Now is a critical time for employers to review their FMLA procedures.

On top of recent changes to the law, the DOL just announced it plans to ramp up on-site FMLA investigations – something the agency has virtually never done in the past.

Before the feds get there …

The DOL’s latest move suggests the agency is more determined than ever to root out FMLA abuse.

To avoid getting caught off-guard by the feds’ new strategy, employers should take a proactive approach by conducting an in-house audit on all things FMLA.

Although the process can seem overwhelming, employment attorney and FMLA Insights founder Jeff Nowak offers a comprehensive guide on what all self-audits should do. Here’s a summary of that guide:

1. Review your FMLA policy with a fine-toothed comb.
   Should the feds come knocking, they’ll be checking to make sure the latest 2013 FMLA regs are incorporated in all of your FMLA-related documents.

   Not only should your policy be up-to-date and included in your employee handbook, it should include all key FMLA components. Some –

IRS publishes the 2014 HSA contribution limits

It’s that time again.

The IRS just announced the 2014 limits for HSA contributions, and HDHP deductible and out-of-pocket maximums. Each year, the agency factors in cost-of-living adjustments and updates these benefit limits.

Increases from $50 to $200

The maximum amount individuals enrolled in a HDHP can contribute to an HSA in 2014 will be:

• $3,300 for self-only coverage (up $50 from 2013), and
• $6,550 for family coverage (up $100 from 2013).

The minimum HDHP deductibles are unchanged and will remain at:

• $1,250 for self-only coverage, and
• $2,500 for family coverage.

When it comes to how much more employees with an HDHP can expect to pay, the 2014 out-of-pocket maximums will be:

• $6,350 for self-only coverage (a $100 increase from 2013), and
• $12,700 for family coverage (up $200 from 2013).

Out-of-pocket expenses include deductible, co-pay and co-insurance charges, but not premium costs.

Info: bit.ly/COLA444
**FMLA …**

(continued from Page 1)

but not all – of these things include:

• eligibility requirements
• definition of FMLA leave year, and
• employees’ FMLA obligations.

2. Look over all postings. Be sure the DOL's FMLA poster is “prominently” displayed where it can be seen by all workers and job applicants.

Plus, if a significant percentage of your company speaks the same non-English language, then the poster must be posted in that language, too.

3. Examine your FMLA forms. Much like your overall policy, all of the FMLA forms (Eligibility, Rights and Responsibilities and Designation Notices) you use must reflect the law’s recent changes.

And while you can use the DOL's model forms, it’s important to remember: The DOL's forms don’t include the GINA safe harbor language. You can find an example of this language here: [bit.ly/safe444](bit.ly/safe444)

4. Revisit your correspondence process. A DOL investigation will also focus on your communication.

During the audit, you’ll want to make sure you’re in compliance with it.

5. Double-check your FMLA processes and procedures. This is one of the most critical aspects of an in-house FMLA audit because it’s likely to uncover at least a few areas that need to be updated.

Here are some of the procedures you should be clear on:

• what managers do when workers report an absence that may trigger FMLA
• what questions managers ask to determine if FMLA may apply, and
• how increments of intermittent leave are calculated.

6. Re-examine your recordkeeping process. FMLA-related records must be maintained for a minimum of three years – and must be kept in a separate personnel file.

The complete recordkeeping regs are spelled out in the FLSA and can be found here: [bit.ly/records444](bit.ly/records444)

7. Look for manager and supervisor training opportunities. Many employers’ FMLA problems are the direct result of manager mistakes.

So while you’re combing over FMLA procedures, look for areas of manager training that can be improved upon or done more often.

**How do managers determine if FMLA applies?**

when it comes to communicating things like certification, recertification, return to work, etc.

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**WHAT’S NEW in Benefits & Compensation**

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**SHARPEN YOUR BENEFITS JUDGMENT**

This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.

- Is reassigning job duties a ‘reasonable accommodation’?
  - “Working hard, Jim?” benefits manager Betty Murphy asked as she stepped into company attorney Jim Gannon’s office.
  - “Just clearing my head,” Jim said as he putted a golf ball across his carpet. “But I’m glad you’re here. I need to talk about Sheryl Need.”
  - “I still can’t believe that women is suing us,” Betty said. “What exactly is she claiming?”
  - “That we flat-out refused to accommodate her disability and essentially fired her because of her disability,” Jim said.
  - “That’s just not the case,” Betty said. “We tried to keep her, but it was impossible.”
  - “Give me the details,” Jim said.

**Delegated everything!**

“After Sheryl returned from disability leave, she was on a medication regimen that made it all but impossible for her to work. So she started delegating her tasks to two of her subordinates,” Betty said.

“How much of her work?”

“Practically everything,” Betty said. “When we brought it up to Sheryl, she said she was fully capable of doing her job as long as she had her subordinates’ help as an accommodation.”

“Did you look into it?” Jim asked.

“We did. But in the end, we decided it just wasn’t reasonable, and we let her go,” Betty said.

Sheryl sued Betty’s company for disability discrimination, and the company fought to get the suit tossed out. Did it win?

- Make your decision, then please turn to Page 6 for the court’s ruling.
Health reform SBCs: What you need to know about the feds’ changes

Just when the confusion surrounding health reform’s Summary of Benefits and Coverage (SBCs) statements has subsided, the DOL decided to add some changes to the documents.

Tucked away in the agency’s 14th FAQ on health-reform implementation are two changes to SBCs.

As you know, the Affordable Care Act requires all health plans to provide participants with SBCs and a glossary of commonly used terms.

The added changes will apply to health plans with coverage beginning on or after January 1, 2014, and will apply to plans’ second-year SBCs.

‘Pay or play’ factored in

So what’s different about the second-edition SBCs? Next year, plans will have to answer the following two questions about their coverage in the SBCs that are distributed:

• Does this coverage meet the minimum essential coverage? The law requires most individuals to have insurance that meets the definition of the “minimum essential coverage” requirements. And a health plan’s SBC must let participants know whether it meets those requirements.

• Does this coverage meet the minimum value standard? The law requires health plans to meet one of the four “metal” levels of coverage. These levels are based on the following actuarial values: bronze (60% actuarial value); silver (70%); gold (80%); and platinum (90%). SBCs must state whether the plan meets the minimum value standard of 60% actuarial value.

These questions are designed to help the feds determine if the employer (as plan sponsor) will have to pay a shared-responsibility penalty.

Note: Plans can avoid answering the two added questions in their SBCs if they are:

• using (or have used) SBCs that met the reform law’s requirement in the first year of applicability, and

• distributing a cover letter with the SBCs that answers the questions.

Info: bit.ly/summary444

Important but misunderstood

Employees’ thoughts on the benefits their companies offer

<table>
<thead>
<tr>
<th>Thought</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Said understanding their benefits is at least somewhat important</td>
<td>98%</td>
</tr>
<tr>
<td>Said they understand their companies’ benefits ‘very well’</td>
<td>34%</td>
</tr>
<tr>
<td>Said they don’t understand their companies’ benefits at all</td>
<td>7%</td>
</tr>
</tbody>
</table>

Source: Colonial Life study

So what can firms do to improve benefits communication? 34% of workers said they’d like to talk with a benefits expert on company time, the study found.
5 plan features that will increase employees’ retirement readiness

With study after study confirming that most workers are alarmingly underprepared for retirement, companies are focusing on more education in this area.

In fact, 84% of plan sponsors cited improving employee education as a major focus area in the 12th Annual 401(k) Benchmarking Survey.

And to achieve that goal, the study found that 61% of plan sponsors are now offering individual financial counseling and advice. That’s up from the 50% of employers that offered this service back in 2011.

Beyond financial advice

In addition to financial counseling, retirement plan service provider TransAmerica suggests employers use the following tactics to increase workers’ retirement readiness:

• Use auto-enrollment and auto-escalation to bolster savings. Auto-enrollment gets workers started, and auto-escalation gets them to gradually bump up their contributions to where they need to be. The best part: Although workers can opt out of these features, once they’re on-board, most workers stay the course.
• Don’t go overboard with investment options. Employers have to be careful: If they offer too many investment options, it overwhelms staffers – and can even hurt participation. Best bet: Keep the options to a reasonable number that will still give workers the ability to make choices.
• Focus on target-date funds (TDFs). This option makes it easier for employees to select investments based on their comfort with varying risks. And TDFs are only likely to grow in popularity. Reason: The DOL plans to issue a final rule on required disclosures for target-date funds, as well as tips employers can use to select these funds.
• Get them to shoot for 10%. Ideally, you want employees’ 401(k) contribution rates to hit 10%. One way: Consider bumping up your company’s match a few percentage points.

Info: bit.ly/transam444

The role of automatic features

<table>
<thead>
<tr>
<th>Employee participation in defined-contribution (DC) plans and automatic features</th>
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<tr>
<td>Workers who participate in a DC without an auto-enrollment feature</td>
</tr>
<tr>
<td>Workers who participate in a DC with an auto-enrollment feature</td>
</tr>
<tr>
<td>Companies that include an auto-escalation feature with their DC plan</td>
</tr>
</tbody>
</table>

Source: Center for Retirement Research at Boston College report

Overall, one in five workers at companies with at least 1,000 workers were auto-enrolled, compared to one in eight at firms with fewer than 500 workers.
Our readers come from a broad range of companies, both large and small. In this regular section, three of them share success stories you can adapt to fit your needs.

1 **Used our rich benefits to lure new employees**

Our company has outstanding benefits, but we were having some trouble getting this across to job applicants.

Like a lot of businesses, we can’t always compete for talent when it comes to salary alone.

But we really believe our benefits program is one of the best around. That being said, it was difficult for us to find a great time to get info to candidates in a way that didn’t feel forced – or that took up too much of our time.

Then we found that one small step that made a huge difference for us.

**A strategic brochure**

What we did: put together a benefits brochure.

Sure, it’s nothing too groundbreaking, but you’d be surprised how well the move works.

The brochure outlines all of the different aspects of our company’s benefits program.

It lets applicants know what we have to offer and what that would mean for a candidate if he or she decided to join us. When job applicants are waiting to be interviewed, we have HR hand them the brochure.

Normally, they’ll start reading – and take notice of what we offer.

Once the interviewing process goes on and we start talking salary, we always go back to our benefits.

Now that applicants know exactly what our benefits entail, it’s made landing new hires much easier.

*(Paul Falcone, HR director, Paramount Pictures, Hollywood, CA)*

2 **Staff-funded ‘Biggest Loser’ sparks competition**

When it came to wellness, we wanted to put together something that was fun, convenient and competitive.

Weight loss was a goal that appealed to the greatest number of our staff, so we decided to go that route.

Based on the popularity of “The Biggest Loser,” we knew that was the type of format we wanted to follow.

But rather than simply awarding a predetermined cash prize to the winner, we raised the stakes a little.

Interested participants contribute a small amount to the competition to build up the reward. That way, the better the participation, the greater the rewards.

Plus, people tend to be more competitive when their money is involved.

**Multiple rewards**

The competition takes place over a four-month period (a semester), and on the final weigh-in day, we set up a number of times to make it convenient for everybody.

The individual with the greatest percentage of weight loss and the runner-up end up raking in the highest cash prizes.

However, anyone who loses at least 5% of his or her body weight still gets a $40 prize. Plus, each participant who shows a weight loss from the previous weigh-in is entered into a drawing for an end-of-the-year prize.

*(Connie Tresedder, instructor, Bay de Noc Community College, Escanaba, MI)*

3 **CEO recognizes staff’s efforts … with a gong**

We know how hard our employees work, and we wanted to find some fun ways to reward them for their efforts.

Based on the research we’ve conducted with our workforce, we discovered that our employees really love public recognition.

We’re a small company, which gives us a lot of flexibility in setting up an interesting recognition program.

After lots of research and brainstorming, we decided to launch the “Be Remarkable” campaign.

**Workers get the ball rolling**

The program is built around workers’ recommendations.

Here’s how: Employees are encouraged to recommend colleagues for public recognition by going directly to the CEO and explaining what the staffer did that was remarkable.

The CEO has the final say on which staffers end up getting rewarded and when.

That’s crucial because once the CEO has chosen who to reward, he lets everyone know by ringing a giant gong he keeps in his office.

That’s the signal for employees to go online to read about what the employee did to be recognized.

Staffers have told us how much they love being able to nominate other people for recognition.

Plus, the gong is a nice touch that is very consistent with our culture.

*(Jeanne O’Connor, HR manager, Billtrust, Hamilton, NJ)*
**HEALTH REFORM**

‘Affordable’ health care & wellness

When it comes to determining “affordable” coverage under the health reform law, many employers have been wondering how wellness programs will factor in.

In its most recent barrage of guidance, the IRS has weighed in on the subject.

2 major wellness categories

Under the healthcare reform law, employers with 50 or more full-time equivalent employees (FTEs) must offer affordable coverage to all FTEs starting January 1, 2014, or pay a penalty.

Health care is deemed affordable if an employee’s contribution toward self-only coverage doesn’t exceed 9.5% of his or her household income.

Because many wellness programs are in some way tied to workers’ healthcare premiums, it makes sense that they should be factored into the affordability equation in some way.

The feds broke down wellness programs into two main categories: Wellness programs that aim to reduce or prevent tobacco usage – and those that don’t.

How a company’s health plan affordability is determined depends on what category its wellness program falls into.

When it comes to wellness programs specific to tobacco usage, health plans should assume all employees don’t use tobacco and will earn the program’s incentives when it comes to determining the plan’s affordability.

Example: A wellness program that offers a premium discount to either:
- non-tobacco users, or
- tobacco users who satisfied the wellness program’s requirements — e.g., attending smoking-cessation classes.

However, when it comes to determining affordability for all other non-tobacco-based wellness programs, plans should assume that all employees will fail to satisfy that program’s requirement.

Therefore, the affordability calculation won’t factor into the incentives offered through an employer’s wellness plan.

Exception for 2014 plan year

Of course, like all federal guidance, there’s an exception.

---

**WHAT BENEFITS EXECS SAID**

**HSA Explosion**

How many individual HSAs were opened (by year)?

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
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<tr>
<td>2011</td>
<td>119,000</td>
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<tr>
<td>2012</td>
<td>182,000</td>
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</tbody>
</table>

Source: Fidelity Investments analysis

According to Fidelity Investments, the number of HSA accounts it handles has increased 53% from May 2011 to May 2012. This growth is largely due to the growing popularity of high-deductible plans.

(Basically, the exception makes it possible for plans to assume employees satisfy the requirements for all wellness programs – tobacco-related and non-tobacco related – between May 3, 2013, (the date the guidance was issued) and January 1, 2015.

During that time frame, plans can factor the incentives from these programs into their affordability calculations under the health reform law.

Info: bit.ly/afford444

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**SHARPEN YOUR JUDGMENT – THE DECISION**

*(See case on Page 2.)*

Yes, the company won, and a court dismissed Sheryl’s ADA discrimination suit.

Sheryl’s attorney tried to argue she’d proven that she was fully capable of doing her job by delegating tasks to her subordinates. And by refusing to grant Sheryl an accommodation – and eventually terminating her – the company had discriminated against her because of her disability.

Betty’s company argued that Sheryl wasn’t just delegating certain tasks, she was basically having her subordinates do her entire job.

And a court sided with Betty’s company for a number of reasons. First off, even though someone is physically able to return to work (like Sheryl was), it doesn’t necessarily mean that person is capable of performing a specific job, the court said.

Ultimately, the court pointed to a 1998 case in its decision and said that “if [an employee] can’t perform the essential functions of [her] job absent assigning those duties to someone else ... [she] cannot be reasonably accommodated as a matter of law.”

**Analysis: A limit to what firms must accommodate**

It’s good to know courts are willing to side with employers when accommodation requests are too unreasonable. However, it’s still critical to engage in the “interactive process” whenever the ADA is in play.

Companies’ best defense against any ADA claim is clear documentation that they made an effort to try and accommodate the employee’s request.

Increased communication with our broker to better serve employees

After the market collapsed, our employees were understandably concerned – and they were looking to us for help with their retirement savings.

Obviously, we helped as much as we could. But it seemed like there was only so much we could do in this area. Many of our employees were looking for regularly updated info on the ever-changing market, and we just didn’t have the time or resources to provide it. But there was someone who did.

Monthly check-ins

That’s when I decided to start leaning more heavily on our retirement broker. After all, when we signed on with our broker, he guaranteed above-average service.

So I started making monthly phone calls to him to check in on our accounts as well as the market at large.

During these calls, our broker offers me updates on the changing market trends and fills me in on the performance of the funds we’re invested in.

If funds aren’t performing the way we’d like, he gives us the reasons for it. Plus, he fills us in on any new funds as soon as they’re available.

These monthly check-ins allow our company to react to the changing market in ways we hadn’t been able to previously.

Check-ins allow us to react to the changing market.

But a big-picture analysis wasn’t all our broker offered.

Individual attention

Employees often come to me with investment questions that I feel would be better answered by our broker.

Example: What is the most effective way to shift money from one fund to another?

Whenever this happens, I’ll immediately shoot an email over to our broker with the staffer’s question.

And true to his word, his responses are always prompt – and easy to understand.

Because many of our employees have taken a more active role in monitoring their investments, our broker came up with a tool to help keep them up to date.

Each week, he emails a “Market Snapshot” newsletter to us. The newsletter is filled with charts and stats on the economic reports, various indexes, U.S. Treasury bonds, notes and more.

Plus, it includes a simple summary for employees on the week-to-week market changes.

Regularly updated advice

Understanding how to react to the constant changes in the market can be overwhelming.

But thanks to the constant communication with our broker, we have the benefit of getting regularly updated advice on the types of moves we should be making.

And the personalized attention is exactly the type of help our employees were looking for when it comes to planning for their retirement.

(Catherine Haggard, controller, Apel Steel Corp., Cullman, AL)

Information and ideas for workers

Recent changes in plain language

If your company offers health care coverage, you may have noticed a change in how it’s being delivered to you. The Department of Labor has released proposed final rules putting a new waiting period in place.

The rules state that employers must make healthcare coverage effective immediately, starting on or after January 1, 2014.

If a worker’s 90th day falls on a weekend, the plan sponsor must make the coverage effective earlier than the 91st day.

Answers to the quiz

1. True. Employers that offer healthcare coverage can’t make employees wait longer than 90 days to be eligible for that coverage, beginning on or after Jan. 1, 2013.

2. True. Weekends and holidays should not be counted in employers’ 90-day calculation.

3. True. If a worker’s 90th day falls on a weekend, the plan sponsor must make the coverage effective earlier than the 91st day.

Answers to the quiz

1. True. Employers that offer healthcare coverage can’t make employees wait longer than 90 days to be eligible for that coverage, starting on or after Jan. 1, 2014.

2. True. Weekends and holidays should not be counted in employers’ 90-day calculation.

3. True. A worker’s 90th day happens to fall on a Sat., which makes it impossible for coverage to start on the 91st day (Sun.).

The plan sponsor must make the coverage effective on that Fri.

To start on the 91st day (Sun.), the plan sponsor must make the coverage effective earlier than the 91st day.

Info: bit.ly/ninety444
DOL offers guidance on reform exchange notices

Benefits pros have been on the lookout for more details on delivering exchange notices to employees ever since the feds pushed back the deadline on this major healthcare reform reg. Now that info is available.

The DOL recently issued guidance on the notices that businesses are required to distribute to employees on the availability of health insurance exchanges.

According to the agency, employers must provide this notice to all current employees by October 1, 2013. And new employees must receive a notice within 14 days of their start date.

In addition to guidance, the agency issued two model notices that employers can use to satisfy the health reform’s exchange notice requirement.

The first model notice the DOL released is meant for firms that offer health care to some or all of their workers. The second is for businesses that don’t offer a health plan.

Finally, the DOL released a revised COBRA Model Election Notice, which includes info about the health insurance exchanges.

Info: bit.ly/exchange444

Court kills NLRB’s proposed poster rule

Here’s some news that should come as a welcome relief to most employers: You won’t have to worry about hanging up a poster at your worksite stating employees have the right to unionize and bargain collectively for wages, benefits and hours any time in the near future.

That’s because a U.S. Court of Appeals just nixed a proposed rule from the National Labor Relations Board (NLRB) that would require most private sector firms to hang up such a poster.

The proposed poster rule, which the NLRB first proposed in 2010, has been met with strong opposition from several business groups that claimed the poster rule exceeded the NLRB’s power.

In the end, it came down to employers’ free-speech rights. According to the court, employers have just as much right not to circulate views as they do to express their own views. Therefore, it would be illegal to punish a business for expressing a statement – or in this case, for failing to post a statement that the NLRB ordered.

Info: bit.ly/union444

New bill would allow PTO instead of overtime pay

New legislation that would allow private-sector employees to take paid time off (PTO) – or comp time – for overtime they’ve earned just made it through the House.

The bill, which passed 223-204, is titled the Working Families Flexibility Act and was part of the larger “Making Life Work” agenda.

Under the bill, workers could choose whether they want to take overtime pay for hours worked over 40 in a single week or comp time, which would be accrued at the same rate as overtime pay.

However, employees would have to enter into an agreement with their employer to get the comp time – though they could opt out of that at any time and take their wages in cash.

Info: bit.ly/comp444

Lighter side: Firm brings happy hour right to staff

Rounding up employees to get together for a happy hour at a local watering hole isn’t always easy.

That’s why a Florida-based healthcare company took matters into its own hands and added an unusual on-site perk.

The perk: “Beer Cart Fridays,” where workers get a free drink on the company’s dime.

The downside: There’s a one-drink maximum.

Funds Watch

If your 401(k) funds are underperforming compared to these benchmark data, you may want to make changes.

Average % Rate of Return*

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Source: Lipper Analytical Services

Performance Indexes

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*As of 5/15/13