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Employment and Labor Law ALERT

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New Health Care Reform Requirements for Employers and their Medical Plans

Introduction

Many of the most significant aspects of the new health care law requirements relate to employers, especially small employers, and the health care coverage they provide (or don't provide) to their employees and their families. This Client Alert identifies the principal provisions that will affect employers:

Effective immediately for new plans and, for existing plans, effective for plan years beginning on or after the date which is six months following enactment:

- Insurers and self-insured plans will be barred from dropping or charging more for existing coverage on account of illness or denying coverage or charging more for coverage of pre-existing conditions of children under age 19 (a temporary high-risk pool is to be established to cover adults with pre-existing conditions until 2014, when these rules are expanded to adults), and will be limited to restricted annual caps under existing coverage (both annual and lifetime caps will be completely prohibited by 2014).

- The nondiscrimination requirements as to eligibility and benefits which have been applicable to self-insured medical plans will become applicable to insured medical plans as well.

- Young adults will be required to be permitted coverage under their parents' policies/plans until they attain age 26 (until 2014, unless they are eligible for other employer coverage).

- Insurers will be prohibited from imposing co-payments or deductibles for preventive care and medical screenings under all new insured plans.

- For the period 2010 - 2013, small employers (no more than 25 employees and average wages below $50,000/year) will be eligible for a federal “general business” tax credit for the amount spent on health insurance for their employees -- up to 35% -- employers with no more than 10 employees and average wages below $20,000/year will be eligible for the full 35% amount -- the credit will be phased-out for other small employers (for 2010 - 2013, a 25% payroll tax credit will be available for small non-profit organizations). The maximum credit will increase to 50%, beginning with 2014, for eligible small businesses purchasing health care coverage for their employees on an exchange (the maximum payroll tax credit for small non-profit organizations purchasing health care coverage for their employees on an exchange will increase to 35%).

Effective 90 days following enactment:

- A temporary federal reinsurance program (currently scheduled to terminate as of the earlier of 2014 or when the funding ($5 billion) is exhausted) will reimburse employer health plans for 80% of the cost of benefits provided to early retirees (age 55 - 64) in excess of $5,000 but below $90,000.

Effective for 2011:

- Expenses for over-the-counter drugs will no longer be permitted to be reimbursed under health care flexible spending accounts, unless prescribed by a physician.
- "SIMPLE" cafeteria plans (subject to relaxed nondiscrimination requirements) will be available to small businesses with an average of 100 or fewer employees during a 2-year period.
- Employers will be required to report the value of health benefits on their employees' Forms W-2.

Effective for 2013:

- The employer portion of the Medicare payroll tax (currently 1.45% of total 2.9% employer and employee portions) will increase to 2.35% (extra 0.9%) on income in excess of $200,000 for individuals ($250,000 for joint filers).
- Effective for 2012, a separate Medicare payroll tax will be imposed on the investment income (dividends, interest, royalties, rents, capital gains) of individuals with earnings and investment income in excess of $200,000 ($250,000 for joint filers) -- equal to 3.8% of the lesser of their net investment income or the amount by which their modified adjusted gross income exceeds $200,000/$250,000.
- The annual participant limit under health care flexible spending accounts will be reduced from $5,000 to $2,500 (CPI-indexed after 2013).
- The 28% tax-free federal subsidy available to companies since 2006 to help them pay up to $1,330 per retiree for retiree prescription drug coverage (to ease the pressure on Medicare Part D) will no longer be tax-deductible. (These companies are required to immediately account for the present value of this future tax increase as a present charge to their earnings.)

Effective for 2014:

- Most employers will be required to provide group medical plan coverage to their employees or face penalties if they fail to do so (for businesses with 50 or more full or part-time employees, a fine of $2,000 per each full-time employee in excess of 30 employees will be imposed if any of their full-time employees (working at least 30 hours/week) obtains subsidized coverage on a health insurance exchange.
- For employers which do provide health care coverage but have at least one full-time employee who obtains subsidized coverage on a health insurance exchange, the fine will be the lesser of $3,000 per full-time employee obtaining the subsidized coverage, or $2,000 per each full-time employee. (These fines would not take into consideration employees who have not satisfied a plan eligibility waiting period of not more than 90 days.)
- Insurers and self-insured plans will be barred from denying coverage or charging more for coverage of pre-existing conditions of adults, or imposing annual or lifetime caps on coverage.
- Coverage eligibility waiting periods will be limited to a maximum of 90 days.
- Employers with 200 or more employees that sponsor a health plan will be required to automatically enroll all employees in their plans -- employees will be permitted to opt-out if they have other coverage.
- As to their health care plans, employers will be required to report annually to the Federal government - (i) whether they offer minimum essential health care coverage to their full-time employees and their dependents, (ii) the extent of any plan eligibility waiting period, (iii) the lowest-cost option in each enrollment category, (iv) the employer's share of the total costs of benefits' provided and (v) the total number and names of full-time employees receiving health care coverage.

Effective for 2018:

- A nondeductible 40% excise tax will be imposed on insurers (or on the employers that sponsor self-insured plans) with respect to high-end, so-called "Cadillac plans" -- those having premiums in excess of $10,200 (CPI - indexed) for individual coverage/$27,500 (CPI - indexed) for family coverage (these amounts do not take into account the premiums for stand-alone vision or dental benefits) (there are somewhat higher thresholds for certain high-risk professions).
- All plans will be required to provide preventive care, such as annual check-ups, with no co-payments.

For more information on the content of this alert, please contact Dana Scott Fried at 212.407.4185 or at dfried@loeb.com, or any member of our Employment and Labor Practice Group.

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