

## COWDEN TIMES

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Why we walk

Right now, 30 million American adults are living with kidney disease. We want to help improve and extend people's lives. We walk for patients, families, and people at risk. We walk with more than 5,500 teams from across the country to raise vital funds and help the National Kidney Foundation (NKF) expand the public conversation from kidney disease to kidney health.

Make an impact today! Walk with us and fundraise or support our efforts with a donation.

[Click here to donate or to join our team.](#)

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## [Industry News](#)

### [Compliance Bulletin: DOL Updates Model FMLA Forms](#)

The Department of Labor (DOL) recently released updated model forms to help employers with Family and Medical Leave Act (FMLA) administration. The DOL's previous model forms were set to expire on May 31, 2018, but were extended monthly until the new model forms were approved. No substantial changes have been made to the FMLA forms, but the new expiration date is August 31, 2021. This *Compliance Bulletin* contains, both, a link to the website to access all of the FMLA forms and individual links to each form. It is important that employers start using the updated models as soon as possible.

Contact your Cowden [representative](#) for more information on this or other compliance issues.

[Read Compliance Bulletin PDF here](#)

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## [ACA Compliance Bulletin: Exchange Model Notice Expiration Date Extended](#)

The Department of Labor (DOL) recently extended the expiration date on its model Exchange notices through May 31, 2020. These model notices (or a modified version), called “Model Notices to Employees of Coverage Options,” may be used to comply with the Exchange notice requirement under the Affordable Care Act (ACA). The content of the model notice has not changed substantially since it first became effective October 1, 2013. The expiration date included on the model notice largely serves an administrative function for the DOL and does not impact the notices’ applicability or an employer’s ability to use them. Employers should be sure to verify that they are using the most up-to-date version that has been made available.

The ACA requires employers to provide an Exchange notice to all new hires upon their date of hire. Currently, there is no annual requirement to provide the notice to existing employees, nor is there a fine or penalty under the ACA for failing to provide the notice to new employees. The attached article includes a link to the current model notice.

Contact your Cowden [representative](#) for more information on this or other compliance issues.

[Read ACA Compliance Bulletin PDF here](#)

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## [Compliance Overview: Medicare Part D Notices Are Due Before October 15, 2018](#)

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Each year, group health plan sponsors are required to disclose, to individuals who are eligible for Medicare Part D and to the Centers for Medicare and Medicaid Services (CMS), whether or not their employer-sponsored health plan's prescription drug coverage is creditable. Plan sponsors must provide the annual disclosure notice to Medicare-eligible individuals prior to the beginning of the annual enrollment period for Medicare Part D, which is **October 15, 2018**. Model disclosure notices for employers have been provided by CMS and links to the notices can be found within the attached article. This notice is important because Medicare beneficiaries who are not covered by creditable prescription drug coverage and do not enroll in Medicare Part D when first eligible, will likely pay higher Medicare premiums if they enroll at a later date. Although there are no specific penalties associated with failing to provide this notice, not providing it to employees may prove to be detrimental to them. The attached article defines what is considered creditable coverage and provides a plan of action for how to provide these notices in a timely fashion.

Contact your Cowden [representative](#) for more information on this or other compliance issues.

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## Meet Our Team

Our team consists of 25 employees; each newsletter we take time to highlight some of our employees. To see our leadership team [click here](#); to see all employees please [click here](#).

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## **Elizabeth Murn** **Analyst**

### **What would you most like to tell yourself at age 13?**

Be kind to others, even if they don't return the kindness; you never know what someone else is going through.

**Where is the best place you've traveled to and why?** I went to a small village in Panama for a week during college; it was an incredible experience to learn about a different culture and lifestyle.

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## **Jeanne Michaud** **Consultant**

### **What would you most like to tell yourself at age 13?**

You need to believe in your own abilities.

**Where is the best place you've traveled to and why?** Rome – amazingly rich in history and art, plus the food is so delicious!

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## What's Dinkin Thinkin'?



Elliot Dinkin is equally comfortable whether he is in a courtroom providing testimony or in a CFO's office providing strategic counsel. The 25-year plus veteran of the actuarial, compensation, and employee benefits fields continues to make his mark.

Today, as President and CEO at Cowden Associates, Inc., Elliot provides leadership to position the company at the forefront of the industry. You can learn more about changes in actuarial, benefits, management, and compensation policies from his blog, "[What's Dinkin Thinkin'?](#)" or on Twitter, [@ElliotDofCowden](#).

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## Emerging Trend Regarding Medical Marijuana Will Create Even More Stress for Employers?

It is hard enough to attract and retain talent, while still being compliant. Now a new wrinkle arises with the legalization of medical marijuana in over 30 states. Employers need to be aware of all requirements under federal laws, despite any state laws that may prohibit discrimination against medical marijuana users. Employers must consider the following issues when dealing with medical marijuana:

- Discrimination claims for terminating employees
  - Negligent hiring and negligent retention claims, since employers are subject to federal law requirements to provide a safe workplace
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- Claims arising if a safety issue involving medical marijuana occurs, and it is later revealed that the employer was aware that the employee had failed a drug test

### **What should an employer do?**

In reviewing this issue with your legal counsel and operations and benefits employees, consider the following:

- *Am I required to offer coverage for Medical Marijuana under my health plan?* â€ A health plan is not required to provide coverage for medical marijuana in any state where it is legal. As marijuana is considered a Schedule I drug under federal law, a health plan is not required to provide coverage for medical marijuana regardless of the state of residence of the plan participant.
  - *Can I still terminate or suspend an employee?* â€ An employer still retains rights to terminate employees who cannot perform their jobs because of medical marijuana use. Certainly, an employer can be challenged on a discriminatory basis under various state laws.
  - *What type of other protections should I consider?* â€ Employers should make sure that they have written policies that are tailored to the specific jurisdiction and attached to their handbook. This would then create a specific separate policy for each state vs. the creation of a company-wide standard policy. An employer may also want to expand or utilize a medical review officer to assist in the determination of whether or not an employee who is using medical marijuana can safely carry out his/her duties.
  - *What overriding factors should I consider on this slippery slope?* â€ From my perspective, an overriding premise must still be avoiding safety issues and making sure that the job performance is being handled in the most efficient manner possible. Even though medical marijuana is legal in a majority of states, marijuana is still considered a Schedule I controlled substance that can potentially impair those who use it. From a strict non-legal business perspective, it would seem to me that until a state law explicitly prohibits discrimination on the basis of medical marijuana, an
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employer should continue to stand by the premise that their decisions must consider the primary focus of operating a safe and efficient workplace.

In the final analysis, good judgment will drive any decision. For example, suppose an employee's medical marijuana use is outside the workplace with no impairment on the job and it doesn't involve a safety-sensitive position? It would then appear that this would not be an issue.

Additionally, the legalization of medical marijuana will cause employers, working with legal counsel and operations and benefits employees, to re-evaluate their drug testing policies, consider their reasons for testing, and understand the importance of engaging in an interactive process.

Please share your thoughts!

[Click here to view the printable PDF](#)

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## About Cowden

Cowden Associates, Inc. (Cowden) is recognized as a leading independent compensation, health and benefits, and retirement consulting firm regionally, nationally, and internationally. Cowden was established in 1996, bringing together seasoned professionals to provide client-focused advice designed to produce superior and measurable results to businesses, regardless of size or industry. Client industries include: financial institutions, governmental entities, healthcare, manufacturing, not-for-profit, school districts, and Taft-Hartley.

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Cowdenâ€™s exceptional interactive approach is what sets us apart from similar consulting firms. To deliver a tailored resolution to your specific needs, we first identify the overall attributes exclusive to your organization. We build an understanding of your organization by asking questions, observing, and listening. In this manner you are not merely receiving a pre-fabricated answer, but rather a unique solution for your circumstances.

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**How Are We Doing?**