A Snapshot of Where Employers Stand under **the Affordable Care Act Today**

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THE STATUTE AND regulations pertaining to the Affordable Care Act ("Act") have generated thousands of pages of legal documents. Even someone with a moderate understanding of an employer's obligations under the Act could be confused in the wake of administrative delays and all of the publicity generated by court challenges. Here's a snapshot of where things stand as we enter the last quarter of 2014.

Although uninsured employees were expected to sign up for insurance last winter, the duty imposed on employers to offer health insurance to employees was temporarily delayed administratively. At this point, employers fall into one of three categories:

Employers with 100 or more employees will need to offer insurance commencing January 1, 2015 (or face a tax/penalty for not complying).

Employers with between 50 and 100 employees will have one more year until they face a mandatory requirement – however, to have the benefit of this further delay, they will need to certify to the federal government (form has not yet been published) that: (1) they have not reduced the size of their work force or the aggregate hours of their service, except for legitimate business reasons (as opposed to reducing the number to avoid this obligation), and (2) have not materially reduced the existing health care coverage provided to employees already. Forms for claiming this status have not yet been published.

So, in this respect, the important thing to note is that, an employer of this size that intends to delay providing qualifying insurance needs to be aware of this general duty to maintain the size of the workforce (and whatever insurance it may already be offering) through 2014 and 2015.

Employers with less than 50 employees (Treasury Department says that is 96% of the employers in America) have no obligation to provide insurance under the Act. Nothing has changed in this regard. Employers in this category continue to have the possibility of qualifying for a tax credit to cover up to half the employer's cost of providing insurance, if the employer has less than 25 employees who are earning an average of less than $50,000 per year. The credit is available for two years.

There seems very little likelihood that anything will further delay the 2015 employer mandate this time around. The Supreme Court's Hobby Lobby decision from last summer was a focused limitation on one small issue (certain contraceptives) which applied to one small sector or employers (small, closely-held companies with a clear history of making management decisions grounded in religious beliefs). There is another line of several pending cases challenging the Act using the technical argument that, as actually worded, key sections of the law are premised on a "credit" which is to be issued by an insurance exchange, specifically a state exchange, yet, in a majority of states, there is no state exchange. While theoretically a viable argument, there is virtually no chance the Supreme Court would have the opportunity to rule on this point of law before the end of this year. And, while Congressional action to limit the obligations to "full time" employees based on the normal 40 hour workweek (rather than the Act's 30 hours) passed in the House, analysts give it essentially zero chance of passage in the Senate.

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