



## Ideas and Information for Human Resources Professionals

# Stephens

Stephens Insurance, LLC

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## Health Care Reform

### 2012 Election: PPACA Is Here to Stay

The votes have been counted and the campaign signs are gone from yards and highway medians (at least most of them). Now, employers are evaluating what the election results will mean for their businesses in the coming years.

On the national level, Americans chose to keep the status quo with President Barack Obama's re-election and split party control of Congress. For employers, the most significant and immediate impact of the election will be the preservation and advancement of the Patient Protection and Affordable Care Act (PPACA), according to a Reuters report.

"There's sort of an immediate acceptance that this law will stay in place in some meaningful way," Chris Jennings, who served as an advisor to former President Bill Clinton, told Reuters. "It's sort of like a big barrier has been removed."

Although the survival of the law now seems all but certain, its final form has yet to take shape. A number of provisions still lack guidance from federal agencies, and employers should expect an "avalanche" of regulations in the coming months, Gretchen Young of the ERISA Industry Committee told *Business Insurance*.

For example, the details of the penalty (\$2,000 per full-time employee) on some employers that don't offer adequate coverage remain sketchy. Also, employers are still waiting for full guidance on how much they will have to contribute to the federal reinsurance program that is mandated by the law,



*Business Insurance* reports.

In the meantime, employers should focus on the immediate requirements that are known, according to a press release by United Benefit Advisors (UBA). Some of these include:

- Expanding first-dollar preventive care to include a number of women's services, including contraception, unless the plan is grandfathered
- Issuance of summaries of benefits and coverage (SBCs) to all health plan enrollees
- Reducing the maximum employee contribution to \$2,500 if the employer sponsors a health flexible spending account (FSA), beginning with the 2013 plan year
- Providing information on the cost of coverage on each employee's 2012 W-2 if the employer issued 250 or more W-2s in 2011
- Calculating and paying the Patient Centered Outcomes Fee in July 2013 if the plan is self-funded (insurers are responsible for calculating and paying the fee for insured plans but will likely pass the cost on)
- Providing a notice about the upcoming health care exchanges to all eligible employees in March 2013

The issue of the exchanges -- marketplaces that will allow employees and employers to shop for health care coverage -- represents another question mark for employers. State leaders have until mid-December to decide whether they will set up their own exchange or let the federal government run the show in their state. Nearly a half-dozen Republican-controlled states have already stated they won't set up exchanges, and more may follow. Because the makeup of these exchanges will affect a wide range of employers, companies should keep an eye on what's happening in their state, UBA notes.

Of course, the law still faces dozens of lawsuits, including one aimed at overturning the requirement that church-affiliated organizations must cover contraceptives for their employees, Reuters reports. Yet the reality for employers seems clear: PPACA is here to stay.

"There is no way the law is going to be repealed in the next two years, and Republicans know that," Chantel Sheaks of Buck Consultants L.L.C. told *Business Insurance*.

## Smoking

### Companies Recommit to Smoking Cessation

While workers' waistlines remain a prime target in many employer-sponsored wellness initiatives, companies also are deploying aggressive anti-smoking programs in hopes of controlling health care costs, experts say.

Amy McAllister with Provant Health Solutions noted in a recent *Employee Benefit News* report that her company has seen a strong uptick in the use of tobacco cessation initiatives.

McAllister said more employers are shifting their wellness programs to include a "total-body" approach, and that means tackling smoking among the workforce.

Provant's clients are using a mix of "carrot and stick" methods to encourage employees to participate, she said, including higher premiums for workers who refuse to quit.



Although the health benefits of kicking the habit are widely known, employers often overlook some of the legal snags that can occur with a smoking cessation program -- especially if it involves tests to make sure workers remain compliant.

"The issue of nicotine testing is complicated not only by the presence of smokers' rights laws and lifestyle statutes in certain states, which prohibit employer interference in off-duty conduct, but also by questions regarding disability and privacy," said Julie B. Ross of the law firm Lynn Ross Smith & Gannaway, according to *Human Resource Executive Online*.

Although no court has ruled that nicotine addiction is a disability, recent amendments of the American with Disabilities Act may make it easier for employees who are fired or penalized for failing a nicotine test to win legal battles with employers, Ross said.

Callan G. Carter, a partner at Fisher & Phillips LLP, noted that communication and test administration can further complicate programs that require testing. These challenges often convince employers to limit their scope of testing programs.

"I find that most employers allow employees to self-certify their tobacco use status and only test an employee for nicotine if the employer has a reason to believe the employee may be using tobacco after they have certified otherwise," Carter told *HREO*.

Still, the pressures of health care costs likely will continue to persuade employers to lean on anti-smoking programs and other initiatives that promise to drive down costs. A recent report by Adecco notes that 55 percent of executives rank health care costs as their No. 1 worry -- beating wages, taxes and talent retention.

That high concern about health care costs means companies should expect the trend of more smoking cessation programs and tobacco testing to continue, experts say.

## Health Plans

### Shop Smart When Hunting for Plans

The process of choosing the right health care plan can be a daunting task -- especially for small businesses that might lack financial flexibility, time and resources.

A few simple steps, though, can help smaller companies craft a competitive benefit package without breaking the bank or tumbling into a legal pitfall, according to a recent online post by *Business Insider*.

When shopping for health insurance coverage, experts suggest that companies:

**Examine all the options:** Don't just buy the cheapest plan, advises insurance consultant Dan Weedin. "As with any other insurance, don't make your decision on price alone," he said. "In insurance, you often get what you pay for, and that can be more expensive in the long run." On the other hand, it's best to make a budget and stick with it, according to entrepreneur and author Aimee Elizabeth. "If you don't know your budget, you can easily end up with buyer's remorse when you wind up buying a package that leaves you penniless," Elizabeth said in the *Business Insider* post.

**Check out tax-friendly accounts:** Examine high-deductible health plans with health savings accounts, health reimbursement arrangements or flexible spending accounts, which may come with tax advantages that sweeten the value of the benefit, experts said.



**Beware of unstable insurers:** A recent court case highlights the need for employers to also be aware of the insurance carrier's financial strength. *CFO Magazine* reports that International Schools Services (ISS), which provides services for international educational institutions, ran into trouble when claim checks from its insurer, AAUG Insurance Co., bounced.

Despite an order by the U.S. District Court in Florida, AAUG also failed to pay for a forensic accountant who was hired by ISS to look into the matter.

Although the court froze AAUG's assets and left the door open for more penalties, the case certainly created a mess for ISS, said Elliott Kroll, an attorney representing the company.

"There is a risk for American businesses in finding a package that looks financially attractive with health insurers that aren't as well known as the major ones," Kroll told *CFO*. "And the more that companies deal with fringe players in the health care market, whose numbers I think will increase in the next few years, the more these types of situations will arise."

To guard against this type of issue and to help secure the best plans, the experts cited in *Business Insider* offer one last, important tip:

**Hire an experienced advisor:** A knowledgeable consultant can walk you through the process of purchasing health care coverage and help you make the best choices.

Elizabeth noted that it's important for employers to ask for referrals and to interview the advisor firm to make sure it's a good fit.

"Explain what you need and why," Elizabeth said. "See if he actually listens and understands, or if he rolls his eyes, interrupts you a lot and tries to shove his preconceived plan down your throat. You want the first guy, not the second."

## In Brief

### FMLA DISASTER

In the wake of Hurricane Sandy, an attorney from Franczek Radelet P.C. reminds employers that disasters can stir up compliance issues from the Family and Medical Leave Act (FMLA). In an article for the Society of Human Resource Management (SHRM), Jeff Nowak notes that the law does not require employers to give employees time off to deal with the aftermath of a natural disaster. However, the law does apply if the disaster causes an employee to suffer "a physical or mental illness or injury that meets the definition of a 'serious health condition' and renders them unable to perform their job," or if the employee is required to take care of a family member that's been affected by the disaster.

### STILL CONFUSED

A new poll finds that small businesses remain confused about the health care reform law. A survey by eHealth finds that many small companies are unclear about their obligations under the Patient Protection and Affordable Care Act. For instance, nearly one third incorrectly believed they would be required to offer health benefits by 2014 (only employers with 50 or more employees are subject to that rule). Also, few are making any long-term plans based on how that law might affect their business, the survey found.

### TELEWORK SLIP

While the growing popularity of working remotely has been in the headlines recently, new research suggests the trend may be fizzling. A WorldatWork / Dieringer Research Group report found that the number of people teleworking in 2010 was 26.2 million, down from 33.7 million in 2008. The report cited a number of reasons for the decline, including high unemployment and workers' anxiety about job security.

### **BUSINESS AS USUAL?**

A new survey finds employers don't expect to make any major moves in how they do business anytime soon. The poll by the Midwest Business Group on Health, conducted prior to the election, found that most companies had no plans to make any major shifts because of the health care reform law. For instance, only 9 percent said they expected their company to participate in the state-run health care exchanges in 2014-16. Also, the poll found little indication that employers expect to stop offering health care coverage.

### **CHOLESTEROL DROP**

Americans' cholesterol levels have dipped since the 1980s, thanks to lipid-lowering drugs and better awareness, the Centers for Disease Control and Prevention reports. The study found that average total cholesterol dropped from 206 milligrams per deciliter in 1988-1994 to 196 in the 2007-2010 time period, with a similar decrease in LDL (or "bad") cholesterol.

### **TDF SKIP**

Although a majority of retirement plan sponsors offer a target-date fund (TDF) option in their defined contribution plans, only half of them are using the TDFs as the default fund, according to AllianceBernstein. Of the 50 percent of companies offering a TDF but not as a default, 83 percent have no default at all or are using a stable fund, an equity fund or bond as the default.

### **INCOME BUMP**

U.S. retirees are collecting more in retirement income today from employer-sponsored plans than in the mid-1970s, according to a report by the Investment Company Institute. The research found that in 2011, 33 percent of retirees received retirement income from private-sector retirement plans, compared with 21 percent in 1975. The median income from those retirement plans in 2011 was \$6,300, compared with \$4,700 in 1975 (in 2011 dollars).

### **NO 'FREE' FALL**

A lack of protection from falls ranks as the most frequently registered safety violation in fiscal year 2012, according to the Occupational Safety and Health Administration. Other common infractions include problems with communicating the presence of hazardous materials, scaffolding issues and lack of respiratory protection.

### **LITTLE SCORES BIG**

Worried that your company can't pass out big bonuses at the holidays? Don't fret: Most U.S. workers are happy to receive small gifts as a token of appreciation, according to a study by Parago Inc. The online poll found that 69 percent of employees don't expect to receive anything from their employers this year, while 61 percent they'd be thrilled with just a \$25 prepaid gift card. Eighty-five percent said a gift card of \$100 or less would do.

### **FICA RISE**

The maximum amount of income subject to the Federal Insurance Contributions Act (FICA) tax will rise to \$113,700 from \$110,100 as of January 2013, the Social Security Administration has announced. The agency recommends employers make adjustments to their payroll accordingly and inform employees of the change.

### **SOCIAL SIGNS**

California recently joined Illinois and Maryland in prohibiting employers from requiring access to current employees' and job candidates' social media sites. Gov. Jerry Brown signed a law that will bar employers from asking for usernames and passwords for social media accounts or access to the accounts in the presence of the employer. The law also bans employers from punishing workers who fail to comply with a request for social media information.

## **Webinars**

### **Personal and Financial Wellness**

**Thursday, Dec. 6**

**2 p.m. ET / 11 a.m. PT**

When you think of improved health, you might think of lowered body mass index, blood pressure and cholesterol. What about outcomes such as higher energy levels, productivity and potential wealth? Yes, wealth!

Personal wellness is a strategy that can lead to wealth when it comes to retirement savings for both the employee and employer. An effective wellness program can help employees save more for retirement and enter their retirement years in good health. Join this session to see the real ties between physical and fiscal well-being.

## **The Impact of the Election on PPACA - Where Do We Go From Here?**

**Tuesday, Dec. 11**

**2 p.m. ET / 11 a.m. PT**

We are fast approaching January 2014, when the key provisions of the Patient Protection and Affordable Care Act (PPACA) are to take effect. To date, regulations have not been issued on a number of significant provisions. In addition, the law remains controversial, and the ever-shifting political winds are likely to bring about more changes. Join this webinar, in which Janet Trautwein of the National Association of Health Underwriters will offer perspectives on which regulations are likely to be released soon and what employers should be doing now to cope with PPACA.

**To register or learn more about these webinars, please contact us.**

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