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Health-Care Reform Changes Affecting Employers

While the new health care reform law does not require employers to provide employee health benefits, the law does impose penalties and offers incentives to encourage employer participation.

The 2010 Patient Protection and Affordable Care Act (ACA) includes provisions that directly affect employers and business owners. The following is a brief overview of some of the ACA provisions that employers should be aware of.

SHOP Marketplace

The ACA created the Small Business Health Options Program (SHOPs) to help small businesses provide health coverage to their employees. The federal government site, healthcare.gov is available to employers with 50 or fewer full-time equivalent employees and provides a forum for employers to compare health insurance coverage based on price and benefits offered, and purchase suitable insurance for employees.

Small employer tax credit

If you employ fewer than 25 full-time equivalent employees (FTEs) with average annual wages of less than $55,200 (adjusted annually for inflation), and you contribute at least 50% toward the cost of your employees' health insurance that is purchased through a Marketplace, you may qualify for a small employer tax credit. The credit is up to 50% (35% for qualified charitable employers) of the lesser of your actual cost for health insurance coverage, or the amount of contributions you would have made during the taxable year if each employee had enrolled in coverage based on a benchmark premium.

The full credit is available if you have 10 or fewer FTEs with average annual wages below $27,600. The credit is reduced if you have more than 10 FTEs (but less than 25 FTEs) and/or pay average annual wages greater than $25,000 (but less than $50,000). In any case, the credit is only available for two consecutive years.

Play or pay

Employers are generally not required to offer coverage, but those that don't may be subject to a penalty tax. In 2020, the penalty tax applies to employers with 50 or more full-time equivalent employees (FTE) who do not offer qualifying health coverage to at least 95% of their FTEs and dependent children up to age 26 (spouses are not considered dependents and coverage does not have to be offered to spouses of FTEs). The penalty is assessed to eligible employers that do not offer coverage if at least one FTE receives a federal premium tax credit or cost-sharing subsidy for coverage purchased through a health insurance Marketplace. In 2020, the employer penalty is $2,320 per FTE divided by 12, excluding the first 30 FTEs.

In addition, if an eligible employer offers health insurance that is not considered affordable or does not provide minimum value, the penalty for each month is $3,480 divided by 12, for each FTE receiving a premium tax credit, up to a maximum of $2,570 per FTE, excluding the first 30 FTEs, divided by 12. Health insurance provides minimum value if it pays for at least 60% of covered health care expenses for a standard population. Health insurance is affordable when the cost of coverage is no more than 9.56% of an employee's family income.

Employers with more than 200 full-time employees that offer health insurance must automatically enroll new full-time employees, subject to a waiting period of no longer than 90 days.

Other employer incentives

In an effort to promote wellness and decrease health insurance costs, employers may offer employees rewards, such as premium discounts and added benefits, for participating in wellness programs and meeting certain health-related standards. The value of the rewards can equal as much as 30% of the cost of coverage and may even reach 50% in some cases.

Group health plan coverage requirements

Group health plan requirements under the health-care legislation directly apply to insurers. However, most of these provisions are incorporated by reference into

ERISA and the Internal Revenue Code, extending their application to employers offering group health insurance. Some important group health plan requirements include:

- Group plans that offer coverage for dependent children must extend the age for dependent coverage to age 26. For plans in existence prior to March 23, 2010 (the date of legislative enactment), the extension of dependent coverage applies only if an adult child is not eligible to enroll in any other eligible employer-sponsored health plan.
- Coverage for a plan participant cannot be rescinded except for fraud or intentional misrepresentation, and plans may not impose pre-existing condition exclusions on any plan participant or beneficiary.
- Plans may not impose lifetime limits on the dollar value of essential health benefits for plan participants and beneficiaries. Essential health benefits are intended to include those benefits customarily provided under a typical employer health plan, as defined by the Secretary of Health and Human Services. Also, plans cannot impose annual coverage limits for essential health benefits.
- Most preventive care services and immunizations recommended by the U.S. Preventive Services Task Force will not be subject to deductibles, co-pays, and co-insurance. (Plans in existence on or before March 23, 2010, are exempt from this provision.)
- Most employers must meet certain reporting and disclosure requirements, which include providing a summary of plan benefits and annual reports to participants; reporting annual enrollment and claims practices to the Secretary of Health and Human Services; and providing premium and coverage information to the IRS.

Tax provisions

Employers who filed more than 250 Forms W-2 for the preceding calendar year, must include the aggregate cost of group health plan benefits (with some exclusions) provided to employees on Form W-2.

Health-care legislation makes changes to health savings accounts (HSAs), Archer medical savings accounts (MSAs), flexible spending accounts (FSAs), and health reimbursement accounts (HRAs) that affect both plan participants and employers. Over-the-counter drugs no longer qualify for distributions/reimbursements under HSAs, Archer MSAs, health FSAs, and HRAs. In addition, the tax on nonqualified distributions from HSAs or Archer MSAs is 20%. Also, contributions to health FSAs are limited to $2,750 per year.

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