



Ideas and Information for Human Resources Professionals

Stephens

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Health Care Reform

PPACA Ruling May Have Limited Effect on Employers' Plans

The Supreme Court finished hearing oral arguments on the health care reform law in March. Now, employers -- along with patients and political pundits -- can do little except wait.

Several judges, including Justice Anthony Kennedy -- perceived as a "swing vote" in tight cases -- severely questioned the government over three days on the individual mandate that requires all Americans to have health insurance and whether other provisions of the law could stand without it.

The justices likely have already cast their initial votes on the case, but a formal decision on the Patient Protection and Affordable Care Act (PPACA) is not expected until June.

No matter how the Court rules, employers will face some tough benefit choices, according to a report in *Business Insurance* magazine.

If the court strikes down the law, employers would regain some lost plan flexibility, Steve Wojcik of the National Business Group on Health told *BI*. Employers again could design benefits "without worrying about compliance with the letter of the [health care reform] law as opposed to what makes sense for their employees," Wojcik said.

But because many provisions -- including the extension of benefits to workers' children through age 26 -- are already in place, parts of PPACA may prove more difficult to unwind, Chantel Sheaks of Buck Consultants told *BI*.



"Once you provide a benefit, even if legally you can take it away, as a sense of company morale, it is [very] difficult to take it away," Sheaks said.

Employers may encounter financial challenges if the Court strikes down the individual mandate but leaves other costly provisions intact. A law that requires insurers to grant coverage to patients with pre-existing conditions without a mandate could further drive up health care costs by prompting the carriers to raise premiums to guard against the increased level of risk, the *BI* report noted.

Yet in the long run, the fate of mandate may become moot, according to a report in *Bloomberg Businessweek*. From the start, the individual mandate's bite was relatively weak (a \$695 annual charge or 2.5 percent of household income for not complying), and the government likely could come up with alternatives -- such as tax credits or enrollment deadlines -- that would be just as effective without the constitutional hurdles, according to Paul Ginsburg, president of the Center For Studying Health System Change.

In the meantime, many experts suggest that employers make no sudden moves.

"I've been advising clients since the beginning that the prudent course is to assume that an act of Congress will be upheld," Tom Christina, an attorney with Ogletree Deakins, told *Workforce* magazine. "Pundits are saying that it looks like the individual mandate is dead but I would think that imprudent."

FSAs

FSAs Require Careful Compliance Care

A flexible spending account (FSA) can serve as a solid employee benefit that can help workers pay for out-of-pocket costs with pretax dollars, but employers must keep a close eye on new rules from the Patient Protection and Affordable Care Act (PPACA) that impact the accounts, experts say.

Starting Jan 1, 2013, the law will require plan sponsors to limit pre-tax FSA contributions per employee to no more than \$2,500 per calendar year. Prior to PPACA, the accounts had no annual limits, according to the law firm Porter Wright in a recent online post.

Although the rule doesn't kick in until next year, and even though the law's fate remains unknown (see "PPACA Ruling May Have Limited Effect on Employers' Plans"), Porter Wright advises employers with noncalendar year plans to start planning now for the new limit because it is tied to the taxable year of the participant. The law firm offers several options that these employers can take:

1. Impose new FSA limits at the start of the 2012-13 plan year
2. Keep the current limit but cut off 2013 contributions when they hit \$2,500
3. Allow employees to prorate their contributions for the 2013 portion of the 2013-14 plan year

David Bergmann, a benefit expert in California, noted in a recent blog post that while the change may limit FSAs, they remain an attractive benefit.

"In the 30 percent tax bracket one has to make \$1.42 before taxes to have \$1 of after-tax dollar[s] to spend on medical or other expenses," Bergmann wrote. While 42 cents may seem small, it adds up -- and it means more money in employees' pockets rather than in the government's hands, Bergmann noted.



Despite limitations and compliance challenges, FSAs remain a popular benefit. About 33 million Americans use FSAs, according to the *Minneapolis Star Tribune*. And lawmakers are starting to recognize that some regulations, including the rule that bars the use of pre-tax FSA funds to purchase nonprescription medication, may be damaging the benefit. "It's become a real wake-up issue," Rep. Erik Paulsen, R-Minn., told the newspaper.

Workforce

Hotter Economy Can Spark Retention Challenges

Although a recent report on U.S. job growth has left many observers disappointed, other economic signs are prompting employers to re-evaluate their benefits and retention strategies to avoid a potential talent exodus.

The Department of Labor reported that the nation added 120,000 jobs in March, down from the previous three months that saw 200,000 or more new jobs. Still, the stock market is up for the year, and U.S. employees appear to be more secure in their jobs. The Randstad employee confidence index -- which measures how confident workers feel about their job security and the economy -- rose in March to the highest level since October 2007, according to *Workforce* magazine.



An improving economy, however, has a dark side: Talented but unhappy employees will seek better opportunities elsewhere, experts say.

"There is a storm brewing," said Lynne Sarikas, executive director of the MBA Career Center at Northeastern University, in a recent *Human Resource Executive* online report. "Many people will be looking to make a change once they perceive improvement and stability in the job market. This will have a significant impact on their employers."

More movement in the job market can spur hotter competition among employers for good talent. In addition to competitive wages, robust employee benefits can help employers keep their best workers happy and productive -- and employers are taking notice. A recent study by MetLife found that 90 percent of companies say they don't plan to cut employee benefits in the near future, according to a report by CCH. A large majority (91 percent) of those polled expressed confidence that benefits work as retention tools.

While health, dental, vision and other stalwarts in the retention toolbox remain central to many companies' overall offerings, employers may want to consider additional choices to sweeten the benefits pot.

For instance, companies that want to pull in younger workers may want to investigate defined benefit (DB) retirement plans, according to new research. A recent study by Towers Watson, reported in *PLANSPONSOR*, noted that 63 percent of workers younger than 40 said in 2011 that they chose their current employer because it offered a DB plan, compared with only 28 percent in 2009.

Education benefits are paying off for some companies, as well. United Parcel Service is sponsoring a program that pays up to \$3,000 per year in tuition reimbursement for part-time employees. Executives say the program has spawned talented leaders who have stuck with the company.

"Enhancing the skills and knowledge base for our employees is a fundamental element of our success, and correlates directly with our policy to promote from within," Susan Rosenberg, UPS public relations manager, told the *Atlanta Journal-Constitution*.

SBC FAQ

The federal government recently released a new set of frequently asked questions (FAQs) that provide additional guidance on the summary and benefits coverage (SBC) rules from the health care reform law. The FAQs explore when, how and to whom the SBC should be delivered. Regulators kept the Sept. 23 deadline for distribution but noted in the FAQs that the government would focus more on providing guidance than enforcement in the first year of the requirement. The FAQs are here: <http://www.dol.gov/ebsa/faqs/faq-aca8.html>

ADEA RULES

The Equal Opportunity Employment Commission (EEOC) has issued a final rule that brings the Age Discrimination in Employment Act (ADEA) in line with recent Supreme Court rulings. An EEOC press release states that the rule clarifies that ADEA is designed to stop practices that harm older employees more than younger ones, unless the company can show the policy is based on "reasonable factors other than age." The rule balances the need to protect older workers with an employer's ability to make "reasonable business decisions," the EEOC release said. The rule applies to private employers with 20 or more workers and to state and local government employers.

SLOWER GROWTH

The growth rate for all types of medical plans is expected to dip below double digits for 2012, according to a new Buck Consultants analysis. The report projects a 9.9 percent increase in costs for all plans this year -- the first predicted increase below 10 percent since 2001.

MINORITY REPORT

Blacks and Hispanics have taken loans from their 401(k) plans during the recession at a greater rate than other ethnicities, according to a report by Ariel Investments. Almost 9 percent of black workers made hardship withdrawals in 2010, compared with 6.3 percent in 2007. In contrast, 1.7 percent of white employees took hardship withdrawals in 2010 vs. 1.1 percent in 2007. Half of black workers and 40 percent of Hispanic employees carried a loan balance on their 401(k) accounts at the end of 2010, compared with 26 percent of whites and 22 percent of Asians.

NETWORK GAP

Despite rising health care costs, nearly half of health plans in the U.S. retain a \$0 in-network deductible, according to a report by HighRoads. The survey also found that the gap between in-network and out-of-network copays is growing. The average out-of-network copay for a doctor office visit is 53 percent higher than the average in-network copay in 2012. This compares with just a 16 percent difference in 2011.

HIPAA WARNING

The Department of Health and Human Services (HHS) has announced it is shifting its HIPAA privacy enforcement to companies and organizations that demonstrate an "abject failure" to comply. The head of the Office for Civil Rights within HHS noted that the agency aims to resolve the majority of HIPAA cases through education but will aggressively pursue financial penalties for entities that show an "abject failure of due diligence."

PART-TIME BLUES

A new report by the Employee Benefit Research Institute finds that part-time workers lag far behind their full-time counterparts when it comes to having access to health benefits. Only 16.8 percent of part-time workers had access to employer-sponsored health coverage in 2010, compared with 60.1 percent of full-time workers, the study found.

TDF CONFIDENCE

Workers who hold target-date funds (TDFs) in their retirement portfolios feel more confident about reaching their financial goals compared with those who did not, according to a new report by ING. Seventy-one percent of TDF holders said the funds made them feel more secure about their financial investments.

SICK LOSS

On average, full-time private-sector employees who had paid sick leave with a fixed number of days do not use all the sick time allotted to them, according to a Bureau of Labor Statistics analysis. Of those with access to paid sick days, 68 percent of employees were enrolled in plans with a fixed number of sick days, while only 10 percent could take sick days on an as-

needed basis, the report said. The rest could access sick time under a paid-time-off (PTO) system.

WELLNESS INTO WELL-BEING

Companies' health and wellness benefits are rapidly expanding to cover areas beyond merely the physical health of employees, according to new WorldatWork research. The report found that while health-related initiatives such as immunizations and exercise programs are popular, companies also are offering mental health coverage (69 percent) and work/life benefits such as flexible schedules (65 percent), community involvement programs (56 percent) and employee assistance programs (80 percent).

Webinar

Do You Have an Affirmative Action Plan?

Tuesday, May 8

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

The Office of Federal Contract Compliance Programs (OFCCP), the agency charged with ensuring affirmative action compliance by federal contractors and subcontractors, is now aggressively enforcing this requirement. The OFCCP has made clear that it intends to conduct a record number of affirmative action audits this year. Failing to have an appropriate affirmative action plan in place can result in a wide range of penalties, including your company being barred from future government contracts and/or costly fines. Attend the May installment of the Employer Webinar Series and learn how to develop and implement an individualized and proactive affirmative action program and plan. Please contact us to register or to learn more.

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