



## The U.S. health care reform legislation: the impact on contract attorney staffing agencies

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After at least a year in the making and months of uncertainty, landmark health care reform legislation has been signed into law in the U.S. The new health care law makes sweeping changes to our nation's health care system. Many provisions will have a significant impact upon employers and their employees. While many of the changes are phased in gradually over the next eight years, many changes take effect this year.

There was a very good summary published yesterday on *law.com* ([click here](#)) which includes a chart that summarizes many provisions of the health care law and the relevant effective dates. Two other good reviews can be found [here](#) and [here](#).

We have received hundreds of emails from our members asking if the staffing employment agencies that employ them will be subject to the new rules. We have read numerous summaries of the legislation and have made a good-faith attempt to wade through (some of) the actual legislation. It was a bit daunting but we think we figured out the major elements.

But to determine how staffing agencies would be affected we turned to three contacts we have at law firm employee benefits practice groups. They told us to focus on several points:

1. The key is whether the agency is a "large employer" which are employers defined as those who employ an average of at least 50 full-time employees on business days during the preceding

calendar year. And as expected, it's complicated. The 50-employee threshold is based on the employer's average number of employees on business days during the preceding calendar year. Both full-time and part-time employees are considered in determining whether the employer has 50 or more employees; however, the number of part-time employees to be counted is determined by dividing the aggregate number of hours of service for those part-time employees for each month by 120.

2. The definition of "full-time employees" which under the legislation are employees who average at least 30 hours of service per week. Smaller employers will be exempt.
3. The key provisions do not kick-in until January 1, 2014. That's when employers having those 50 "full-time" employees in the preceding calendar year must offer full-time employees and their dependents the opportunity to enroll in employer sponsored coverage. And remember that full-time status is determined on a monthly basis and means employment averaging 30 or more hours per week during the month.

It's a complicated piece of legislation. And it is still being read and interpreted. There are a myriad of issues that we need to address. Just a few of them:

1. Will the agencies be forced to pass along increased costs to their clients? We spoke to an accountant at Deloitte who told us if an agency adds in health insurance for temps, the cost will go up by an estimated 10 percent to 15 percent.

2. The bill doesn't require businesses to insure workers, but an employer may have to pay a fine if employees receive federal subsidies to purchase insurance through the new state-run insurance exchanges.

3. The exception for "seasonal employees": does it affect us? If an employee works for any company, including a staffing agency, for fewer than 120 days each year, he is considered seasonal, and the company does not have to include him in the employee count. A temp who works with one agency for fewer than 120 days and moves on, then, would be considered seasonal. One who works through a staffing agency longer than that would count as a regular employee.

4. An attorney at KPMG told us staffing agencies will have to decide whether to pay their temps' health insurance premiums — and raise their rates to cover the costs — or risk paying fines if too many temps end up working for too many days.

5. And two agencies told us pretty much the same thing: we just came out of a bad patch of "no work" and offering benefits to attract workers was a nonstarter. But the tide is turning and demand is back. They will all be competing for the same available labor pool again and need to be attractive, plus their clients are asking more and more "*how are you handling the insurance/health care issue?*"

The three employee benefit lawyers we spoke with all agreed: most staffing agencies would be affected and it would increase their costs but it would mean health care coverage would need to be extended to more contract attorneys than under present law.

We have been promised a more detailed analysis by two of the attorneys we spoke with (on a *pro bono* basis) and when we get it we'll pass it on. We will also have a report from last week's American Staffing Association meeting where a Posse List member attended a briefing on the final health care reform legislation and what staffing firms will have to do to comply.

But in the meantime we'd like some feedback from Posse List members (**see special email below to contact us**):

1. If you have done any research on the legislation and you have some thoughts on these issues, email us and include any links you have found helpful/informative.
2. What has your agency told you (if anything) about how the new legislation affects them?
3. Many agencies offer some kind of insurance plan in which the temps may enroll, but the agencies usually don't pay any of the premiums. Usually the candidate pays, and the cost is payroll-deducted. If your agency offers coverage — any kind of coverage — tell us about it and send us their plans and/or a web link. We'll assemble all the information and post it and update it as we proceed.
4. If you have found good, affordable healthcare coverage outside the contract attorney world (bar association, trade association, whatever) tell us about it.

Please email us at [healthcare@theposselist.com](mailto:healthcare@theposselist.com).

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