

Where Do We Stand with Health Care?



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Where Do We Stand with Health Care?

By Jewell Lim Esposito on April 3, 2017

The American Health Care Act was designed to provide health care reform and to replace former President Obama's Affordable Care Act (the "ACA"). However, the House of Representatives, under President Trump's direction, cancelled its vote in late March because of lack of overall support from Republicans to get passage of the bill in the House. Now what?

ACA is Still in Effect

The stop-and-start and vacillation regarding health care reform produces confusion: for those on the Hill, for businesses, for lawyers, for individuals and for those in the health insurance business itself. For now, however, the ACA remains the law of the land.

Companies.

For companies, the "play or pay" provisions of the ACA apply only to "Applicable Large Employers" ("ALEs"), generally those with 50 or more full-time employees in the prior calendar year, including full-time equivalent employees. A company with fewer than 50 full-time employees, including full-time equivalent employees, is not an ALE subject to the ACA (and not subject to the employer shared responsibility provisions or the employer information reporting provisions). Those companies that are not ALEs may be eligible for the Small Business

Health Care Tax Credit and should seek advice to determine how the ACA affects them.

- We often see clients encounter problems in determining “full-time” employees and how “full-time equivalent” plays into the calculation. Knowing the difference between those terms and what the ACA requires is why a company, who may have 80 full-time equivalents, has to offer health care to only its subset of 40 full-timers, as the ACA imposes a penalty only for the failure to extend an offer of coverage to full-time employees, but not those who are counted as part of the full-time equivalent formula.
- We also see clients considering shifting their employees between related companies (to a parent company, a subsidiary, or a company owned by a spouse), so that each company has an employee count below the ALE threshold of 50 full-time equivalents. For the most part, such maneuvering will not work, as related companies are generally grouped together as one ALE under ACA controlled group rules.
- We also caution against simply reducing an employee’s work hours to below 30 hours (the hour requirement for an employee to be considered “full-time”), in an effort to avoid having to offer health care to that now lower-hour employee. Since the enactment of ACA, there has been a rise in claims from employees who were denied health care because employers reduced their hours, under what ostensibly could have looked like a viable business solution.

Generally, ALEs must either (a) offer “affordable” “minimum essential coverage” that provides “minimum value” to “full-time employees” (and offer coverage to the full-time employees’ “dependents”) or (b) pay an employer shared responsibility excise tax. All the quoted terms have complex meanings, and compliance often requires a company to coordinate with outside experts to ensure that any offered health care program meets applicable requirements. Even when a company unequivocally has the requisite “affordable” “minimum essential coverage” with “minimum value,” if the company fails to offer such health coverage to enough of its full-time employees, there can be a substantial penalty. We also have clients who decide simply not to offer health care at all to their employees, choosing instead to pay the non-deductible employer shared responsibility tax. With the ACA still in effect, so too are the IRS mandatory health insurance reporting requirements. For employers, this generally includes reporting the value of the health insurance coverage provided to each employee on Form W-2 and certain information regarding health insurance offerings to full time and other individuals on Forms 1094-C and 1095-C. The IRS uses the information provided on such information returns to administer the employer shared responsibility provisions.

Individuals.

Under the ACA, individuals must report qualifying health coverage for themselves, their spouse (if filing jointly), and any of their dependents on an individually-filed federal tax return, or pay a penalty. In fact, Line 11 on Form 1040-EZ and Line 61 on Form 1040 asks for self-disclosure:

Health Care [Tax]: individual responsibility. . . Full year coverage [check for yes; pay tax if no]

IRS Enforcement of ACA

President Trump's very first Executive Order "Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal," released on the day of his inauguration, mandated:

Sec. 2. To the maximum extent permitted by law, the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the Act shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the [Patient Protection and Affordable Care] Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.

Now that initial repeal and replace efforts have failed, and the ACA remains governing law, focus turns to whether we will see relaxed enforcement as a response to the President's Executive Order. It is unclear how and when the IRS and other agencies will act to "exercise authority and discretion available to them to...reduce [the ACA's] burden."

Because there is nothing published indicating how the IRS will respond to the Executive Order, companies should continue to comply with their

obligations under the ACA. With respect to individuals, the IRS has already indicated that it will accept electronic and paper Forms 1040 and 1040-EZ returns for processing even if those forms not indicate compliance with the individual health care coverage requirement. We will continue to monitor the Executive Order's impact on enforcement activities, especially with respect to employer penalties.

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