



Information Every Business Needs to Know

# HR & Benefits Advisor

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## In This Issue

[Do you have Social Media Policy?](#)

[Writing a Dynamic Job Description](#)

[Employer Provided Vehicles](#)

[Mental Health Parity](#)

[COBRA Subsidy Payments](#)

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## New Rules on Mental Health Parity



The U.S. Departments of Labor, Health and Human Services (HHS), and the Treasury jointly issued new rules providing parity for consumers enrolled in group health plans who need treatment for mental health or substance use disorders. The new rules prohibit group health insurance plans from restricting access to care by limiting benefits and requiring higher patient costs than those that apply to general medical

## Employers Must Consider Implementing Social Media Policies

By Andrew W. Singer, Esq. and Jason B. Klimpl, Esq.

The boundaries between personal and professional have become increasingly blurred due to the growing prevalence of internet-based social media, including interactive websites such as Facebook, MySpace, LinkedIn and Twitter. While social media outlets may be excellent platforms for employees to network and promote their employer's business, a myriad of problems may result from an employee's improper or unlawful use of a company's name, reputation or confidential information while using such social media.



As a result, all employers must consider whether to implement a policy to guide their employees in responsibly and lawfully using social media and any employer that encourages its employees to use social media to further business objectives should have a social media policy in place. In deciding whether a social media policy is appropriate, an employer should first reflect upon the concepts described below.

**Employee Use of Firm Identity.** If an employee uses an employer's name or a company e-mail address to communicate with or otherwise use social media, a third-party may be led to believe that the employee is speaking or writing on behalf of the company. A third-party may think that the employee is acting in an official capacity with authority to bind the employer, or that certain views espoused by the employee are the views of the company. For this reason and others, the FTC has implemented rules effective December 1, 2009, regulating the use of testimonials in advertising. Under these rules an employer may be held responsible for employee maintained blogs or other employee postings about the employer's products and services. In an effort to avoid these problems, a social media policy may direct employees in such situations to use a disclaimer explicitly stating that his or her views are not those of the employer. The social media policy may also provide that employees are not permitted to act or speak as a representative of the company while using social media, unless given prior permission.

**Conflicts with Employment Responsibilities.** Employees should be prohibited from using social media – whether in or away from the office – in a way that conflicts with their professional obligations or work

or surgical benefits. The rules implement the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The new rules are effective for plan years beginning on or after July 1, 2010, and apply to employers with 50 or more workers whose group health plans choose to offer mental health or substance use disorder benefits.

The new law requires that any group health plan that includes mental health and substance use disorder benefits along with standard medical and surgical coverage must treat them equally in terms of out-of-pocket costs, benefit limits and practices such as prior authorization and utilization review. These practices must be based on the same level of scientific evidence used by the insurer for medical and surgical benefits. For example, a plan may not apply separate deductibles for treatment related to mental health or substance use disorders and medical or surgical benefits. They must be calculated as one limit.

A press release from the DOL on the regulations is [available here](#).

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## **COBRA Subsidy Payments in 2010**

responsibilities. For example, an employee's use of social media to promote services or businesses that compete with his or her employer may be prohibited. A policy should prohibit an employee's excessive use of social media that results in deficient work performance, and employers may wish to limit employees' in-office use of social media to certain hours. Finally, to the extent employees are permitted to use social media during working time, the policy should prohibit employees from using company computers or other equipment to conduct any commercial activity unrelated to the employer's business.

**Confidentiality and Intellectual Property Protections.** A social media policy should address employees' online use and dissemination of an employer's confidential and proprietary information. The policy should clearly define what information is confidential to the employer and state how employees may or may not use such information. Employers may risk any right they have to protect client contact information by encouraging employees to connect with, link to or friend the employer's clients through the employee's personal social media accounts. These risks need to be balanced with the potential benefits to a business of doing so. The policy should also provide that the employer's intellectual property, including trademarks, logos, and copyrighted material, may not be used by the employee while using social media without the company's prior consent.

**Employee Performance Feedback.** In the event of a lawsuit by a terminated employee, positive feedback posted on social media by co-workers or supervisors may be used against the company to show that the worker was performing satisfactorily. For instance, in the event of a discrimination claim where a company terminated a worker for poor performance, it would be harmful to the company if one of its supervisors had "recommended" the worker on LinkedIn. As a result, a social media policy may contain a provision that prohibits employees from using social media to comment on or display information concerning the work performance of other employees without prior company consent.

**Workplace & Co-Worker Privacy.** Employees who use social media should be reminded of the need to honor the privacy rights of their co-workers. Thus, a policy may state that employees should seek permission from co-workers before writing or displaying information that might be considered a breach of privacy or confidentiality. Further, the social media policy should prohibit employees (including supervisors) from gaining or attempting to gain unauthorized or unlawful access to another employee's private and secure social media platform, which may, for instance, be a violation of the federal Stored Communications Act and various state privacy laws.

**The Employer's Right to Monitor.** Companies should be open with their employees and inform them of the company's right to lawfully monitor their use of social media to protect legitimate business interests. However, the social media policy should also prohibit employees from using any information derived from an applicant's or employee's use of social media to unlawfully discriminate against that individual on the basis of a protected class.

**Advising Employees to Use Common Sense.** Any social media policy should appeal to employees' common sense and sound judgment. The policy should remind employees that anything they write or display may be used to form opinions about the company and may permanently



The IRS has responded to employer questions related to receiving the 35% share of the COBRA premium assistance in 2010 for 2009 coverage and what to do as it relates to Form 941 with the following guidance. If an employer receives an assistance eligible individual's 35% share of the COBRA premium in 2010, the employer may claim the credit for the related premium subsidy on Form 941 for either the quarter in 2010 in which it receives the individual's 35% premium payment or a later quarter in 2010, but not for a quarter in 2009, regardless of the fact that the premium is for coverage during 2009.

**Q.** Is the employer required to claim the credit on Form 941 for the quarter during which the COBRA subsidy is provided to assistance eligible individuals?

**A.** No. Instead of claiming the credit on Form 941 for the quarter during which the COBRA subsidy is provided, the employer may generally choose to claim the credit on Form 941 for a later quarter in the same calendar year.

Alternatively, if the

remain in the public domain. In this regard, the policy should urge employees to use common sense and utilize social media in a knowledgeable, respectful, and professional manner. Specifically, the policy should prohibit employees from jeopardizing the reputation or interests of the employer by making or engaging in personal attacks, obscenities, pornography, lewdness, defamation, harassment, intellectual property infringement, and other inappropriate behavior. Finally, employees should be reminded that any unlawful conduct while using social media may result in civil or criminal charges against them.

**Conclusion.** A well-crafted social media policy may be a useful tool for employers to prevent the dissemination of its confidential information, the improper use of its intellectual property, and a host of other problems stemming from employees' use of social media. Consequently, companies should consider whether implementing such a policy would further their business objectives and fit within their company culture.

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## Writing a Dynamic Job Description

How do you write a job description that really works for your company? It's all about a process that involves detailed investigation, collaborative effort, and streamlining of company policy. By the

time you have successfully completed a job description, you will not only have a very effective tool in filling a job opening, but you will also help to reshape organizational standards for your company.

### First, Perform a Job Analysis

To better understand the position you are filling, your company should first perform a job analysis. A job analysis is an investigation into the purpose and necessary requirements of any particular job. It should combine personal observation, interviews and collected data, such as questionnaires or work entries.

### Identify the Job's Purpose

The first step in performing your job analysis is to identify the reasons why the job exists at all. How does the job contribute to the success of your organization? Then, list what duties are necessary to make these important contributions. This list should only be a handful of duties, and



employer has not claimed the credit on the original Form 941 for the quarter during which the COBRA subsidy was provided, the employer can file [Form 941-X](#) for that quarter. In all cases, however, if an employer chooses to reduce its payroll tax deposits during a quarter by the amount of subsidy provided during the quarter (or during a previous quarter), it must claim the credit for that subsidy amount on Form 941 for the quarter during which its payroll tax deposits were reduced. In addition, of course, an employer may not claim credit for the same subsidy amount on Forms 941 for more than one quarter.

**Q.** If, in 2010, an employer receives payment of an assistance eligible individual's 35% share of the COBRA premium for 2009 coverage, does question [FP-15](#) permit the credit for the related 65% premium subsidy to be claimed for a quarter in 2009?

**A.** No. If an employer receives an assistance eligible individual's 35% share of the COBRA premium in 2010, the employer may claim the credit for the related premium subsidy on Form 941 for either the quarter in 2010 in which it receives the individual's 35% premium payment or a later quarter in 2010, but not for a quarter in 2009, regardless of the fact that the premium is for coverage during 2009. In all cases, however, if an employer chooses to

not yet go into significant detail.

### **Reconstruct the Work Setting**

Next, you should recreate the environment in which the employee will work. Start with the overall worksite itself. How is the site laid out? What equipment is used? Does the employee have to travel on or off the premises? What physical conditions will the employee encounter or experience? Note whether the employee will interact with the public or customers, or remain in a private setting.

After describing the worksite, think about the employee's immediate workstation. How is the area arranged? What, if any, equipment will he or she use?

### **List Activities**

To complete your job analysis, record the activities the employee will be required to perform. Is there an order in which work is performed on a daily basis? Do you expect the employee to produce specific results? Be sure to identify and list results or expectations.

### **Determine the Essential Functions**

Once you have completed a job analysis, it is time to write the basic requirements or essential functions of the job. The job analysis will help you to clearly define the duties, activities and results expected of the employee. Also be sure to avoid preferences that do not relate to the essential functions of the job, such as an advanced degree for clerical work.

Include the amount of time spent on each task, possibly with ratios or percentages, as long as the figures are accurate. If appropriate, allow flexibility in the position so that an applicant does not believe he or she is pigeonholed into only a few tasks when you may want the employee's role to grow. It is also important to include the input of several managers and employees to craft a more accurate and complete job description.

### **Recruiting and the ADA**

When developing your job description, be sure you do not violate disability discrimination laws such as the Americans with Disabilities Act. Also, review your state's discrimination laws as well. Compliance guidance is available from the Office of Disability Employment Policy and the [Job Accommodation Network](#) (JAN). For more information on recruiting and hiring people with disabilities, please review the [Recruiting and Hiring](#) section on [Disability.gov](#).

### **Use Your Job Description as a Company Standard**

Finally, a skillfully-developed job description can reshape your company standards. The description should serve as the basis for how you evaluate performance in that position, since the company took the time to carefully investigate, define and revise the key requirements of the job. Using the job description in this regard will promote consistency throughout the employee relationship, from recruitment and training to performance review and succession. The more consistent and objective your company's documents are regarding all job-related descriptions and reviews, the less exposure you will have to issues related to arbitrariness, favoritism or discrimination.

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reduce its payroll tax deposits during the quarter based on the receipt of the individual's 35% premium payment, the employer must claim the credit for the related subsidy amount on Form 941 for the quarter during which its payroll tax deposits were reduced. In addition, of course, an employer may only claim credit for the subsidy amount once.

## 2010 Values for Vehicles Provided by Employers

The IRS has released Rev. Proc. 2010-10, which updates for 2010 the maximum allowable fair market value (FMV) of an employer-provided vehicle for use in determining the value of an employee's personal use of the vehicle.



If an employer provides an employee with a vehicle that is available to the employee for personal use, the value of the personal use must generally be included in the employee's income and wages. (IRC § 61; Treas. Reg. § 1.61-21)

- The maximum value of employer-provided vehicles first made available to employees for personal use for which the vehicle cents-per-mile valuation rule provided under section 1.61-21(e) of the Income Tax Regulations may be applicable is \$15,300 for a passenger automobile and \$16,000 for a truck or van;
- The maximum value of employer-provided vehicles first made available to employees for personal use in calendar year 2010 for which the fleet-average valuation rule provided under section 1.61-21(d) of the regulations may be applicable is \$20,300 for a passenger automobile and \$21,000 for a truck or van.

For additional information, see [Rev. Proc. 2010-10](#).