

## Employee Benefits Update

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Nebraska Association of School Business Officials  
 State Convention  
 April 17, 2015

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## Introduction

- Changes to FMLA – coverage for same-sex spouses
- Pending cases regarding same-sex marriage
- Other employee benefits issues

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## Changes to FMLA

- 12 workweeks of unpaid, job-protected leave each year because of -
  - The birth of a child or the placement of a child for adoption or foster care, to care for an immediate family member who has a serious health condition, or because of their own serious health condition.
  - A “qualifying exigency” arising because a spouse, son, daughter, or parent is on active duty or call to covered active duty status in a foreign country (or has been notified of an impending call or order to covered active duty in a foreign country) in the Armed Forces.

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## Changes to FMLA

- FMLA applies to –
  - Private sector employers with 50 or more employees
  - Public agency employers, without regard to the number of employees
  - Local educational agency employers, without regard to the number of employees.

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## Changes to FMLA

- Initial DOL Guidance following Windsor –  
  
FMLA leave based on the employee's same-sex marriage only if the employee lived in a state that recognized same-sex marriage.



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## Changes to FMLA

- 2015 Guidance (effective March 27, 2015):
  - Eligible employees in a legally valid same-sex marriage will be able to take FMLA leave to care for a spouse or family member, regardless of the state where the employee lives.
  - Includes same-sex marriages from foreign countries

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## Changes to FMLA

- 2015 Guidance (effective March 27, 2015):
  - Eligible employees will be able to take qualifying exigency leave due to their same-sex spouse's covered military service
  - Eligible employees will be able to take military caregiver leave for their same-sex spouse.
  - Eligible employees may take FMLA leave to care for step-child of a same-sex spouse.

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## Changes to FMLA

- Nebraska has joined Texas, Arkansas, and Louisiana in a lawsuit against the DOL regarding the ruling.
- On March 26, 2015, U.S. District Court in Texas stayed application of the final rule.
- DOL has requested a hearing regarding the Order.



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## Pending Cases

- Waters v. Ricketts
  - Oral Argument scheduled for May 12, 2015 in Omaha
  - Case was consolidated with cases from Arkansas, South Dakota, and Missouri, which also found those states' bans to be unconstitutional

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## Pending Cases

- Obergefell v. Hodges
  - Oral Argument scheduled for April 28, 2015
  - Decision expected by June 30, 2015



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## Employee Benefits Issues

- Cafeteria Plan Change:
  - Optional Carryover of up to \$500
  - Does not count against \$2,500 (indexed) annual limitation on salary reduction contributions
  - Consider the order of carryover amounts
  - Cannot have grace period and carryover

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## Employee Benefits Issues

- Carryover:
  - What does employer presently do with forfeitures?
  - COBRA issues?
  - W-2 Reporting?
  - Limit carryover to employees who elect to make new salary reductions?
  - Pass-through TPA administrative fees?
  - Minimum carryover?
  - What about nondiscrimination testing?

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## Employee Benefits Issues

- New model COBRA notices:
  - DOL issued updated model COBRA notices
  - Information about Exchange
  - Future model notices released from DOL's website: <http://www.dol.gov/ebsa/cobra.html>
  - Appropriately completed model notice constitutes compliance with COBRA's notice requirements
  - Limited special enrollment period in Exchange following COBRA event



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## Employee Benefits Issues

- Employers cannot reimburse premiums for individual insurance policies
- Notice 2013-54 says this violates ACA rules
  - Prohibition on annual dollar limits
  - Requirements for preventive services without cost-sharing
  - Excise taxes of \$100 per employee per day (\$36,500 per year)
  - Notice 2015-17 – Limited Transition Relief

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## Employee Benefits Issues

- Records Retention – Income & FICA
  - In most (but not all) cases, IRS and Social Security Administration require 4-year retention of payroll records.
  - 4 years from the due date of the employee's personal income tax return



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## Employee Benefits Issues

- Records Retention – Fringe benefits
  - Code Section 6039D(b) – employer required to keep whatever records are needed to determine whether the plan meets the requirements for excluding benefits from income.
  - Retain these records at least 4 years

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## Action Steps for School Districts

1. Change FMLA practices
2. Monitor Federal Court cases
3. Consider Cafeteria Plan Carryover
4. New Model COBRA Notices
5. Do NOT reimburse individual insurance policies
6. Consider records retention issues
7. Windsor Amendment to 403(b) Plans
8. Windsor Amendment to Cafeteria Plan



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## Questions?



### Employee Benefits

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