



Employers: Take Steps Now for Affordable Care Act Compliance

by Nancy Farnam

Grand Rapids, Michigan

Bridgewater Place
333 Bridge Street, N.W.
P.O. Box 352
Grand Rapids, MI 49501
Phone: 616/336-6000
Fax: 616/336-7000

Lansing, Michigan

The Victor Center
201 N. Washington Square
Suite 810
Lansing, MI 48933
Phone: 517/482-6237
Fax: 517/482-6937

Kalamazoo, Michigan

251 North Rose Street
4th Floor
Kalamazoo, MI 49007
Phone: 269/382-2300
Fax: 269/382-2382

Grand Haven, Michigan

The Chemical Bank Building
1600 South Beacon
Suite 240
Grand Haven, MI 49417
Phone: 616/846-7100
Fax: 616/846-7101

Metro Detroit, Michigan

39500 High Pointe Boulevard
Suite 350
Novi, MI 48375
Phone: 248/567-7400
Fax: 248/567-7440

Important Notice: This advisory has been prepared by Varnum LLP for informational purposes only and does not constitute legal advice. Copyright © 2012, Varnum LLP. All rights reserved.

The State Legislature might be struggling with a decision on health care exchanges required under the Affordable Care Act, but that will not excuse employers from taking steps to meet the requirements of the Act now that the Supreme Court has upheld it as law.

Generally, this ruling means that the Affordable Care Act remains in place. We have covered many of the facets of the Act in prior client advisories and we will continue to provide updates as the various provisions come into effect. At this point, plans and employers should be preparing for upcoming requirements, including the following:

- Summary of benefits and coverage. On either the plan's first open enrollment period or the first plan year beginning on or after September 23 – whichever comes first - plans must provide participants with a summary of benefits and coverage. A template of this four-page summary is available on the Department of Labor's website (See: Templates, Instructions, and Related Materials heading at this link).
- W-2 reporting of employer-sponsored health coverage. Beginning with this 2012 tax year, employers need to include on employee's W-2s the cost of employer-sponsored health coverage. This includes both employer and employee portions of the cost of health benefits.
- Notice of exchange. Beginning March 1, 2013, employers must provide all employees and new hires with a written notice of the availability of the healthcare exchange. The notice must inform employees of the existence of the exchange and describe the

services provided by the exchange. It must also inform employees that they may be eligible for a premium tax credit or a cost-sharing reduction through the exchange in certain circumstances. The Department of Health and Human Services has indicated that it expects to issue a model notice.

- Limit on FSA salary reductions. Beginning with plan years after December 31, 2012, there is a \$2,500 limit on salary reduction contributions to health flexible savings accounts. This limit applies to all plans, including grandfathered plans. Cafeteria plan documents must be amended to reflect the \$2,500 limit.

Looking out to the future, beginning in 2014, employers with at least 50 full time employees will need to offer health insurance to employees who average 30 or more hours per week or will pay a penalty for failing to offer coverage. If an employer chooses not to offer coverage to full time employees or offers coverage that is not "affordable" under the ACA, the penalty will be equal to \$2,000 for each actual full-time employee in excess of 30 full-time employees. Employers should consider whether they will offer coverage or will simply pay the penalty.

Supreme Court Decision on ACA - Background

On June 28th, in a 5-4 decision, the Supreme Court upheld the Affordable Care Act. A total of 26 states, several individuals and the National Federation of Independent Business had challenged the constitutionality of the Act. Specifically, they questioned the constitutionality of the individual mandate and the expansion of Medicaid coverage to include all individuals

whose income falls below 133% of the poverty level.

With respect to the individual mandate, Chief Justice Roberts, in writing for the majority, concluded that although Congress does not have the authority to require individuals to have health insurance, it does have the authority to tax individuals who do not. This means that most Americans will be required to maintain minimum essential health coverage. If individuals choose not to do so, they will be required to make a “shared responsibility payment” to the IRS.

Additionally, the Court ruled that the Medicaid expansion under the ACA violates the Constitution. The ACA gives the Secretary of Health and Human Services the authority to threaten states with the loss of existing Medicaid funding if they choose not to comply with the Medicaid expansion. The Court explained that Congress may not require states to regulate in this way. The Court concluded, though, that this Constitutional violation is remedied by eliminating the provision that gives the Secretary the ability to withdraw existing Medicaid funds. The Medicaid expansion otherwise stands.