

BenefitBeat



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NEW FMLA GUIDE FOR EMPLOYEES

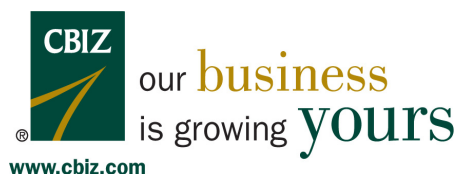
The Family and Medical Leave Act (FMLA) is a law enacted in 1993. It applies to employers with 50 or more employees. FMLA provides up to 12 weeks of job protected leave in the event of serious health condition of an employee or his/her family member, or for the addition of dependents through birth or adoption. In addition, the FMLA now provides certain military-related leave.

The DOL's Wage and Hour Division has posted a **new guidebook** directed at employees to ensure that they understand their rights and obligations under the FMLA. While it is intended for employees, it may be useful for employers, as well. An employer subject to FMLA may want take a look at the guide. The employer may be able to point to information contained in the guide to explain to employees such issues as:

- Eligibility;
- Serious health condition;
- Notice obligations; and
- Medical certification

While this guide does not break new ground, it is another tool that the government is providing to ensure compliance with the law.

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HIPAA PRIVACY AND SECURITY AUDIT PROTOCOLS

The HIPAA privacy and security rules were enacted in 1996, as part of the Administrative Simplification law. They were later amended in 2009 by the Health Information Technology for Economic and Clinical Health ("HITECH") Act. These rules are intended to ensure protection of individual identifiable medical information, specifically protected health information (PHI). This includes PHI contained both in paper form, and that which is maintained electronically.

The HIPAA law applies to covered entities including health plans, health care clearinghouses and health care providers, and through the HITECH law, to business associates.

Last year, the HHS Office of Civil Rights initiated an audit program (see **New Pilot Audit Program: HIPAA Privacy and Security Compliance**, January 2012 *Benefit Beat*). Recently, the OCR issued an **Audit Protocol**. These charts provide great information on what would be reviewed in the event of an audit. Specifically, the procedures outline a covered entity's compliance with the privacy rules relating to:

1. Notice of privacy practices;
2. Individual rights, such as requests for privacy protection and access to an individual's PHI;
3. Compliance with administrative rules and the use and disclosure rules;
4. Amending PHI; and
5. Accounting of disclosure.

In addition, the protocol reviews compliance with the HIPAA Security and Breach Notification rules.

Anyone responsible for compliance with these rules should use these charts as a roadmap.

ACA COMPLIANCE AUDITS

Not only is it HIPAA privacy compliance that is being reviewed by the government, but the DOL is making efforts to ensure that health plans comply with the HIPAA portability segment of the law as well. The DOL doesn't stop there – they are including, in their audits, a review to ensure a plan is compliant with the Affordable Care Act provisions that are in effect. Among these are the requirement to allow dependent children to remain on their parent's plan until age 26, the requirement to impose no preexisting condition exclusion on a child under age 19, the requirement to impose no lifetime limits on essential benefits, implementation of an internal claims, appeals and external review process, as well as substantiation and disclosure requirements relating to grandfathered health plan status. Clearly it the intent of the government agencies that plans comply with applicable rules.

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