



## HR and Benefits Update

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### Open Enrollment Trends Here to Stay

Open enrollment season is a time of year when employers evaluate change — changes to plan design, implementations of wellness programs and methods to improve employee communications, to name a few. In today's business environment, employers are faced with uncertainty and an ever-changing health care landscape. Therefore, during the decision-making process, it's vital for employers to be aware of emerging open enrollment trends.

### Technology That Promotes Employee “One-Stop Shopping”

It's no surprise that the use of technology throughout the open enrollment process can lead to efficiencies for employers and employees alike. The last few years have seen advances in technologies geared toward improving the open enrollment experience. In particular, these advances have focused on providing employees with the ability to log in to a centralized employee portal to research and take action on all their benefits and HR needs without having to log in to multiple vendor applications and/or websites. The “one-stop shopping” approach improves benefits and HR delivery by streamlining multiple systems while promoting employee portal utilization.

## Social Media

Much has been said on the importance of social media. Some claim it's merely the fad du jour, while others believe it's here to stay. One of the biggest advantages of social media is the ability to equip employees with the right communications tools to assist them in making better and more informed decisions. Not surprisingly, a diverse workforce yields different learning styles. Understanding which social media tools (podcasts, interactive videos, audio mp3 files, etc.) best match an employer's workforce will not only improve employees' understanding of their benefits offerings, but also lead to a greater appreciation of those offerings.

## Promotion of Employee Health Literacy

With the rise of consumerism and employees having to bear a greater portion of the cost of their benefits, employers have been increasingly tasked with providing their workforce with adequate decision-making resources and promoting employees' understanding of their benefit programs. The implications of poor health literacy are manifold, including increased health care costs. According to the Institute of Medicine's report "Health Literacy: A Prescription to End Confusion," an estimated \$73 billion is spent each year on medical care due to poor health literacy. The authors also estimate that close to half of the population has difficulty understanding and using health information. Those employers who take a proactive approach in promoting their workforce's health literacy will foster not only a better educated workforce, but one that makes cost-efficient decisions.

The health care landscape is continually evolving. Those employers who can differentiate and incorporate lasting trends in the open enrollment process will have a competitive advantage. Lasting trends – such as technology that promotes one-stop shopping, social media and improvements in employee health literacy – will result in a more engaged workforce that better understands and appreciates their employer-sponsored benefits offerings.

## Up Close: Changing Market Conditions and Participant Behavior

J.P. Morgan recently released a white paper titled "Searching for Certainty: Observations and opinions on how changing market conditions are affecting 401(k) plan participant outcomes." The study, which surveyed 1,000 individuals with 401(k) plans nationwide, reveals a fundamental shift since 2007, largely due to the market conditions of the past several years.

According to the paper, participants are focusing on financial issues, but "on a near-term basis." Half of the respondents indicated their top financial concern was meeting monthly obligations. A distant second and third were saving for retirement and reducing their mortgage, respectively.

With regard to company-sponsored retirement plans, the study concluded that many participants remain "accidental investors," because they don't actively manage their accounts. According to the study, 45 percent of participants never call or visit the provider's website to monitor their accounts.

The white paper also discussed the growing trend called the "pensionization" of defined contribution plans. Employees appear to be relying upon employer decisions with their retirement plans. Examples to combat employee inertia include automatic enrollment, automatic deferral escalation and qualified default investment alternatives.

Finally, the report brought back the concept that we often see in these types of studies: the goal of using the retirement plan to bridge the gap between what programs such as Social Security will provide and what the participant will actually need in retirement. Most studies in the past focused on lower-income employees, but this study identified an emerging risk for high-income employees due to the fact that they can expect a smaller percentage income replacement from Social Security. As a result, this group must do more to supplement that shortfall.

According to J.P. Morgan, the high-income group (those defined as earning over \$100,000 per year) has the following characteristics:

- Half are "concerned about having enough money to make ends meet."
- Half of all loans are to high-income employees, and they represent half of the value of all loans, despite the fact that the highly compensated group as a whole is typically a fraction of all employees.
- A quarter of high-income employees have more than \$10,000 in credit card debt, versus only 12 percent of those making less than \$50,000 per year.

In short, education needs to focus on how decisions today can affect the dollars of tomorrow. To learn more about education trends or solutions for high-income employees, contact your plan consultant.

## Compliance FAQ

Q. May an employer automatically terminate an employee with a disability who needs a longer leave than the time allowed under either FMLA or the employer's written policy?

A. No. As background, under the Americans with Disabilities Act (ADA), employers with 15 or more employees are prohibited from discriminating against individuals with a disability, which would include termination.<sup>1</sup> Additionally, the U.S. Equal Employment Opportunity Commission (EEOC) maintains that an automatic policy requiring that employees be terminated following the expiration of leave under the federal Family Medical Leave Act (FMLA) violates the ADA. A policy of this type that allows an employer to automatically terminate employment either after FMLA expires or following non-FMLA leave under an employer's policy is generally known as a "no-fault" leave policy. Enforcement guidance issued by the EEOC states: "If an employee with a disability needs additional unpaid leave as a reasonable accommodation, the employer must modify its 'no-fault' leave policy to provide the employee with the additional leave."<sup>2</sup> This is consistent with the requirement under the ADA that employers must reasonably accommodate individuals with disabilities, and a leave of absence may constitute a reasonable accommodation in some circumstances. An employer would not necessarily need to modify the "no-fault" leave policy if it can show that there is another effective accommodation that would enable the person to perform the essential functions of his or her position, or granting additional leave would cause an undue hardship.

Keep in mind that the ADA does not protect disabled employees who are unable to perform the duties of their job. The law only protects those who are able to perform their duties with or without accommodation. Thus, an employer should determine whether a disability can be reasonably accommodated with a temporary leave of absence or extension of an existing leave. As a result of the recent enactment of the Americans with Disabilities Amendments Act, it is easier for employees to qualify as disabled, meaning it is more important for employers to consider and explore reasonable accommodations in order to ensure that their policies are in compliance.

Note that if a leave is covered by both the ADA and the FMLA, an employer should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take. Some employees eligible for FMLA leave will not be entitled to leave as a reasonable accommodation under the ADA, either because they do not meet the ADA's definition of disability or because the need for leave is unrelated to that disability.<sup>3</sup>

Therefore, as a best practice, fixed leave policies should be amended to make clear that the leave period can be extended or adjusted as a reasonable accommodation where such an extension or adjustment would not result in undue hardship to the employer.<sup>4</sup> Unfortunately, the EEOC has not provided guidance about how much leave an employer must provide if extended leave is a reasonable accommodation, but it is clear that the appropriate length of leave under the ADA will require an individualized analysis to determine whether additional leave might be an appropriate accommodation, and that an employer cannot have a policy in place that never allows for the possibility of extended leave as a reasonable accommodation.

Please note that we have only addressed the interaction of federal law. There may be state laws to take into consideration as well. For more information, please contact your advisor.

### Footnotes

<sup>1</sup> 42 USC 12112(a).

<sup>2</sup> U.S. Equal Employment Opportunity Commission. "Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act." Oct. 17, 2002. [www.eeoc.gov/policy/docs/accommodation.html](http://www.eeoc.gov/policy/docs/accommodation.html).

<sup>3</sup> U.S. Equal Employment Opportunity Commission. "Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act." Oct. 17, 2002. [www.eeoc.gov/policy/docs/accommodation.html#N\\_59\\_](http://www.eeoc.gov/policy/docs/accommodation.html#N_59_).

<sup>4</sup> U.S. Equal Employment Opportunity Commission. "Written Testimony of John Hendrickson, Regional Attorney, EEOC." June 8, 2011. [www.eeoc.gov/eeoc/meetings/6-8-11/hendrickson.cfm](http://www.eeoc.gov/eeoc/meetings/6-8-11/hendrickson.cfm).

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