

The Health Care Act How it impacts Businesses

Since our last update, the Senate passed and President Obama signed what is now the Health Care & Education Tax Credits Reconciliation Act of 2010 (collectively, the “Health Care Act”). Listed below are points that may impact your business.

Fair Labor Standards Act (FLSA) Modification for Nursing Moms – *Effective immediately.*

- As a part of the Act, the FLSA has been amended to require breaks for nursing mothers. Employers must now provide “reasonable” breaks for nursing mothers to breastfeed or express breast milk. “Reasonable” has not been defined, nor does it specify the length or frequency of the required breaks. These breaks must be provided for up to one year after the child’s birth and can be unpaid breaks. In addition, employers must provide a private place, other than a restroom, that is “shielded from view and free from intrusion from coworkers and the public.”

Small Business Health Care Tax Credit – *Effective for 2010 calendar year.*

- Qualified Business – has 25 or fewer full time employees with average wages of less than \$50,000 and covers at least 50% of the cost of health care premium for workers.
- Businesses will receive up to 35% of the premiums it pays to cover its workers. Only businesses with 10 or fewer full time employees and average yearly wages of less than \$25,000 are eligible to get the full 35% credit. The credit phases out gradually for firms with average wages between \$25,000 and \$50,000 and for firms with the equivalent of between 10 and 25 full-time workers. The rate will increase to 50% in 2014.
- The tax credit can offset the AMT, but it is nonrefundable.
- Tax-exempt organizations are eligible for a 25% tax credit in 2010. This increases to 35% in 2014.
- To avoid an incentive to choose a high-cost plan, an employer’s eligible contribution is limited to the average cost of health insurance in that state.

Cafeteria Plans - *Effective January 1, 2011.*

- Small employers are defined as employers who, on average, employed 100 or fewer employees over the previous two years.
- The Act creates a Simple Cafeteria Plan to provide a vehicle through which small employers can provide tax-free benefits to their employees.

W-2 Reporting – *Effective January 1, 2011.*

- The Act requires employers to disclose the value of the benefit provided by the employer for each employee’s health insurance coverage on the employee’s annual Form W-2.

Health Savings Account (HSA) Withdrawals – *Effective January 1, 2011.*

- The Act increases the additional tax for HSA withdrawals prior to age 65 that are not used for qualified medical expenses from 10% to 20%.

“Medical Expenses” for Flexible Spending Accounts (FSAs) and Health Reimbursements Accounts (HRAs) Redefined – *Effective January 1, 2011.*

- The definition of “medicine” for FSAs and HRAs has been narrowed to generally include drugs that are prescribed by doctors and insulin. Previously, medicines were more broadly defined (e.g., over-the-counter drugs).

Community Living Assistance Services and Supports (CLASS) Act – *Effective January 1, 2011.*

- Creates a national social insurance program providing limited long-term-care coverage through the workplace for employees.
- All premium costs can be charged to employees.
- Employers need to create automatic enrollment procedures that allow workers to opt out, or workers could choose to enroll and pay premiums for five years before they could receive benefits. Premiums would average \$123/month in 2011, would vary with age and would not increase once the employee signed up.
- Enrollees would become eligible for assistance if they experience limitations in two or more activities of daily living, including eating, bathing, dressing and taking medications.

FSA Caps – *Effective in taxable years beginning January 1, 2013.*

- Decreases the maximum amount of pre-tax income that can be set aside in FSAs to \$2,500 annually.

Medicare Part D Subsidies – *Effective January 1, 2013.*

- Businesses that receive federal subsidies for providing retiree drug benefits will be required to report these subsidies in calculating corporate income taxes. (Currently, they are able to deduct the full cost of the drug benefits provided.)

Employer Responsibility – *Effective January 1, 2014.*

- Impacts companies with 50 or more employees (working 30 or more hours per week).
- If the employer does not offer health coverage to its employees it will have to pay \$2,000 annually per employee. (The first 30 employees are not included in calculating the penalty amount.)
- The penalty can increase to \$3,000 for a full-time employee who receives a federal tax credit in the Exchange because they cannot “afford” the cost of the employer’s health care coverage. (If the employee has to pay more than 9.8% of his/her income or the employer contributes less than 60% of the actuarial value of the plan it is deemed “unaffordable.”)
- Businesses with more than 200 employees will be required to enroll employees into their health care plans automatically. Employees will then have the choice to opt out of the plan.

SHOP (Small Business Health Options Program) Exchanges – *Effective January 1, 2014.*

- Created at the State level, health-insurance Exchanges will allow individuals and small employers to buy health coverage from a pool similar to costing for larger employers.
- Applies to individuals or small employers with 100 or fewer employees. (States may opt to limit this to organizations with 50 or fewer employees, but we do not know at this time what Florida will decide.)
- If an employee chooses to purchase a health plan through an Exchange, an employer will have to provide a “free-choice voucher,” which must be equal to the amount paid to provide coverage to participants in the company’s health care plan.
- Any employee who earns less than four times the federal poverty level and pays more than 8% of their income for the employer-sponsored coverage will have the option of purchasing health insurance through Exchanges.

Wellness Programs – *Effective January 1, 2014.*

- Employers can offer increased incentives to employees for participation in a wellness program or for meeting certain health-status targets.
- Permits rewards or penalties, such as premium discounts of up to 30% of the cost of coverage. Existing plans are limited to 20% reduction of total premium.
- The Act creates a \$200 million, five-year program to provide grants to small employers (fewer than 100 employees) for comprehensive workplace wellness programs. The grants will go to small employers that did not have a wellness program when the Act was enacted.