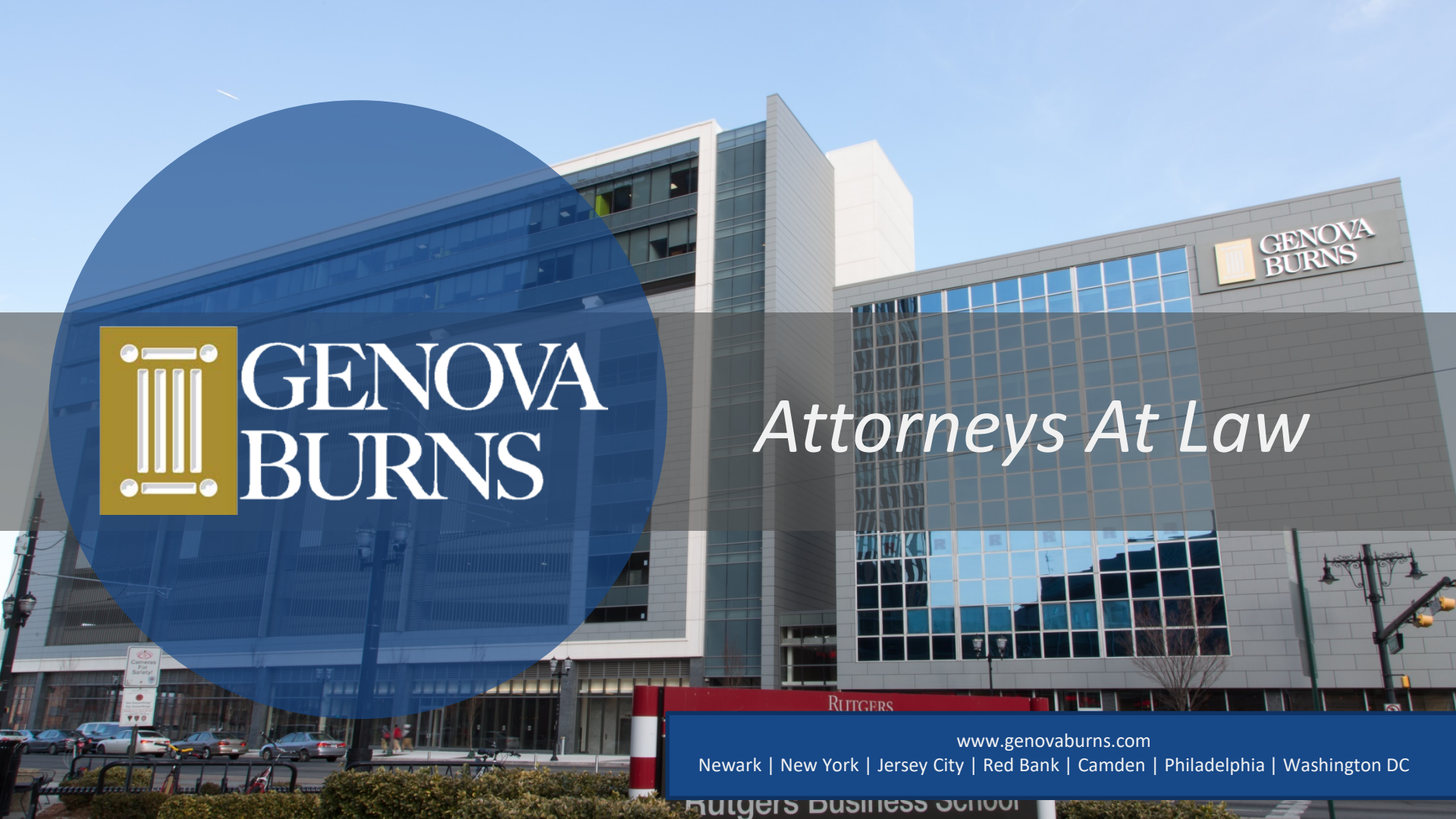
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AFFORDABLE CARE ACT IN A TIME OF TRANSITION

PRESENTED BY PATRICK McGOVERN ESQ.

at the New Jersey League of Municipalities

2016 Annual Convention

November 17, 2016

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Affordable Care Act– Where We've Been

- In June 2015 U.S. Supreme Court in a 6-3 decision upheld ACA despite challenge that Congress failed to provide for subsidies to States that did not create their own health care Exchanges and opted for federal tax credits.
- Court held that State and Federal Exchanges should be the same and tax credits must be available on both Exchanges.

Affordable Care Act– Where We've Been

- In May 2016 U.S. Supreme Court in a 4-4 decision sent a challenge to ACA's provisions on contraception back to lower court to consider whether compromise was possible. *Zubik v. Burwell.*

Affordable Care Act– Where are We Today

- 20 Million Americans now have health care coverage as result of ACA.
- 12.7 million Americans have coverage through the HealthCare Marketplace.
- Annual enrollment period in HealthCare Marketplace is Nov. 1 to January 31.

Affordable Care Act– Where are We Today

- 2015 was First Year that ACA Penalties were Effective.
- No Information Available on IRS Enforcement of Employer Mandate Penalty in 2016.

Affordable Care Act– Where are We Today

- In 2016 the 95% Rule Took Effect (up from 70%).
- In 2016 the ACA Affordability Percentage rose to 9.66% of Employee's Household Income, up from 9.5%.
- If Coverage Costs more than 8.05% of EHI, Employee Pays no Penalty for Non-Coverage.
- In 2016 the Individual Mandate Penalty Increased to $695, up from $325.

Affordable Care Act– Where are We Today

- In 2016 minimum essential coverage penalty increased from $*2080 x Number of FTEs minus 80* to *$2160 x Number of FTEs minus 30*.
- In 2016 the penalty for violating the minimum value and affordability rules increased from $3120 to $3240 for each full-time employee who purchased coverage through the HealthCare Marketplace and received a premium tax credit.

Affordable Care Act– Where are We Today

- In Oct. 2016 U.S. reported that premiums for midlevel health plans under ACA will increase by average of 25% in 2017 and …
- Fewer insurance companies will offer ACA-compliant coverage in 2017.
- Penalties increased to $250 for failure to file information return for tax year 2016.

Affordable Care Act– Where are We Today

- Cadillac Tax is delayed to 2020. However, the dollar thresholds with COLA that would have taken effect in 2020 will take effect as scheduled. *Best guess.*
- ACA's menu-labeling requirements will be enforced starting May 5, 2017.

Affordable Care Act– Where are We Today

- ACA's automatic health care enrollment requirement (for employers with more than 200 FTEs) was repealed on Nov. 2, 2015.
- Starting 2016 non-grandfathered plans including self-funded plans must apply an embedded self-only out of pocket maximum of $6,850 ($13,000 for family coverage), up from $6600 and $13,200 in 2015.

Affordable Care Act– Where are We Today

Retaliation

ACA Section 1558 prohibits an employer from discharging or in any manner discriminating "against any employee with respect to his or her compensation, terms, conditions, or other privileges of employment because the employee (or an individual acting at the request of the employee) has (1) received a credit under section 36B of the Internal Revenue Code of 1986 or a subsidy under section 1402 of this Act…."

Affordable Care Act– Where are We Today

Retaliation

- In *Marin v. Dave and Buster's Inc.*, Marin sued her employer claiming her hours were reduced to just 10 to 25 hours per week (from 30 to 40), to avoid offering her ACA coverage. Suit filed in U.S. District Court, Manhattan.
- Court refused to dismiss the complaint and stated that the critical element of the claim is employer intent.
- Court permitted Marin's suit to proceed and discovery of the employer.

Affordable Care Act– Where are We Today

Discrimination

- ACA Section 1557 prohibits discrimination in making coverage available based on race, gender, color, national origin, age and disability.
- ACA Section 1557 applies to all entities receiving federal financial assistance.

Affordable Care Act– Where are We Today

- HHS Rule interpreting Section 1557 takes effect Jan. 1, 2017.
- HHS Rule applies to entities that receive HHS financial assistance or funding.
- HHS Rule requires employers to post notices.
- HHS Rule prohibits a categorical exclusion of gender transition benefits.
- HHS Rule will be enforced by Office of Civil Rights.

Affordable Care Act– Where are We Today

IRS Rules on Summary of Benefits and Coverage

- On June 16, 2015 IRS issued final rules regarding the summary of benefits and coverage (SBC).
- All insurance issuers must include an Internet web address with a copy of the actual coverage policy.
- Safe harbor for plan sponsors that contract with vendors to deliver SBC if plan sponsor satisfies three duties:
  - monitors performance by the vendor
  - corrects noncompliance as soon as practicable after notice, and
  - takes steps as soon as practicable to avoid future violations

Affordable Care Act– Where are We Today

IRS Rules on Minimum Value Requirements

- On December 18, 2015 IRS issued final rules on minimum value requirements.
- When calculating affordability, if employer offers wellness program incentives, the employer must assume each employee fails to satisfy the requirements of the wellness program.
- Employer health reimbursement arrangement (HRA) contributions are counted toward the employee's required contribution.

Affordable Care Act– Where are We Today

IRS Rules on Minimum Value Requirements

- Employer HRA contribution example:
  - Employee contribution for health coverage offered by employer is $200 per month
  - Employer makes available $1,200 (or $100 per month) under an HRA that employee may use to pay employee share of medical coverage, cost-sharing, or dental/vision coverage
  - The $1,200 employer HRA contribution reduces the employee's required contribution for coverage
  - Bottom line: Employee's required contribution is $100 per month ($200 – $100)

Affordable Care Act– Where are We Today

EEOC Rules on Wellness Programs

- On May 17, 2016 EEOC issued final rules explaining how Title I of ADA and Title II of GINA apply to employer wellness programs.
- The Rules take effect January 1, 2017 and permit employers to set incentives as high as 30% of the annual cost of coverage.
- The Rules require wellness programs to be reasonably designed to promote health and prevent disease while safeguarding confidential health information.
- On Oct. 24, 2016 AARP sued EEOC and is asking the federal district court to issue an injunction stopping the Rules from taking effect.

Affordable Care Act– Where are We Today

IRS Rules on Opt-Out Payments

- On July 8, 2016 IRS issued proposed rules addressing the effect of employer opt-out payments on affordability calculations.
- Opt-out payments conditioned on employee's obtaining health coverage elsewhere but not in the individual market will not be used in affordability calculation.
- Opt-out payments based only on employee's waiver of employer-provided coverage are unconditional and included in affordability calculation.

Affordable Care Act– Where are We Going?

- Donald J. Trump is President-Elect.
- Trump campaign platform prioritized full ACA repeal by Congress.
- Most recent pronouncements from Trump camp are to preserve prohibition against pre-existing condition exclusions, and mandatory coverage of children until age 26.
- Mitch McConnell, Paul Ryan Say Obamacare Repeal Is A High Priority.

Affordable Care Act– Where are We Going?

Effects of Repeal of ACA

- Federal deficit effects
  - $1,200 billion added to deficit through lost revenue
  - $950 billion added to deficit through lost Medicare savings
  - $1,650 billion subtracted from deficit through decreased spending on insurance coverage
- Estimated $500 billion increase to federal deficit over next decade
- Estimates provided by Committee for a Responsible Federal Budget

Affordable Care Act, Generally

- Requires “minimum essential” benefit coverage.
  - 26 U. S. C. §5000A.
  - Some exceptions exists (i.e. prisoners)
- Creates shared responsibility with the government
- Creates penalty for failure to obtain coverage
- Coverage from employers, government plans or through private providers
- Affordability Requirements

Affordable Care Act, Generally

- Quality Care
- Creates the Patient Bill of Rights
- Protection for individuals with pre-existing conditions
- Cost free preventive services
- Gender neutrality
- Dependent child coverage through age 26 under some circumstances
- In-network protections
- Emergency services and out-of-network protections
- Creates Health Care Marketplace
- Plain language documentation

Affordable Care Act, Generally

- "As of 2014, most individual and small group health insurance plans, including plans sold on the Marketplace are required to cover mental health and substance use disorder services."
  - http://www.hhs.gov/healthcare/facts-and-features/fact-sheets/health-insurance-and-mental-health-services/index.html
- "Health insurance companies now have to spend at least 80 cents of your premium dollar on health care or improvements to care, or provide you a refund."
  - http://www.hhs.gov/healthcare/facts-and-features/state-by-state/how-the-health-care-law-benefits-you/index.html
- "Insurance companies in every state must publicly justify any rate increase of 10 percent or more."
  - Id.

- Approximately 20 million individuals obtained coverage as of February 2016
  - https://aspe.hhs.gov/sites/default/files/pdf/187551/ACA2010-2016.pdf
- Approximately 2.3 million young adults remained covered because of additional dependent coverage
  - https://aspe.hhs.gov/sites/default/files/pdf/139211/ib_uninsured_change.pdf

Affordable Care Act, New Jersey

"Marketplace Signups and Tax Credits in New Jersey:

- 83 percent of New Jersey consumers who were signed up qualified for an average tax credit of $306 per month through the Marketplace.
- 38 percent of New Jersey Marketplace enrollees obtained coverage for $100 or less after any applicable tax credits in 2015, and 71 percent had the option of doing so.
- In New Jersey, consumers could choose from 6 issuers in the Marketplace in 2015 – up from 4 in 2014."
- "New Jersey consumers could choose from an average of 45 health plans in their county for 2015 coverage – up from 26 in 2014.
- 86,087 consumers in New Jersey under the age of 35 are signed up for Marketplace coverage (34 percent of plan selections in the state). And 63,299 consumers 18 to 34 years of age (25 percent of all plan selections) are signed up for Marketplace coverage. "

  - http://www.hhs.gov/healthcare/facts-and-features/state-by-state/how-aca-is-working-for-new-jersey/index.html

Affordable Care Act, New Jersey

- "In New Jersey, 254,316 consumers selected or were automatically re-enrolled in quality, affordable health insurance coverage through the Marketplace as of Feb. 22. Nationwide, nearly 11.7 million consumers selected a plan or were automatically enrolled in Marketplace coverage."
  - http://www.hhs.gov/healthcare/facts-and-features/state-by-state/how-aca-is-working-for-new-jersey/index.html
- "New Jersey has received $8,897,316 in grants for research, planning, information technology development, and implementation of its Marketplace. "
  - http://www.hhs.gov/healthcare/facts-and-features/state-by-state/how-aca-is-working-for-new-jersey/index.html

KEY EFFECTIVE DATES OF PHASE-IN OF ACA PROVISIONS

Effective 2010

- *Grandfathered Plans* - A health insurance plan that existed on March 23, 2010 enjoys ACA grandfathered status and is exempt, at least temporarily, from some (not all) ACA provisions. Any plan that first took effect after March 23, 2010 and any plan offered through a health care exchange are ineligible for grandfathered status.
- *Pre-Existing Conditions:* No pre-existing conditions exclusions for enrollees under age 19 are permitted.
- *Dependents Under Age 26* – Plans must allow adult children under age 26 to enroll in a parent's plan, regardless of the child's financial dependency, residence, student status or employment.
- *Annual/Lifetime Limits:* No annual or lifetime limits on essential benefits

KEY EFFECTIVE DATES OF PHASE-IN OF ACA PROVISIONS

Effective 2011

- *Plan Administrative Costs (Medical Loss Ratio)* – Plans must provide rebates to plan participants if the percentage of premiums spent on medical services and activities to improve health care quality falls below 85 percent for plans with more than 100 employees or 80 percent for plans with 100 or fewer employees. *Self-insured plans are exempt.
- *W-2 Reporting*: Must include aggregate cost of employer-sponsored health coverage on annual Form W-2

KEY EFFECTIVE DATES OF PHASE-IN OF ACA PROVISIONS

Effective 2012

- *Summary of Benefits:* Insurers and plan sponsors of self-insured plans must provide a summary of benefits to all participants and applicants stating whether the plan provides minimum essential coverage.

KEY EFFECTIVE DATES OF PHASE-IN OF ACA PROVISIONS

Effective 2013

- *Flexible Spending Account (FSA) Changes* - Limits FSA contributions to $2,500
- *Employer Notice Requirements* - Effective October 1, 2013 employers subject to the FLSA are required to provide written notice informing employees about the Public Exchange and employee eligibility for premium credits.
- *Public Exchanges* – Effective October 1, 2013 individuals could purchase coverage on the public exchanges which are accessible via the Internet, with coverage effective January 1, 2014.

KEY EFFECTIVE DATES OF PHASE-IN OF ACA PROVISIONS

Effective 2014

- *No Lifetime Or Annual Limits* –Plans are prohibited from limiting the dollar value of benefits, on an annual and on a lifetime basis.
- *Waiting Periods* – Plans must reduce any waiting periods to 90 days or shorter.

KEY EFFECTIVE DATES OF PHASE-IN OF ACA PROVISIONS

Effective 2014

- The measurement period that employers should have implemented in 2013 was deferred to 2014
- Federal Exchange/HealthCare Marketplace enrollment deadline pushed back to 3/31/14
- Restrictions On Denying Coverage Because Of Pre-existing Conditions (eff. 1/14)
- Individual Mandate (Play or Pay) (eff. 4/14, $95 penalty)
  - Supreme Court upheld individual mandate 2012

WHEN IS THE EMPLOYER COVERED?

1. How many full-time employees, including all work locations?
2. How many full-time equivalent ("FTE") employees, when all of the employer's locations are taken into account?
3. How many common law employees, at all of the employer's locations?
4. How many FTE, full-time employees and common law employees (including seasonal employees) do all of the employer's controlled group members have?
5. When all full-time, FTE and common law employees of the employer and its controlled group members are aggregated **does the total equal or exceed 50**?

HOW DOES A COVERED EMPLOYER SATISFY ITS ACA REQUIREMENTS?

An employer covered by ACA must:

- ***Offer*****,** not provide,
- Benefit coverages that ***comply with levels*** required by ACA and that
- Meet ***affordability*** requirements
- To ***at least 95%*** of eligible employees.
- *Providing cash to an employee to purchase coverage is not compliance*

WHICH EMPLOYEES HAVE ACA RIGHTS?

- Full-timers -- employees who regularly work 30 or more hours per week (130 hours per month).
- Part Timers
  - Seasonal employees?
  - Contract workers?
  - Casual employees?
- Varied hours

WHICH EMPLOYEES ARE AND ARE NOT ELIGIBLE

1. **ACA Rules For Current Employees Who Regularly Work 30 Hours/Week**
    - ACA requires a covered employer to offer coverage to full-time employees
    - A covered employer is not required to offer coverage to part-time employees
2. **ACA Rules For Current Employees Who Do Not Regularly Work 30 Hours/Week but Average 30 Hours Per Week or More of Work.**
    - *Ongoing Variable Hours Employee* – an existing employee not reasonably expected to work an average of at least 30 hours per week or 130 hours per month
    - *Standard Measurement Period* – an employer determines each ongoing variable hour employee's full-time status by looking back at a defined period of **three to 12 calendar months** as chosen by the employer

WHICH EMPLOYEES ARE AND ARE NOT ELIGIBLE

2. ACA Rules For Current Employees Who Do Not Regularly Work 30 Hours/Week But Average 30 or More Hours (Continued)

- *Administrative Period* – a covered employer must offer to enroll employees who are determined to work an average of at least 30 hours per week during the Standard Measurement Period in an employer-sponsored health insurance plan with the coverage effective no later than **90 days** after the end of the Standard Measurement Period
  - If Standard Measurement Period is three months (October 1, 2016 through December 31, 2016), coverage must be offered no later than 90 days after the end of the Standard Measurement Period (March 31, 2017)
- Standard Measurement Period plus Administrative Period cannot exceed 13 months!!
  - If Standard Measurement Period is 12 months (October 1, 2016 through September 30, 2017), then coverage must be offered within 30 days after the end of the Standard Measurement Period (by October 30, 2017)

WHICH EMPLOYEES ARE AND ARE NOT ELIGIBLE

2. ACA Rules For Current Employees Who Do Not Regularly Work 30 Hours/Week but Average 30 or More Hours (Continued)

- *Stability Period* – equivalent to the coverage period and follows the Standard Measurement and Administrative Periods; a covered employer is assessed penalties if it fails to offer affordable coverage to full-time employees during this period
  - Must be at least six consecutive calendar months and cannot be shorter in duration than the Standard Measurement Period
- ***An employee's hours during the Stability Period do not affect full-time employee status. Stability Period hours do not affect the analysis.***

WHICH EMPLOYEES ARE AND ARE NOT ELIGIBLE

2. ACA Rules For Current Employees Who Do Not Regularly Work 30 Hours/Week but Average at least 30 Hours of Work (Continued)

- **Example:** If Standard Measurement Period is three months (October 1, 2016 through December 31, 2016), coverage must be offered no later than 90 days after the end of the Standard Measurement Period (March 31, 2017)
  - Stability Period must be at least six months (April 1, 2017 through September 30, 2017)
- **Example:** If Standard Measurement Period is 12 months (October 1, 2016 through September 30, 2017), then coverage must be offered within 30 days after the end of the Standard Measurement Period (by October 30, 2017)
  - Stability Period must be 12 months (October 30, 2016 through October 30, 2017)
- ***Notice that the Stability Period is always at least six months long and is at least as long as the Measurement Period.***

WHICH EMPLOYEES ARE AND ARE NOT ELIGIBLE

3. ACA Rules for New Employees Who Are Reasonably Expected to Work 30 Hours/Week

- A covered employer must reduce the waiting period for providing coverage to 90 days or less for newly-hired employees who are reasonably expected to work full-time at the time of hire
- Newly-hired employees must receive coverage notice within 14 days of the employee's start date [same as October 2013 Notice to employees]

WHICH EMPLOYEES ARE AND ARE NOT ELIGIBLE

4. ACA Rules for <u>New Hire Variable Hour</u> Employees

- *Initial Measurement Period* - a defined period of three to 12 calendar months from the time of hire, as chosen by the employer, to calculate whether the employee qualifies for full-time status
- *Administrative Period* – 90 days after the end of the Initial Measurement Period; Initial Measurement Period plus Administrative Period may not exceed 13 months after the new employee's start date
- *Stability Period* – Three to 12 months but cannot be longer than the Initial Measurement Period

How are Hours Defined?

- Time for "which an employee is paid, or entitled to payment, for the performance of duties for the employer." 26 CFR 54.4980H-1 (a)(24).
  - It also includes paid time off for vacation, holidays, sick time, disability, layoffs, jury duty, military leave and/or leaves of absences. Id.

AFFORDABILITY

- **60%-40% Rule. Employers must offer coverage that provides minimum value (MV). Employer's share of the total allowed cost of benefits must equal or exceed 60% of the health care plan costs.**
  - Generally means 60% actuarial value test (percentage of medical expenses --deductibles, co-insurance, co-payments, etc. -- paid for by the plan for a standard population and set of allowed charges).
- **IRS and Department of Health and Human Services (HHS) have proposed 3 methods for employers to calculate whether their plans provide MV:**
  - MV calculators: employers input in-network cost-sharing features of their health plan for different categories of benefits into an online calculator which determines whether the MV requirements are satisfied.
  - Safe-harbors: design-based safe harbors that allow an employer to see if their plan design features meet one of several design-based safe harbors. Each safe harbor checklist would describe the cost-sharing attributes of a plan that apply to the four core categories.
  - Actuarial Certification: If an employer plan contains non-standard features and neither the MV calculator nor the design-based checklists applies to the plan, an employer could use a certified actuary to determine whether the plan meets the MV standard.

AFFORDABILITY

- **Employees cannot be required to pay more than 9.66% of household income toward employee-only coverage. Under current regulations, this 9.66% may be calculated in one of 3 ways:**
  - *W-2 wages* –monthly contribution cannot exceed 9.66% of that employee's Form W-2 wages from the employer for that calendar year;
    - Example: If an employee's W-2 income for the year is $100,000, the employee cannot be required to contribute more than $9,660 toward the cost of basic health care coverage.
  - *Rate of Pay* - monthly contribution cannot exceed 9.66% of an amount equal to 130 hours multiplied by the employee's hourly rate of pay as of the first day of the coverage period (generally the first day of the plan year); OR
  - *Federal Poverty Line* - monthly contribution cannot exceed 9.5% of the most recently published Federal poverty level for a single individual for the applicable calendar year, divided by 12.
- The 9.66% is subject to indexing based on premium-cost growth relative to income growth.
- **Although ACA requires employers to provide coverage to employees' dependents, the coverage provided to dependents does not have to be affordable (as defined above).**

ACA Compliance

I CURRENTLY OFFER COVERAGE TO MY EMPLOYEES, THEIR SPOUSES AND THEIR DEPENDENTS? DO I HAVE TO CONTINUE TO DO SO OR CAN I CHANGE NOW?

1. ACA does not require the employer to grandfather an employee into coverage who is not a full-time employee. But a labor agreement and employee retention requirements may necessitate this.
2. ACA does not require that an employer offer coverage to an employee's spouse, unless of course the spouse is separately eligible for ACA coverage through the employer.
3. ACA requires that the covered employer offer a full-time employee dependent coverage through 26th birthday.
4. Deadline for offering dependent coverage for a large employer: 1/1/15 unless employer qualifies for the transition relief, in which case 1/1/16.
5. Deadline for offering dependent coverage for a mid-sized employer: 1/1/16.

PENALTIES

- **Employer Mandate Penalty (Offer Failure)** – **$2,160** times Eligible Full-Time Employees minus 30 employees divided by 12= Monthly Penalty.
- **Employer Mandate Penalty (Affordability Failure)** -- approximately **$3240** times Employees who receive Premium Tax Credit divided by 12= Monthly Penalty.
- **Individual Mandate Penalty**(failure to obtain coverage thru employer, or individual coverage, student health plan coverage or federal programs) – **ranges from $95employee/$285family to $695employee/$2085family** annually, eff. 1/1/14.
- ***Does ACA impose a penalty when the employee is offered ACA-affordable coverage at work but purchases coverage elsewhere (on the exchange, through spouse's employer, or opts for no coverage)? No!***

Cadillac Tax

- Effective date 2020
- Excise tax on so-called Cadillac Plans
  - Group health plan, either fully insured or self-insured with benefits
  - Generous and deductibles and co-pays so low that the cost of coverage per individual is $10,200 for individual coverage or $27,500 for family coverage. (These amounts are indexed for inflation so they will rise slightly over time).
- ***No exceptions for government plans***

Cadillac Tax

- It is calculated by multiplying 40% by the cost of coverage in excess benefit.
- Different Rates:
  - $10,200 for individual coverage
  - $27,500 for family coverage
- Amounts are indexed to COLA, not to health care inflation.
- *$10,200 and $27,500 numbers adjusted upward for high-risk professions such as firefighters (e.g., $11,850 and $30,950).*

Cadillac Tax- Coverage

- ***Cost of coverage*** is the total cost of providing the coverage, regardless of who pays ("coverage includes employee portion") to the extent it is excludable from the employee's gross income and may include
  - FSA
  - HSA
  - Retiree plans

Cadillac Tax- Coverage

- Cost of Coverage ***does not include***:
  - Long-term care;
  - Coverage under a separate policy for treatment of the mouth or the eye (a/k/a/ separate coverage for dental and vision coverage). Some confusion as to whether this carve-out applies equally to self-funded and fully insured dental plans;
  - Some accident/disability income plans;
  - Some liability insurances

Cadillac Tax

- ***Excess benefit*** means the difference between
  - (A) the aggregate cost of the employer-sponsored coverage of the employee for the month; and
  - (B) $10,200 divided by 12 months, or
  - (C) $27,500 for family coverage divided by 12.

Cadillac Tax

- The tax applies not only to employee coverage but also coverage offered to:
  - Former employees
  - Surviving spouse
  - Other primary insured individual

Cadillac Tax

- 2020 the employer pays $9000 toward coverage and the employee pays $1500 toward individual coverage. Since the total cost of coverage is $10,500, an excise tax will be imposed on the group health plan.
- Difference between $10,500 and $10,200 is $300 and 40% of the excess is $120.
- And if there are 100 employees whose coverage is in excess of the $10,200 limit, then the tax is $120 times 100 employees, for a total of $12,000 for year 2020.

The Appropriations Act

- Made the Cadillac Plan Tax deductible for employers.
- Requires the U.S. Comptroller General to report to Congress on benchmarks for the age and gender adjustment of the applicable dollar limit of the Cadillac Plan Tax, including premium cost of the Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan.

Cadillac Tax

- Sylvia Mathews Burwell- United States Secretary of Health and Human Service
- Developing transformation in health care so "that our nation delivers better care, spends our dollars more wisely, and keeps people healthy."
- Three Strategies:
  - "Pay for what works and help doctors and other providers focus on the quality of care, not the quantity of services."
  - "Improve the way care is delivered by encouraging coordination and integration, and prioritizing wellness and prevention."
  - "Unlock health care data and information, so that providers have the information they need to make the best possible decisions and patients are empowered to take control of their health."
    - http://www.hhs.gov/about/leadership/secretary/speeches/2016/americas-health-insurance-plans-national-health-policy-conference.html
- Cadillac tax "will help drive employer demand for employer-sponsored plans that adopt these kinds of strategies. It's an important reason to maintain and improve the tax." Id.

Cadillac Tax

- ***Paid by the coverage provider***:

- Generally the health insurance issuer.
  - Fully insured plans- the insurer pays the tax.
  - Self-insured plans- the employer pays.
  - Health Care Spending Account- the coverage provided is the employer.

Application of the Tax

Is the tax only on coverage that the employee selects, or is it levied on every coverage that is offered?

- Tax is on the excess relating to the coverage “made available,”
- Tax is not on all coverages that were offered.

Application of Tax- Employer duty

- ***If a tax is payable***
  - The employer is responsible for calculating the tax and notifying the Government and the coverage provider of the amount of the tax.
  - If the employer miscalculates the tax, then not only will the employer have to pay the correct amount of tax, but it will also be required to pay the ***excess of cost of coverage over $10,200 or $27,500, plus interest*.**

Application of Tax

- NYC Deputy Mayor Holloway, deputy mayor for operations: He estimates the Cadillac tax will cost NYC: $22 million in 1st year, and $549 million in 2nd year.
- Robert Reich, Pres. Clinton's secretary of Labor in the mid-1990s: "I think it was misguided all along," who claims he is worried that the tax is "a blunt instrument that could too easily become a bargaining chit for cutting back benefits of workers."
- Jonathan Gruber at MIT, was a paid consultant to the Obama administration on health care policy, says the tax will do what it was intended to do, force state and local governments to rein in health care costs: "This is intended to shift compensation away from excessively generous health insurance toward wages."

What May the Employer Do?

- Theoretical since this is a most unpopular ACA provision.
- Encourage healthier behaviors on the part of the employees.
- Plan and prepare requests for new insurance coverage that will get the cost of coverage under the Cadillac plan limits
- Explore whether any portion of the tax can be passed on to the employee as higher contributions, gradually leading up to 2020.
- Explore whether some of the cost of coverage can be treated as income to the employee so that the cost of coverage is lowered.

Questions

Contact Us

Our Office

Founded over twenty five years ago, Genova Burns works with many of the premier companies and business interests spanning the region between Wall Street and Center City, Philadelphia. Our firm stands at the intersection of law, government and business.

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