

## MONTHLY BENEFIT NEWS AND DEVELOPMENTS

June 2008

### Milliman Medical Index

Milliman issued its fourth annual study of average medical spending by a U.S. family of four. Besides analyzing changes in national average health costs, the Milliman Medical Index™ (go to: [www.milliman.com](http://www.milliman.com)) presents health-cost data for 14 major U.S. metropolitan areas. Key findings include:

- The total medical cost in 2008 for a typical American family of four is \$15,609 (compared with \$14,500 in 2007).
- The employee's share of spending on healthcare services rose by double digits for the second consecutive year.
- The average annual medical cost to the family increased by 7.6% from 2007. While the \$1,109 increase is big, the rate of increase fell for the second straight year and is the lowest rate of increase in the past five years.
- In the 14 metropolitan areas, healthcare costs varied by more than 35% from lowest to highest.

### Upcoming Key Dates

**12/15/08** (financial periods beginning after) – Application of GASB Statement 45 for governments with total annual revenues of less than \$10 million.

**12/15/08** – Proposed modification for reporting pension assets under FASB 132.

**12/31/08** – Expiration of 0.2% FUTA (unemployment) surtax.

**12/31/08** – Deadline for compliance with final 409A regulations on nonqualified deferred compensation plans.

### Legislative Activity on the Benefits Front

Before breaking for their Memorial Day recess, the House and Senate each unanimously approved the “Heroes Earnings Assistance and Relief Tax Act” (H.R.6081), a revised compromise bill that provides a broad range of tax benefits for military personnel and their families (as well as other benefits provisions). The bill, which the President will sign, calls for:

- permanently extending a tax provision to allow active-duty reservists to make penalty-free withdrawals from their retirement plans and allowing employers to grant access to unused funds from health flexible spending accounts;
- requiring qualified retirement plans to treat the day prior to the date of a serviceperson’s death or disability as the date he or she returned to work for purposes of benefit eligibility, and permitting plans to recognize the period of military service of the deceased or disabled employee for benefit accrual purposes;
- treating differential wages paid to an employee on active duty as wages for withholding and retirement plan purposes, and temporarily providing small employers (fewer than 50 employees) a tax credit for a portion of differential wages paid;
- extending through December 31, 2008, the current-law mental health “parity” requirements, unless legislation enacted later this year supersedes this provision; and
- imposing employment taxes (FICA) for wages paid to employees of foreign subsidiaries of U.S. parent companies with federal government contracts, and holding the parent responsible for unpaid FICA taxes from the subsidiary.

### Bills Signed into Law

**Meanwhile**, Congress overrode the President’s veto of the farm bill (H.R.2419, P.L.110-234), which allows retirement plans to be amended to permit “qualified disaster distributions,” loan repayment delays, and recontributions of withdrawals for home purchases for participants affected by storms in the Kansas disaster area. **Also**, the President signed the “Genetic Information Nondiscrimination Act of 2008” (H.R.493) into law (P.L.110-233) on May 21 (see [Client Action Bulletin 08-12](#)).

### Other Legislation Moving

In other congressional action:

- Negotiators on mental health parity bills (S.558/H.R.1424) have dropped language requiring employer-sponsored plans to cover all illnesses listed in a provider manual referred to as the DSM-IV.
- Provisions to extend unemployment compensation benefits for 13 weeks for workers who have exhausted their benefits are included in a “must pass” Iraq war supplemental spending bill (H.R.2642) that the House and Senate are working to finalize.

*(continued on next page)*

## Three Reports Released by the ERISA Advisory Council

The final reports of the Labor Department's ERISA Advisory Council's 2007 Working Groups have been released. The reports provide recommendations on: participant benefit statements; the employer's role in financial literacy of plan participants; and fiduciary responsibilities and revenue sharing practices.

**Separately**, the Council said topics it would study in 2008 are: the decumulation (payout) of retirement plan assets; hard-to-value pension plan assets; and phased retirement.

Go to: [www.dol.gov/ebsa](http://www.dol.gov/ebsa)

## State & Local Government Retirement Benefits

The Bureau of Labor Statistics has issued *National Compensation Survey: Retirement Benefits in State and Local Governments in the United States, 2007*.

Go to: [www.bls.gov](http://www.bls.gov)

## CRS Study on Earnings

The Congressional Research Service issued a report, *Real Earnings, Health Insurance and Pension Coverage, and the Distribution of Earnings, 1979-2006*, which examines trends in real weekly earnings in the U.S. The study provides separate analyses for female and male workers. The study also provides historic data on employment-based health insurance coverage, as well as participation in employer- or union sponsored pension plans. In addition to providing a detailed summary of the report's findings, the paper discusses possible broad policies that would increase real earnings or decrease earnings inequality.

Go to: [www.opencrs.com](http://www.opencrs.com)

## Legislative Activity on the Benefits Front – cont.

- Extensions of certain employment tax credits, changes to the tax treatment of deferred compensation paid by managers of certain offshore hedge funds (or other "tax indifferent parties"), and benefits provisions (bicycle commuting and group legal services) are included in the energy and tax extenders bill (H.R.6049) that the House sent to the Senate. ■

## Regulatory Roundup

*The White House recently issued a memo to regulatory agencies, directing them to propose rules by June 1 and not to issue final rules after November 1, to avoid the historical tendency by Administrations to increase regulatory activity in their final months. The directive is not expected to halt the issuance of the IRS's or the DOL's major employee benefits and related regulatory initiatives.*

### From the Department of the Treasury/IRS:

- *Revenue Procedure 2008-29*, providing the 2009 inflation adjusted amounts for health savings accounts (HSAs).
- *Information Release 2008-68* and *Announcement 2008-44*, providing guidance on withdrawing without penalty "economic stimulus payments" made directly to taxpayers' individual retirement arrangement, HSA, Archer medical savings account, Coverdell education savings account, or qualified tuition program account.

### From the Department of Labor:

- *FirstStep Recordkeeping, Reporting and Notices Advisor* to help employers determine which of the DOL's recordkeeping, reporting, and notice requirements apply to them. (The suite of First Step elaws is available at: [www.dol.gov/elaws/firststep](http://www.dol.gov/elaws/firststep)).

### From the Pension Benefit Guaranty Corporation:

- A *final rule* amending the agency's bylaws for the first time in over 30 years, and adopting the Pension Protection Act's requirement that the head of the PBGC be appointed by the President with the advice and consent of the U.S. Senate (rather than by the Secretary of Labor).

## U.S. Supreme Court Rules for Employee in Retaliation Claim

The U.S. Supreme Court ruled in favor of an employee who claimed his employer retaliated against him after he lodged a complaint of racial discrimination. In *CBOCS West v. Humphries* (No. 06-1431, May 27, 2008), the Court said that the worker could sue his employers for retaliation, even if the civil rights statute the suit was brought under did not expressly prohibit retaliation by employers.

Significantly, the Court's decision centered on a Civil War-era law – Section 1981 of the Civil Rights Act of 1866 – that gave freed slaves the right to make and enforce contracts. In contrast with Title VII of the 1964 Civil Rights Act, Section 1981 does not cap the damages a successful plaintiff can receive, does not require a prior Equal Employment Opportunity Commission filing, and has a less restrictive statute of limitations (i.e., it gives plaintiffs up to four years from the time of the alleged violation to file a suit).