



North Country Human Resources Association, Inc.

Society for Human Resource Management (SHRM) Affiliated Professional Chapter #0559

Serving North Country HR Managers since 1998

Website: <http://northcountryhra.org>

Newsletter – April 2011

2010–2011 Board of Directors

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What's in the April Newsletter

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April Member's Meeting

DATE:	Tuesday, April 26, 2011
SITE:	Best Western, Watertown
TIME:	8:00 AM Social Networking 8:15 AM Buffet opened 8:30-9:30 AM Meeting Topic
TOPIC:	Affirmative Action Plans
SPEAKER:	Larry P. Malfitano, Esq. Chair, Labor and Employment Law Bond, Schoeneck & King, PLLC
MENU:	Breakfast Buffet
COST:	\$10.00 Paid Members \$12.00 Potential Members & Guests \$5.00 Non-Dining Members
RSVP:	Cherie Moore – Treasurer cherie.moore@na.manpower.com by 4 PM Tuesday, April 19, 2010



The use of this seal is not an endorsement by the HR Certification Institute of the quality of the program. It means that this program has met the HR Certification Institute's criteria to be pre-approved for recertification credit.

April's Topic: This program will address legal and practical implications for employers regarding Affirmative Action Plans and will:

- address which Employers are subject to the Affirmative Action requirements
- identify the obligations of Executive Order 11246 and the DOL's Regulations
- provide advice on developing and maintaining Affirmative Action Plans
- Offer guidance on tracking and recording applicants for Affirmative Action Plan administration
- Offer suggestions for responding to Affirmative Action audits



Cancellations:

We will make every effort to cancel the RSVP if given reasonable notice of cancellation. If NCHRA is charged for the meal, then you are responsible to pay for the meal.

Name tags will be provided at the door to help every one get to know their fellow members. Please remember to return them before leaving.

Remember...

- Bring your business cards with you to the monthly meetings to share and network with other members.
- At each meeting NCHRA Members can enter their business card in the door prize drawing for a free meal at the next meeting.
- The "*Sally Kafka Memorial Membership Drawing*" held in December 2011 awards a one year paid membership to the winner. Those members with perfect attendance at the monthly meetings (September 2010-December 2011) will be eligible for the drawing.

Message From The President

It's Springtime and signs of spring are ever so slowly starting to show. I was in the northern part of Massachusetts recently and their daffodils are blooming in full force. So we can't be far behind! We're still getting our fair share of gray days but the temperature is rising and people are enjoying the outdoors more. As our time turns more toward summer related events, our HR monthly meetings will wrap up with our annual conference on June 7.

This year's conference promises to be a great one! Compliance is the hot topic that we're all concerned about. As much as we like to pride ourselves on staying current with changing laws and regulations, it's very difficult to do so, especially if you have limited personnel or resources to rely on. This conference will provide you the opportunity to confirm your process and procedures and to ask questions about "those things" you may need to start doing! Please take a few minutes to look over the agenda (in this newsletter) for the details and sign up today....and bring a co-worker along too!

Our April meeting will be on Affirmative Action and the May meeting will be on processing new employees and the personnel file. These are topics that were requested by members that have not been presented in the last few years. Please continue to give us your feedback and suggestions, as we will be planning for next year's topics at our summer planning meeting. We're also looking for members to volunteer to be on the Nominations Committee. Our elections will be in November so the committee will need to start work soon. If you're interested in helping out, please contact me or a Board member.

Be sure to attend the April 26 meeting and get informed on the Affirmative Action. It affects everyone! Please RSVP to Cherie by 4 pm on Tuesday, April 19 at cherie.moore@na.manpower.com



Kathleen Scheible, PHR
President,
North Country Human Resources Association, Inc.



**JUNE CONFERENCE
PLANNING COMMITTEE MEETING
following the April 26 General
meeting at the Best Western
COME JOIN US**

****JUNE 2011 Conference ****



North Country Human Resources Association, Inc.

PO Box 8302

Watertown, New York 13601

315-376-6899

www.northcountryhra.org

April 5, 2011

For immediate release

Watertown, NY

NORTH COUNTRY HUMAN RESOURCES ASSOCIATION, INC. ANNUAL CONFERENCE "2011 - THE YEAR OF COMPLIANCE"

Chapter President, Kathleen Scheible, PHR, announced the fifth annual local conference for human resources professionals. The theme this year is "2011 - The Year of Compliance" to take place June 7, 2011, 8 am to 2:30 pm, Dulles State Office Building, in Watertown, NY. Kathleen reports that "With the heightened focus on compliance audits by several state and federal agencies, we want to assist businesses with understanding what the current laws and regs are and how to be compliant. More than HR managers can benefit from this conference."

This year's conference is a unique opportunity to learn directly about NYS labor laws from NYS Department of Labor representative Joe Jakubowski. Mr Jakubowski will present a three hour morning session titled "Understanding Compliance Requirements for New and Existing Labor Laws". HR professionals and those who manage employment of others need to hear this critical information to ensure compliance within their workplace.

Special thanks to Hancock Estabrook, LLP for again sponsoring this conference. Mike Sciotti, Esq. will present the afternoon session on "HR Compliance Requirements". Those who have heard Mr. Sciotti before know what a captivating speaker he is and how much information he brings to share. Mike will provide detailed take-aways that can be applied immediately as well as be reference material for years to come.

Both speakers plan to allow time to approach each individually with inquiries.

Early bird registration prior to or on May 15 for members \$75 and nonmembers, \$125; registration after May 15 for members \$100 and nonmembers \$150. To register and make inquiries, go to website www.northcountryhra.org or contact Cherie Moore, 315-376-6899 or cherie.moore@na.manpower.com

North Country Human Resources Association, Inc. Conference

2011—The Year of Compliance

Society for Human Resource Management (SHRM)
 Affiliated Professional Chapter #0559
 serving North Country HR Managers
 since 1998



Date: June 7, 2011

Drawing Prizes Include:

- Free SHRM Membership
- Free NCHRA Memberships

Time: 8:00 am to 2:30 pm
 (7:15-8:00 registration & continental breakfast)

Location: State Office Building
 317 Washington St
 11th Floor
Photo ID Required



A continental breakfast, lunch, and assorted beverages will be provided.

This conference is worth 4.5 CEUs for Recertification

Parking: Access to Free Public Parking is available via Clinton St. or Stone St. (Behind the Watertown Savings Bank drive-thru)

For out-of-town guests: The Carriage House Best Western is conveniently located across the street. For more information or to make reservations contact the Best Western @ 315-782-8000.

Directions from South (Syracuse): Take Route 81 to Exit 44 (Watertown Center). Take a left at the end of the ramp and turn right on Rt. 232. Go 2 miles and turn left on Route 11 North. Follow Route 11 North approximately 4 miles to the State Office Building.

Directions from North and East (St Lawrence County): Take Route 11 South to Watertown. Turn left on to Arsenal Street (Routes 3 & 12) toward downtown. Take first right at Public Square on to Washington Street. The State Office Building is one block (two stop lights) up on the left at the corner of Washington and Clinton Streets.

2011 Agenda

7:15 - 8:00 am	Registration and Continental Breakfast
8:00 - 8:15 am	Welcome, Introductions and Sponsor Recognition
8:15 - 9:45 am	Understanding Compliance Requirements for New and Existing Labor Laws; Joe Jakubowski, NYS Dept of Labor
9:45 - 10:00 am	Break/Networking
10:00 - 11:30 am	Understanding Compliance Requirements for New and Existing Labor Laws (Cont.); Joe Jakubowski, NYS Dept of Labor
11:30 am- 12:15 pm	Lunch (Included)
12:15 - 12:30 pm	Sponsor and Vendor Networking
12:30 - 2:15 pm	HR Compliance Requirements Mike Sciotti, Hancock Estabrook, LLP
2:15 - 2:30 pm	Closing Remarks, Door Prizes and Other Awards (Please complete your conference evaluation and drop it off at our registration desk)

Member*—Registration prior to or on May 15, 2011 -	\$75
Member—Registration after May 15, 2011 -	\$100
Non-Member—Registration prior to May 15, 2011 -	\$125
Non-Member—Registration after May 15, 2011 -	\$150

*Member includes SHRM, NCHRA, GWNCCC, Iroquois Assoc. or affiliated SHRM Chapters

Please return registration form and check payable to:

NCHRA
C/o Cherie Moore
PO Box 8302
Watertown, NY 13601
 Phone: 315-376-6899
 Fax: 315-362-9513
 E-mail: cherie.moore@na.manpower.com

Sponsored by:



North Country Human Resources Association, Inc.

2011 HR Conference REGISTRATION



**Please return registration form and check payable to:
North Country Human Resources Association (NCHRA)
Attn: Cherie Moore, PO Box 8302, Watertown, NY 13601**

PLEASE PRINT CLEARLY

Name _____ Title _____

Organization _____

Address _____

Email _____ Phone _____

Date: June 7, 2011 - Time: 8:00 am to 2:30 pm
(7:15-8:00 registration & continental breakfast)

Location: Dulles State Office Building
317 Washington St 11th Floor
Watertown NY 13601

Make Selection Below:

Member* —Registration <u>Prior to May 15, 2011</u>	\$75	<input type="checkbox"/>
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Member* —Registration <u>After May 15, 2011</u>	\$100	<input type="checkbox"/>
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*Member: <input type="checkbox"/> SHRM <input type="checkbox"/> NCHRA <input type="checkbox"/> GWNCCC <input type="checkbox"/> Iroquois Assoc <input type="checkbox"/> affiliated SHRM Chapters		
Please select appropriate membership		

Sponsored by: **HANCOCK**
ESTABROOK, LLP
COUNSELORS AT LAW

Non-Member —Registration <u>Prior to May 15, 2011</u>	\$125	<input type="checkbox"/>
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Non-Member —Registration <u>After May 15, 2011</u>	\$150	<input type="checkbox"/>
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June Conference Scholarships Available

The Member Benefits Committee will be accepting scholarship applications from NCHRA members to help cover the cost of the conference. The applications will be subject to a pre-defined set of criteria to ensure consistency across the review and approval process.

2011 Meeting Dates (through June)

May – June 2011 meeting dates for your calendar. All meetings will be held at the Watertown Best Western.

<u>Meeting dates</u>	<u>Topics</u>
Tuesday, May 24, 2011 (breakfast)	New Employee Processing and Files
Tuesday, June 7, 2011 (at State Office Building)	5th Annual NCHRA Conference

Future NCHRA Leadership Opportunities

The Board wants to get the word out early that the North Country Human Resources Association will be initiating a search for key leadership positions this fall to lead the Chapter beginning in January 2012.

We already have the next president... Ross Wachowski of Otis Technology, Inc. But we have a number of board positions opening up that we will need to fill for next year.

This year's nomination committee is Gil Pearsall (Immediate Past President), Kathy Scheible (President) and Ross Wachowski (President Elect). We will also be looking for one general member who can sit on the committee.

The committee will begin soon to reach out to the membership to determine interest in serving on the board. We will be looking for energetic and motivated members to serve on the board. Membership on the Board does not take too much time (we have a 30-45 minute board meeting once a month to plan for each of our membership meetings and conduct an annual one-day planning meeting each summer). There are also "perks to being a board member, to include paid annual SHRM membership and opportunities to attend National and New York State SHRM events.

If you are interested in becoming a board member and want to play an important role in Associations future, please contact one of the committee members.

2010-2011 NCHRA Membership

We have changed the fiscal year for the NCHRA to coincide with the calendar starting in 2011. The 2010-2011 membership year runs from September 2010 to December 2011. Annual membership dues are payable to NCHRA and mailed to:

NCHRA
PO Box 8302
Watertown NY 13601

A one-year professional membership is \$35 and two-year is \$60.

A one-year associate membership is \$20 and two-year is \$35.

Remember: there is a meal price difference for members and non- members so it's to your advantage to get your membership in early!

Types of memberships:

PROFESSIONAL MEMBERSHIP: Professional Members shall be limited to (a) those individuals engaged in Human Resources or Industrial Relations functions; (b) the teaching, administration or management of Human Resources; (c) individuals who previously served in those positions.

ASSOCIATE MEMBERSHIP: Individuals who do not meet the qualifications of the other classes of membership, but who demonstrate a bona fide interest in human resource management and the mission of the Chapter. Associate members may not vote or hold office in the Chapter.

STUDENT MEMBERSHIP: Individuals who are actively enrolled in Human Resources or related programs at the college or University level. Student members may not vote and may not hold office in the Association. Student members shall be entitled to full membership without the payment of dues.

North Country Human Resources Association Inc.

P.O. Box 8302, Watertown, NY 13601

Society for Human Resource Management (SHRM) Affiliated Professional Chapter #0559

Serving the North Country HR Managers since 1988.

MEMBERSHIP APPLICATION FOR 2010-2011



Web Address: <http://northcountryhra.org/>

Professional Member Dues: \$35.00 one year – non refundable if approved - due with your application.

\$60.00 two years – non refundable if approved -due with your application.

Associate Member Dues: \$20.00 one year – non refundable if approved - due with your application.

\$35.00 two years – non refundable if approved - due with your application.

Membership in NCHRA is contingent upon approval of Board of Directors.

Applicants will receive notification of membership decision.

Name: _____ (Membership is individual-not transferable)

Home Address: _____

Phone: _____

Company: _____

Address: _____

Email Address: _____ Company Web Site: _____

Telephone: _____ Fax: _____

Title: _____

Function(s): _____

Renewal Membership New Membership

Do you have a certification? SPHR PHR GPHR

Are you a SHRM member? Yes No

How long have you been a SHRM member? _____

How did you hear about the NCHRA? _____

Internal Use Only

Application / Payment submitted on:

Type of Membership: Professional Associate Student Honorary

Membership expires: 2011 2012

Form of Payment: Personal Check Business Check Cash

Date Board approved:

Date Notification sent:

Wage Theft Prevention Act – NYSDOL Opinion Letter



New York State Department of Labor
Andrew M. Cuomo, *Governor*
Colleen C. Gardner, *Commissioner*

February 22, 2011

[REDACTED]

Re: Request for Opinion
Wage Theft Prevention Act
RO-11-0030

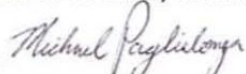
Dear [REDACTED]:

I am writing in reply to your letter of December 2, 2010, in which you inquire as to the requirements of the Wage Theft Prevention Act which was officially signed by Governor Paterson on December 10, 2010. (Chapter 564 of the Laws of 2010 [Effective April 9, 2011]) As you state in your letter, that Act amends Section 195 of the Labor Law to require that employers provide a written notice of pay on or before February 1st of each year of that employee's employment. Your letter seeks confirmation that the annual notification requirement is first effective on or before February 1, 2012, given the effective date of the Act is April 9, 2011. Please accept this letter as such confirmation.

While the annual notification requirements are not triggered until next year, the amended notice requirements set forth in the Act will immediately apply to persons hired on or after the effective date and to all employees where there is a change in the terms and conditions of employment as related to the various statutory elements, as amended, e.g. a change in rate of pay, allowances, pay date.

Should you have any further questions, please feel free to contact me.

Very truly yours,
Maria L. Colavito, Counsel

By: 
Michael Paglialonga
Assistant Attorney II

cc: Carmine Ruberto

Phone: (518) 457-4380 Fax: (518) 485-1819
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

HR One HR eNews – Wage Theft Prevention Act Notices

HR eNews- your connection to HR solutions!



Did You Know...

The New York State Department of Labor has released model notices that employers can use to comply with the Wage Theft Prevention Act?

The Wage Theft Prevention Act's (WTPA) April 9, 2011 effective date is quickly approaching. As previously communicated in the January 13, 2011 HR eNews, the WTPA amends - and greatly expands - the current NYS wage rate notice requirements set forth in Section 195.1 of the labor code. Private sector employers, charter schools, private schools, and not-for-profit corporations are covered by the Act but federal, state, and local government employers are exempt.

The Department of Labor has made the following wage rate notice templates available. The templates include the required employee acknowledgment. Employers should determine which template to use for a particular employee based on how the employee is paid (e.g., per hour, multiple hourly rates, weekly rate, salary, prevailing wage, or exempt).

- <<http://www.labor.ny.gov/formsdocs/wp/LS50.pdf>> - Guidelines for Notice and Acknowledgement of Wage Rates for Temporary Help Firms
- <<http://www.labor.ny.gov/formsdocs/wp/LS54.pdf>> LS 54 - Pay Notice for Hourly Rate Employees
- <<http://www.labor.ny.gov/formsdocs/wp/LS55.pdf>> LS 55 - Pay Notice for Multiple Hourly Rates
- <<http://www.labor.ny.gov/formsdocs/wp/LS56.pdf>> LS 56 - Pay Notice for Employees Paid a Weekly Rate or Salary for a Fixed Number of Hours (40 or fewer in a week)
- <<http://www.labor.ny.gov/formsdocs/wp/LS57.pdf>> LS 57 - Pay Notice for Employees Paid a Salary for Varying Hours, Day Rate, Piece Rate, Flat Rate or Other Non-Hourly Pay
- <<http://www.labor.ny.gov/formsdocs/wp/LS58.pdf>> LS 58 - Pay Notice for Prevailing Rate and Other Jobs
- <<http://www.labor.ny.gov/formsdocs/wp/LS59.pdf>> LS 59 - Pay Notice for Exempt Employees

Use of these templates is optional. An employer may develop its own written wage rate notice as long as it contains all of the required information.
See HR One form attached.

The wage rate notice must be provided to employees in their primary language. If an employee's primary language is other than English, the notice must be provided in that language if the Department of Labor provides a template in that particular language. If the Department of Labor does not provide a template in an employee's primary language, the employer may provide notice

to that employee in English only. The current wage rate templates available from the Department of Labor are in English, Spanish, Chinese, Korean, Haitian-Creole, Polish, and Russian.

Penalty for Failure to Give Proper Notice...

Employers that fail to provide the wage rate notice when required can be assessed damages of \$50 per week per worker.

Penalty for not Providing a Proper Wage Statement...

Employers can be assessed charges by the Department of \$100 per week per worker if proper wage statements are not given.

Penalties for Retaliation...

Employers or their agents can be fined up to \$10,000 and assessed another \$10,000 in liquidated damages. The Department can also request reinstatement of the worker and/or compensation for lost wages. There are also potential criminal penalties but those would be prosecuted by an agency other than DOL.

This HR eNews is not intended to render legal advice but is meant for general informational purposes only.

If you have questions, contact HR One's Human Resource Hot Line at 1.800.457.8829.

HR One HR eNews – Equal Opportunity Employer

HR eNews- your connection to HR solutions!



Did You Know...

The phrase “equal opportunity employer (EOE)” should be included in all job advertisements?

There are numerous federal and state equal employment regulations that prohibit employers from discriminating against individuals in any term or condition of employment on the basis of their race, religion, gender, age, disability, national origin, or other protected characteristics.

While including an EOE statement in job advertisements is not normally required unless an organization receives government contracts, it is strongly recommended as a way to reaffirm your organization’s commitment to EEO principles and to show compliance with employment regulations that prohibit discrimination.

If you utilize the services of an employment agency, private search firm, or other third party to recruit job applicants, the company’s commitment to being an EEO employer should be communicated to these organizations in writing at least annually.

If you have questions, or would like assistance in writing EEO compliant job advertisements, contact HR One's Human Resource Helpline at 1.800.457.8829.

This HR eNews is not intended to render legal advice but is meant for general informational purposes only.

If you have questions, contact HR One's Human Resource Hot Line at 1.800.457.8829.



Employee Benefits Law Information Memo

March 2011

[Electronic Dispatch](#)

[Go to BS&K Employee Benefits Practice Home Page](#)

WHO IS A FIDUCIARY? DOL PROPOSES AN EXPANSION OF THE DEFINITION

The U.S. Department of Labor (“DOL”) has proposed regulations that more broadly define the circumstances under which a person or entity will be considered to be a plan “fiduciary” by reason of giving investment advice to an employee benefit plan or to a plan’s participants or beneficiaries. If the proposed regulations are made final in their current form, the number of plan service providers that will be considered plan “fiduciaries” will increase significantly. Plan sponsors need not take any current action with respect to the proposed regulations, but should be aware that agreements with service providers may need to be reviewed and modified to conform to the regulations.

Background

Under the Employee Retirement Income Security Act (“ERISA”), a person is a fiduciary with respect to an employee benefit plan to the extent that the person (i) exercises any discretionary authority or discretionary control respecting the management or disposition of the plan’s assets, (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the plan, or has any authority or responsibility to do so, or (iii) has any discretionary authority or discretionary responsibility in the administration of the plan.

Individuals and entities, including plan service providers, who are considered plan “fiduciaries” are subject to a number of strict duties and responsibilities and are prohibited from engaging in a number of specific acts with respect to the applicable plan. Among other consequences, fiduciaries who fail to satisfy their plan-related duties, or who engage in plan-related prohibited transactions, can be subject to personal liability for losses suffered by the plan.

The Proposed Regulations

The DOL’s proposed regulation addresses the circumstances under which a person or entity is considered to be a plan “fiduciary” by reason of (ii) above; that is, by giving investment advice for a fee or other compensation to an ERISA-covered plan, to a plan fiduciary, or to the plan’s participants or beneficiaries. Two of the key elements of the proposed regulations are the scope of the terms “investment advice” and “fee or other compensation”.

“Investment Advice”

The proposed regulations generally provide that a person renders “investment advice” if the person:

- Provides advice, or an appraisal or fairness opinion, concerning the value of securities or other property;
- Makes recommendations as to the advisability of investing in, purchasing, holding, or selling securities or other property;
- or
- Provides advice or makes recommendations as to the management of securities or other property.

In addition to one or more of the activities noted above, a person renders “investment advice” only if the person also:

- Represents or acknowledges fiduciary status within the meaning of ERISA with respect to giving advice or making recommendations;
- Has or exercises discretionary authority or control with respect to the purchase or sale of investments for a plan, with respect to management of the plan, or with respect to the administration of the plan;
- Is an “investment adviser” under the Investment Advisers Act of 1940 (which generally includes any person who, for compensation, engages in the business of advising others as to the value of securities or the advisability of investing in, purchasing, or selling securities, or who promulgates analyses or reports concerning securities); or
- Provides advice pursuant to an agreement, arrangement or understanding, oral or written, between such person(s) and the plan, a plan fiduciary, or a plan participant or beneficiary, that such advice may be considered in connection with making investment or management decisions with respect to plan assets, and will be individualized to the needs of the plan, a plan fiduciary, or a participant or beneficiary.

Bond, Schoeneck & King, PLLC

New York ▪ Albany Buffalo Garden City Ithaca New York Oswego Rochester Syracuse Utica Florida ▪ Naples Kansas ▪ Overland Park

This document may be considered “Attorney Advertising” under the rules of some states. The hiring of a lawyer is an important decision that should not be based solely upon advertisements.

This part of the proposed regulations modifies current law in a number of ways, including the addition of appraisals and fairness opinions in the definition of advice. The DOL believes this change will align the duties of those who provide these opinions with those of plan fiduciaries who rely on them. Among other things, this brings valuations of closely held employer securities for purchase by an employee stock ownership plan, and appraisals of real property considered for purchase by a plan, into the realm of “investment advice.” The proposal also specifically includes advice and recommendations as to the management of securities or other property. This could include, for example, advice in connection with the exercise of stock rights (e.g., voting proxies), and advice in the selection of plan investment managers. Another significant change from current law would be that the “advice” need not be provided on a “regular basis.”

Limitations

Even if the person’s activities with respect to a plan may suggest that the person is a fiduciary, a person will not be considered a fiduciary under the following circumstances:

- Where it can be demonstrated that the recipient of the advice knows, or reasonably should know, that person is, or represents, a person whose interests are adverse to the interests of the plan or its participants or beneficiaries, and that the person is not undertaking to provide impartial investment advice;
- The person provides only investment education information and materials, pursuant to other DOL regulations;
- The person provides general financial information and data to assist a plan fiduciary in the selection or monitoring of securities or other property as plan investment alternatives, if the provider discloses in writing to the plan fiduciary that the person is not undertaking to provide impartial investment advice; and
- The person prepares a general report or statement that merely reflects the value of an investment of a plan, unless such report involves assets for which there is not a generally recognized market and serves as a basis on which a plan may make distributions to plan participants and beneficiaries.

Fee Requirement

In order to be a fiduciary, the provider must provide investment advice “for a fee or other compensation, direct or indirect.” The proposal defines this fee requirement to include fees or compensation for advice received by the person from any source and any fee or compensation incident to the transaction in which the investment advice has been, or will be, rendered.

Effective Date and What’s Next?

The proposal will be effective 180 days after publication of the final regulations in the Federal Register. Thus, the expansion of the fiduciary definition will not apply for some time. The DOL has reportedly received many comments, some favorable, some not; these rules may change prior to being finalized. Stay tuned.

If you have any questions about this memorandum, please contact Amelia M. Klein in our Albany office (518-533-3217, aklein@bsk.com) or any of the other members of our Employee Benefits and Executive Compensation Practice Group listed below.

In Central New York, call 315-218-8000 or e-mail:
 Mark G. Burgreen mburgreen@bsk.com
 Susan L. Dahline sdahline@bsk.com
 Stephen C. Daley sdaley@bsk.com
 Brian K. Haynes bhaynes@bsk.com
 Richard D. Hole rhole@bsk.com
 Ted Lewkowicz tlewkowicz@bsk.com
 Aaron M. Pierce apierce@bsk.com

In Buffalo / Niagara Falls call 716-566-2800 or e-mail:
 John C. Godsoe jgodsoe@bsk.com

In the New York Metro Area, call 646-253-2300 or e-mail:
 Michael P. Collins mcollins@bsk.com

In the Rochester Region, call 585-362-4700 or e-mail:
 Robert H. Kirchner rkirchner@bsk.com

Bill Seeks to End FSA "Use It or Lose It" Rule

The proposed Medical Flexible Spending Account Improvement Act ([H.R. 1004](#)), a bill that would allow employees to withdraw and pay taxes on any remaining funds in their medical flexible spending accounts (FSAs) instead of forcing them to forfeit the remaining balance to their employer, as current rules require, was introduced on March 11, 2011, by Reps. Charles Boustany, R-La., and John Larson, D-Conn.

FSAs are pretax accounts funded by employer contributions that can be used to pay for qualified medical expenses. The IRS adopted the forfeiture, or "use it or lose it," provision to prevent FSAs from being misused as tax shelters. However, a \$2,500 cap on FSA contributions set to begin in 2013 as required by the Patient Protection and Affordable Care Act eliminates the need for that concern, according to Save Flexible Spending Plans, an advocacy campaign that works to promote the accessibility and use of FSAs.

The proposed bill does not allow unused FSA funds to be rolled over and remain in the employee's account for the following year. In this regard, FSAs would remain distinct from health savings accounts (HSAs), in which funds may roll over and grow through compounding from year to year. HSAs, however, must be linked to high-deductible health plans, whereas FSAs carry no such requirement.

An 'Easy Fix'

"As the price of health care continues to climb, FSAs help millions of working Americans manage and hold down their out-of-pocket costs," said Joe Jackson, CEO of benefits provider WageWorks Inc. "Unfortunately, the 'use it or lose it' rule creates an unnecessary risk for FSA participants and a deterrent for non-participants. A change to this rule ensures that individuals will not be forced to use up or forfeit any remaining funds simply because their families' needs did not match their predicted annual health care expenses."

He added, "In considering changes to improve our health care system, removing 'use it or lose it' is an easy fix."

Forfeiture Fears

Boustany and Larson echoed that sentiment in a letter to their colleagues in Congress. "Over 85 percent of large employers offer FSAs, but only 20-22 percent of eligible employees enroll," stated the representatives. "The principal reason for not enrolling, or for underfunding accounts, is fear of the 'use-or-lose' provision."

One-quarter of participants forfeit some of their FSA funds every year, the bill's sponsors noted.

"Now is the time to finally eliminate the use-or-lose provision," Larson added in a [statement](#). "It is truly unfair that families must forfeit hard-earned dollars that they have reserved for health expenses if they remain in the account at the end of the year."

Employer Concerns

Some employers responded to the bill's introduction by noting there is a business case to be made for forfeiture of unused funds. Forfeited funds, they argue, are used by employers to offset the cost of administering the FSA.

In addition, the "uniform coverage" rule requires that employers make the full amount of coverage elected under the plan available to employees from the first day of the plan year, regardless of how much an employee has actually contributed to the account through salary deferral. When employees elect the full amount, submit and receive reimbursement up to the annual limit and then leave employment mid-year, the employer is liable for the expenses in excess of the employee's partial-year contribution. Forfeited funds help offset this cost, which can be substantial, some point out.

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<http://www.shrm.org/hrdisciplines/benefits/articles/pages/fsalegislation.aspx>

BSK 2010-2011 Breakfast Series

2010-2011 HR Breakfast Series

The Breakfast Series Seminars, co-sponsored by BS&K and MACNY, are designed to address current, important issues and provides updates and insight on a variety of important HR topics.

All Syracuse presentations will take place at MACNY headquarters (see below). Please see reverse for dates and location of our "On The Road HR Series" in Utica.

October 19, 2010

Wage/Hour Update: State and Federal DOL Crackdown and Class Action Issues – Do You Have Exposure?

- DOL Enforcement Initiatives; Review of Enforcement Positions and Opinion Letters and Regulatory Updates
- Deductions from Wages; Meal Periods; Hiring Documentation; and Other State Law Issues
- Class Action Developments
- Equal Pay Act & Potential Amendments to FLSA – Pending legislative and regulatory developments
- Hiring Incentives – how to qualify and practical concerns

November 16, 2010

FMLA and ADA Update: Handling Delicate Medical Issues with Employees

- FMLA Medical Certification Challenges and Solutions
- Intermittent Leave Issues
- ADA – Reasonable Accommodations & the Interactive Process
- Difficult Accommodation Issues
- FMLA and ADA Overlap – additional time off as accommodation and other issues

March 15, 2011

Social Media/Networking – Dangers and Opportunities

- How to Use Social Networking to Screen Applicants and Avoid Litigation
- Legal Pitfalls to be Avoided in the Monitoring and Managing of Employee Use of Social Media
- Developing an Effective Social Media Policy

April 19, 2011

What *all* Employers Need to Know About the NLRB: How new board appointments, rulings and legislative developments are effecting both unionized and non-unionized employers alike.

- The "New" Board – How Changes in Membership Have Influenced the Law
- NLRB Decisions and Impact on Organizing
- NLRB Decisions and Impact on Unionized Employers
- Legislative Developments – Status of EFCA and Other Initiatives
- Preparing for Union Organizing
- Best Practices for Unionized Employers

HRCI Recertification Credit: These programs have been submitted to the HR Certification Institute.

Registration and Breakfast: 7:30 a.m. to 8:00 a.m.; Program: 8:00 a.m. to 9:30 a.m.

Briefings held at MACNY Headquarters, One Webster's Landing, Syracuse, NY

Cost for each HR Breakfast Series Session is \$25 for BS&K Clients and MACNY Members

\$35 for Non-Clients and Non-Members (includes breakfast and handouts)

(Make checks payable to MACNY)

See reverse side for registration information.



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If you are unable to honor your registration, please provide 48 hour cancellation notification.
Otherwise, we will be charged by the venue and have to pass along the cost to you.