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Sweeping Changes in Your Employees' Benefit Packages Have Arrived and More are on the Way. Are You Ready?

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Although it has been overshadowed in recent months by the state of the national and global economies and other issues, health care reform remains a politically charged issue that stands to have a substantial impact on employers. The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act (collectively the "Health Care Reform Law") were signed into law in March, 2010 and make up the bulk of the legislation that aims to overhaul health care in the United States.

As expected, there have been many legal challenges to the Health Care Reform Law. The Supreme Court of the United States recently agreed to hear these challenges and is expected to make a ruling in June of 2012. The Court may rule on the validity of the law in its entirety or may only rule on select provisions of the 1,000-plus page bill. Some of those provisions will directly affect employers in a significant way if they survive the Court's scrutiny. There are three central provisions of the Law, among many others, that will most directly affect employers: (1) a "grandfathered" plan is exempt from certain healthcare reforms, (2) healthcare plans may not discriminate in favor of "highly compensated individuals," and (3) employers will soon be required to provide affordable health care to all of its full-time employees. A broad overview of these three provisions follows.

1. A "grandfathered" plan is exempt from certain healthcare reforms — Certain employee health plans may be exempt from some of the healthcare reforms if the plan qualifies as a "grandfathered" plan. This means that the plan may continue to provide the coverage that was in effect on March 23, 2010 so long as the plan does not eliminate benefits relating to diagnosis or treatment of particular conditions, and if the plan does not increase employees' contributions or co-pays by a certain percentage. Obviously, as the cost of providing healthcare continues to increase, the employer's burden of remaining "grandfathered" will become increasingly difficult to maintain if the employer cannot share some of the rising costs with its employees. Employers will need to weigh the cost of remaining "grandfathered" and the cost of compliance with the new health care reforms.

2. Health care plans may not discriminate in favor of "highly compensated individuals" — Effective September 23, 2010, most group or individual health insurance plans cannot discriminate in favor of "highly compensated individuals." Specifically, health plans cannot provide better benefits to highly compensated individuals and cannot favor highly compensated individuals when considering which employees are eligible for health insurance benefits. A "highly compensated individual" is defined as (1) one of the five highest paid officers, (2) a shareholder owning more than ten percent of the company's value, or (3) an individual among the highest paid 25 percent of all employees. The rules regarding discrimination in health benefits are relatively simple: employers must provide the same benefits to highly paid individuals and non-highly paid individuals alike.

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In contrast, the rules preventing discrimination in a plan's eligibility requirements are complex and extremely technical. There are several tests to determine whether the plan is discriminatory, which generally require certain percentages of employees to be eligible and enrolled in the plan. Additionally, the Internal Revenue Service (IRS) has discretion to determine whether the plan is discriminatory or not by analyzing several factors, including whether the plan falls under certain proscribed "safe harbors." These safe harbors are highly technical calculations that analyze the proportions of employees that are eligible and/or enrolled in the plan.

The IRS may impose a penalty for failing to comply with the nondiscrimination rules in the form of a non-deductible excise tax on the employer in the amount of $100 per employee for every day that the plan is out of compliance. Although the anti-discrimination requirements are currently in effect, the good news is that the penalties for violations will not be enforced until the IRS and other agencies provide further guidance, which is expected sometime prior to July 2012.

3. Employers will soon be required to provide affordable health care to all its full-time employees — Effective January 1, 2014, most employers are required to provide a certain minimum amount of affordable health coverage to its employees. The regulations have not yet determined what minimum amount of coverage is required, however it is likely that the coverage will have to meet the requirements of a grandfathered plan. Coverage is considered unaffordable if the employee's share of the premium exceeds 9.5 percent of the employee's household income, or if the employee is responsible for more than 40 percent of the premium.

If the employer fails to offer the essential minimum insurance coverage, or if the employer offers the essential minimum coverage but it is not affordable, it will be penalized by way of a significant non-deductible excise tax. Depending on the circumstances, the tax is equal to $167.00 or $250.00 per employee who is not offered affordable essential minimum coverage during any month.

Call us for planning to optimize your transition into compliance.
Although we do not know how the Supreme Court will decide the various suits attacking the new health care regulations, we can say that Health Care Reform, in whatever iteration ultimately becomes law, will have a significant impact on businesses. Some advance planning can help you ease the burden of compliance with Health Care Reform's many requirements and potentially help your business avoid any non-deductible penalties. If you would like to discuss how Health Care Reform may affect your business and how you can optimize your transition into compliance, please call our office or contact Theresa Wade at twade@ghrlawyers.com or Bill Weidner at wweidner@ghrlawyers.com for more information.