

AMERICAN BENEFITS COUNCIL

P4P – Preparing for PPACA
Webinar on Automatic Enrollment Programs

MAY 4, 2011

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Automatic Enrollment

- » PPACA § 1511 amends the Fair Labor Standards Act to create new FLSA § 18A
- » Requires an employer with 200+ full-time employees to automatically enroll employees “in one of the plans offered” by the employer
 - Enrollment can occur after permissible waiting period
 - Program must provide “adequate notice”
 - Program must provide opportunity for employee to “opt out”
 - Includes provision preempting contrary state law (presumably, such as state anti-wage garnishment laws)
 - Must also continue enrollment for “current employees”

Automatic Enrollment

» Open Questions/Considerations

– Who is a “full-time employee”?

- FLSA does not define “full-time employee” – left to employer prerogative
- PPACA (§ 1511 or otherwise) does not provide a definition of full-time employee that would apply for this purpose
 - Will regulators allow employer discretion in defining full-time employee, or will they seek to impose a specific definition? If so, which one?
 - » Note: 30 hour/week definition for employer responsibility provisions
 - » What about full-time equivalents?
 - » Notice 2011-36 and tri-agency “coordination” language
- Does the provision apply just to the “full-time” employee only or also any spouse and dependents?

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Automatic Enrollment

- » Open Questions/Considerations
 - Into which plan can the full-time employee be enrolled?
 - New FLSA § 18A states only that the full-time employee must be enrolled “in one of the plans offered” by the employer
 - On its face, it appears an employer has the discretion to choose which plan, BUT...
 - » Given the overlay of the employer responsibility requirements, the practical answer is that an employer likely will have an incentive to enroll at least those “full-time employees” meeting the employer responsibility definition of full-time into “minimum essential coverage”
 - » Also, decisions could be affected by nondiscrimination rules for insured and self-insured group health plans

Automatic Enrollment

» Open Questions/Considerations

- Which employees are subject to the maintenance of effort requirement?
 - new FLSA § 18A states that an employer must also continue enrollment for “current employees”
 - On its face, the provision is not limited to full-time employees
 - The reference to “current employees”, if not only full-time employees, seems overly broad in light of employer responsibility provisions (*i.e.*, no requirement to provide qualifying coverage to part-time employees)

Automatic Enrollment

- » Open Questions/Legal Considerations
 - What constitutes “adequate notice”?
 - Presumably the notice must be provided in advance or providing coverage. If so, how far in advance?
 - Interaction with IRC § 125 elections for purposes of paying for the medical plan coverage (only have 30 days following hire)
 - Must the notice be in writing? If so, what must it include?
 - To whom must the notice be provided? Just the full-time employee or also any spouse or dependents?
 - Look to COBRA notice provisions as model?

Automatic Enrollment

- » Open Questions/Legal Considerations
 - **What will be the terms of the mandated “opt-out”?**
 - How long will individuals be permitted to opt-out?
 - 401(k) safe harbor – Provides for 90-day revocation window
 - Is it just in or out? Or can they move between different types of coverage?
 - Does it apply only at the employee-level?
 - To the extent an employer also auto-enrolls individuals into an IRC § 125 premium-only plan (“POP”) for purposes of paying premiums, likely will need administrative relief
 - 401(k)s – First 90 days of “erroneous automatic contributions” subject to return
 - Practical solution – no pre-tax premium contribution allowed until after opt-out period runs?

Automatic Enrollment

» Practical Considerations

- Do you also automatically enroll the individual in POP for purposes of paying the premium?
 - If so, many issues including likely need for IRC § 125 relief
- Will you know whether the individual has a spouse or dependents?
- Income and payroll tax and reporting considerations in administering an opt-out

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May 4, 2011

Motorola Solutions benefit auto-enrollment and opt-out process

CATHY FLADHAMMER | SENIOR CONSULTANT
U.S. BENEFITS, MOTOROLA SOLUTIONS



Auto-enrollment



WHY?

- Practicing for 20+ years
- Paternalistic employer

WHO?

- Any employee on U.S. payroll eligible for benefits (20+ hours/wk)



Auto-enrollment details



- Coverage begins on date of hire (or date eligible for coverage, if later)
- 30 days to elect desired coverage
- Default after 30 days to single medical coverage in lowest premium plan (i.e., high-deductible option)



Election confirmation

- Opt-out allowed with affirmation of other group health coverage
- Online transactions
- Coverage election or change generates a confirmation notice

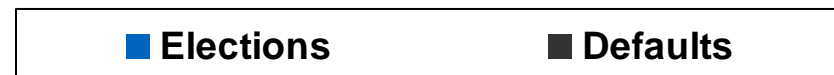
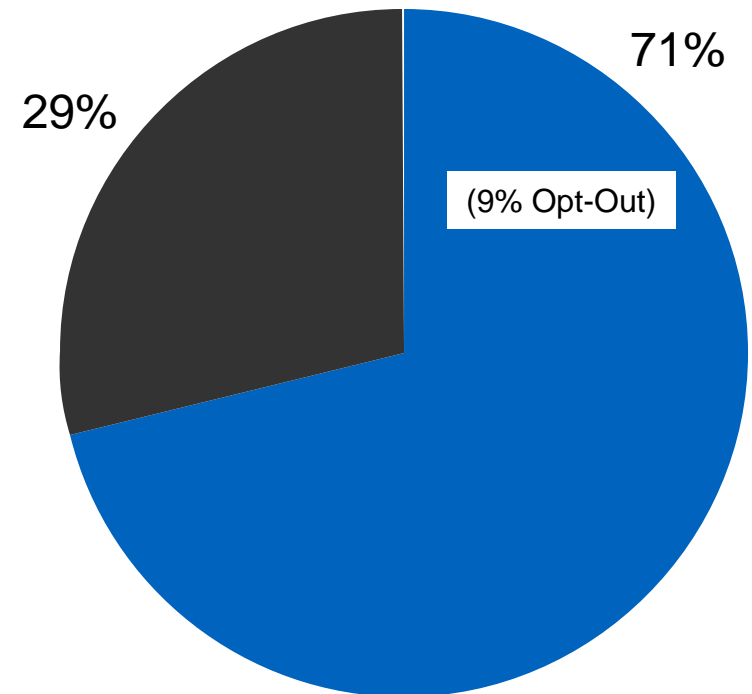


New hire stats



71 percent of new hire employees make an active benefit election
(9 percent elect to opt-out)

29 percent of new hire employees 'default' by not making an active benefit election



Lessons learned

- **Suspend employee's premium until election/default is secured**
- **Continue to expand opportunities with electronic alerts, warnings and notifications**



THANK YOU...



Costco Wholesale Auto Enrollment

Donna Sexton
Director Employee Benefits
May 4, 2011



Costco Auto-Enrollment Journey

- Default coverage for eligible new hires since 1994 – Basic plan; EE only; no cost to enroll
- Plan changed in 2004 – no cost plan eliminated
- Newly eligible automatically enrolled in lowest cost plan; EE only
- Why? Protect them from themselves!

Costco Auto-Enrollment

- 107k US EE's – 55% Full-time
- Benefits for both FT and PT EE's
 - PT must average 20 hrs per wk; guaranteed 25
- 91% eligible
- 98% enrolled
- PT – One plan available
- FT – Two plans available

Costco Auto-Enrollment – How?

- EE's advised during new hire orientation; must acknowledge as part of new hire checklist
- Advised that per pay period deductions would apply
- EE's receive notice 30 days prior to effective date
- Enrollment options explained; how to add dependents; how to opt out of coverage
- Enrollment deadline is 30 days after effective date
- Enrollment confirmation sent

Costco Auto-Enrollment – What?

- EE is enrolled in Default Coverage
 - Co-pay medical plan, Core Dental, RX, Vision, LTD, BH, Basic Life and AD&D insurance
- Per pay period premium is \$16
- Less than 3% opt out
- Election is evergreen

Auto-Enrollment – Benefits

- Carrier informed before effective date
- Timely delivery of ID card
- EE accountable for choices
- Payroll deductions begin; EE still has time to make adjustments
- Retroactive changes held to a minimum
- Take care of our employees

Auto-Enrollment – What else?

- Short-Term Disability in voluntary states
 - All new hires after 90 days
 - EE paid; % of bi-weekly pay
 - 3% opt out
- 401(k)
 - All new hires after 90 days
 - Auto increase
 - 9% opt out

Auto-Enrollment – PPACA

- The one thing we could “check” off the list