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NEWSLETTER FOR DECEMBER 2006

State health proposal targets small employers

So far, most of the mandatory health benefits bills around the country have taken aim at Wal-Mart and similar high firms.

But a new bill in Massachusetts targets even small employers: This one would affect all organizations with 11 or more employees.

Under the terms of the bill, all affected firms must:

- either provide health coverage or pay to the state a per-employee annual fee of \$295, and
- pay between 10% and 100% of all hospital bills over \$50,000 for uninsured workers at your firm who make multiple use of emergency room services (the bill calls these employees "free riders") and
- offer all employees a Section 125 medical cafeteria plan to reimburse out-of-pocket medical expenses on a pre-tax basis.

Non-compliant firms would get increasingly stiff fines.

The good news is this bill is likely to be softened to increase its chance of passage. The bad news: Similar bills affecting small employers loom in other states as well..

Info: <http://snipurl.com/bill280>

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### **Study: To better control health costs, put your eggs in many baskets**

What's the one best way to control healthcare costs? There is no simple best way, finds a new Watson Wyatt and National Business Group on Health study.

Instead, organizations that combine a variety of plan-design and education techniques get the best results.

The study looked at the different programs and practices in the best-performing of 585 health plans at organizations of various sizes.

None of the plans had all of the six features listed below, but most had several in combination:

- decisions based on a firm-specific claims analysis
- giving employees information related to their specific health issues
- disease management programs
- offering premium discounts and other incentives based on wellness program participation
- using tiered provider networks, and
- consolidating the plan design for physical and mental health benefits to address potentially overlapping health issues.

Typically, organizations that use most of these strategies have yearly premium increases of at least 3% lower - and often even better - than the national average for that plan year.

Many firms remain worried over how much more of the cost-share burden can be shifted to employees.

The study found a 25% total employee cost share - including premiums, deductibles and copays - is the current ceiling.

Beyond 25%, and employees start to avoid needed care and develop a negative attitude about the company's benefits.

End result: higher long-term health costs, lower morale and rampant absenteeism and presenteeism.

What about HSAs? The study found they're only great cost-savers if they're backed up by support tools.

Info: <http://snipurl.com/cost280>

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Exec has to make good for \$38,200 shortfall in 401(k)

Lack of accurate record-keeping is one of the first things lawyers - or the Department of Labor - pounce on in a 401(k) dispute.

What happened: A Rhode Island employer lacked a tracking system to ensure employees' contributions had been paid to its 401(k) carrier. Nearly \$38,200, scattered over several years, was unaccounted for.

Result: The DOL went after the company president. He had to pay \$38,000 out of pocket to make up for the shortfall.

Cite: Chao v. Lukens, Civ. Action No. 06-93-ML, 3/30/06.

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## **Sharpen your Benefits Judgment**

Was firm negligent in its choice of third-party administrator?

"Betty, I need to see you," said Widget, Inc., employee Cecily Philips. Benefits manager Betty Murphy was used to Cecily's interruptions. A chronic complainer, Cecily always had an "urgent" issue to discuss.

"Sure, Cecily," Betty said calmly. "Let's talk at 3 o'clock after I'm...."

"It can't wait," Cecily whined.

Frowning slightly, Betty motioned for Cecily to close the door.

"What's wrong?" asked Betty.

"I've had it with those idiots at the insurance company," griped Cecily. "For months they said my son wasn't enrolled in the plan."

"I remember", said Betty. "I helped you fix that."

"Now they deny my son's visit to an ENT specialist, even though we got a referral," said Cecily.

"File a complaint. Here's the form."

Cecily ignored Betty's suggestion and continued her rant.

"Look. I've talked to other people around here. We've all dealt with this nonsense. There's a fistful of denied claims, and it's impossible to speak to a live person when you call."

"What are you getting at, Cecily?" asked Betty.

"We're filing a class-action lawsuit against Widget. Either this company did no homework before choosing this plan or you misled us about our health coverage.

"We deserve to be reimbursed for all these denied claims."

Did Widget win in court?

## **The Decision**

Yes. Widget won.

Cecily and the other employees claimed Widget had violated its fiduciary responsibilities under ERISA by negligently selecting - and retaining - a health-plan TPA that didn't have its act together.

As evidence, the employees pointed to a series of questionable eligibility decisions and problems getting wrongly denied claims corrected.

In response, the company showed the court its plan documents and benefits handbooks. There were specific procedures for filing complaints with the TPA - but many employees never bothered to read the instructions, and relied on Betty to set things right.

Widget also argued it lived up to its fiduciary duties because Betty reviewed the plan's denied-claims data and made coverage adjustments accordingly.

The court sided with Widget. In his decision, the judge noted the plan documents spelled out specific steps for filing formal complaints and settling claim disputes. It was up to employees to read and follow these steps.

By itself, the judge wrote, employee dissatisfaction with a benefits plan doesn't mean there's been an ERISA fiduciary foul-up by the employer.

Analysis: A sweet victory

ERISA fiduciary lawsuits have spread like wildfire for 401(k)s, so it was just a matter of time before lawyers tried the same tactic in a health-plan dispute. But as long as your plan documents are in order, you should be safe.

Cite: Ball v. Transcon Co., U.S. Dist. Ct., S.D., Ohio, No. 1:04-CV-00578, 2/24/06. Dramatized for effect.

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