SUPREME COURT UPHOLDS AFFORDABLE CARE ACT: WHAT IS THE EFFECT ON EMPLOYER HEALTH PLANS?

Now that the Supreme Court has upheld the Affordable Care Act, employers will need to focus on their plans' compliance with health care reform requirements and communicating with employees about these changes.

The US Supreme Court has upheld the constitutionality of the Affordable Care Act (ACA) in a much anticipated decision. Given the uncertainty about health care reform, many employers had paused their compliance efforts while waiting for this decision. Employers will now need to continue determining which provisions apply to their plans and working to get contracts and plans into compliance, in some cases in time for open enrollment periods in late 2012. Other important provisions taking effect in 2014 and later years will require decisions to be made about health plan coverage, including whether to provide coverage at all, or pay a specified "penalty" instead.

The Supreme Court's decision, *National Federation of Independent Business et al. v. Sebelius*, decided three cases brought under the ACA. The Supreme Court upheld the constitutionality of the ACA as a permissible use of Congress' power to tax, cutting back only certain provisions relating to Medicaid issues which do not directly involve employer plans. It is expected that the challenges to the ACA provisions will continue, both in the courts and as part of Republican lawmakers' stated goal to replace or repeal the law. In the meantime, some important provisions apply in 2013 and 2014.

Many employers were waiting to take steps until the decision was announced. They will now want to make sure that they are on track to meet the law's many requirements that apply to their plans. Given the intense media scrutiny of this case and the expected continued political battle over the ACA, employers can expect that their employees, retirees and dependents will be looking closely at their health care coverage during the next open enrollment period.

Employers will want to make sure that their plans comply with the requirements for increased claims procedures, coverage for children up to age 26 (some states impose an older age) and any required preventive care benefits. If not already done, plan documents, summary plan descriptions and communications materials will need to be updated. The Department of Labor has begun sending audit requests to employers to determine compliance with certain of these ACA requirements.

Some of the major changes in the ACA for 2013 which will require employer action in 2012 are below.

- Employee communication and implementation of the reduced limit on health care flexible spending accounts of $2,500 per year beginning in 2013. Communications will need to be in place for upcoming open enrollment periods.
- Summary of benefits and coverage requirements will apply to open enrollment periods beginning on or after September 23, 2012.

- The increased Medicare taxes on high income individuals will apply in 2013.
- Employers must report the aggregate cost of health coverage provided for an employee on Forms W-2 for 2012 (this is optional for employers who were required to file fewer than 250 Forms W-2 in the prior year under an IRS interim relief rule.) Employers with multiple health plans will want to begin to determine how to aggregate the costs of these plans.

Many more rules become effective in 2014 and subsequent years. These may require important decisions about the way in which the employer will continue to provide health care coverage, if at all. Employers will need to focus on advance planning and decisions since plans may need to be redesigned and communicated to employees. Some of these changes are below.

- Employers with 50 or more full-time employees will be charged a penalty if they do not provide a specified minimum level of affordable health coverage.
- After the issuance of regulations, employers with more than 200 full-time employees must automatically enroll new full-time employees in health plans, with an opt-out right.
- Wellness incentives under group health plans may be offered up to a maximum of 30% rather than the current 20% of premiums.
- Beginning in 2018, an excise tax will apply on the excess value of coverage in high-cost (so-called "Cadillac") health plans.

Employers who previously determined that their plans would be "grandfathered" will want to make sure that they still meet the requirements for their "grandfathered" designation.

Employers maintaining plans pursuant to collective bargaining agreements will want to review the terms of those agreements before making any decisions about changes in benefits. Employers who are now, or will be shortly, negotiating collective bargaining agreements may want to consider negotiating a re-opener provision in the agreement so that health care issues can be addressed when more regulations have been issued.

Given the complexity of the ACA's requirements and the expected regulations and interpretations, employers will want to make sure that they have a plan to meet all these requirements and communicate coming changes to their employees.

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