **Typical plan that allows copay assistance:** Employee pays $4,000, copay assistance pays $3,000 and insurer pays $8,000.
- **Plan with copay accumulator:** Employee pays $7,000, copay assistance pays $3,000 and insurer pays $5,000.

Insurers that have instituted the practice say they did so because they want to steer health plan enrollees toward generic medicines and away from pricier brand-name drugs.

They say that these copay cards and coupons are an incentive for drug companies to inflate list prices, then offer copay assistance that spares the patient, but shifts more of the costs to the insurer.

Lawmakers in a number of states have taken note and are trying to address the practice legislatively. They have introduced legislation that would ban insurers from using accumulator policies when there's no generic version of the drug available.

However, the Centers for Medicare and Medicaid Services in February 2020 proposed a rule allowing insurers to impose copay accumulator policies.

What you can do

Many health plan enrollees do not know that their health plan has a copay accumulator program until they get to the pharmacy counter. They think they've reached their out-of-pocket limit, but find they still have to pay for their medications.

If they haven't had this experience in the past with their plan, it's maybe because they didn't realize that it had switched to an accumulator program.

Come your company's next open enrollment, you should stress to your staff that if any of them are large users of prescription medications, they need to carefully read their current plan's summary of benefits as well as other plan documents.

If you have concerns that any your staff might run into issues, you can call us to go over your current plans to identify those with or without accumulator programs.

This is especially important during open enrollment, as those enrollees that require expensive prescriptions should be given options, including at least one plan that does not use an accumulator program. ❖

Employee Health

Diabetes Wellness Programs Can Boost Productivity, Reduce Costs

PHYSICIANS AND employee health experts are increasingly recommending that employers include diabetes screening, prevention and management in their company-sponsored wellness programs.

Diabetes – known as the "silent killer" – afflicts more than 29 million Americans, or 9% of the population.

Type 2 diabetes – or "adult-onset diabetes" – accounts for about 90% to 95% of all diagnosed cases of diabetes. Type 2 diabetes is associated with older age, obesity, family history of diabetes, history of gestational diabetes, impaired glucose metabolism, physical inactivity, and race/ethnicity.

The fallout from the disease has a significant impact on businesses as it can lead to stress, depression and a number of other health problems, including cancer, stroke and heart problems. That in turn leads to lost productivity for you as well as "presenteeism" – or the dilemma of a worker being at work but not being productive.

Medical costs and costs related to time away from work, disability and premature death that were attributable to diabetes totaled $245 billion in 2012, according to the U.S. Centers for Disease Control. Of that total, $69 billion was due to lost productivity.

With these statistics in mind, it's imperative that employers help their workers manage their diabetes. Helping them get diabetes under control or helping them avoid developing diabetes can keep your productivity strong, reduce your workers' comp claims and also chip away at your health insurance expenses thanks to lower premiums.

Diabetes means decreased productivity

Of the roughly $69 billion that U.S. employers lost in 2012 from decreased productivity due to diabetes:

- $21.6 billion was from the inability to work as a result of diabetes.
- $20.8 billion was from presenteeism.
- $18.5 billion was from lost productive capacity due to early mortality.
- $5 billion was from missed workdays.
- $2.7 billion was from reduced productivity for those not in the labor force.

DIABETES PREVENTION & MANAGEMENT

The Integrated Benefits Institute during its Annual Forum in February held a session highlighting what some employers are doing to educate their workers on how to manage diabetes:

- **The San Francisco Municipal Transportation Agency** has partnered with the American Diabetes Association to deliver educational seminars on diabetes to its workforce. The agency also offers as part of its diabetes program health risk and orthopedic assessments, glucose and cholesterol screenings, nutritional counseling, exercise classes and a walking club. (Since the transport agency's wellness plan provider initiated the diabetes program, its workers' comp claims have also fallen.)
- **Caterpillar, Inc.** found diabetes to be one of its primary cost drivers, so it now provides incentives for employee risk assessments and care management. For example, half of the employees in its diabetes management program reduced their A1C levels (a measure of diabetes control), while 96% reported measuring these levels regularly and 72% reported meeting recommended activity levels.
- **The City of Asheville, NC**, used local pharmacists to coach employees on how to manage diabetes. More than 50% of those in the program experienced improved A1C levels, and the number of employees with diabetes that achieved optimal levels increased.
- **Vanderbilt University** expanded a pilot program of intensive exercise and nutrition that helped employees with diabetes improve cholesterol and blood sugar. About 25% of the employees were able to stop taking all of their medications.
- **The Ohio Police and Fire Pension Fund** works with United Healthcare to offer its employees access to diabetes prevention and control programs. Employees voluntarily participate in worksite health screenings. Those who have pre-diabetes can attend YMCA-led diabetes prevention programs either at work or in the community.