# HR COMPLIANCE LIBRARY
## Ideas & Trends

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INSIDE



GENETIC INFORMATION NONDISCRIMINATION ACT

# GINA: privacy concerns and wellness plans

Could that new wellness plan you have implemented soon attract the unwanted attention of the Equal Employment Opportunity Commission (EEOC)? Wellness programs are heavily promoted by the Patient Protection and Affordable Care Act (ACA) (P.L. 111-148), and many employers hope that such programs will bring down the costs of group health care for their employees. Wellness programs often incorporate biometric screenings, which typically include tests for weight, blood pressure, cholesterol levels, and blood glucose, but these screenings can leave an employer vulnerable to charges of privacy violations under the Genetic Information Nondiscrimination Act (GINA), especially if the screenings are tied to the employer's group health insurance provisions.

Wellness programs with incentives such as insurance premium discounts for participation in biometric screenings are popular: According to a survey by the National Business Group on Health and Fidelity Investments, 95 percent of employers offer a health risk assessment, biometric screening, or other wellness program in 2014. About three in four (74 percent) employers use incentives to engage employees in these programs. A recent lawsuit filed against Honeywell International by the EEOC (*EEOC v. Honeywell*, No. 0:14-04517 (DC MN) November 6, 2014) serves as a cautionary tale, however, for those employers that take too punitive an approach to wellness program implementation.

**GINA charges against Honeywell.** A Honeywell wellness program was tied to premiums for the company's group health insurance, and a substantial premium surcharge was set to be levied against employees who did not complete biometric screening tests beginning in 2014, for the 2015 plan year. When some Honeywell employees complained to the EEOC about the required screenings, the EEOC filed suit, alleging that Honeywell was violating the Americans with Disabilities Act (ADA) and GINA. The EEOC had already filed a number of claims regarding wellness programs under the ADA, alleging that such programs were not truly voluntary, but the inclusion of a privacy claim based on GINA was novel.

**Blood tests required for spouses.** In its lawsuit, the EEOC argued that the screenings would violate employees' privacy because they required the collection of protected health information (PHI) of employees' family members, in violation of GINA. Employees whose spouses refused to participate in certain blood screenings would incur a $1,000 tobacco surcharge. The EEOC sought a temporary restraining order and a preliminary injunction that would stop Honeywell from compelling its wellness program medical exams.

Public Health Service Act (PHSA) Sec. 2705(j), as added by the ACA, does not specifically mention penalties imposed by employers upon employees who do not

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participate in wellness programs, but it does state that rewards may be in the form of premium discounts or rebates, or the absence of a surcharge.

It should be pointed out that the EEOC originally alleged that penalties were imposed on employees whose spouses refused to take the same biometric screenings required of employees. As it turns out, the spouses were only required to participate in blood screening in order to determine if they smoked tobacco. The tobacco surcharge would be levied against any employee whose spouse refused the blood test, even if they submitted evidence in the form of a physician's statement stating that they did not use tobacco.

**EEOC's take on GINA.** Under GINA, it is illegal to request certain genetic information from an employee, and this includes information about the manifestation of a disease or disorder of the employee's family member. There is an exception for genetic information collected as part of a voluntary wellness program, but the EEOC contended, as part of its ADA argument, that the Honeywell program was not voluntary. Previously, it was widely assumed that GINA only applies to PHI of job applicants, employees, and their *genetically*-related family members, as opposed to spouses.

Perhaps employers should have seen this lawsuit coming. GINA generally prohibits employers from requesting or requiring genetic information from an employee or an employee's family members. Furthermore, it defines a "family member" as "a person who is a dependent of that individual as the result of marriage, birth, adoption, or placement for adoption" (at 29 C.F.R. 1635.3(a)(1)), and "genetic information" as "the manifestation of disease or disorder in family members" (at 29 C.F.R. 1635(c)(1)(iii)).

**Uncertainty persists.** A Minnesota district court's refusal to issue the EEOC's requested temporary restraining and preliminary injunction in November 2014 did not address the merits of the EEOC's GINA claim. Instead, it focused primarily on arguments surrounding the threat of irreparable harm absent the grant of a preliminary injunction along with the balance of harms between the parties, adding that, "great uncertainty persists in regard to how the ACA, ADA, and other federal statutes such as GINA are intended to interact."

Therefore, until more specific guidance is issued, employers should carefully review their wellness programs, especially since it is not impossible that the EEOC would take action again if a program imposed penalties or provided for the absence of a reward if employees' spouses do not provide certain health information. On September 21, 2015, speakers at an ALI-CLE webinar were still pointing to *EEOC v. Honeywell* as a basis for concern regarding the implementation of wellness programs ("Trending Affordable Care Act Topics & Related Issues").

**No help yet from Congress.** A bill introduced in the Senate in March 2015 (S.620) would take a major leap toward solving the problem by providing that a workplace wellness program does not violate GINA merely because it provides any amount or reward (as provided in PHSA Sec. 2705(j)(3)(A)) for participants, as long as it complies with PHSA Sec. 2705(j) or any other DOL HHS, and IRS regulations. The bill also provides that the mere collection of information about an employee's family member's manifested disease or disorder, where the employee is participating in a workplace wellness program, is not an unlawful acquisition of the employee's genetic information, and does not violate GINA. The bill was referred to the Committee on Health, Education, Labor, and Pensions on March 2, 2015, but, unfortunately for employers, the bill appears to have stalled.

**Little help from the EEOC.** Proposed EEOC regulations issued in April 2015 (80 FR 21659, April 20, 2015) that addressed the ADA as it relates to employer wellness programs specifically stated that the extent to which GINA "affects an employer's ability to condition incentives on a family member's participation in a wellness program would be addressed in future rulemaking." The EEOC has also stated in a February 2015 regulatory review status report that it intends to issue proposed regulations on GINA this fall. Until then, employers are left with little guidance.

**You should still review your wellness program.** The EEOC proposed regulations do have other privacy provi-

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sions impacting wellness programs that employers should be aware of, however. For example, they provide that medical information collected as a part of a wellness program may be disclosed to employers only in aggregate form that does not reveal the employee's identity, and must be kept confidential in accordance with ADA requirements.

The regulations, if finalized as-is, would also require that employers provide employees with a notice describing what medical information will be collected as part of a wellness program, with whom it will be shared, how it will be used, and how it will be kept confidential. The EEOC also issued interpretive guidance with an extensive discussion of both legal requirements and best practices that ensure confidentiality of employee medical information.

Employers should think carefully about who might actually obtain employees' wellness information, especially if, like Honeywell, they require biometric screenings. Not only could the information end up in the hands of any testing laboratories that provide blood test results, it could also be thoughtlessly included in orders sent to companies issuing reward items for employees that met wellness program criteria. Keep in mind that wellness vendors are not necessarily bound by HIPAA privacy restrictions.

**Can wellness companies be *too* helpful?** Virgin Pulse, for example, states on its website that it is "committed to protecting your privacy." Employees who submit health information as part of their employer's wellness program may fail to read all the fine print before signing a consent form, however, and, like many wellness vendors, Virgin Pulse states on its website privacy page that it reserves the right to retain employees' health, fitness, and related activities information along with their email addresses and credit card numbers. Furthermore, the company reserves the right to distribute that information to partners, affiliates, and subsidiaries in certain circumstances, such as marketing activities or the sale of part of the company whereby some PHI could constitute part of the company's business assets.

In an apparent effort to offer comprehensive wellness services, Virgin Pulse also advertises that they can support employees' "activity, nutrition, sleep, stress, focus, cognition, financial health, personal relationships, philanthropy – whatever helps make them happier human beings," which can at first sound beneficial, until the possible invasiveness of tracking those issues becomes obvious. This statement is in the company's "Personalized well-being" section, accompanied by photos of wearable tracking devices. Virgin Pulse does state that it requires third parties to agree to process PHI in compliance with its privacy policy, but not all wellness companies may be as equipped to ascertain whether or not their third party vendors are truly in compliance.

**Industry response to *Honeywell*.** In a press release on its website, Honeywell stated, with regard to the EEOC's suit, that, "Honeywell's wellness plan incentives are in strict compliance with both HIPAA and the ACA's guidelines, which were designed by Congress to encourage healthier lifestyles while helping to control healthcare costs."

**Lack of EEOC guidance.** In addition, Brian Marcotte, president and CEO of the National Business Group on Health (NBGH), commented, "Employers have been seeking guidance from EEOC regarding how the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act of 2008 (GINA) apply to wellness programs for years and the EEOC has yet to issue clear guidance. The EEOC has had numerous opportunities to provide that guidance but has failed to do so. Their lack of clear guidance, plus the recent legal action conflicts with the message of HIPAA and the Affordable Care Act which encourages the adoption and expansion of programs that benefit the health of employees and their families."

Marcotte believes that suits like the EEOC's will have a "chilling effect" on wellness programs, and recommends that wellness programs that are already compliant with HIPAA and the ACA be considered to be also compliant with the ADA and GINA.

Marcotte also contends that well-designed wellness programs are effective in safeguarding privacy, and that these are the sorts of programs typically adopted by large employers.

**ERIC's response.** On hearing that the EEOC brought the suit against Honeywell's wellness program, Gretchen Young, The ERISA Industry Committee's (ERIC) senior vice president for Health Policy, said, "Our primary concern is that it apparently is no longer enough for an employer-sponsored wellness plan to comply with the applicable requirements under the Patient Protection and Affordable Care Act (ACA). … Even though large American companies have invested a huge amount of time, money, and manpower into making sure that their wellness programs comply with the ACA, now here comes the EEOC out of left field with a whole new set of rules and regulations to impose on these programs."

Young expressed concern that suits such as *Honeywell* "undercut efforts by employers to create a healthier workplace," and ERIC has argued that further guidance on incentives for wellness program participation is needed from the EEOC, along with clarification of regulations interpreting GINA about the use of family medical history to identify employees (and their spouses) who would benefit from wellness programs. ■

**Source:** *Written by Carol E. Potaczek, J.D. for the October 21, 2015 edition of Employment Law Daily, a Wolters Kluwer Law & Business publication.*

UNSCHEDULED ABSENCES

## Employees average six unscheduled absences per year

Employees averaged six unscheduled absences from work in 2014, according to a recent study from the National Business Group on Health and Truven Health Analytics. The *Employer Measures of Productivity, Absence and Quality (EMPAQ) Survey* noted that for an employer with thousands of employees, that can equate to significant lost productivity. In addition, since many employers have moved to paid time off (PTO) systems, the ability to track unscheduled sick days or leaves has become a challenge.

The survey, based on responses from 107 large employers, provides information on several employer health and productivity programs. The survey found the following:

- **Family and Medical Leave Act.** Employers experienced total FMLA leaves of 19.6 per 100 covered employees in 2014. This varied from a low of 12.8 in the pharmaceuticals industry to a high of 27.7 in the hospitality and retail industry. In terms of lost workdays for nonconcurrent FMLA leaves, employers experienced 164.3 per 100 covered employees in 2014.
- **Short-term disability.** Large employers had an overall STD incidence of 8.4 per 100 covered employees. The average cost per covered employee was $374.
- **Long-term disability.** Across the industry, the annual LTD claim incidence was 4.13 per 1,000 employees. This varied from a low of 2.31 per 1,000 employees for the pharmaceuticals industry to 4.78 for manufacturing.
- **Employee assistance programs.** Program costs averaged $22 per employee, with the highest spending ($38) in the energy and utilities industry and the lowest ($13) in health care. Across all industry segments, EAP participation averaged 6 cases per 100 employees.
- **Health risk assessments (HRA).** Nearly all (88 percent) of the surveyed firms reported using an HRA. The average participation rate across industries was 49 percent. The survey found that participation rates vary greatly by industry. Pharmaceutical companies have the highest participation (74 percent), while energy and utilities average only 21 percent participation.
- **Onsite clinics.** Over half (60 percent) of the employers surveyed offered an onsite clinic to at least some portion of their workforce. Acute care services were provided by 48 percent of employers and occupational health services by 33 percent. Manufacturers are most likely to offer an on-site clinic, with 86 percent in this sector offering the benefit. ■

**Source:** *National Business Group on Health and Truven Health Analytics, October 14, 2015.*

EMPLOYEE ABSENCES

## Study reveals increase in well employees calling in sick to work

According to a new CareerBuilder survey, 38 percent of employees have called in to work sick when they're feeling well in the past year, up from 28 percent last year. Of the employees who have called in sick when feeling well in the past year, 27 percent said they had a doctor's appointment, the same proportion said they just didn't feel like going, 26 percent said they needed to relax, 21 percent said they needed to catch up on sleep and 12 percent blamed bad weather.

**The cost of a sick day.** Of the 52 percent of employees who have a Paid Time Off (PTO) program that allows them to use their time off however they choose, 27 percent say they still feel obligated to make up an excuse for taking a day off (compared to 23 percent last year), and many of them are relatively new to the workforce. Of these employees who have a PTO program, 32 percent of those ages 18-34 say they still feel obligated to make up an excuse, compared to 20 percent of those 55 and older.

On the other hand, some feel they can't afford to use a sick day, even when they're ill. More than half of employees (54 percent) say they have gone into work when sick because they felt the work wouldn't get done otherwise. Further, nearly half (48 percent) say they can't afford to miss a day of pay, up from 38 percent last year, and this varies greatly by age: Age 18-24: 71 percent; Age 25-34: 63 percent; Age 35-44: 44 percent; Age 45-54: 40 percent; Age 55+: 32 percent

**Busting the fakers.** The most popular months for employees to call in sick continue to be December (20 percent), January (15 percent) and February (14 percent), on par with last year's survey results. And while less than 1 in 10 employees (9 percent) say they have ever faked being sick during the holidays, those that do most often say it's to spend time with family and friends (68 percent), while others wanted to holiday shop (21 percent) or decorate for the season (9 percent).

While most employers claim to trust their employees, one in three employers (33 percent) have checked to see if an employee was telling the truth after calling in sick this year, compared to 31 percent last year. Of these employers, asking to see a doctor's note was the most popular way to find out of the absence was based in truth (67 percent), followed by calling the employee (49 percent) and checking the employee's social media posts (32 percent).

More than 1 in 5 employers (22 percent) has fired an employee for calling in sick with a fake excuse, an increase from last year (18 percent).

To keep an eye on questionable behavior, employers are going online. Thirty-three percent of all employers have caught an employee lying about being sick by checking their social media accounts, and of those, 26 percent have fired the employee.

**About the survey.** The national survey was conducted online by Harris Poll on behalf of CareerBuilder from August 12 to September 2, 2015, and included a representative sample of 3,321 full-time workers and 2,326 hiring managers and human resource professionals across industries and company sizes. ■

**Source:** *CareerBuilder.*

CADILLAC TAX

## Survey looks at employers' strategies to avoid Cadillac tax in 2018

Although it doesn't take effect until 2018, employers nationwide are taking steps to determine whether they will trigger the Cadillac tax and then most are taking actions to avoid it. That's according to a survey from the International Foundation of Employee Benefit Plans (IFEBP) that finds that nearly nine in ten employers have calculated whether their health plan will trigger the Cadillac tax, and 60 percent say that without any future changes, their plan will face the tax.

**What is the tax?** Section 9001 of the Patient Protection and Affordable Care Act (ACA) created the Cadillac tax to act as a revenue offset provision to help pay for the cost of the law. Beginning in 2018, a non-deductible excise tax will be imposed on the cost of employer-sponsored health programs that exceed an aggregate value of $10,200 for individual employee-only coverage and $27,500 for family coverage. Each tax period, employers will be responsible for calculating the amount of excess benefit subject to the tax for any applicable employer-sponsored coverage offered to employees. The employer must pay the excise tax.

**When will it hit?** Of those that are on track to trigger the tax, 62 percent say they will likely face the tax right away in 2018. An additional 10 percent say they will hit the tax in 2019, 12 percent in 2020, and 11 percent in 2021 or later.

"According to the ACA provision, the Cadillac tax thresholds will be indexed annually. The annual adjustments, however, will not be based on health care cost inflation but instead on the Consumer Price Index, which is considerably lower," explained Julie Stich, CEBS, director of research at the IFEBP. "While we expected the number of plans subject to the tax would increase after 2018 because of this, we weren't sure how many plans would trigger the tax during the very first year."

**What actions are being taken?** The vast majority of plans that would be subject to the Cadillac tax are implementing changes to avoid it. Only 5 percent of surveyed employers that are on target to hit the tax threshold report they plan to pay the tax. Forty percent are currently working on plan changes, and another 40 percent plan to take future action to avoid the tax.

Among employers that have made changes or are considering changes, the most common actions to avoid the Cadillac tax are:

- shifting costs to employees (46 percent),
- moving to a high-deductible plan (39 percent),
- reducing benefits (33 percent),
- dropping higher cost plan options (31 percent), and
- adopting wellness and preventive care initiatives (26 percent).

"Employers are already taking action because making the changes needed to avoid the tax can be time-consuming and challenging—and they may have big implications for their workers," Stich said. "With only 5 percent of employers reporting that they plan to pay the Cadillac tax, many Americans can expect to see changes to their employer-sponsored health plan."

A number of employers have already made modifications to their plans so they will not face the tax. Nearly one-third of employers (32 percent) that have done calculations and are no longer on track to trigger the tax report they have already implemented plan changes to avoid it.

The survey also asked employers about their ACA reporting progress and found that most employers had a strong understanding of the requirements and were taking action to meet the upcoming deadlines. Only 8 percent plan to file for extensions. ■

**Source:** *www.ifebp.org.*

HR QUIZ

## Can FSAs be used to reimburse nontraditional health care providers?

**Q** **Issue:** *One of our employees wants to use the money in her health flexible spending account (FSA) to pay for her treatments by a holistic healer. Is this allowed?*

**A** **Answer:** To be reimbursed by an FSA, expenses need not be prescribed by a licensed medical physician. Services or treatments provided by other providers — such as naturopaths, holistic healers, acupuncturists, and alternative healers, such as Christian Science practitioners — may qualify for FSA reimbursement within the definition of medical care if the services or treatments otherwise meet the Internal Revenue Code Sec. 213 definition of medical care. Thus, treatments that are provided by nontraditional alternative health professionals are eligible if they are for the treatment of a specific medical condition. However, alternative treatments, medicines, and drugs that are merely prescribed for general health are not considered eligible expenses for reimbursement.

Plan administrators should take additional steps to make sure that treatments and services provided by nontraditional health care providers are being provided to diagnose, treat, alleviate, or otherwise prevent an actual medical condition. The FSA should communicate these rules to employees so they know what can be reimbursed.

RECRUITMENT AND RETENTION

## SHRM says benefit offerings have taken on new importance

Faced with a competitive job market and stagnant wages, more organizations are turning to their benefit offerings — health care coverage and retirement savings programs, among them — to help recruit and retain prized employees, a Society for Human Resource Management (SHRM) survey showed. SHRM's *2015 Strategic Benefits Survey* found that more than one-third (38 percent) of respondents said their organization leveraged benefits to recruit employees at all levels during the past 12 months, a statistically significant increase from 26 percent in 2013 and 29 percent in 2012. At a time when more than one-half of respondents said their organizations had difficulty recruiting highly skilled employees, 40 percent of respondents said their organizations used benefits to lure these hard-to-recruit employees during the past 12 months. This represents an increase of 10 percentage points since 2013.

To retain employees at all levels of their organization, one-third of HR professionals looked to benefits in the past 12 months, a statistically significant increase from 18 percent in 2013 and 20 percent in 2012.

**Health care.** The vast majority of organizations (96 percent) offered health care insurance plans, according to the survey, and for plan year 2015, respondents said their organization is paying on average 76 percent of employees' total health care costs while 46 percent said their organization increased the share employees pay for health care this plan year over last plan year. "Health care is the benefit mostly highly valued by employees," said Evren Esen, director of SHRM's survey programs. "Maintaining coverage is an effective tool for recruitment and retention. In coming years, retirement savings, compensation, flexible work and career development also will play increasingly important roles in recruiting strategies."

**Additional survey findings.** The survey also reveals the following:

- **Wellness:** About two-thirds (69 percent) said their organizations offered a wellness program, resource or service and 52 percent indicated employee participation in wellness programs increased year over year, as has been the case since 2012.
- **Flexible work arrangements:** About one-half (48 percent) of HR professionals indicated their organization provided employees with the option to use flexible work arrangements. More than one-quarter (29 percent) of employers that do so reported an increase in employee participation over last year.
- **Assessment and communication of benefits:** Few organizations use social media to communicate information about benefits to their employees. This may change, however, as 9 percent said they plan to start using social media as a benefits communication tool within the next 12 months. ■

**Source:** *Society for Human Resource Management.*

CONFERENCE COVERAGE

# Job description and performance management go hand-in-hand

Calling the job description "home base' because it's the central document that everything comes back to, Polsinelli attorney Robert Hingula and several of his colleagues discussed important issues surrounding performance management that employers should keep in mind. This fourth segment of Polsinelli's *Lifecycle of an Employee* year-long webinar series continued to tie together concepts and legal issues that are present throughout the lifecycle of a worker's employment with a company. The message seemed clear, however, that a good job description goes hand-in-hand with performance management.

**Job description is central.** The job description was again a focus of discussion, this time in its relationship to managing job performance. "As we have stated throughout the series, the importance of an accurate and current job description cannot be overstated," said Moderator Eric Packel, a shareholder in Polsinelli's Kansas City office.

What, specifically, should a job description do and why is it so important? According to Hingula, job descriptions:

- should always reflect that actual duties performed by the employee;
- set expectations for employees;
- provide a road map for the employee to succeed;
- are used for corrective action and evaluations;
- are used as evidence in lawsuit; and
- can provide evidence for FLSA exempt status (duties actually performed).

Hingula stressed that for all of these reasons, as well as others, it's really important to keep job descriptions current.

A well-crafted job description not only helps an employer to identify prospective employees that will be best qualified for the position, it also sets up the expectations for the employee so that no confusion exists as to the employee's responsibilities and essential functions, Hingula explained. "This is imperative in issuing meaningful and constructive feedback, discipline, and evaluations. It is also very helpful in navigating the newer and ever-changing requirements in entering into the interactive process and identifying if any reasonable accommodations exist—as has been a recent focus by EEOC and state administrative agencies."

**Disability discrimination.** Hingula underscored that job descriptions should also identify the essential duties of the job. This is very important for ADA purposes, for example, in determining whether a reasonable accommodation exists. Documenting the essential job functions is also important in determining whether reassignment is a potential reasonable accommodation.

Noting that the ADA and the FMLA are both important in the context of job performance, Packel suggested that "employers now more than ever need to be conscientious about whether a disability is somehow affecting an employee's job performance and if so, to be sure to engage in an interactive process and attempt to accommodate the employee."

**Performance management.** "Managing employee performance is critical not only to developing and maintaining a successful employee, but managing its ongoing investment in human capital provides an employer an excellent way to find success for its business overall," according to Polsinelli attorney Jay Dade

The whole point of performance evaluations for employees, according to Polsinelli attorney Jim Swartz, is so that the employer can set out its expectations and start to track the employees' execution of their responsibilities against some meaningful performance goals. It's important that on the front end employers think very carefully about how each positon can be evaluated, Swartz said. The employer will not get employee buy-in to a performance evaluation process that is rigid and applies the same criteria to everyone across the board.

**The paper trail.** The Polsinelli attorneys stressed the importance of having a paper trail. "Starting with the well-tuned job description, an employer can build an employee's written employment history, or paper trail, that provides the starting point to effective performance evaluations as well as any discipline or discharge decisions," Dade explained. "A strong paper trail, in turn, can provide an employer an invaluable tool in fending off claims of improper treatment, including defending such claims in litigation."

Polsinelli attorney Michele Gehrke added that "a well drafted job description and performance assessment is important in managing expectations for the job, addressing wage and hour, and ADA accommodation/leave of absence issues." She said that job descriptions and employee performance reviews "are important pieces of evidence when terminating an employee becomes necessary and an employer must defend litigation that may arise."

No matter how the performance evaluation process is completed, what is most important, according to Gehrke, is what shows up on paper. That's why managers must be honest in the performance ratings and the narratives they give for employees—something that is often difficult for managers to do. Nothing is worse in litigation, she said, than having to defend in litigation that someone was let go because of performance problems when there are years of positive evaluations—it's a hard sell to the jury. ■

**Source:** *Written by By Pamela Wolf, J.D. for the October 14, 2015 edition of Employment Law Daily, a Wolters Kluwer Law & Business publication.*

HR NOTEBOOK

### Real average hourly earnings increase 0.1 percent in September

Real average hourly earnings for all employees increased 0.1 percent from August to September, seasonally adjusted, the U.S. Bureau of Labor Statistics (BLS) reported October 15. This result stems from essentially no change in average hourly earnings combined with a 0.2-percent decrease in the Consumer Price Index for All Urban Consumers (CPI-U).

Real average weekly earnings decreased 0.2 percent over the month due to the increase in real average hourly earnings being more than offset by a decrease of 0.3 percent in the average workweek.

Real average hourly earnings increased 2.2 percent, seasonally adjusted, from September 2014 to September 2015. This increase in real average hourly earnings combined with no change in the average workweek resulted in a 2.2-percent increase in real average weekly earnings over this period.

### CPI for all items falls 0.2 percent in September

The Consumer Price Index for All Urban Consumers (CPI-U) decreased 0.2 percent in September on a seasonally adjusted basis, the BLS reported October 15. Over the last 12 months, the all items index was essentially unchanged before seasonal adjustment.

The energy index fell 4.7 percent in September, with all major component indexes declining. The gasoline index continued to fall sharply and was again the main cause of the seasonally adjusted all items decrease.

In contrast to the energy declines, the indexes for food and for all items less food and energy both accelerated in September. The food index rose 0.4 percent, its largest increase since May 2014. The index for all items less food and energy rose 0.2 percent in September. The indexes for shelter, medical care, household furnishings and operations, and personal care all increased; the indexes for apparel, used cars and trucks, new vehicles, and airline fares were among those that declined.

### Unemployment rate remains unchanged at 5.1% in September

Total nonfarm payroll employment increased by 142,000 in September, and the unemployment rate was unchanged at 5.1 percent, the BLS reported October 2. Job gains occurred in health care (+34,000), professional and business services (+31,000), retail trade (+24,000), food services and drinking places (+21,000), and information (+12,000). Mining employment fell (-10,000).

Employment in other major industries, including construction, manufacturing, wholesale trade, transportation and warehousing, financial activities, and government, showed little or no change over the month.

The number of unemployed persons (7.9 million) changed little in September. Over the year, the unemployment rate and the number of unemployed persons were down by 0.8 percentage point and 1.3 million, respectively.

## OFCCP posts pocket card designed to assist workers in requesting reasonable accommodations for disabilities

Continuing its outreach and education efforts for workers, the OFCCP has created a new pocket card on "Requesting a Reasonable Accommodation" under Section 503 of the Rehabilitation Act. The pocket card is designed to help applicants, employees and other interested parties understand the process for requesting a reasonable accommodation.

According to an OFCCP announcement, the card uses simple language and answers these four common questions about seeking a reasonable accommodation:

- What is a reasonable accommodation?
- How do I request a reasonable accommodation?
- What do I need to tell my employer?
- What happens after the request is made?

The pocket card is available on OFCCP's Web site at www.dol.gov/ofccp, and copies may be attained by contacting OFCCP's Help Desk at 1-800-397-6251. ■