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Health Care Reform Enacted

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On March 21, 2010, the U.S. House of Representatives passed two pieces of health care reform legislation. First, the House passed the Patient Protection and Affordable Care Act (the "Act"), which was previously passed by the U.S. Senate on Christmas Eve 2009. The Act was signed into law by President Obama on March 23, 2010, enacting extensive changes to the country's health care system.

But wait! Before you respond too quickly to the Act's provisions, the House also passed, on March 21, 2010, the Health Care and Education Reconciliation Act of 2010 (the "reconciliation bill"). The reconciliation bill contains significant changes to the Act and was needed in order to obtain the necessary votes in the House to pass the Act. The reconciliation bill now goes to the Senate. To be passed by the Senate, the reconciliation bill will require a simple majority of Senate votes (51) and will then be sent to the President to be signed into law.

Patient Protection and Affordable Care Act

Under the Act, there are a number of significant changes affecting both individuals and employers. The changes will impact the individual's access to and obligation to maintain health coverage. It also impacts the design, administration, cost, and mandate for employers to provide health coverage. Some of the more significant changes under the Act include:

- A requirement that all individuals obtain health coverage or pay a penalty beginning in 2014. Certain exceptions apply based on hardship or religious beliefs;
- Creation of State Health Care Exchanges that would provide access to health coverage for individuals and small businesses beginning 2014;
- A "pay or play" requirement where employers with 50 or more full-time equivalent employees must offer "minimum essential coverage" or pay a fine, effective 2014;
- A sliding scale tax credit is available to small businesses which contribute at least 50% toward qualifying health insurance premiums. Tax credits may be up to 35% of applicable premiums (25% for tax-exempt small employers), beginning with tax years on or after January 2011;
- A requirement that employers with more than 200 full-time employees and who offer 1 or

more health plans to their employees must automatically enroll new full-time employees with the opportunity for employees to opt-out;
- 40% excise tax on the excess benefit (health benefit in excess of $8,500 for self-only coverage, $25,000 for coverage other than self-only) of high cost employer-sponsored health coverage ("Cadillac plan tax"), effective 2013;
- Employee salary reduction contributions to Health FSAs limited to $2,500, effective 2011;
- A requirement that if a plan offers dependent coverage, it must be provided until the child turns age 26, effective for plan years beginning 6 months after the effective date of the Act (generally 2011 for calendar year plans);
- No lifetime limits on the "essential benefits," effective for plan years beginning 6 months after the effective date of the Act (generally 2011 for calendar year plans);
- Grandfathering provision - existing plans are excluded from certain provisions under the Act (including collectively bargained plans until the collective bargaining agreement relating to the coverage terminates);
- Elimination of the Medicare Part D retiree drug subsidy deduction, effective 2011.

Health Care and Education Reconciliation Act

The reconciliation bill contains significant changes to Act, including the following (list is not exhaustive):

- Delays the effective date for the limitation on Health FSAs until 2013;
- Delays eliminating the deduction for the Medicare Part D retiree drug subsidy until 2013;
- Increases "pay or play" penalties for employers with more than 50 full-time employees that do not offer minimum essential coverage;
- Delays the application of the Cadillac plan tax until 2018;
- Increases the dollar threshold of employee high cost health plans to $10,200 for single coverage and $27,500 for family coverage (for retiree and high risk professions the thresholds would be $11,850 single coverage and $30,950 family coverage);
- Removes the "grandfathering" provision for existing plans, such that existing plans (and collectively bargained plans) will be subject to certain provisions under the Act (i.e. prohibition on lifetime limits, dependent coverage until age 26, etc.).

Next Steps

Watch for resolution of the reconciliation bill in the Senate. It is anticipated that the bill will be passed within the next week and will give employers a clearer picture of the issues and their effective dates when considering the design and administration of their health and welfare plans.

Once the reconciliation bill has been addressed by the Senate, we will provide additional guidance on the legal and practical implications of the new health care reform laws on employers and what employers should do to comply with the changes.

If you have any questions regarding the new legislation or other employee benefits related issues, please contact your attorney.

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