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# Benefit\$ Alert

Brought to you by Brian Foley

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## Employers Will Not Be Required to Post Employee Rights Notice in the Workplace



The [National Labor Relations Board](#) (NLRB) has decided not to seek Supreme Court review of two U.S. Court of Appeals decisions invalidating the agency's Notice Posting Rule, which would have required most private sector employers to post a notice of employee rights in the workplace.

Originally scheduled to become effective in 2011, the Notice Posting Rule was subject to a number of court challenges and delayed several times. The workplace poster remains available on the [NLRB website](#) for employers who wish to voluntarily display the notice.

Visit our section on [Federal Poster Requirements](#) to learn about other federal notices required to be displayed in the workplace and to download printable posters.

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## Important Changes to the Small Business Health Care Tax Credit in 2014

Under the Affordable Care Act, small employers may be eligible for a [special tax credit](#) to help cover the cost of providing health coverage to employees. Employers who are interested in claiming the credit should be aware of a number of important changes for tax years beginning in 2014 and forward.



### General Eligibility Requirements

An employer may be eligible for the credit if:

- It has **no more than 25 full-time equivalent employees** (FTEs) for the taxable year;
- The average annual wages of its FTEs **do not exceed certain amounts**; and
- It pays **at least 50% of the premium cost** for single health care coverage for each employee.

### Changes to the Tax Credit in 2014

For tax years beginning in 2014 or later, the following key changes will apply to the small business health care tax credit:


- The maximum credit increases to **50% of premiums paid for small business employers** and 35% for small tax-exempt employers;
- To be eligible for the credit, small employers **must obtain health insurance through the Small Business Health Options Program (SHOP) Marketplace** (**Note:** Until online functionality for the federally-facilitated SHOP is available, small business owners may work with an agent or broker to

- enroll employees in a qualified health plan and apply for SHOP eligibility);
- For purposes of employer eligibility for the credit, the **average annual wages of employees must not exceed \$50,800** (the credit phases out gradually for eligible small employers if the number of FTEs exceeds 10 or the average annual wages exceed \$25,400); and
  - An employer may claim the credit for **two-consecutive taxable years**, beginning with the first taxable year in or after 2014.

#### Additional Information

Our section on the [Small Business Health Care Tax Credit](#) provides additional details. [Q&As](#) about the small business health care tax credit are also available from the IRS, along with a [Small Business Health Care Tax Credit Estimator](#), which can help employers determine potential eligibility and get an estimate of the credit they might receive.


## Do's and Don'ts for Preventing Common COBRA Mistakes

With so many requirements under [COBRA](#), it's easy to make a mistake that could result in costly penalties. Understanding your responsibilities when it comes to compliance is the best way to prevent expensive mistakes. The following do's and don'ts can help you get started. 

- **DO count part-time employees to determine whether your plan is subject to COBRA.** COBRA generally applies to group health plans maintained by employers [with at least 20 employees](#) on more than 50% of typical business days in the prior year. Each part-time employee counts as a fraction of a full-time employee, equal to the number of hours the part-time employee worked divided by the hours an employee must work to be considered full-time.
- **DO stay on top of required notices.** Use the [Model General Notice](#) and [Model Election Notice](#) provided by the U.S. Department of Labor to help satisfy certain [notice requirements](#). Keep track of when and to whom notices are sent (and don't forget to provide a separate notice to the spouse or dependent child if necessary).
- **DON'T overlook qualifying events.** Remember that if a plan measures eligibility for coverage by the number of hours worked in a given time period, an employee's failure to work the minimum number of required hours may be considered a [reduction in hours](#) that gives rise to COBRA election rights.
- **DON'T terminate COBRA coverage too early.** There are very specific rules regarding when COBRA may terminate prior to the end of the [maximum period of coverage](#) (for example, when premiums are not paid). In certain circumstances the maximum period of COBRA coverage may be extended due to disability or the occurrence of a second qualifying event.
- **DON'T forget about state law.** Many states have enacted what are commonly referred to as 'mini-COBRA' laws, which typically require continuation of group health plan coverage provided by employers with fewer than 20 employees. Employers of all sizes should check to see if a state mini-COBRA law applies to their plans and if so, how the law differs from federal COBRA.

Most importantly, **DO** consult with a trusted employment law attorney or benefits advisor if you have any questions as to how COBRA applies to a particular plan or your obligations under the law. Our page on [Preventing Common COBRA Mistakes](#) features additional mistakes employers may make and tips on how to avoid them.

## 3 Things Employers Should Know About Payroll Cards

Did you know that you may be able to arrange with a bank or other financial institution to pay your employees with a [payroll card](#)? In such instances, an employee's pay is loaded directly to a payroll card rather than deposited to a bank account or provided in the form of a paper check. 

Payroll cards can be convenient for both employers and employees, but it's important to realize that these cards are subject to a number of requirements under the law. Keep in mind the following [guidance](#) from the

federal Consumer Financial Protection Bureau:

### 1. Employers Cannot Require Payroll Cards

Under [federal law](#), an employer cannot require an employee to receive his or her wages on a payroll card--the employer must offer at least one other alternative.

For example, employers may give employees a choice between direct deposit into a bank account, direct deposit to a payroll card, or a paper check. Permissible wage payment methods are governed by state law, so be sure to check your state's requirements.

### 2. The Law Protects Employees

Federal law contains provisions specific to payroll cards that provide employees with [certain protections](#), including:

- **Disclosure of Fees.** Payroll card holders are entitled to receive disclosures of any fees they may incur. These disclosures must be clear, in writing, and in a form that holders may keep.
- **Access to Account History.** The card issuer must either provide periodic statements or generally make card holders' account balances and histories available in specified formats. The account history must include information on any fees imposed for fund transfers.
- **Error Resolution Rights.** If a card holder reports a payroll card account error, the financial institution must respond so long as the report is received within a certain amount of time.

### 3. Other Laws Also Affect Employee Pay

Employers should be mindful that [fees](#) associated with payroll cards may have the effect of reducing hourly employees' wages below the minimum wage, which may lead to potential penalties under the federal [Fair Labor Standards Act](#) and state minimum wage laws. Also, certain states may regulate or prohibit the use of payroll cards. Contact your [state labor department](#) for more information.

Our section on [Employee Pay](#) includes information on other issues related to employee compensation.

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