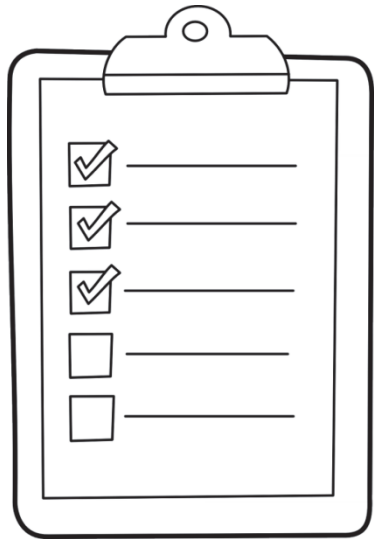
Mid-Year Compliance Grab Bag

Presented by: Dannielle O'Toole, Esq.
Manager - Compliance and Client Solutions
dotoole@marshallsterling.com
July 27, 2017

Today's Agenda

- Common COBRA Compliance Mistakes
- New York Paid Family Leave
- Affordable Care Act Status Updates
- Section 125 Plan Requirements & Permissible Mid-Year Changes
- Domestic Partner Coverage and Imputed Income



Marshall & Sterling
GROUP BENEFITS

COBRA COMPLIANCE

Sign up for our E-News Today!

www.marshallsterling.com/group-benefits

Marshall & Sterling GROUP BENEFITS

COBRA Overview

- **Federal:** Consolidated Omnibus Budget Reconciliation Act (COBRA); 20+ employees

- **New York:** State Continuation Coverage (mini-COBRA); under 20 employees & insured plans

Both give employees and their beneficiaries who lose their health benefits the right to choose to continue group health coverage provided by the plan under certain circumstances ("qualifying events").

Marshall & Sterling
GROUP BENEFITS

COBRA Requirements

- COBRA coverage must be identical to that available to similarly situated beneficiaries who are not receiving COBRA coverage under the plan (generally, the same coverage that the QB had immediately before qualifying for continuation coverage).
  - *Any changes made to the plan's terms that apply to similarly situated active employees and their families will also apply to qualified beneficiaries receiving COBRA continuation coverage.*

- Qualified beneficiaries may be required to pay the entire premium for coverage up to 102% of the cost to the plan (entire premium + 2 percent for administrative costs)

- COBRA administration can be handled by either the employer or a third-party administrator.

Marshall & Sterling
GROUP BENEFITS

Common Employer Mistakes

I. Not identifying all Qualifying Life Events (QLEs) and Qualifying Beneficiaries (QBs)

II. Not providing all required notices within the correct timeframe

III. Misunderstanding COBRA-eligible benefits

Marshall & Sterling GROUP BENEFITS

Understanding What & Who

Qualified Beneficiary (QB): An individual covered by a group health plan on the day before a qualifying event occurred that caused him or her to lose coverage.

Qualified Beneficiary	Qualifying Event	Continuation Period: Federal	Continuation Period: New York
Employee Spouse Dependent child	-Termination -Reduced hours	18 months (generally)	36 months
Spouse Dependent child	-Entitled to Medicare -Divorce or legal separation -Death of covered employee	36 months	36 months
Dependent child	Loss of dependent child status	36 months	36 months

In NY, those who receive Federal COBRA must be offered the opportunity to continue coverage under a fully insured plan for up to 36 months from termination.

Marshall & Sterling GROUP BENEFITS

COBRA Timeline – Timing is Everything!

1. Initial COBRA Rights Notice:

Within the first **90 days** of coverage commencing

2. COBRA Qualifying Event Notice:

- Employer: To administrator within **30 days**
- Employee /Dependent: To employer/administrator within **60 days**

3. Election Notice:

Must be provided to QBs within **14 days** after the administrator receives the notice of a qualifying event.

4. Election Period:

QBs have **60 days** from the date of notice or the date of loss of coverage, whichever is later, to elect COBRA

5. Premium Due:

Federal: QB has **45 days** from the election date to pay premium.

NY: 1st payment must be sent with coverage election

Marshall & Sterling GROUP BENEFITS

COBRA Eligible Benefits

- **Health FSA**
  - Available to participants who underspent their account
  - Coverage extends only until end of Plan Year
  - Dependent Care Accounts **not** COBRA eligible

- **Health Reimbursement Arrangement (HRA)**
  - Both integrated & standalone HRAs qualify for COBRA
  - Employer may charge premium for the HRA (bundled or unbundled)

- **Employee Assistance Programs (EAP)**
  - Does the EAP provide medical care?
  - Is EAP staffed by trained counselors?
  - If yes to both questions→EAP is subject to COBRA

Marshall & Sterling GROUP BENEFITS

Fines for Non-Compliance

- IRS: non-deductible excise tax of up to $100 per day per violation for each qualifying beneficiary
- ERISA Penalties including up to $110 per day
- Public Health Services Act violations
- Department of Labor (DOL) audit
- Private lawsuits, which often occur against employers and plans

The IRS estimates that most employers in the U.S. **have not fully met their COBRA obligations.**

Marshall & Sterling GROUP BENEFITS

N.Y. PAID FAMILY LEAVE

Sign up for our E-News Today!

www.marshallsterling.com/group-benefits

Marshall & Sterling GROUP BENEFITS

New York Paid Family Leave

- In 2016, as part of New York State's 2016-2017 Budget, Governor Andrew Cuomo signed into law a paid family leave policy, New York Paid Family Leave Benefits Law (PFLBL).

- The law will be phased in gradually beginning on January 1, 2018.
  - Payroll deductions ***may*** begin starting July 1, 2017.

- Final regulations were adopted by N.Y. Workers' Compensation Board on July 19, 2017.

Marshall & Sterling
GROUP BENEFITS

New York Paid Family Leave

When completely phased in New York's Paid Family Leave Benefits Law will:

- Be the most comprehensive paid family leave program in the country
- Provide eligible employees with up to 12 weeks of paid leave during a 52-week calendar period.
- Provide eligible employees 67% of their average weekly wage, not to exceed the New York State Average Weekly Wage.

Marshall & Sterling GROUP BENEFITS

New York Paid Family Leave

- **Affected Employers:** All private sector employers employing one or more employees at least 30 days in any calendar year are required to provide all eligible employees with paid job protected leave.
  - Public employers are not required to provide coverage but may opt-in to the program.

- **Eligible Employees:** Employees who work 20 hours or more per week become eligible after 26 consecutive weeks of work, and employees who work less than 20 hours per week become eligible after the 175th day of work.

Marshall & Sterling GROUP BENEFITS

Qualifying Event for PFL

Eligible employees will receive a certain percentage of their average weekly wage as paid leave when the following life events occur:

1. Bond with the employee's newborn or newly-placed adoptive or foster child during the first 12 months following birth or placement.

2. Care for a ***family member*** (child, parent, parent-in-law, grandparent, grandchild, spouse or domestic partner) with a serious medical condition. This includes physical or psychological care.

3. Employees with a spouse, child, domestic partner or parent who has been notified of an order of active military duty.

Marshall & Sterling
GROUP BENEFITS

PFL Benefit: Phase In Schedule

Year	Weeks Available	Max % of Employee Average Weekly Wage	Cap % of State Average Weekly Wage*
1/1/2018	8	50%	50%
1/1/2019	10	55%	55%
1/1/2020	10	60%	60%
1/1/2021	12	67%	67%

**The NYS DOL has computed the NYS Average Weekly Wage for 2016 to be $1,305.92*

Example (in 2018):

An employee who makes $1,000 a week would receive a benefit of $500 a week (50% of $1,000)

vs.

An employee who makes $2,000 a week would receive a benefit of approximately $653 (capped at 50% of NYS average weekly wage)

Marshall & Sterling GROUP BENEFITS

NY PFL Insurance Coverage

- Beginning January 1, 2018, the Disability insurance policy will be required to automatically provide NY Paid Family Leave included with the policy.
  - Will typically be included as a rider to an employer's existing disability insurance policy.

- Employers that self-insure their disability policy can purchase a standalone NY Paid Family Leave policy. They will have the option to self-insure their NY Paid Family Leave plans.

Marshall & Sterling
GROUP BENEFITS

Paid Family Leave Funding

- Funded exclusively through employee contributions deducted from payroll. *Employers may, but are not required to contribute to PFL benefit.*

- Weekly contribution rate (per NY DFS): 0.126% of the employee's average weekly wage, or the statewide average weekly wage, whichever is less
  - *The weekly contribution rate will be updated annually*

- Maximum employee contribution amount for 2018: $1.65 per week

Marshall & Sterling GROUP BENEFITS

NY PFL & FMLA

NY Paid Family Leave will run concurrently with FMLA if applicable, ***employees cannot stack NY PFL and FMLA time.***

SUBJECT	FMLA	NY Paid Family Leave
Covered Employers	50 or more employees	All employers subject to Worker's Compensation Law
Eligible Employees	Employees employed for 12 months and worked 1,250 hours in the preceding 12 months	Employed 26 weeks (Work 20 or more hours/week) Employed 175 days (Work less than 20 hours/week)
Length of Leave	Up to 12 weeks in a 12 month period	Up to 12 weeks (Schedule to be phased in from 2018-2021)
Continuation of Health Insurance	Maintain health insurance as though actively employed	Maintain health insurance as though actively employed
Job Restoration	Entitled to position held at time of leave or an "equivalent" position	Entitled to positon held prior to leave or comparable position with comparable benefits/pay

***Definition of "family member" more inclusive under NY PFL**

Marshall & Sterling GROUP BENEFITS

Other PFL Considerations

- **Intermittent Leave:** Smallest leave increment=one full day
- **Use of Sick & Vacation Time:** Employees given the choice of using accrued leave or to receive PFL benefits
- **PFL & Disability:** Cannot receive both at same time; cannot receive more than 26 total weeks of combined disability/PFL benefits in 52 week period
- **Waivers for Ineligible Employees:** Employer must offer PFL Waiver to employees that will not meet minimum eligibility
- **Complaint Procedure:** Employees must submit a written request to employer to come into compliance with PFL before bringing a PFL discrimination claim

Workers Compensation Board will issue further guidance on FAQ as it arises.

Marshall & Sterling GROUP BENEFITS

ACA
STATUS UPDATES

Sign up for our E-News Today!

www.marshallsterling.com/group-benefits

Marshall & Sterling GROUP BENEFITS

Timeline of HCR Under New Administration

- **Jan. 20:** President Elect Trump takes office and issues an Executive Order calling upon federal administrative agencies to minimize the economic burden of the ACA
- **Feb. 28:** During his first address to Congress, President Trump outlines key measures he wants lawmakers to adopt in ACA replacement legislation
- **March 6:** House Republicans release text of ACA replacement legislation, the American Health Care Act (AHCA)
- **March 7—May 3:** Revisions, CBO scores, and vote delays
- **May 4:** The AHCA passes the U.S. House by a vote of 217-213, moves to the Senate floor
- **June 22:** Senate Republicans unveil the Better Care Reconciliation Act (BCRA)
- **June 23-July 24:** More revisions, CBO scores, and vote delays
- **July 25:** Senate votes (51-50) to begin debate on ACA replacement plan
- **July 25:** In a 43 to 57 vote, Senate rejects latest Republican repeal & replace proposal

*ACA compliance is required unless and until official guidance or legislation to the contrary is issued

Marshall & Sterling GROUP BENEFITS

ACA Provisions Affecting Employers

- The Employer Mandate
- IRS 6055/6056 Reporting
- W-2 Reporting of Employee Health Coverage Cost
- Health Plan Design Rules
- Notice/Disclosure Requirements
- Taxes and Fees

Marshall & Sterling
GROUP BENEFITS

The Employer Mandate – "Play or Pay"

Applicable Large Employers (ALEs) may be assessed a penalty for failure to offer compliant health coverage to full-time employees if at least one employee receives a government subsidy to buy coverage through an Exchange (Marketplace). To avoid penalty, coverage must be:

- **Offered to all "ACA full-time" employees:** Determine whether an employee meets the ACA's definition of full-time and, if so, offer coverage on a timely basis.
  - *IRS regulations provide guidance for determining full-time status by tracking each employee's hours of service based on specific measurement methods.*

- **"Affordable":** Check that lowest-cost self-only coverage option available to employees does not exceed **9.69%** (for 2017) of their income under an available safe harbor *(keeping in mind IRS clarification on the impact of Opt-Out Benefits & HRAs).*

Marshall & Sterling
GROUP BENEFITS

Employer Mandate Penalties in 2017

Penalty A – "The sledgehammer":
Penalty for not offering coverage to 95% of "ACA FT" employees

$188.33/month, times **all** eligible employees

($2,260/year)

Penalty B – "The ice pick":
Penalty for offering noncompliant coverage (not affordable and/or MV)

$282.50 a month, times the number of eligible employees who got a subsidy on an exchange

($3,390/year)

Marshall & Sterling
GROUP BENEFITS

IRS 6055/6066 Reporting Overview

	Section 6055 – INSURER REPORTING	Section 6056 – EMPLOYER REPORTING
Applies to:	Providers of minimum essential coverage (MEC): Self-insured plan sponsors; insurers/carriers	Applicable Large Employers (ALEs)
Requires reporting parties to:	• File information with the IRS • Provide statements to covered individuals	• File information with the IRS • Provide statements to full-time employees
Purpose is to assist:	• IRS administer the individual mandate • Individuals show compliance with the individual mandate	• IRS administer the employer shared responsibility rules and determine eligibility for subsidies

Self-funded ALEs must report under both sections, but will use a combined reporting method to report on a single form.

Marshall & Sterling GROUP BENEFITS

ACA Reporting Deadlines

IRS Returns

- **Annual Deadline**: Feb. 28 (March 31, if filed electronically)

Individual Statements

- **Annual Deadline**: Jan. 31
- May be furnished electronically if consent requirements are met

→ Employers filing over 250 forms are required to file with the IRS electronically.

Marshall & Sterling GROUP BENEFITS

ACA Reporting Penalties

ACA reporting under both sections 6055 & 6056 are subject to the Internal Revenue Code's reporting penalty provisions:

- §6721: Failure to file correct **information returns**
- §6722: Failure to furnish correct **individual statement**

Penalty Type	Per Violation	Annual Maximum
General	$250	$3 million
Intentional Disregard	$500	None

Marshall & Sterling GROUP BENEFITS

W-2 Reporting of Employee Health Coverage Cost

- Certain employers must report the total cost of each employee's health coverage on box 12 of their Form W-2
- **Purpose:** To inform employees of the value of their health coverage, does not affect taxability
- Currently optional for employers that file fewer than 250 Form W-2s in the previous calendar year

Marshall & Sterling GROUP BENEFITS

Group Health Plan Design Rules

- **Health FSA Limit:** The amount of annual elective contributions limited to no more than $2,600
- **Health HSA Contribution Limit:** Self-only: $3,400 and Family: $6,750 ($1,000 catch up allowed for those 55 & over)

For 2017 Plan Year

- **Waiting period:** No more than 90 days
- **Individual Policy Reimbursement Prohibition:** Employer reimbursement arrangements for individual policies violate the ACA and will trigger $100/day per employee excise taxes under Internal Revenue Code §4980D

Marshall & Sterling GROUP BENEFITS

Notice & Disclosure Requirements

- **Summary of Benefits and Coverage (SBC):** Provide at enrollment and upon request. Typically provided by insurance carrier, but employer is responsible for distribution.

- **Exchange (Marketplace) Notice:** Federal notice explaining the availability of the Health Insurance Exchanges (Marketplaces). Under the FLSA, employers must provide to all employees within 14 days of hire.

- **Grandfathered Plan Notice (grandfathered plans only):** Include with materials describing the plan's benefits, such as enrollment materials, summary plan description (SPD).

- **Notice of Patient Protections (non-grandfathered plans only):** Provide at enrollment and include in plan documents/SPD.

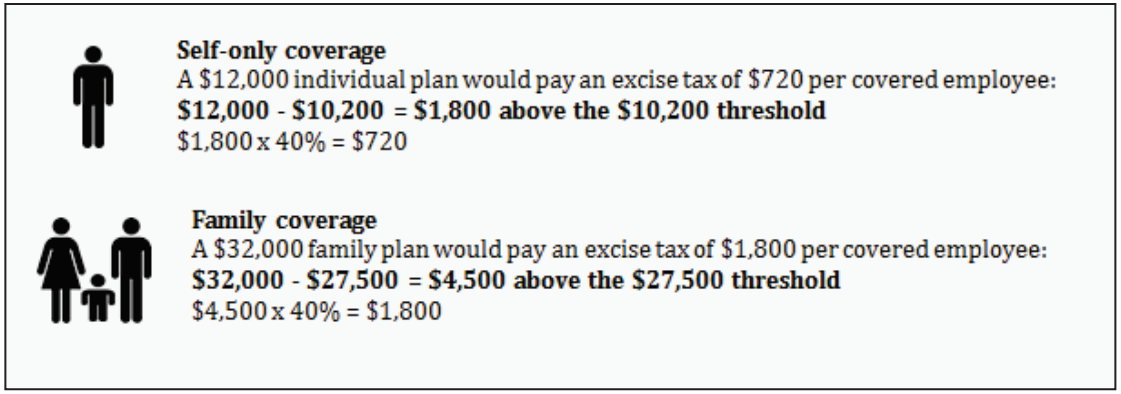
Marshall & Sterling
GROUP BENEFITS

ACA Taxes and Fees

- **Patient Centered Outcomes Research Institute (PCORI):** For self-funded group health plans (*including non-excepted HRAs*) count the average number of participants for the plan year ending in 2016 and pay the corresponding annual fee by July 31, 2017. The fee is filed and paid once per year using IRS Form 720.
  - For Plan Years Ending 1/1/2016 to 9/30/2016, fee amount: $2.17 x avg. # of covered lives during that plan year; For Plan Years Ending 10/1/2016 to 12/31/2016, fee amount: $2.26 x avg. # of covered lives during that plan year

- **Cadillac Tax:** Excise tax on "high cost" employer sponsored health plans scheduled to take effect in 2020. The tax is 40% of the cost of health coverage that exceeds predetermined threshold amounts.

How it Works: *Examples based on current thresholds*



Marshall & Sterling GROUP BENEFITS

§125 PLAN REQUIREMENTS

Sign up for our E-News Today!

www.marshallsterling.com/group-benefits

Marshall & Sterling GROUP BENEFITS

Cafeteria Plans Overview

- Key Feature: Allow employees to choose between taxable cash and nontaxable qualified benefits without adverse tax consequences

Some common examples of Cafeteria Plans include:

1. Premium Only Plan (POP)
2. Flexible Spending Accounts (FSAs)
3. Contributions to Health Savings Accounts (HSAs)

Marshall & Sterling GROUP BENEFITS

Tax Implications under IRC § 125

Failure to satisfy Section 125 requirements could result in plan disqualification, meaning pre-tax contributions will not be allowed and the government will expect their share in back taxes (plus penalties and interest)

Commonly Misunderstood §125 Plan Requirements:

- ❑ Written Plan Document (+ SPD to participants)
- ❑ Annual non-discrimination testing
- ❑ Permissible mid-year changes & QLE

Marshall & Sterling GROUP BENEFITS

§ 125 Non-Discrimination Testing

To receive their tax advantaged status, cafeteria plans must generally three nondiscrimination tests. These tests are designed to ensure that the plan does not discriminate in favor of highly compensated individuals (HCIs).

1. Eligibility to participate test: Looks at whether a sufficient number of non-highly compensated individuals are eligible to participate

2. Benefits and contributions test: Designed to make sure that a plan's contributions and benefits are available on a nondiscriminatory basis and that HCIs do not select more nontaxable benefits than non-HCI participants select

3. Key employee concentration test: Key employee contributions cannot exceed 25 percent of the total contributions into the plan

If a cafeteria plan fails to pass nondiscrimination testing, highly compensated employees lose the tax benefits of participating in the plan (that is, they must include the benefits or compensation in their income).

Marshall & Sterling
GROUP BENEFITS

Permissible Mid-Year Changes

Employers need to ask these four key questions to verify a given midyear change is permissible:

- ❑ Is the change allowed under Section 125 – the situations where midyear changes are permitted?
- ❑ Is the change consistent with the event prompting the change?
- ❑ Is the change allowed under the employer's Section 125 plan?
- ❑ Is the change permitted under the underlying plan, such as the medical plan, the dental plan, the life plan and so on?

If the answer to all the above questions is yes, then the employer can make the change midyear.

Marshall & Sterling
GROUP BENEFITS

DOMESTIC PARTNER COVERAGE & IMPUTED INCOME

Sign up for our E-News Today!

www.marshallsterling.com/group-benefits

Marshall & Sterling GROUP BENEFITS

Domestic Partner Coverage

If a domestic partner or domestic partner's child(ren) does not qualify as a tax dependent, employers must:

1. Deduct the portion of the employee's contribution that is attributed to their domestic partner's coverage on an after-tax basis

2. Report the fair market premium value (FMV) of domestic partner coverage as additional employee wages subject to federal and state tax withholding (***imputed income***)

Marshall & Sterling GROUP BENEFITS

Determining Tax Dependent Status

To qualify as an IRS tax dependent, an employee's domestic partner and/or domestic partner's child(ren) must:

a) receive more than half of their support from the employee; and

b) use the employee's residence as their principal residence and be a member of the employee's household.

Employers may rely on an employee's written certification that the employee's domestic partner is their tax dependent

Marshall & Sterling GROUP BENEFITS

Calculating Imputed Income

Most common method: Calculate the difference between the cost of employee only coverage and the cost of employee + domestic partner coverage—after deducting what the employee contributes

Employee only monthly premium= $400.00

- Employer share = $275.00
- Employee share = $125.00

Employee + one monthly premium= $800.00

- Employer share = $500.00
- Employee share = $300.00

Calculation:

- $500.00 - $275.00 = $225.00 (monthly)
- $225.00 x 12 months = **$2,700.00 in annual imputed income**

Marshall & Sterling GROUP BENEFITS

Questions?

Sign up for our E-News Today!

www.marshallsterling.com/group-benefits

Marshall & Sterling GROUP BENEFITS