

CSBA Sample

Board Policy

Health And Welfare Benefits

Attachment A1

BP 4154 4254,4354
Personnel

***Note: The following optional policy should be revised to reflect district practice and collective bargaining agreements. Districts that contract with the Board of Administration of the Public Employees' Retirement System to obtain a health benefit plan under the Public Employees' Medical and Hospital Care Act (PEMHCA), Government Code 22750-22944, should revise the following policy and accompanying administrative regulation to reflect the requirements of that program. ***

The Governing Board recognizes that health and welfare benefits are essential to promote employee health and productivity and are an important part of the compensation offered to employees. The district shall provide health and welfare benefits for employees in accordance with state and federal law and subject to negotiated employee agreements.

(cf. 4140/4240/4340 - Bargaining Units)
(cf. 4141/4241 - Collective Bargaining Agreement)
(cf. 4151/4251/4351 - Employee Compensation)

***Note: The district should select or revise the appropriate option below to reflect district practice regarding employees who are not in bargaining units. Districts selecting Option 2 should expand this policy or accompanying administrative regulation to specify benefits for unrepresented employees. Also see BP 4121 - Temporary/Substitute Personnel. ***

OPTION 1: Certificated management, administrative, and supervisory employees who are not in bargaining units shall receive the same health and welfare benefits as those specified in the collective bargaining agreement for certificated employees. Classified management, administrative, and supervisory employees who are not in bargaining units shall receive the same health and welfare benefits as those specified in the collective bargaining agreement for classified employees.

(cf. 4300 - Administrative and Supervisory Personnel)

OPTION 2: Employees who are not in bargaining units shall receive health and welfare benefits as specified in Board policy and administrative regulation.

(cf. 4121 - Temporary/Substitute Personnel)

***Note: Family Code 300, as amended by SB 1306 (Ch. 82, Statutes of 2014), defines marriage as a personal relationship arising out of a civil contract between "two persons" rather than between

a man and a woman. In addition, pursuant to Family Code 297.5, registered domestic partners have the same rights, protections, and benefits as spouses. Therefore, to the extent that the district provides health benefit coverage to spouses of employees pursuant to state law, the same coverage must be provided to registered domestic partners. Pursuant to Health and Safety Code 1374.58, health care service plans and health insurers are required to provide registered domestic partners coverage that is equal to the coverage provided to spouses. ***

For purposes of granting benefits, a registered domestic partner and his/her child shall have the same rights, protections, and benefits as a spouse and spouse's child. (Family Code 297.5, 300)

***Note: The following paragraph is for use by districts that have an average of 50 or more full-time equivalent (FTE) employees over the preceding calendar year. The federal Patient Protection and Affordable Care Act (PPACA) (42 USC 300gg-300gg95; 26 USC 4980H; 26 CFR 54.4980H-1-54.4980H-6) requires such districts to offer FTE employees and their dependents (not including spouses) the opportunity to enroll in an affordable district-sponsored group health plan or health insurance coverage that provides minimum "essential coverage," as defined in Health and Safety Code 1367.005, 26 USC 5000A, and 26 CFR 1.5000A-2 and 54.4980H-1. In addition, the district must ensure that the employee's contribution toward the cost of the coverage does not exceed 9.5 percent of his/her household income; see the accompanying administrative regulation for further information about the calculation of the employee's contribution. ***

***Note: For purposes of determining the applicability of this law, the district must calculate the number of FTE employees in accordance with 26 USC 4980H and 26 CFR 54.4980H-1. An FTE employee is one who works at least 30 hours per week (including actual work hours and hours for which an employee is paid or entitled to be paid due to vacation, holiday, sick leave, disability, jury duty, military leave, or other leave of absence). 26 CFR 54.4980H-3, as amended by 79 Federal Register 29, Feb. 12, 2014, clarifies that districts should not calculate employment breaks of four or more consecutive weeks, such as summer break, in a way that would significantly detract from the calculation of an employee's overall work hours. Thus, an employee who averages 30 hours or more per week for nine months and then no hours for three months would still be considered a full-time employee. In addition, in determining the number of FTE employees, the district must include the hours of service for all part-time employees for a calendar month divided by 120. Although part-time employees are considered in the determination as to whether the PPACA applies to the district, the district is not required under the PPACA to provide health benefits to part-time employees. See BP 4121 - Temporary/Substitute Personnel. The calculation of FTE employees is complex and the district should consult legal counsel as necessary. ***

***Note: Beginning with the 2016 plan year, a district with 50 or more FTE employees will be required to offer health coverage that meets the PPACA requirements to at least 95 percent of its FTE employees. If a district fails to comply with this law and any FTE employee uses a federal tax credit or cost-sharing premium reduction to purchase coverage through a health exchange (i.e., Covered California), the district must pay a financial penalty. ***

The district shall offer full-time employees who work an average of 30 hours or more per week and their dependents up to age 26 years a health insurance plan that includes coverage for essential health benefits, pays at least 60 percent of the medical expenses covered under the terms of the

plan, and meets all other requirements of the federal Patient Protection and Affordable Care Act.

***Note: Pursuant to 26 USC 105 and 26 CFR 1.105-11, self-insured medical expense reimbursement plans are prohibited from discriminating in favor of "highly compensated" individuals as to eligibility to participate or level of benefits provided under the plan. As defined in 26 USC 105(h), "highly compensated" individuals are those who are among the highest paid 25 percent of all employees, with specified exceptions. The PPACA (42 USC 300gg-16) extends this requirement to non-self-insured group health plans. Implementation of this provision with respect to group health plans has been delayed until the first plan year after the issuance of federal regulations or other guidance on how to comply with the requirement. As of October 6, 2015, this delay is still in effect. However, it is still recommended that districts begin to review their plans and practices to be prepared to comply with the expected rules. ***

With respect to eligibility to participate in the health benefits plan or the level of health benefits provided, the district shall not discriminate in favor of employees who are among the highest paid 25 percent of all district employees. (26 USC 105; 42 USC 300gg-16)

Continuation of Coverage

***Note: Education Code 7000-7005 provide for continued health and dental care benefits for retired certificated employees and their spouses/domestic partners. In addition, for districts with 20 or more employees, continued health and disability benefits for former classified and certificated employees and their qualified beneficiaries are addressed in the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (26 USC 4980B; 29 USC 1161-1168; 26 CFR 54.4980B-1-54.4980B-10). For districts with 2-19 employees, continued health and disability benefits for former employees and their qualified beneficiaries are addressed in the California Continuation Benefits Replacement Act (Cal-COBRA) (Health and Safety Code 1366.20-1366.29; Insurance Code 10128.50-10128.59). These programs provide continuation coverage for limited time periods and under limited conditions. The following section reflects the general purposes of these programs; see the accompanying administrative regulation for a summary of major program requirements. ***

***Note: Pursuant to Governmental Accounting and Standards Board Statement 45, "other postemployment benefits" (OPEBs) (i.e., medical, dental, vision, hearing, life insurance, long-term care, long-term disability, and other nonpension benefits for retired employees) must be reported by the district as a current expense over the working years of an employee. To the extent that OPEBs are not prefunded in a designated fund or irrevocable trust, they must be reported as a liability on the district's financial statements. See BP 3100 - Budget and AR 3460 - Financial Reports and Accountability. ***

Retired certificated employees, other employees who would otherwise lose coverage due to a qualifying event specified in law and administrative regulation, and their qualified beneficiaries may continue to participate in the district's group health and welfare benefits in accordance with state and federal law.

***Note: The following paragraph may be revised to reflect district practice. Covered employees

and their qualified beneficiaries who elect continuation coverage may be required to pay all costs of the insurance plan as provided below (Education Code 7000; Health and Safety Code 1366.26; Insurance Code 10128.56; 26 USC 4980B). Any district contribution to retired employee health costs is a negotiable item. ***

Unless otherwise provided for in the applicable collective bargaining agreement, covered employees and their qualified beneficiaries may receive continuation coverage by paying the premiums, dues, and other charges, including any increases in premiums, dues, and costs incurred by the district in administering the program.

Confidentiality

***Note: The Health Insurance Portability and Accountability Act (HIPAA) (45 CFR 164.500-164.534) specifies actions that a health plan, health care provider, or health care clearinghouse must take to protect the privacy of an individual's health information. Generally, entities covered by HIPAA may release or receive "protected health information" about an individual only if that individual gives permission or the Act expressly permits its release. ***

***Note: Civil Code 56.20-56.245 address an employer's responsibility to maintain the confidentiality of medical information it receives. ***

The Superintendent or designee shall not use or disclose any employee's medical information the district possesses without the employee's authorization obtained in accordance with Civil Code 56.21, except for the purpose of administering and maintaining employee benefit plans and for other purposes specified in law. (Civil Code 56.20)

(cf. 4112.6/4212.6/4312.6 - Personnel Files)

Legal Reference:

EDUCATION CODE

7000-7008 Health and welfare benefits, retired certificated employees

17566 Self-insurance fund

35208 Liability insurance

35214 Liability insurance (self-insurance)

44041-44042 Payroll deductions for collection of premiums

44986 Leave of absence, state disability benefits

45136 Benefits for classified employees

CIVIL CODE

56.10-56.16 Disclosure of information by medical providers

56.20-56.245 Use and disclosure of medical information by employers

FAMILY CODE

297-297.5 Rights, protections and benefits under law; registered domestic partners

GOVERNMENT CODE

12940 Discrimination in employment

22750-22944 Public Employees' Medical and Hospital Care Act

53200-53210 Group insurance

HEALTH AND SAFETY CODE

1366.20-1366.29 Cal-COBRA program, health insurance

1367.08 Disclosure of fees and commissions paid related to health care service plan

1373 Health services plan, coverage for dependent children who are full-time students

1373.621 Continuation coverage, age 60 or older after five years with district

1374.58 Coverage for registered domestic partners, health service plans and health insurers

INSURANCE CODE

10116.5 Continuation coverage, age 60 or older after five years with district

10128.50-10128.59 Cal-COBRA program, disability insurance

10277-10278 Group and individual health insurance, coverage for dependent children

10604.5 Annual disclosure of fees and commissions paid

12670-12692.5 Conversion coverage

LABOR CODE

2800.2 Notification of conversion and continuation coverage

4856 Health benefits for spouse of peace officer killed in performance of duties

UNEMPLOYMENT INSURANCE CODE

2613 Education program; notice of rights and benefits

UNITED STATES CODE, TITLE 1

7 Definition of marriage, spouse

UNITED STATES CODE, TITLE 26

105 Self-insured medical reimbursement plan; definition of highly compensated individual

4980B COBRA continuation coverage

4980H Penalty for noncompliance with employer-provided health care requirements

5000A Minimum essential coverage

6056 Report of health coverage provided to employees

UNITED STATES CODE, TITLE 29

1161-1168 COBRA continuation coverage

UNITED STATES CODE, TITLE 42

300gg-300gg95 Patient Protection and Affordable Care Act, especially:

300gg-16 Group health plan; nondiscrimination in favor of highly compensated individuals

1395-1395g Medicare benefits

CODE OF FEDERAL REGULATIONS, TITLE 26

54.4980B-1-54.4980B-10 COBRA continuation coverage

54.4980H-1-54.4980H-6 Patient Protection and Affordable Care Act

1.105-11 Self-insured medical reimbursement plan

CODE OF FEDERAL REGULATIONS, TITLE 45

164.500-164.534 Health Insurance Portability and Accountability Act (HIPAA)

Management Resources:

CALIFORNIA SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Health Policy: Implications of Covered California for School Boards, Districts and Personnel, Governance Brief, January 2013

INTERNAL REVENUE SERVICE NOTICES

2011-1 Affordable Care Act Nondiscrimination Provisions Applicable to Insured Group Health Plans

U.S. DEPARTMENT OF TREASURY PUBLICATIONS

Fact Sheet: Final Regulations Implementing Employer Shared Responsibility Under the Affordable Care Act (ACA) for 2015

WEB SITES

CSBA: <http://www.csba.org>

California Employment Development Department: <http://www.edd.ca.gov>

Internal Revenue Service: <http://www.irs.gov>

U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services: <http://www.cms.gov>

U.S. Department of Labor: <http://www.dol.gov>

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