

Health Care Laws and Employers — Planning for 2010 and 2011

The impact of the new health care reform legislation is going to be huge, particularly for employers and health plan administrators who need to have a thorough understanding and proactive response to changes in the tax Code, ERISA, and other laws included.

Some provisions of the law are effective immediately. And there are also some tax-planning opportunities and requirements that become effective later in 2010 or in 2011.

We've included below a short description of the key provisions of the health care acts that you and your company should be aware of. Please note that some effective dates apply to plan years or taxable years.

Effective 2010:

- Credit for small employers (no more than 25 employees) for health insurance expenses.

Effective March 23, 2010:

- Employers with more than 200 full-time employees and that have one or more health plans must automatically enroll new full-time employees in one of the offered plans. Notice and opportunity to opt out must be provided. *Note:* This effective date is not clear. The provision may not be effective until guidance is issued.
- The Fair Labor Standards Act is amended to protect whistleblowers and other employees receiving health care subsidies.

Effective March 30, 2010:

- Self-employed individuals may deduct health insurance premiums paid on behalf of children under age 27.
- Dependent coverage is extended to a child of a member of a voluntary employees' beneficiary association (commonly referred to as a VEBA) who is less than age 27 as of the end of the calendar year.
- Qualified retirement plans may pay health benefits for a retiree's child under age 27.

Effective June 20, 2010:

- Employer health plans providing coverage to early retirees have access to reinsurance. Program terminates January 1, 2014.

Effective September 23, 2010:

- Insurers and group health plans that offer dependent coverage are required to allow uninsured children to remain on their parents' health insurance through age 25.
- Small and large group market plans are prohibited from imposing lifetime limits on coverage.
- Plans must provide coverage, without cost-sharing, for preventive services and immunizations.
- Insurance companies are prohibited from rescinding coverage, except in cases of fraud or intentional misrepresentation of material fact.
- No discrimination based on the wages of employees.

- All health insurance plans are prohibited from excluding children under age 19 on the basis of a pre-existing condition.

Effective 2011:

- Employers must report on Form W-2 the cost of employer-sponsored health insurance.
- Health flexible spending accounts, health reimbursement arrangements, health savings accounts (HSAs) and Archer medical savings accounts (MSAs) may reimburse for medications that are prescribed drugs or insulin only (no over-the-counter medications).
- The tax on distributions from an HSA or Archer MSA that are not used for qualified medical expenses is raised to 20%.
- Small employers (average of 100 or fewer employees in either of two preceding years) may establish “simple cafeteria plans.”

Tax Provisions

If you run a business or small business, or if you're self-employed, the following legislation may affect you:

- **Credit for Employee Health Insurance Expenses of Small Business** — Beginning in 2010, eligible small businesses can receive a nonrefundable tax credit of up to 35% (25% for tax-exempt small employers) of the total premium cost of providing health care to their workers. I can explain to you the eligibility requirements and how this credit will play out in future years.
- **Qualifying Therapeutic Discovery Project Credit** — Taxpayers are eligible for a 50% nonrefundable investment tax credit for qualified investments in “qualifying therapeutic discovery projects.” I can explain what this means, the potential financial impact, and special rules that apply.
- **Trade or Business Expenses** — Effective March 30, 2010, self-employed taxpayers can deduct amounts paid during the taxable year for medical insurance covering the taxpayer, the taxpayer's spouse, dependents, and children under age 27.

Changes impacting individuals include:

- **Expansion of Adoption Credit and Adoption Assistance Programs** — Effective for taxable years beginning after 2009, the adoption credit and adoption assistance programs are expanded by increasing the maximum amount of adoption expenditures that may be claimed as a credit to \$13,170, including a child with special needs. Other changes apply as well.
- **Amounts Received Under Accident and Health Plans** — Effective March 30, 2010, you are no longer required to include in your income employer-provided accident or health plan reimbursements for medical care expenses paid on behalf of your child up to the age of 27, a big change from the current age of 19 or 24 if the child is a full time student.

We welcome the opportunity to meet with you to evaluate your personal situation and explain in greater detail these healthcare changes and how they can impact you.