

On-Site Health Clinics Advisory

FEBRUARY 27, 2014



On-Site Health Clinics – Compliance Issues

By Ann Murray and Lorie Hutchins

Providing on-site health services to employees can provide significant cost savings and increase employee productivity, but there are a number of compliance challenges and risks you should consider, particularly when the services go beyond first-aid. In this first in a series of alerts addressing on-site health clinics, we address some of the more significant laws that may impose obligations on an employer offering a clinic:

Workplace Safety and Health Requirements

When designing or assessing an on-site care program, you should consider the applicable workplace safety and health requirements that protect employees working at or visiting your facilities, including federal standards issued by the [Occupational Safety and Health Administration](#) (“OSHA”). The OSHA regulations require, in part, that certain employers conduct a hazard assessment of operations to identify the full scope of compliance and reporting obligations. The results of this assessment will aid you in defining the scope of workplace safety services and identifying what services exceed standard worksite safety and first-aid response.

Application of Employee Benefits Rules

If you choose to offer services beyond basic first-aid, the on-site health clinic may be subject to additional federal regulations such as the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”). Compliance issues need to be considered:

- *ERISA Group Health Plan:* If the on-site health clinic services go beyond basic first-aid or the clinic provides services to employees, family members or to on-site contractors, the clinic will likely be regulated as a group health plan under ERISA. As a result, you may wish to treat the on-site health clinic as a component of your group health plan in order to streamline compliance and ensure that any wellness incentives relating to the on-site health clinic do not violate the Americans with Disabilities Act (“ADA”). Combining your clinic with your plan, however, can create other issues and should be carefully considered.

→ Contacts

For additional information,
please contact:

[Ann Murray](#)
404.527.4940
amurray@mckennalong.com

[Lorie Hutchins](#)
404.527.4586
lhutchins@mckennalong.com

- **COBRA:** There is no clear exception for on-site health clinics from COBRA unless the services are limited to first-aid provided during working hours. Offering COBRA raises several practical issues including, for example, whether to charge a separate premium and how to calculate it. In addition, there may be safety or morale concerns in allowing former employees access to your facilities in order to visit the on-site health clinic.
- **HIPAA:** On-site health clinics are “excepted benefits” under HIPAA and, as such, are exempt from the HIPAA portability requirements (and many other group health plan mandates) and privacy and security requirements as a covered group health plan. Note, however, that HIPAA may still apply to the on-site health clinic as a provider or business associate (we will address these obligations and other privacy protections in a future alert).

Possible Labor Relations Issues

Your decision to offer on-site health clinic creates additional issues if you are unionized. Depending on the particulars of your collective bargaining contract with the union, you may have an obligation to bargain over a number of related issues, including whether the establishment of your on-site health clinic is the creation of a new benefit for employees and, thus, a mandatory subject of bargaining.

Drug and Alcohol Testing Considerations

If you use your on-site health clinic to conduct workplace drug and alcohol testing, you must ensure that your practices comply with federal, state and local laws. For example, some jurisdictions prohibit on-site drug or alcohol testing and require certain notices and other administrative safeguards. Drug and alcohol testing may also trigger privacy issues (we will address privacy issues in a future alert).

By taking steps now to determine if the above issues exist for your on-site health clinic and address them as needed, you will help protect yourself from unexpected liabilities in the future that could cost you significant amounts of money and, perhaps more importantly, employee relations problems.

With a team of attorneys who are highly experienced in the employee benefits field, MLA can provide answers to questions and assistance in complying with these requirements.

Albany | Atlanta | Brussels | Denver | Los Angeles | Miami | New York | Northern Virginia | Orange County | Rancho Santa Fe | San Diego | San Francisco | Seoul | Washington, DC

McKenna Long & Aldridge LLP (MLA) is an international law firm with more than 575 attorneys and public policy advisors in 15 offices and 13 markets. The firm is uniquely positioned at the intersection of law, business and government, representing clients in the areas of complex litigation, corporate law, energy, environment, finance, government contracts, health care, infrastructure, insurance, intellectual property, private client services, public policy, real estate, and technology. To further explore the firm and its services, go to mckennalong.com.

If you would like to be added to, or removed from this mailing list, please use this [link](#) or email information@mckennalong.com. Requests to be removed are honored within 10 business days.

© 2014 MCKENNA LONG & ALDRIDGE LLP. All Rights Reserved.

*This Advisory is for informational purposes only and does not constitute specific legal advice or opinions. Such advice and opinions are provided by the firm only upon engagement with respect to specific factual situations. This communication is considered Attorney Advertising.