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Five Questions An HR Manager Should Be Asking About The Affordable Care Act

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Five Questions For HR Managers

- Should my company continue to offer health insurance to our employees after 2013?
- Will my company have to change the benefit design of our employees' health benefit plan?
- What is an "American Health Benefits Exchange"? Do I need to know about that?
- Will States be able to regulate the benefits that my company offers to our employees?
- Does the tax treatment of the benefits that my company offers to our employees change?

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Should I continue to offer health insurance to my employees?

- Almost surely, every large employer's response to this question will be "yes" in 2014.
  – Health insurance is an important benefit to attract employees.
  – Since World War II, health insurance has been linked to employment; severing the employment/insurance link would be a major change in the nation's social fabric.
- But some employers may say "no," and more may do so after 2014.
  – There are some important considerations in that case:
    - Large employers that <u>do not</u> offer coverage and whose full-time employees access premium or cost sharing subsidies are subject to a penalty of $2,000 per employee per year.
    - Large employers that <u>do</u> offer coverage but whose employees access the subsidies (because coverage is unaffordable) are subject to a penalty of $3,000 per employee per year.
    - The $2,000 and $3,000 amounts are indexed for inflation.

Will I have to change the benefit design of our employees' health benefit plan?

- The answer depends on whether the employer health plan offers "minimum essential coverage"
- If an employer's health plan offers "minimum essential coverage":
  - The employee is exempt from the individual responsibility penalty; and
  - The employer is exempt from the shared responsibility penalty described in the previous slide

Will I have to change the benefit design of our employees' health benefit plan? – Cont'd.

- What is "minimum essential coverage"
  - Government programs (Medicare, Medicaid, SCHIP, TFL, VA, Peace Corps)
  - An employer-sponsored plan
  - Plans sold in the individual market
  - Grandfathered health plans
- Grandfathered plans
  - Generally, a grandfathered plan is one that was in existence on March 23, 2010; <u>but a plan can lose its status if it makes changes to the benefit design after that date</u>
    - E.g., changes in cost sharing, changes in benefits

What is an 'Exchange'?

- An Exchange is an online marketplace established by the State where individuals will be able to purchase health insurance coverage in 2014.
  - Open to individuals and small group market in 2014
  - At State option, can open to large groups in 2017
  - Individuals with income between 100% and 400% of the FPL qualify for tax credits and cost-sharing subsidies for insurance purchased through an Exchange
- So why should an employer that offers health benefits to its employees care?
  - If an employer offers a health plan that is not "affordable" to an employee, the employee can access a plan on an Exchange, with subsidies, subjecting the employer to a penalty.
  - If an employer offers a health plan that does not offer a minimum actuarial value, the employee can access a plan on an Exchange, with subsidies, subjecting the employer to a penalty.

What is an 'Exchange'? – Cont'd.

- Definitions
  - "Affordable"
    - The statute defines "affordable" as 9.5% of "household income."
  - "Minimum actuarial value"
    - The statute defines "minimum value" as employer coverage of at least 60% of the costs of the plan.
- Potential concerns
  - "Household income" is not a defined term in the Internal Revenue Code.
  - An employer typically will not know an employee's "household income" so won't know when the 9.5% threshold is triggered.

Will States be able to begin to regulate the terms of our employee benefit plans?

- ERISA prohibits a State from having in effect a law or regulation that “relates to” an employee benefit plan.
  - States can regulate insurance, but they cannot regulate an employee benefit plan.
  - Thus, the Courts draw a distinction between insurance and benefit plans where the employer bears the insurance risk.
- Nothing in the ACA changes this general rule.
- In addition, arguably, the ACA displaces State regulation of insurance.
  - The only plans that can be sold on an Exchange are those that provide the essential health benefit package.
  - States can provide additional benefits if they assume the cost.
  - Thus, if a State law mandates a benefit that is not in the essential health benefit package, a plan offering that benefit can’t be sold on an Exchange unless the State subsidizes it.

Does the ACA change the tax treatment of health care?

- The ACA does not change the WWII-era exclusion from gross income for employer-provided health insurance, nor does it reduce the employer business expense deduction for employer-provided health insurance.
- The ACA does impose an excise tax on high-cost health plans.
  - 40% of the excess of the cost of employer-provided coverage over $10,200/$27,500 (beginning in 2018).
  - These dollar amounts are indexed by CPI, not health care costs

Tax Issues

- Important tax policy consideration
  - The tax benefit for an individual purchasing health care on an Exchange and accessing the subsidy is <u>far</u> more generous than the tax benefit available to an individual receiving employer-provided health insurance.
  - Does this create an incentive for individuals to want to exit the employer-based coverage market and obtain coverage through an Exchange?

Conclusion

- The enactment of the Affordable Care Act makes dramatic changes to the way individuals will obtain health insurance in the United States.
- The vast majority of individuals affected by these changes will be individuals who are uninsured, not individuals who have employer-based coverage.
- That said, employers need to be aware of some important considerations.
- Questions and follow up:
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