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# The Future of the Affordable Care Act: *Foreseen challenges and implications for employers*

*Implemented in parts over the next eight years many have already noticed the new provisions that came into effect in 2010. The next wave will be those that occur this year (2011) through 2013, and the remainder will take place during 2014 – 2018.*

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## **Qualified Medical Expenses**

One major change that has been made in the Affordable Care Act is the definition of a Qualified Medical Expense. This will impact the reimbursements and withdrawals for all types of health care accounts such as Flexible Spending Accounts, Health Savings Accounts, Health Reimbursement Accounts, etc. One major change is that over-the-counter or OTC medications can no longer be paid for or reimbursed by any health care accounts, unless your doctor gives you a prescription for an OTC medication then it can be paid

for with any FSA-type account. Without a prescription for OTC medications the tax penalties on withdrawals that aren't used for Qualified Medical Expenses increases from 10% to 20%. Starting in 2013, employees will only be allowed to contribute up to \$2,500 to their FSA.

### **In The Court Room**

The individual mandate has sparked quite a debate about whether or not The Affordable Care Act is unconstitutional and thus enforceable. In fact, twenty six states have banded together to file suit against the federal government, challenging the bill. Recently, Judge Vinson, a U.S. District Judge in Florida, ruled that under the constitution, the federal government cannot force an individual to purchase a good or service and cannot tax them for not doing so. Furthermore, because The Affordable Care Act does not include a severability clause, which would allow Congress to delete certain line items, Judge Vinson ruled the entire bill to be unconstitutional. As a result the state of Florida has halted implementation of the bill. Most likely, the Supreme Court is going to have to make a final ruling on the bill.

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The 1099 tax provision is about the only provision that everyone can agree on that should be eliminated. In fact, the Senate just voted to repeal this provision as the IRS openly admitted that it would be too difficult to monitor which companies are or are not in compliance. This mandate would require all employers to report any expenditures with another company they did business with that totaled \$600 or more. One can only imagine the number of transactions that exist between companies in a given year. To make matters worse, most small employers aren't equipped with large enough accounting departments to handle all this. This purpose of this provision was to raise \$17 billion - \$19 billion in revenue per year.

### **Fines, Tax Credits & W2's**

The Affordable Care Act does offer tax credits for small businesses to help offset the cost of providing health coverage to their employees. To qualify, employers must use a new form 8941 to calculate their actual tax credit. These credits are based on a sliding scale and to be eligible the employer must pay annual wages under \$50,000 and have less than the equivalent of 25 full-time employees.

Employers are now required to note on every W-2 form the value of each employee's health benefits. This will not be considered

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taxable income; however it will be important in 2018 when the Cadillac Taxes come into effect. Essentially, those employers who offer health plans that are valued at more than \$10,200 for an individual or \$27,500 for families will be hit with a 40% excise tax. For example, if an employer offers Cadillac-type health coverage to an employee with a family that costs \$28,000 per year, that same policy will now cost the employer over \$39,000 per year. This will have a negative effect on employers and cost them substantial amounts of money. Substantial enough that they will be forced to either cut their labor force, reduce their plan's coverage or maybe cancel coverage all together. Verizon estimated that the Cadillac Tax will cost them an extra \$255 Million a year.

The Affordable Care Act now requires companies that have at least 50 full-time employees to either provide affordable health coverage or pay a fine of \$2,200 per employee per year. A full-time employee is someone who works at least 30 hours per week. Affordable means the employee's premiums don't exceed 9.5% of their household income. Employers must pay at least 60% of the plan's total cost. Employers will have to pay a fine if their plans are too rich or if they are too poor.

These fines could very likely lead many employers to drop their coverage all together. Many employers would rather pay a fine instead of pay the higher costs as a result of the reform. AT&T for example found that they spend about \$2.4 Billion per year for its 300K employees. If they were to cancel their coverage, their fines and penalties would only be about \$600 Million a year. It is hard to predict what will happen with this and if employers will decide to keep health insurance or just pay fines. Health insurance has for a long time been a recruitment vehicle for many employers and many employers will continue to offer it for that reason alone.

### **Conclusion**

It is hard to predict 100% what will be the outcome of the Reform Bill. It is clear to see that there are many new laws and possible fines and taxes. Every employer might find a different solution to the reform better for them. There are of course many new costs and it will be interesting to see how over the next few years employers handle these costs. Employers are being required to do so much more, however if cutting jobs is the only way to afford the costs of healthcare reform who will it really help.