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2013 Revisited

It was an interesting year for health care, but not for the reasons you would expect.



The coming year was supposed to be the year when two of health care reform's most critical provisions, the employer and individual mandates, took effect. But employers who were busily preparing for the January 1, 2014, deadline during 2013 had to deal with a lack of critical regulatory guidance, backdoor efforts to repeal or defund health care reform, and ultimately an extension of the deadline that only delayed the inevitable. Meanwhile, the Supreme Court decision on same-sex marriage in June had employers scrambling to update their plans, policies and payroll practices. The year 2013, it turns out, was a busy one, but not in the way companies might have expected. With all of these events, it is easy for employers to lose sight of what is really important.

Here are the three things a health plan sponsor should be doing now:

1. Payroll Taxes. Perhaps the most pressing issue to deal with is the Supreme Court's decision that a critical part of the Defense of Marriage Act (DOMA) was unconstitutional. As a result of the decision, for purposes of federal tax law, health plans governed

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by the Employee Retirement Income Security Act (ERISA) are required to recognize same-sex marriages celebrated in states that recognize same-sex marriage. The most immediate impact is on tax treatment of health coverage for same-sex spouses. Many employer health plans offered coverage to same-sex domestic partners of employees, but DOMA did not permit employers to treat same-sex partners as "spouses," even if they were considered legally married in the state. As a result, employers were required to calculate the value of the benefits provided to the same-sex spouse and add it to the employee's income for federal tax purposes. After the Supreme Court's decision, same-sex spouses are treated like opposite-sex spouses and this special tax "imputation" is no longer required for federal tax purposes. State tax laws vary with respect to whether such imputation of income is still required. Employers who set up complex payroll systems to comply with the law under DOMA need to revise their payroll practices immediately.

In addition, the Internal Revenue Service announced special procedures for employees with same-sex spouses and their employers to correct overpayments of income and Federal Insurance Contributions Act (FICA) taxes computed on the value of benefits for same-sex spouses. The special rules apply to any "open years," which generally includes 2010, 2011 and 2012. Employers should take advantage of these special procedures and should help their employees do so as well.

2. Employer Mandate. The employer mandate, which requires large companies to provide health coverage to all full-time employees, was originally effective January 1, 2014, but the Treasury Department announced on July 2 that it would not assess any penalties for failure to comply with the mandate until 2015. Guidance as to which employees qualify as "full time" required many employers to set up complex systems for capturing hours. As a result of this guidance, employers were required to start measuring hours in 2013 to determine eligibility for 2014. With the deadline extended, employers have additional time to comply, but they will be required to start measuring hours in 2014.

3. Regulatory Watch. The provisions of the health care reform law have staggered implementation dates — some provisions were effective immediately, while other important provisions do not take effect until 2018 and beyond. Timely regulatory guidance is critical to understanding the sometimes oversimplified text of the statutes. Prudent employers will keep a close lookout for guidance (including the 90-day waiting period limitation) and also for any further extension of the deadlines.

Health care reform will undoubtedly still be a hot topic for employers in 2014. Employers should continue to track these changes in the law, so they can be sure they are in compliance.

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