Health Care Reform UPDATE

A periodic publication about Health Care Reform
September 2016

ELECTION

FEATURE STORY

ELECTION 2016
Outlines of each candidate’s platform for health care reform.

ALSO IN THIS ISSUE

EMPLOYERS RECEIVING NOTICES OF EMPLOYEE PREMIUM SUBSIDIES FROM MARKETPLACE
We won’t bring out our crystal ball for this issue of the newsletter, but we will outline each candidate’s platform for health care reform. We know that employers are quite anxious about the coming election cycle. The outcome of this year’s elections – Presidential and Congressional – will affect the economy significantly. Congress has a large role to play in the reform agenda, and so we include Speaker Ryan’s proposed legislation, too. Here are the proposals:

DONALD TRUMP

Not surprisingly, Trump’s proposal favors market-based changes such as increased competition and individual freedom to seek coverage. He believes that illegal immigrants should not receive subsidized coverage. An interesting item in his platform is removing barriers to entry for companies producing reliable drugs more inexpensively, calling for Congress to “step away from special interests...” to enact the appropriate legislation.

The following are the 7 points of his platform:

1. Repeal Obamacare completely and remove the individual mandate.
2. Allow insurance companies to compete across state lines as long as the coverage complies with state law.
3. Allow individuals to deduct health insurance premiums.
4. Expand Health Savings Accounts, allowing the funds to be part of a person’s estate.
5. Require price transparency from all health care providers.
6. Block grant Medicaid to the states to allow states to determine the best coverage for their own citizens and to eliminate the cost of Federal oversight.
7. Remove barriers to entry into free markets for companies providing reliable drugs more cheaply.

To learn more about this and other Health Care Reform topics, check out our blog at www.creativebenefitsinc.com/topic/health-care-reform/
HILLARY CLINTON

Clinton's proposal favors expanded Government programs and solutions. She specifies certain areas where she will increase funding to broaden programs. Additionally, she endorses the idea of price controls, particularly on prescription drugs. She re-emphasizes her commitment to providing coverage to people regardless of their immigration status and to insure the availability of reproductive health care. Here are the points of her platform:

1. Defend and expand the Affordable Care Act and implement a “public option.”
2. Allow people to buy into Medicare at age 55.
4. Reduce the cost of prescription drugs by eliminating tax deductions for direct-to-consumer advertising, allowing a faster path for generic drugs to get to the marketplace, allowing Medicare to negotiate drug prices.
5. Provide incentives to states to expand Medicaid.
6. Expand access to health care to rural Americans, including Federally-funded clinics.
7. Double funding for community health centers.

PAUL RYAN

The agenda, termed “A Better Way,” has market-based ideas including Health Savings Accounts, increased competition in the health insurance market, and tort reform. The plan also would “unshackle” Medicaid, allowing states to innovate and design their own coverage. Additionally, the plan favors allowing small businesses and individuals to band together to increase purchasing power to negotiate with insurers. The Ryan plan continues the current policies of protecting people with pre-existing conditions and allowing dependents to stay on their parents’ policies until age 26. The plan also would prohibit insurance carriers from charging more than standard rates to someone dealing with a medical issue.
EMPLOYERS RECEIVING NOTICES OF EMPLOYEE PREMIUM SUBSIDIES FROM MARKETPLACE

Many employers are receiving notices from the Health Insurance Marketplace telling them that they may have to pay a penalty. For all of the employers who have conscientiously provided health care coverage to their employees, these letters are intimidating and frustrating. If you, as an employer, do receive such a letter, it doesn’t mean that you have done something wrong or that you owe a penalty. If you have offered employer-sponsored health care coverage that complies with the Affordable Care Act requirements, you will not be subject to a penalty. Why does this happen? Any individual can go onto an exchange to apply for coverage and apply for a subsidy. The individual may identify you as an employer but may not state that you have offered coverage. If that employee qualifies for a subsidy based on this false information, it will trigger a notice. Unfortunately, if you receive the letter, you must submit a form appeal within 90 days and include supporting documentation. You should provide proof that you have offered minimum essential coverage that is affordable. The best way to do that is to provide a copy of the 1095-C that you supplied to the employee along with a pay stub and some proof that you have offered coverage to the employee. If you need help in providing proof of offered coverage, Creative Benefits can help you with that. HHS reviews these appeal forms and determines whether to forward them to the IRS. It is the IRS that decides whether an employer owes a penalty. If you are contacted by the IRS, you will have to provide the same information as part of the appeal process. Again, this is more time-consuming and frustrating paperwork, but you must take this seriously to avoid a penalty. To access the proper form, access this link:

NEW OVERTIME RULES THAT EMPLOYERS MUST KNOW

The Department of Labor amended the Fair Labor Standards Act, increasing the salary levels that trigger overtime pay for white collar workers. The new standards go into effect December 31, 2016. The salary level increases from $23,660 per year to $47,476 per year. Generally speaking, white collar workers whose salary is less than $47,476 per year are entitled to overtime pay for anything over 40 hours of work per week. However, salary level alone does not dictate who is or who isn’t exempt. Employees above the new salary range may be exempt from overtime pay only if they fall within certain categories.

Who is exempt? To qualify as exempt, employees must pass three tests: the salary level test – that is they must earn at least $47,476/year; the salary basis test – they must be paid a base salary, not based on quality or quantity of work; and the standard duties test – the primary job must involve duties that are executive, administrative, or professional.

Employers must understand those designations and apply them correctly.

An executive exemption applies to any employee a) whose salary is at least $47,476; b) whose primary duty is managing the enterprise or a division of the enterprise; and, c) who directs the work of at least 2 other full-time employees.

An administrative exemption applies to any employee a) whose salary is at least $47,476; b) whose job responsibilities directly relate to the management or business operations of the business; and, c) whose primary duty must include exercise of discretion and independent judgment with respect to matters of significance (the specific regulatory language).

A professional exemption applies to any employee a) whose salary is at least $47,476; and, b) whose work requires advanced knowledge in a field of science or learning requiring an advanced degree or whose work requires invention, imagination, originality or artistic or creative talent.

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<th>EXECUTIVE</th>
<th>ADMINISTRATIVE</th>
<th>PROFESSIONAL</th>
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<tbody>
<tr>
<td>Salary Basis Test</td>
<td>• Employee must be paid on a salary basis</td>
<td>• Employee must be paid on a salary or fee basis</td>
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<tr>
<td>Standard Salary Level Test</td>
<td>• $913 per week ($47,476 per year for a full-year worker)</td>
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<td>• Special salary level for certain academic administrative personnel</td>
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<td>Standard Duties Test</td>
<td>• The employee’s “primary duty” must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise (and managing 2 full-time employees as well).</td>
<td>• The employee’s “primary duty” must include the exercise of discretion and independent judgement with respect to matters of significance.</td>
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<td></td>
<td>• Additional requirements provided in 29 CFR 541 Subpart B</td>
<td>• Additional requirements provided in 29 CFR 541 Subpart C</td>
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The new standards go into effect December 31, 2016.
Note that the salary level and salary basis requirements do NOT apply to teachers, doctors, and lawyers.

What should employers do to prepare for this significant change in the law? The Department of Labor outlines several options. The first option is do nothing! If your employees typically work 40 or fewer hours, you do not need to do anything. The second option is to raise salaries for non-exempt workers to meet the new salary threshold. Another option is to pay the overtime as necessary. An employer can also reorganize the work force, spread work hours, or otherwise manage employees’ time. Employers who have salaried workers whose current pay is based on a work week that is longer than 40 hours may adjust the worker’s base salary to accommodate the overtime pay requirement.

This is certainly another regulation that requires management’s immediate attention. One bright light is that employers have already had to implement systems for tracking employees’ hours for ACA compliance. Hopefully, employers can at least utilize the same tools to insure compliance with the new FLSA rules.

**What are some options for responding to changes to the salary level?**

- Raise salaries to maintain exemption
- Pay current salaries, with overtime after 40 hours
- Reorganize workloads, adjust schedules or spread work hours
- Adjust wages

The salary level and salary basis do *NOT* apply to teachers, doctors, and lawyers.
...AND FINALLY, IT’S TIME – AGAIN – TO THINK ABOUT ACA REPORTING

WAYS TO DO IT BETTER THIS TIME AROUND

We all learned a lot from the first few rounds of ACA reporting. Now it’s time to perfect the systems in place to get it right once and for all. Employers must begin by assessing data collection and aggregation among all the necessary vendors to be sure that the reporting is as seamless as possible. We have compiled suggestions for making sure reporting is accurate and timely – and as low-cost as possible.

The first thing to remember is that no employer can escape penalties if he or she provides incomplete or inaccurate reporting. The IRS may or may not choose to give employers a pass for “good effort” for 2015. Rest assured there will be no pass for late or inaccurate reporting starting in 2016. This makes good data collection procedures essential. Employers or HR departments must begin with the basics: good clean employee records, including Social Security numbers for all employees and covered family members. It is important to make sure that employers have their employees’ names listed exactly as those names appear on a Social Security card. Discrepancies in names and numbers has created many problems, especially for employers who have e-filed. This will continue to plague employers who aren’t fastidious with their employee information.

Employers must be meticulous in tracking employee work detail. You must track start dates and termination dates as well as leaves of absence, such as FMLA. Also, it is imperative to track actual hours worked for employees that work in the field or work remotely. Tracking and eligibility determination should happen at least monthly to insure that you don’t miss something. Remember that Applicable Large Employers must offer coverage to 95% of its full-time employees in 2016.

Finally, if you want to use a vendor to provide reporting services, you should begin vetting these vendors now. Many employers found that the available reporting systems were inaccurate, expensive, and usually both! The best way to get a handle on 2016 reporting is to review your own data and tracking for accuracy and then find the best process for producing the reports. If you are using a vendor, suggest a test run now to learn if there are any weaknesses in compiling the data or producing the reports. The bottom line is this: don’t wait. The IRS will get strict this year, and you don’t want to end up paying a penalty.