

LABOR & EMPLOYMENT ALERT

REMINDER FOR EMPLOYERS:

Is Your Company In Compliance With The Patient Protection And Affordable Care Act (“Obama Care”)?

With the recent re-election of President Barack Obama, it is likely that the implementation of the Patient Protection and Affordable Care Act (commonly known as “Obama Care” or the “Affordable Care Act”) will proceed largely as the law was passed in 2010. However, given that the Affordable Care Act leaves many details to federal regulatory agencies, such as the U.S. Department of Labor, the Internal Revenue Service and the U.S. Department of Health and Human Services, and with many questions remaining unanswered about the Act, employers should be on alert for a deluge of new regulations from these agencies between now and the end of 2013.

What is the Affordable Care Act? The Affordable Care Act was enacted to reduce the number of Americans without health coverage by (1) requiring most Americans to have some type of health insurance, or pay a penalty and (2) making it easier for individuals to obtain coverage by creating insurance “exchanges,” requiring employers to provide coverage to all full-time employees (or penalizing them for their failure to do so), and removing barriers for those who have medical problems.

Where do the Courts Weigh in? In June of 2012, the U.S. Supreme Court issued the landmark decision in *National Federation of Independent Businesses v. Sebelius* (No. 11-393, June 28, 2012), in which the Court determined that the 2010 Affordable Care Act was constitutional. This means that the highest court in the United States has given the Affordable Care Act the “green light” to keep moving forward.

What does this mean for employers? The Affordable Care Act has many components that must be interpreted and implemented by employers and insurance providers. A number of the reforms required by the Affordable Care Act are already in effect, including the extension of dependent insurance coverage of adult children to age 26; restrictions on the ability of an insurer to rescind coverage; the elimination of pre-existing condition limitations for participants under the age of 19; and the requirement that employers provide employees with an HHS approved, “easy to understand” summary of benefits and coverage explanation prior to enrollment, re-enrollment upon request, or upon midyear material modification.

Additionally, several more notable reforms take effect in 2013 and 2014 including the following:

- **Reporting Value of Employees’ Health Care Coverage.** The Affordable Care Act requires that the aggregate cost of employer-sponsored health care coverage now be reported on an employee’s W-2 Form (beginning with the 2012 calendar year).
- **Reduced Employee Contributions to Flexible Spending Accounts.** Beginning on January 1, 2013, the maximum contribution to healthcare reimbursement flexible spending accounts will be \$2,500, down from \$5,000, per tax year.

- **Employer Shared Responsibility, or “Play or Pay” Requirement.** As of January 1, 2014, employers with 50 or more full-time employees (*e.g.*, those working 30 or more hours per week) must offer “minimum essential” (*i.e.*, basic) medical coverage or pay a penalty of \$2,000 per full-time employee, excluding the first 30 employees. Employers who offer coverage deemed not “affordable” or who fail to provide “minimum value” must pay a penalty of \$3,000 for each employee who receives a premium credit. Coverage is not “affordable” if the employee’s cost of single coverage is more than 9.5% of income. Coverage does not provide minimum value if it is expected to pay less than 60% of anticipated claims.
- **“Play or Pay” Individual Mandate.** Most individual taxpayers must have health coverage or purchase health coverage on a State Health Insurance Exchange or pay tax penalties.
- **Health Insurance Exchanges.** The Affordable Care Act provides for the establishment of health insurance exchanges at the state level beginning in 2014. The intent of the Health Insurance Exchange is to provide a marketplace where people can compare health plans and then purchase coverage.
- **Small Business Health Care Tax Credit.** In 2014, the small business tax credit, which was implemented to help small businesses afford the cost of insuring their workers, increases from 35% to 50% for small business employers, (and from 25% to 35% for small tax exempt employers, such as charities). To be eligible as a qualifying business, an employer must have fewer than 25 full-time equivalent employees and those employees must have average wages of less than \$50,000 a year. In addition, the employer must cover at least 50% of the cost of single, (not family), health care coverage for each of its employees.

What should employers have accomplished in 2012?

- Insurers should have implemented new internal and external claims processes for employer group health plans in part by July 1, 2011, and generally by January 1, 2012. Self-insured group health plans should have contracted with at least two Independent Review Organizations (“IROs”) by January 1, 2012 and three IROs by July 1, 2012.
- Distribute medical loss ratio rebates, if any were received from the insurer. (The Affordable Care Act sets guidelines for how insurers spend the premiums they collect from members. Insurers must use a certain percentage of premium dollars for medical claims and programs that improve the quality of health care and not for administrative expenses. This is known as the medical loss ratio (MLR). When the MLR is below target, insurers must issue rebates to their policyholders.)
- Effective August 1, 2012, employer group health plans’ requirement to provide recommended preventive health services without cost-sharing was expanded to include preventive coverage for women, including coverage for contraceptives.
- Beginning September 23, 2012, employers should have begun issuing summaries of benefits and coverage (SBCs) to all enrollees.
- Beginning December 31, 2012, employers must provide information on the cost of coverage on each employee’s W-2 (if the employer issued more than 250 W-2s in 2011).

What do employers need to do in 2013?

- Beginning January 1, 2013, employers must reduce the maximum employee contribution to \$2,500 if the employer sponsors a health flexible spending account (FSA).
- Beginning January 1, 2013, employers must withhold an extra 0.9% FICA on those employees earning more than \$200,000.

- By March 1, 2013, employers must provide a notice about the upcoming health insurance exchanges to all eligible employees. An Exchange is an insurance marketplace where individuals and small businesses can buy affordable health benefit plans. Exchanges will offer a choice of plans that meet certain benefits and cost standards as required by the government.
- By December 31, 2013, employer group health plans must complete HIPAA certification requirements for HHS rules on electronic transactions between providers and health plans.

What do employers need to do in 2014?

- By January 1, 2014, employers must work with Exchanges to identify those employees eligible for premium tax credits.
- By January 1, 2014, employers with 50 or more full-time equivalent employees must offer a minimum level of affordable health care coverage or pay tax penalties (*i.e.*, comply with employer shared responsibility or “play or pay” requirement). Employers with fewer than 50 employees are exempt from this new employer shared responsibility policy. They don’t have to pay an assessment if their employees get tax credits through an Exchange.
- By January 1, 2014, individuals must have health coverage, purchase health coverage on a State Health Insurance Exchange, or pay tax penalties (*i.e.*, comply with individual mandate requirement).
- By January 1, 2014, group health plans must:
 - Remove all annual dollar limits on essential health benefits.
 - Remove pre-existing condition limitations for adults.
 - Limit eligibility waiting periods to no more than 90 days.
- Employers must begin reporting to the IRS on coverage offered and available (the first reports are actually due in 2015.)
- Large employers (employers with more than 200 full-time employees) must automatically enroll new employees in the employers’ group health plan. NOTE: Compliance is delayed on this requirement until regulations are issued. However, they are expected by January 1, 2014.
- Insured employer group health plans may not discriminate in favor of highly compensated employees. NOTE: Compliance is delayed on this requirement as well until regulations are issued. However, they are expected by January 1, 2014.
- Although not a requirement, beginning in 2014 employers may provide a wellness incentive/penalty of up to 30% of the premium. (Currently, the limit is 20%.)

The Affordable Care Act creates some of the most sweeping changes faced by American businesses in the modern era. This alert is not meant to be exhaustive, but instead to provide a general overview of what is on the horizon for employers with respect to the Affordable Care Act. Companies should contact their legal and tax advisors for a more detailed analysis.

Our Labor and Employment team stands ready to assist your company with these ongoing changes. Please contact us at (404) 658-5386.

This Labor & Employment Alert provides a general summary of regulation updates and is not intended to be, and should not be relied upon as, legal advice.