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Client Alert

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The Supreme Court Decision on PPACA: Repercussions for Employers

The recent Supreme Court decision upholding the majority of the Patient Protection and Affordable Care Act (PPACA) has several implications for employers. Though nothing in PPACA requires employers to provide employees with health insurance, PPACA does impose a series of incentives and penalties to encourage employers to provide their full-time employees with access to affordable health coverage.

Opportunities for Small Employers – Employers with 100 or fewer employees

PPACA establishes two programs intended to make it more affordable for small businesses to provide health coverage to their employees. First, through Small Business Health Option Programs (SHOPS), small businesses with up to 100 employees will be able to purchase health insurance through state based exchanges. SHOPS may give small employers some of the cost advantages enjoyed by larger employers. Additionally, some small businesses may be eligible to receive premium tax credits to help pay for their employees' insurance. If the employer provides coverage that meets certain qualifications, these credits equal 35% (25% for non-profits) of the employer's share of health care premiums beginning in 2012 and increases to 50% (35% for non-profits) in 2014.

The "Employer Mandate" – Employers with at least 50 full-time equivalent employees

Under what has become known as the "employer mandate," an employer with at least 50 full-time equivalent employees will have to pay a penalty if it does not offer affordable coverage to its employees and at least one of its employees receives a premium tax credit to purchase coverage on a state health insurance exchange.

The Triggering Event[1] – Does an employee entitled to a premium tax credit purchase coverage on the state's health exchange?

By 2014, all states must have a fully-certified and operational health insurance exchange which will allow individuals to choose to purchase various levels of coverage. Individuals with household incomes at or below 400% the federal

1 Until 2016, states can elect to limit participation to employers with up to 50 employees.

poverty level will be entitled to premium tax credits towards the cost of coverage in the exchanges. If an employer does not provide affordable access to minimum essential coverage, its employees may choose to participate in the exchange. Some may also be eligible for the premium tax credits.

The health exchanges are relevant to large employers because an employer is only liable to pay any of the PPACA penalties if at least one of its employees chooses to purchase coverage on the exchange and gets a premium tax credit for that purchase. If no employee receives the premium tax credit, the employer does not have to pay any of the PPACA penalties.

The Penalties[2] – If an employee entitled to a premium tax credit purchases coverage on the state's health exchange, then what are the possible employer penalties?
An employer must pay a penalty if (a) it does not provide minimum essential coverage for its full-time employees or (b) if the minimum essential coverage it offers is unaffordable.

a) **Penalty for Not Providing Coverage.** An employer must pay an annual penalty if it does not provide "minimum essential coverage" to all of its full-time employees and at least one receives a premium tax credit and purchases health insurance on the state exchange. This penalty is equal to $2,000 a year (indexed for years after 2014) for each of the employer's full-time employees in excess of 30.

b) **Penalty for Providing Unaffordable Coverage.** An employer that offers minimum essential coverage to its employees will still be required to pay a penalty if the coverage is unaffordable, and an employee entitled to a premium tax credit purchases health insurance on a state exchange. PPACA sets specific guidelines for what coverage is "affordable." The penalty for unaffordable coverage is equal to $3,000 annually for each full-time employee entitled to a tax credit that purchases health insurance on a state exchange. However, this penalty is capped at the amount the employer would otherwise owe for not providing coverage under (a) above.

Employer Options for Minimizing the Increase in Health Care Costs[3]
To minimize increasing health care costs, employers can provide minimum essential coverage and look for creative solutions to minimize coverage costs. When pursing this option, employers should make certain the health coverage meets all the substantive requirements of PPACA and is affordable to employees so as to not incur the PPACA penalties.

2 400% of the federal poverty level is $44,680 for a family of one or $92,200 for a family of four.
3 The Department of Health and Human Services (HHS) will likely issue specific guidelines as to what constitutes the minimum essential coverage. Some insurance plans that employers currently provide may be eligible to be grandfathered in as providing minimum essential coverage.

First, employers can save money by shopping around and getting quotes from multiple insurance carriers. Employers should choose a carrier that offers plans for people in different stages of life so that employees can pick the plan that is best for their families. When employees select their own plans, employers spend less money covering services employees never use. To save money on the operational costs of this selecting a carrier and enrolling employees, employers can consider outsourcing management to a professional employer organization.

Employers can also save money by selecting a high-deductible plan and supplementing it with a health savings account (HSA). An HSA is an account that allows employees to pay for out of pocket medical costs, and gives employees the incentive to monitor their own health care costs.

Another option to reduce costs while encouraging quality improvement is to join forces with an Accountable Care Organization (ACO). ACOs hold healthcare providers accountable for health outcomes by giving financial rewards for high-quality services. Some large employers that self-fund employee insurance program may be able to follow the ACO model, while other employers could gain access to an ACO through a provider network or through a health insurer.

For long-term savings, employers can consider wellness programs that give employees a minimum discount, rebate, or other reward for participation in wellness initiatives. PPACA allows wellness programs, but employers should carefully evaluate the programs to make sure they do not expose the employer to liability under the Genetic Information Nondiscrimination Act or the Americans with Disabilities Act.

In some cases, it may be more cost-effective for the employer to provide no coverage and pay the penalty. Employers could provide a salary "gross up" to pay for part of the employee's cost of premiums. However, there may be additional income and employment tax withholding and reporting, as well as a possible increase in the employer's employment tax liability if a "gross up" is implemented.

Finally, it is important to note that employers cannot attempt to reduce costs by providing management-only health plans. These plans likely discriminate in favor of highly-compensated employees and would result in a penalty of $100 per day for each violation.

Conclusion

Under PPACA, employer contributions to health care costs will likely increase. However, employers can curtail these costs by taking advantage of PPACA incentives and carefully planning the health care coverage they will provide. Contact Warren Kingsley or Doug Smith with any questions about how your business can prepare for the new requirements.

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