

**HR Client Advisory**

September 2008

**Insurance Carriers Beginning  
Communication on New  
Dependents**

Employers should be on alert for communication from their group health insurance carriers on the new definition of “dependent” that will take effect for CT issued group health plans on January 1, 2009. Under the new law (see our July client advisory for more details), the definition of dependent in Connecticut group health insurance policies will be expanded to include dependents under age 26, who are unmarried, living in Connecticut and not covered under another group health plan through their own employment.

The law takes effect for group health plans on January 1, 2009. The changes for individual policies take effect for new policies issued on or after January 1, 2009 and for existing policies on the first date of policy renewal after January 1, 2009. Group health insurance carriers must provide an open enrollment for these newly eligible dependents and communicate with their policy holders on the provisions of the new law and the open enrollment periods.

Employers should not rely only on their carriers’ communications to inform their employees of this enrollment right. In particular, employers should be mindful that an employee may have a dependent that will become eligible for coverage on the company’s insurance plan, but that dependent is not a dependent for tax purposes. As a result deductions for health insurance coverage must be made on a post-tax, not-pretax basis. In addition, the value of the benefit provided to that non-tax dependent is attributable as income to the employee.

*Editor’s Note: Because of the significant interest in this issue, a second seminar for clients has been scheduled for October 21, 2008. Please see p. 2 of this Advisory for additional details on the program.*

**Landmark Federal ADA  
Amendments Pass Senate, onto  
House, then to Law**

On September 11, the U.S. Senate unanimously passed Senate Bill 3406, the ADA Amendments Act of 2008. The Act, which was discussed in our July advisory will, breathe new life into the ADA and impose new problems for employers.

The Amendments would effectively eliminate the existing legislation’s requirement that the employer must have viewed the disability as one that “substantially limits a major life activity.” In addition, the amendments would change the term “substantially limits” to “materially restricts” in an attempt to clarify and broaden the old the language. The Amendments exclude “transitory and minor” impairments from coverage, transitory being “6 months or less.” Further, the determination of who is disabled will be made “without regard to the ameliorative effects of mitigating measures” except with regard to “ordinary eyeglasses or contact lenses.”

The U.S. House of Representatives will likely review and pass the Senate Bill by the end of this week, then it will be on to President Bush to sign into law. Senate Bill 3406 overturns Supreme Court decisions that have applied a narrow reading of the ADA. We anticipate that the House will pass the Bill and that the Amendments will become law, and we will provide our clients with an update in the future.

**CT Workers’ Comp Commission Ups Mileage Rate**

The mileage reimbursement for all work-injury-related travel expenses incurred on or after Aug. 1, 2008 is not 58.5 cents per mile. This rate increase is up from 50.5 cents; it applies to all claimants regardless of injury date and matches the federal mileage reimbursement rate.

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## **EEOC Issues Q&A on Performance and Conduct Issues under ADA**

The EEOC recently issued a Q&A guide addressing frequently asked questions on how the ADA, Americans with Disabilities Act, applies to various performance and conduct issues. The guide was created and issued based on the questions employers and individuals have been asking the EEOC about.

The guide clearly explains that employers can apply the same performance standards to all employees, including those with disabilities, and that the ADA does not affect an employer's right to hold all employees to basic conduct standards. However, employers must make reasonable accommodations that enable individuals with disabilities to meet performance and conduct standards.

Using examples based on real-life cases and scenarios, the guide explains how standards should be applied, the appropriate role of reasonable accommodation, how and when employees should request accommodations, and how an employer should handle requests for accommodations. Other topics addressed include issues related to attendance, dress codes, and drug and alcohol use, and the circumstances in which employers can ask questions

about an employee's disability when performance or conduct problems occur.

Most of the examples are in non-regulatory language. We highlight one, related to alcoholism: The employer has warned Mary several times about her tardiness. The next time the employee is tardy, the employer issues her a written warning stating that one more late arrival will result in termination. The employee tells the employer that she is an alcoholic, her late arrivals are due to drinking on the previous night, and she recognizes that she needs treatment. The employer does not have to rescind the written warning and does not have to grant an accommodation that supports the employee's drinking, such as a modified work schedule that allows her to arrive late in the morning due to the effects of drinking on the previous night. However, absent undue hardship, the employer must grant the employee's request to take leave for the next month to enter a rehabilitation program.

The EEOC guide is available on the agency's web site at [www.eeoc.gov/facts/performance-conduct.html](http://www.eeoc.gov/facts/performance-conduct.html).

### **EBSA Published Guide on 2009 Schedule C**

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) announced guidance to help plan administrators and service providers comply with new requirements for Form 5500 Annual Returns/Reports filed for plan year beginning on or after January 1, 2009. Note that there is an electronic filing requirement for the Form 5500 for reporting years beginning on or after January 1, 2009. See the website for more information:  
[www.dol.gov/ebsa/faqs/faq\\_scheduleC.html](http://www.dol.gov/ebsa/faqs/faq_scheduleC.html).

### **Upcoming: Second Seminar on New Definition of Dependent in Connecticut**

Date: Tuesday, October 21, 2008

Location: Four Points by Sheraton, Meriden, CT

Time: 8:30 AM – 11:30 AM

Due to interest and demand, this special program is being run a second time and will address the definition and the steps needed for implementation. We will review the special problems for employers and insurance agents in addressing this new provision and cover "to do's" for employer implementation.

Contact the firm by telephone or email for more information or if you would like to register to attend.

## **CT CHRO: DISCRIMINATION FILINGS UP; RETALIATION JUMPS**

Retaliation claims jumped 21% last year as reflected in the case reports of the Connecticut Commission on Human Rights and Opportunities (CHRO). The commission recently released its annual case processing report for the 2007 – 2008 fiscal year, which concluded on June 30, 2008. The numbers show that employment discrimination claims filed with the CHRO are up from last fiscal year, from 1743 claims to 1814. The basis for claims was fairly evenly split amongst the top five: color, age, sex, physical disability, and race (with color at the lower end with 502 claims, and race with the highest at 637 claims).

The number of retaliation claims rose significantly from last year: 618 claims for 2007-2008, compared to 507 for 2006-2007, a 21% increase.

A majority of the cases that proceeded past the initial Merit Assessment Review of the CHRO were withdrawn with settlement. In the 2007-2008 year, only six cases reached a final Human Rights Referee decision through a “public hearing,” essentially a less formal trial with a CHRO Referee as the Judge and Jury.

The Law Firm of Robert D. Noonan, Esq. provides legal services to employers.

The firm:

- Represents primarily employers in employment discrimination cases;
- Writes and reviews employee handbooks;
- Advises employers on day-to-day workplace issues;
- Trains supervisors and managers in sexual harassment, interviewing, leave issues, performance appraisals and the law of the workplace.

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## **EEO-1 Reporting and VETS Due September 30**

The EEO-1 Report must be filed by employers with federal government contracts of \$50,000 or more and 50 or more employees; and employers who do not have a federal government contract but have 100 or more employees. The filing deadline for the 2007 EEO-1 Survey is September 30, 2008. Notification letters will be mailed to employers beginning in July 2008.

- Further information about the EEOC is available on its web site at [www.eeoc.gov](http://www.eeoc.gov). The VETS-100 Report must be filed by contractors and subcontractors who receive Federal contracts of \$100,000. Companies are encouraged to submit VETS-100 reports online at [vets.dol.gov/vets100](http://vets.dol.gov/vets100) or by mail.

### **IRS Issues Helpful Guides: Fringe Benefits, HSAs**

Publication 15-B (2008), Employer's Tax Guide to Fringe Benefits can be downloaded at:  
<http://www.irs.gov/publications/p15b/index.html>.

The Guide includes explanations on what fringe benefits are taxable and on fringe benefits exclusion and valuation rules. The IRS also issued IRS notice 2008-59 to provide guidance on Health Savings Accounts using a Q&A format.

The notice can be accessed at:  
<http://www.treas.gov/press/releases/reports/notice200859.pdf>.