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Introducing the Patient Protection and Affordable Care Act

After over a year of contentious debate, parliamentary chicanery, and more than a few dubious deals, health care reform is here in the form of the Patient Protection and Affordable Care Act signed into law by President Obama on March 23, 2010. The bill itself is over a thousand pages long and is sure to drastically change the landscape of the American health care system as we know it.

Most of the pain contained in the bill is delayed until 2014 and beyond – well after the current administration and Congress, responsible for the legislation, have completed their re-election bids. The bill is largely aimed at health care insurers, but there are a number of provisions that drastically affect the nation's employers. The most important provisions are summarized below.

⇒ Effective immediately, employers with 10 or fewer employees earning less than an average of \$25,000 per year can get a tax credit of 35% of health insurance costs. In 2014, the credit will increase to 50%. Employers with 11 to 25 employees earning an average of \$50,000 or less can get smaller, partial credits. *(Ed. Note: See the article in this issue of the newsletter for more detail if you believe your*

business could take advantage of this tax credit.)

⇒ Employers with 50 or more employees are now required to provide unpaid break times and a private location other than a restroom for female employees to express breast milk for up to one year after the child's birth.

⇒ As of September 23, 2010, health plans will no longer be allowed to set lifetime or annual caps on benefits, cancel coverage for ill participants except in cases of intentional misrepresentation, exclude dependents because of pre-existing conditions, and allow children to remain on parents' plans until age 26 unless eligible for their own employer's coverage.

⇒ Beginning in 2011, large employers' (those with 200+ employees) health insurance plans must disclose whether they offer full time employees the opportunity to enroll in minimum essential coverage, the length of any waiting period, the lowest cost plan option, the employer's share of the cost,

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Introducing the Patient Protection and Affordable Care Act

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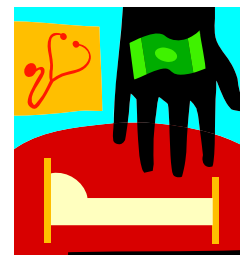
- and the number and name of employees receiving coverage.
- ⇒ Beginning in 2012, employers will be required to disclose the value of health insurance benefits provided on each employee's 2011 W-2. An astute reader would observe that this sounds like a prelude to the taxation of health care benefits as ordinary income.
 - ⇒ By March 31, 2013, employers must give notice of state insurance exchanges and whether their plan meets minimum coverage requirements.
 - ⇒ Large employers (200+ employees) must automatically enroll new full-time employees in their lowest premium health care plan unless the employee opts out or elects a different option. This is expected to be required by 2014 but will be dependent on forthcoming regulations. When this becomes effective, employees will no longer have the option to remain uninsured.
 - ⇒ By 2014, states will have to establish Small Business Health Options Programs (SHOP) exchanges where employers with fewer than 100 employees can buy insurance that is expected to be 1% to 4% lower than other plans.
 - ⇒ By 2014, employers with 50 or more employees that do not offer health care

coverage will be subject to a tax penalty of \$2,000 per employee, except that the first 30 employees would not count towards the penalty. Employers that offer health benefits but whose employees opt to purchase federally subsidized individual insurance would pay a \$3,000 per employee penalty for each employee receiving a subsidy.

- ⇒ In 2014, employers that offer coverage and provide any contribution are required to give "vouchers" to qualified employees whose premium contributions are between 8.0-9.8% of income. These vouchers can be used to purchase coverage through a SHOP exchange.
- ⇒ In 2018, employers who offer high cost plans (the so-called "Cadillac plans") with premiums of \$10,200 for individuals and \$27,500 for families would be subject to a 40% tax on the premiums in excess of those amounts.

This is just a very brief outline of the highlights of the legislation's impact upon employers. Businesses must consult with their legal, accounting, and health care professionals and consultants to prepare for the impact of the bill as it phases in over the coming decade.

Tom Scroggins a labor and employment attorney with a focus on representing employers at Tanner & Guin, LLC.



"Most of the pain contained in the bill is delayed until 2014 and beyond..."

DOL Publishes Proposed Rule on Investment Advice for 401(k) and IRA Participants

The Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code limit the type of investment advice that may be given by an investment adviser to participants in 401(k) plans and IRAs on investments that pay additional fees to the adviser or its affiliates. While advice on these plans is limited, participation in them is on the rise and the retirement security of many Americans depends on their investment decisions. This need for investment advice led the DOL to release a proposed rule that seeks to ensure that plan participants receive unbiased advice on investing in 401(k)-type plans.

The proposed investment advice rule would allow investment advice to be given in two ways:

(1) through the use of a computer model that has been certified as unbiased, or (2) through an adviser who is compensated on a "level-fee" basis (i.e., fees that do not vary based on investments selected by the participant).

The proposed rule also contains the following safeguards and conditions:

- A plan fiduciary would be required to select the computer model or fee-leveling investment advice arrangement;
- Investment advisers relying on the exemption for computer model or fee-leveling advice arrangements would be



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DOL Publishes Proposed Rule on Investment Advice for 401(k) and IRA Participants

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- required to meet certain recordkeeping standards;
- An independent expert must certify computer models in advance as unbiased and as meeting the exemption's requirements;
- The independent expert referenced above would be required to meet new qualifications and satisfy a selection process before he could be deemed an "independent expert";
- The fee-leveling requirements would clarify that investment advisers (including its employees) are not permitted to receive compensation from affiliates on the basis of their recommendations;
- An annual audit of investment advice arrangements, including the requirement that the auditor be independent from the investment advice provider, would be required; and
- Various disclosures by advisers to plan participants would be mandatory, including disclosure of the advisor's fees.



The DOL published the proposed rule on March 2, 2010 and is currently soliciting comments on the rule. If you have any questions about the proposed investment advice rule or how it may affect your business if finalized, please contact Brooke Nixon at (205) 633-0236.

It's About That Time—ICE Is Ramping Up Enforcement

As uncertainty continues around the immigration policy of the Obama administration, officials have again sought to focus on enforcement. Specifically these efforts are gradually concentrating on employers instead of workers to combat illegal immigration. ICE is the group utilized for this task. Homeland Security Secretary Janet Napolitano has said that she wants to focus immigration enforcement on employers hiring undocumented workers, and at times falsifying documentation to avoid detection.

ICE recently issued Notices of Inspection to 180 businesses throughout the South. The notices alert the business owners that they are subject to inspection. While the names and exact locations of the businesses have not been released to the public, we know that the notices were issued to employers located in Alabama, Arkansas, Louisiana, Mississippi, and Tennessee.

Such ICE inspection raids will consist of examining hiring records to determine whether or not there has been compliance with employment eligibility verification laws and regulations. Violations can lead to fines, as well as civil and criminal charges.

As most all employers know, whether they comply with the law or not, employers are required to complete and retain a Form I-9 for verification purposes for each worker hired. In filling out the form, the employer must review and record the individual's identification documents and determine whether such documents appear to be authentic.

Additional questions about employers' requirements under immigration laws may be directed to Brooke Nixon at (205) 633-0236.

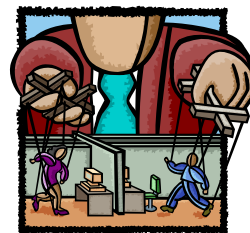
"ICE recently issued Notices of Inspection to 180 businesses throughout the South."

Small Businesses May Qualify for a New Tax Credit

The recent health care reform legislation signed into law by President Obama on March 23, 2010, included a tax credit called the Small Business Health Care Tax Credit which grants certain small businesses with a tax credit for providing health insurance to its employees.

Below is a list of important details about the new tax credit:

- The credit is effective January 1, 2010, and applies to this year and the next five years (for a total of six years).
- Small businesses are eligible for the tax credit if the employer:
 - * employs the equivalent of 25 full-time employees; therefore, a business with fewer than 50 half-time employees would be eligible for the credit;



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Small Businesses May Qualify for a New Tax Credit

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- * pays average annual wages below \$50,000; and
- * covers at least 50 percent of the cost of health care coverage for its employees.
- Eligible for-profit businesses will receive a credit against income taxes. The credit can cover up to 35% of the premiums the employer pays to cover its employees. In 2014, the tax credit can cover up to 50% of the premiums.
- * The amount of the credit gradually phases out for employers with 10-25 full-time workers and with average wages between \$25,000 and \$50,000.
- Eligible non-profit businesses will receive a credit against payroll taxes. The credit can be up to a 25 percent tax credit in 2010 and up to a 35 percent tax credit beginning in 2014.

In the coming weeks, the IRS will send many small businesses post cards giving more information about the tax credit. If you believe your small business is eligible for the Small Business Health Care Tax Credit, take advantage by discussing it with your tax professional. Additional questions about the Small Business Health Care Tax Credit may be directed to Brooke Nixon at (205) 633-0236.

“...the IRS will send many small businesses postcards giving more information about the tax credit.”

The NLRB Gets More Union Friendly

On Saturday, March 27, 2010, President Obama appointed Craig Becker to one of the vacant spots on the National Labor Relations Board (NLRB) as one of 15 recess appointments. Becker was a lawyer with the Service Employees International Union and the AFL-CIO, and his appointment had been rejected by the Senate in a 52-43 vote in February.

Recess appointments occur while Congress is not in session, and avoid Senate confirmation. President Obama defended his actions by accusing Republican Senators of playing politics with his nominees and refusing to act on his nominations despite the fact that Becker's nomination had resulted in a vote. Forty-one Senate Republicans had signed a letter to the President urging him not to appoint Becker. According to article II, section 2 of the U.S. Constitution Becker's appointment will last until the end of Congress' next session – which will be at the end of 2011.

The NLRB is a five member board that oversees the implementation of the nation's labor laws and the relationships between unions

and companies. For years the NLRB has been operating with only two of those seats filled by members of opposing political interests. Thus very few cases have actually been acted upon by the NLRB. Becker's appointment breaks this impasse and sets the stage for action on the board's enormous glut of cases waiting to be decided.

Employers should get ready for significant new changes and reversals in board precedent including the definition of who is a supervisor, use of company email for union solicitation, and employee witnesses (a/k/a “Weingarten rights”). The NLRB may also start pushing for shortened election windows from petition filing to election.

This move means it is likely more important to take a proactive stance towards union organization. Employers will need to get their message out early and often prior to union organizers showing up with authorization cards for employees to sign.

Additional questions about defending against union organizing may be directed to Tom Scroggins at (205) 633-0227.



Retiree Health Subsidies Available Soon

While the Patient Protection and Affordable Care Act is set to transform the American health care system over the coming decade, one portion of it is about to go into effect and help

employers with the cost of providing health care benefits to early retirees. The early retiree

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“Recess appointments occur while Congress is not in session, and avoid Senate confirmation.”

Retiree Health Subsidies Available Soon

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program will begin on June 1, 2010, and early regulations have already been issued.

The program will reimburse employers for 80 percent of claims between \$15,000 and \$90,000 for retirees between the ages of 55 and 64. It extends to spouses, children and other family members of early retirees. The Department of Health and Human Services (HHS) is in charge of the program. Congress has funded the program with \$5 billion, and it will run through 2014 when state-run insurance exchanges will be established. The program may also cease once the \$5 billion is exhausted, so interested employers should apply soon.

Many employers had dropped retiree health benefits over the last 15 to 20 years due to high costs and unfavorable treatment on financial statements of these expenses. This program is designed to bridge the time gap until the exchanges are established when it is hoped such affected persons will purchase individual insurance on the exchanges. After that, retiree health benefits will likely become a thing of the past for employers. Employers wishing to participate must apply with HHS. The application will be available at the end of June 2010.

Additional questions about participating in the retiree health subsidy program may be directed to Tom Scroggins at (205) 633-0227.



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