
Health Care Reform And the HIRE Act

HIRE Act – 2010

(Hiring Incentives to Restore Employment Act)

Currently Available Incentives

- Employer payroll tax exemption (6.2%) for new hires after February 3, 2010.
 - Applies to wages paid for work performed from March 19 through December 31, 2010.
 - Maximum tax savings from exemption is \$6,621 (6.2% of \$106,800).
 - Additional tax credit in 2011 equal to the lesser of \$1,000 or 6.2% of wages if employee is still on the payroll after 52 weeks.
-

HIRE Act – 2010

Requirements

- Qualifying employee must be unemployed or employed for no more than 40 hours during the preceding 60 days.
 - Employee submits affidavit on new Form W-11.
 - Employee generally will be addition to workforce but can be a replacement for another employee who voluntarily left or was fired for cause.
 - For the additional tax credit, wages for last 26 weeks must equal at least 80% of the wages for first 26 weeks.
-

HIRE Act – 2010

Bottom Line

- Employers may want to reconsider their staffing needs in light of these incentives.
 - There is no requirement for a net increase in the total number of employees – can be qualified replacements.
 - Tax incentives are extremely short-term and may not alone justify the hiring of a new employee.
 - However, the incentives are substantial enough to justify the record keeping and reporting burden if qualifying employees are added in 2010.
-

Health Care Reform In Two Acts

Patient Protection and Affordable Care Act
Health Care and Education Reconciliation Act

Health Care Reform

The Overall Approach

- The focus of this presentation will be on the new law's effect on employers and employees.
 - The new law will require most U.S. citizens and legal residents to have health insurance.
 - It will require companies to provide health insurance to their employees.
 - It will require the states to create state-based American Health Benefit Exchanges through which individuals and companies can buy affordable insurance that complies with the new law.
 - These requirements are not effective until 2014. What are employers supposed to do now?
-

Health Care Reform – 2010

Small Employer Tax Credit

- Tax credit for small employers purchasing health care coverage for employees.
 - Employer must contribute at least 50% of premiums.
 - Average annual wages must be no more than \$50,000, and no more than 25 employees.
 - Maximum credit is 35% of employer's premium costs for employers with 10 or fewer employees and annual average wages up to \$25,000.
 - Credit rises to 50% in 2014 but only for employers buying insurance through the new state insurance exchange – ends in 2016.
-

Health Care Reform – 2010

Small Employer Tax Credit

- Helpful IRS guidance in FAQs form
 - All 2010 premiums count – including pre-enactment premiums.
 - For 2010 only, single coverage rule applies in testing for 50% of premium payments.
 - Credit limited to small group benchmark average premium.
 - Part-timers count; seasonal workers (less than 120 days of work) don't count.
-

Health Care Reform – 2010

Small Employer Tax Credit

- Tax-exempts can qualify for 25%/35% credit capped by amount of income tax withholding plus employer and employee share of Medicare tax.
 - Tax deduction for premiums is reduced by credits.
 - Business owners don't count as employees; ignore wages and premiums for sole proprietors, partners, 2% S Corp owners and 5% shareholders.
 - FTE's = hours paid/2080 -- rounded down.
 - Average wages = FICA wages/FTE's.
-

Health Care Reform – 2010

Retiree Coverage

- Temporary reinsurance program for employers providing medical benefits for retirees over age 55 but not eligible for Medicare.
 - Pays 80% of individual annual retiree claims between \$15,000 and \$90,000.
 - Employer must institute cost management programs and apply through HHS.
 - Effective June 21 and phases out in 2014 or when \$5 billion funding runs out.
-

Health Care Reform – 2010

High Risk Pool

- HHS to establish a high risk insurance pool program for individuals with pre-existing conditions who have not had coverage for at least six months.
 - Employer must reimburse the program if the individual was encouraged to withdraw from the employer plan.
 - Beware cash incentives to discontinue employee or COBRA coverage.
-

Health Care Reform – 2010/2011

Required Plan Changes

- No pre-existing condition exclusion for children.
 - No health care cancellation.
 - Coverage for children up to age 26.
 - No lifetime limits; annual limits are restricted.
 - Automatic enrollment for employers with at least 200 employees (not until DOL regulations).
 - These rules do not apply to stand-alone dental and vision plans or disease-specific plans.
-

Health Care Reform – 2010/2011

Lifetime and Annual Limits

- No lifetime limits on coverage of essential benefits (as defined by HHS) for any participant or beneficiary.
 - Annual “restricted” limits only as determined by Health and Human Services (HHS).
 - New rules also apply to out-of-network costs and retiree medical.
 - Beginning in 2014, no limits on any essential benefits.
-

Health Care Reform – 2010/2011

Coverage for Adult Children

- Plans that offer coverage to dependents must offer coverage to children until 26th birthday.
 - Child need not be a student.
 - Child can be married, but no required coverage for the spouse or for grandchildren.
 - Rule N/A to grandfathered plans until 2014 if dependent has his/her own employer coverage.
 - Income tax exclusion extended to coverage for children to end of year in which child turns 26.
-

Health Care Reform – 2010/2011

Cancellation of Health Care

- No cancellation of coverage unless coverage was obtained by fraud or intentional misrepresentation.
 - Employer can still terminate the health plan or cancel coverage for non-payment of premiums.
-

Health Care Reform – 2010/2011

Pre-Existing Conditions

- No pre-existing condition exclusion for children under 19.
 - No pre-existing condition exclusion for anyone starting in 2014.
-

Health Care Reform – 2010/2011

New Plans

- Certain preventive care coverage required.
 - New internal and external review rules.
 - Covered emergency care must be available without prior approval and with the same cost sharing for in-network and out-of-network providers.
 - Non-discrimination rules for insured plans.
 - Plans requiring a primary care provider must allow designation of participating pediatrician.
 - Guard the plan's grandfathered status!
-

Health Care Reform – 2011

Wellness Programs

- Grants for new workplace wellness initiatives.
 - \$200 million appropriated for a five-year period.
 - Fewer than 100 employees working 25 hours or more per week.
 - N/A if employer had a workplace wellness program in place March 23, 2010.
 - HHS to develop program criteria to include:
 - Education, preventive screenings, risk assessments, initiatives to change unhealthy lifestyles.
 - Employers must apply to HHS for funds.
-

Health Care Reform – 2011

Tax Changes

- No reimbursement from FSA, HRA or HSA for over-the-counter medications without doctor's prescription -- except for insulin.
 - 20% tax on non-qualifying distributions from HSA; no tax if over 65.
 - Value of health care costs provided by employer must be reported on Form W-2 for 2011 and later.
 - No discrimination testing for cafeteria plans for companies with no more than 100 employees making minimum contributions to the plan; all 1,000-hour employees must be eligible.
-

Health Care Reform – 2012

Summary Explanation

- HHS will develop a standard summary explanation of health plan coverage for use by employers.
 - No more than 4 pages.
 - At least 12 point type.
 - Culturally and linguistically appropriate.
 - Does not replace the SPD.
 - \$1,000 penalty for each willful failure to provide the summary.
-

Health Care Reform – 2013

Taxes

- Increase employee's Medicare hospital tax by 0.9% on individuals who earn more than \$200,000 or joint filers who earn over \$250,000.
 - Tax is thus 2.35% of earnings over \$200,000 or \$250,000; thresholds are not indexed.
 - Employer must withhold the tax but need not account for earnings of employee's spouse.
 - New Medicare tax of 3.8% on net investment income (including interest, dividends, royalties and rents) but only to the extent that Modified Adjusted Gross Income exceeds \$200,000 (\$250,000 for joint filers).
-

Health Care Reform – 2013

Medicare Tax Examples

- Individual has wages of \$190,000, investment income of \$30,000 and MAGI of \$210,000; no additional tax on wages; the 3.8% tax is owed on the \$10,000 of investment income above the \$200,000 MAGI threshold.
 - Individual has wages of \$300,000; investment income of \$60,000 and MAGI of \$250,000; additional wage tax is owed on \$100,000; the 3.8% tax is owed on \$50,000 (lesser of \$60,000 or \$250,000 - \$200,000).
-

Health Reform – 2013

Taxes

- FSA contributions limited to \$2,500.
 - Medical deduction floor jumps to 10% of AGI, but 65-year-olds keep 7.5% floor until 2017.
 - No tax deduction for employers receiving Medicare Part D retiree drug subsidy payments -- the loss of the expected deduction should be booked in 2010.
 - \$1 fee per covered life; \$2 after 2013.
-

Health Care Reform – 2013/2014

Health Care Exchanges

- States must create health care exchanges by 2014.
 - Exchanges will be portals through which individuals and small businesses can buy insurance.
 - Employers must inform employees about exchanges by March 13, 2013 with a written notice.
-

Health Care Reform – 2014

Health Care Exchanges

- Exchanges will certify that insurance offered complies with new federal standards for coverage of “essential health benefits.”
 - Employees will pay no more than 40% of cost for insurance obtained through exchange by employer.
 - Deductibles must be no more than \$2,000/\$4000.
-

Health Care Reform – 2014

Health Care Exchanges

- Insurance companies will provide regulated premium rates and offer coverage without pre-existing condition limitations or exclusions.
 - Companies can also purchase insurance through the exchanges; some may qualify for subsidies.
 - 100 employee limit; states can keep out employers with more than 50 employees; starting 2016, states may allow larger companies to participate.
 - Exchange insurance can be a cafeteria plan option.
-

Health Care Reform – 2014

Health Care Exchanges

- Individuals earning no more than 400% of the federal poverty level can receive subsidized coverage through the exchange.
 - Premiums for individuals with household income of 400% of FPL (\$88,000 for family of four) are capped at 9.5% of household income.
 - Health care premium tax credit can be paid in advance by IRS to insurance company.
 - No credit if the individual's employer plan pays at least 60% of coverage cost and employee share of cost is no more than 9.8% of household income.
-

Health Care Reform – 2014

Individual Requirements

- U.S. citizens required to have “minimum essential” health coverage.
 - Minimum essential coverage for the individual and dependents includes coverage under an employer plan and exchange insurance.
 - Exclusions for undocumented aliens, children under 18, financial hardship, American Indians, conscientious objectors and others.
 - Penalty by 2016 is the greater of \$695 (\$2,085 for a family) or 2.5% of household income.
-

Health Care Reform – 2014

Employer Requirements

- Employers with at least 50 employees who do not offer minimum essential health care coverage will pay a non-deductible monthly tax if at least one full-time employee receives a premium credit through the new state exchange.
 - \$2,000/12 per full-time employee, but exclude the first 30 employees. Employer with 60 employees would pay fee of \$5,000 (30 x \$2,000/12).
-

Health Care Reform – 2014

Employer Requirements

- Employers with at least 50 full-time employees who offer coverage will pay a monthly fee if at least one employee receives a state exchange credit.
 - \$3,000/12 per employee receiving the credit -- capped at \$2,000/12 x number of employees greater than 30.
-

Health Care Reform – 2014

Penalty Example

- Business with 70 employees and no health plan would owe tax of $\$6,667 = (70-30) \times \$2,000/12$.
 - Not a deductible tax.
 - 30 hours per week = one full-time employee.
 - Full-time equivalents for part-timers calculated on basis of 120-hours per month. Two part time employees working 60 hours in a month = one FTE.
-

Health Care Reform – 2014

Penalty Example

- Business offers health plan, but 25 employees buy insurance through state exchange and obtain subsidy.
 - 55 employees.
 - Monthly excise tax = \$4,167 = $(55-30) \times \$2,000/12$ and not \$75,000 = $25 \times \$3,000$.
 - Independent contractor issues will draw increased IRS scrutiny.
-

Health Care Reform – 2014

Free Choice Vouchers

- Employers offering minimum essential coverage must provide qualified employees with a voucher that can be used in the state health care exchange.
 - Qualified employees are those employees below 400% of the FPL whose plan contribution would exceed 8% (but not 9.8%) of household income.
 - Voucher value = dollar value of the employer contribution to the plan.
 - No penalty for employers if employees use the voucher.
-

Health Care Reform – 2014

Other employer Requirements

- No benefit limits.
 - No pre-existing condition limitations.
 - No waiting period longer than 90 days.
 - Wellness programs are allowed to vary premiums by 30% -- may not apply to grandfathered plans.
 - New limits on deductibles and OOP costs.
 - No limits on appropriate clinical trials.
-

Health Care Reform – 2018

Cadillac Tax

- 40% non-deductible excise tax on insurance companies or employer if plans provide “excess benefits.”
 - Excess benefits are benefits costing more than \$10,200 for individuals and \$27,500 for families.
 - Tax applies to both employer and employee share of costs.
 - Exclude separate dental and vision plans.
 - Higher thresholds for retirees and high-risk professions.
-

Health Care Reform

Odds and Ends

- Milk breaks
 - Gun control
 - Tanning Tax
 - Calorie Counts
 - The CLASS Act
-

Health Care Reform – 2010

Milk Breaks

- Employers must provide reasonable breaks for an employee to express breast milk for a nursing child for one year after the child's birth.
 - Employer must provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers or the public.
 - Break time can be unpaid.
 - N/A to employers with fewer than 50 employees if the rule would impose undue expense or difficulty.
 - More favorable state laws are not pre-empted.
-

Health Care Reform -- 2010

Gun Control

- Gun owners were concerned that health care reform could be used to justify gun control.
 - If owning a gun is an “unhealthy lifestyle” or results in higher risks, insurers might charge higher premiums to gun owners.
 - Wellness programs cannot collect or distribute information about gun ownership.
 - Insurers participating in the new state exchanges in 2014 cannot charge higher premiums, deny coverage or deny wellness discounts on the basis of gun ownership.
-

Health Care Reform -- 2010

Tanning Tax

- 10% excise tax on indoor tanning services.
 - Tanning pays the tax; service provider collects and remits the tax.
 - The tax is effective July 1, 2010.
 - The director of the Indoor Tanning Association calls the new tax a “crummy, crummy way to make tax policy.”
 - Tanning devices have been classified as carcinogenic by an agency of the World Health Organization.
-

Health Care Reform -- 2010

Calorie Counts

- There are 540 calories in a Whopper!
 - Restaurants with more than 20 locations must display the calorie count for each of the food items on their menus. Condiments are exempt.
 - The menu must also include a “succinct” statement concerning a suggested daily calorie intake so that the public can understand how the Whopper fits into a daily diet.
 - Vending machines and drive-through restaurants are also subject to these rules.
-

Health Care Reform – 2011

CLASS Act

- New voluntary federal long-term care plan (Community Living Assistance and Supports).
 - Employer participation is voluntary.
 - Automatic enrollment if employer participates.
 - Contributions withheld from employee pay.
 - 5-year vesting.
 - \$50 per day benefit to purchase non-medical services for participants with functional limitations.
 - Employers must decide whether to participate and establish payroll withholding procedures.
-

Thank You

■ Tulsa

- Clive A. Seymour
cseymour@hallestill.com
(918) 594-0624
- Kenneth L. Hunt
khunt@hallestill.com
(918) 594-0420
- J. Patrick Cremin
pcremin@hallestill.com
(918) 594-0594

■ Oklahoma City

- Clive A. Seymour
cseymour@hallestill.com
(918) 594-0624
 - Susanna M. Gattoni
sgattoni@hallestill.com
(405) 553-2868
 - James C. Shaw
jcshaw@hallestill.com
(405) 553-2809
-