

Mandatory Automatic Enrollment

Smart first steps



The issue

Employers with more than 200 full-time employees that are subject to the Fair Labor Standards Act (FLSA) will have to establish an automatic enrollment program for their group health plans. The automatic enrollment program will be used to enroll new full-time employees and to continue the enrollment of current employees who do not affirmatively opt-out of coverage.

There will be a notice requirement that must be satisfied by each automatic enrollment program. Additionally, each automatic enrollment program will have to include an option for individuals to opt-out of coverage in which they have been automatically enrolled. The Department of Labor is expected to issue detailed guidance on these and other requirements.

State wage-garnishment and similar payroll-related laws are preempted to the extent they otherwise would preclude an employer from implementing an automatic enrollment program.

Effective date: The Department of Labor has taken the position that employers are not required to comply with the automatic enrollment mandate until it issues implementing regulations. The Department of Labor expects to complete the rulemaking process by 2014.

Employers subject to the FLSA that sponsor group health plans will have to comply with the automatic enrollment mandate even if their group health plans are grandfathered health plans.

Key implication: Plan design

Employers that do not currently have an automatic enrollment program for their group health plans may be required to implement one when the Department of Labor issues implementing guidance. Those that do have automatic enrollment programs may need to modify those programs to conform to the Labor Department's guidance.

Key implication: Administration

The requirement to automatically enroll new full-time employees who do not affirmatively opt-out of coverage likely will lead to some individuals being enrolled even though they do not want or need the coverage. However, the mandate apparently will give these employees the right to opt-out after they have been automatically enrolled. It is not clear from the statute whether automatic enrollees will have to be allowed to drop coverage altogether, or just switch from the default coverage option to other plan options. Either way, implementing and operating automatic enrollment programs will create new administrative challenges for employers.

Key implication: Communications

In addition to mandatory disclosure requirements, employers will need to develop a communications strategy to ensure new and continuing employees are aware of the automatic enrollment program, who is covered, how it works, the consequences of not making an affirmative election, and any rights they have to make changes once they have been automatically enrolled in a benefit package. An effective communications strategy can help address many of the potential administrative challenges created by an automatic enrollment program.

What employers are subject to FLSA?

The FLSA applies to all employees of certain "covered enterprises."

A covered enterprise is any of the following:

- A company/organization with at least 2 employees and annual dollar volume of sales or receipts of at least \$500,000
- A hospital or other institution primarily engaged in the care of the sick, the aged, the mentally ill or developmentally disabled who live on the premises (it does not matter if the hospital or institution is public or private, or operated on a for-profit or not-for-profit basis)
- A pre-school, elementary, or secondary school, or an institution of higher learning, or a school for mentally or physically handicapped or gifted children (it does not matter if the school or institution is public or private, or operated on a for-profit or not-for-profit basis)
- A federal, state, or local government agency

Additionally, individuals who are not employed by FLSA covered enterprises may nonetheless be protected by FLSA. It is not clear whether the automatic enrollment mandate will apply only to FLSA covered entities, or to all employers with workers protected by FLSA.

Smart first steps for employers to consider

Given the substantial uncertainty around the specifics of the automatic enrollment mandate, employers are well-advised to wait until the Department of Labor issues guidance before implementing a new automatic enrollment program or modifying an existing one. However, employers may want to begin thinking about the new mandate and be on the lookout for relevant Labor Department guidance, which could be issued at any time and may require action before 2014.

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