

Claremont Management Group Presents Obamacare and Employers July 18, 2012

By

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A. OBAMACARE:

Current Status:

- United State Supreme Court ruled on Obamacare June 28, 2012
- Ruled that the individual mandate under Obamacare was a tax, and therefore was constitutional.
- USSC did disallow a provision that would deny current Medicaid funding to states that declined to expand their Medicaid coverage. As a result, it is expected that numerous states may decline to expand their participation in Medicaid. This could be an unexpected barrier to Obamacare, since the expansion of coverage of medical care was premised on expansion of Medicaid. The consequence for employers is that the expected reduction in health care costs to private employers by the Fed and states covering many low income and unemployed individuals is not likely to occur.
- My take on this is that health insurance costs, already high, will be even higher than anticipated.
- For employers, parts of the Act are already in effect. One example is the Age 26 dependent coverage rule. This provision is fairly simple and some states, like Texas, had already expanded coverage for dependents up to the age of 26.
- Also in effect are requirements for “first dollar” coverage for preventive care; that certain medical “essential benefits” be available without lifetime maximums (including emergency room and hospitalization benefits); and employers with less than 100 employees have relaxed Cafeteria Plan requirements.
- On an individual basis, employees are capped at putting \$2,500 into a Health Savings Account (“HSA”) and OTC medications are no longer an allowed HSA expense.

The Future:

- Repeal of Obamacare? Don't hold your breath!
- Over 2013 and 2014, watch for the following to be implemented under the Act:
 1. Employees with annual income of \$200K, or couples with \$250K, have increased FICA tax of 0.9% of wages.
 2. Elimination of 28 percent subsidy on the costs for Medicare Part D that employers have received.
 3. Group health plans and insurance carriers may not impose any annual limit. Lifetime limit already in place.
 4. Plans cannot have any pre-existing condition exclusions.
 5. Out-of-pocket (OOP) expenses and deductibles cannot exceed those applicable with the HSA-eligible high-deductible health plans.
 6. Maximum coverage waiting period is 90 days or less.
 7. Individuals who do not enroll in qualifying coverage are subject to an excise tax. They generally pay the greater of a flat dollar amount (2014: \$95, 2015: \$325, 2016 and beyond: \$695) or a percentage of income (2014: one percent, 2015: two percent, 2016 and beyond: 2.5 percent). There is a hardship exemption for those with incomes below a certain level.
 8. Employers with 200 or more full-time employees must automatically enroll all new hires.
- Undetermined: creation of state "health exchanges" to provide health insurance for those who are not covered by an employer or cannot afford their employer's plan. The hitch here is that while some states already have such exchanges, states may opt not to participate in such exchanges. Governor Scott of Florida has recently publicly stated that his state will not participate in the exchanges or in the expansion of Medicaid under the Act.
- As part of the Act, covered employers will be required to provide an exchange-related notice to new hires.
- Employers with less than 50 employees, including a calculation of full-time-equivalents ("FTEs") for part time employees, are not subject to the penalty provisions at this time. (Each 120 hours a month of part-time work equals one FTE.) Failure to provide health coverage results in a monthly penalty equal to 1/12 of \$2,000 after disregarding the first 30 employees. Premium credit penalty is \$3,000 or \$2,000 per employee, depending on certain factors. For a detailed discussion of this provision from the NFIB, see:

<http://www.nfib.com/Portals/0/PDF/AllUsers/Free%20Rider%20Provision.pdf>

- The pundits have criticized this penalty, as providing a disincentive for businesses to exceed 50 employees. This may lead to an increased incentive to outsource jobs outside of the United States.
- A possible plus for small employers is that the Act does provide a small business tax credit to encourage businesses with up to 25 FTE employees to provide health insurance. Average wages must be less than \$50,000 for the business to participate.
- One thing is sure: the Act will have an impact on all employers regardless of size.

B. ARIZONA IMMIGRATION LAW DECISION:

USSC rules in June 2012 as follows:

- Police "papers please" requirement rested on the technical issue of whether the law unconstitutionally invaded the federal government's exclusive prerogative to set immigration policy. So, state law enforcement may:
 1. Demand immigration papers from anyone stopped, detained or arrested in the state who officers reasonably suspect is in the country without authorization.
 2. Also commands police to check all arrestees' immigration status with the federal government before they are released.
- Three provisions struck:
 1. Two made it a crime for illegal aliens to be present and to seek employment in Arizona
 2. A third authorized police officers to make warrantless arrests of anyone they had probable cause to believe had committed a deportable offense.

Bottom line: Look for these laws to be less likely by state legislatures. There is still no fix for the "immigration problem."

Caution: Keep complying with IRCA and doing I-9 Forms for all employees.

C. SPECIAL TOPICS FOR FUTURE SEMINARS:

1. NLRB Rules on Concerted Action by Employees through Social Media.
2. EEOC rules that criminal background checks may be discriminatory depending on how they are conducted and administered.
3. Unemployment Rates are anything the Feds say they are. Just saying so does not make it true, of course.