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2013 Health Care Reform Checklist

The New Year brings new requirements under Health Care Reform. The following checklist highlights key changes that may affect employers and insured group health plans this year.

Please Note: This list is for general reference purposes only and is not all-inclusive. The information is subject to change based on new requirements or amendments to the law. If you have questions regarding your responsibilities, please contact a knowledgeable employment law attorney, benefits advisor, or your carrier.

1. Evaluate Grandfathered or Non-Grandfathered Status of Plan

A grandfathered plan is one that was in effect on March 23, 2010.

If a plan loses its grandfathered status, it may no longer be exempt from certain requirements under Health Care Reform.

- Determine whether any changes to the plan that reduce benefits or increase costs to employees and dependents enrolled in coverage result in a [loss of grandfathered status](#).
- To maintain grandfathered status, [provide a statement](#) indicating the plan believes it is a grandfathered health plan, along with contact information for questions and complaints, whenever a summary of benefits under the plan is provided to participants and beneficiaries.

2. Review Plan Documents for Required Changes to Plan Benefits

Certain requirements apply on a plan year basis, meaning the changes take effect when a group health plan begins a new plan year. As a result, compliance deadlines may vary.

- Annual limits on "[essential health benefits](#)" are being [phased out according to the limits set by law](#) (no lower than \$2 million for plan years starting between September 23, 2012 and January 1, 2014).
 - *Note:* Stand-alone HRAs in effect prior to September 23, 2010, which are [automatically exempt](#) from the rules concerning annual dollar limits until January 2014, must distribute an [annual notice](#) to participants and subscribers stating that the plan has restrictive coverage and includes low annual limits.
- For plan years beginning on or after January 1, 2013, salary reduction contributions to [health FSAs](#) are [limited to \\$2,500 annually](#), indexed for inflation for subsequent plan years. Written cafeteria plans must be amended by December 31, 2014 to reflect this change.
- Except for grandfathered plans, [coverage of additional women's preventive services](#) such as well-woman visits, breastfeeding support, domestic violence screening, and contraception is provided without cost-sharing requirements, starting with plan years beginning on or after August 1, 2012.

3. Provide Required Notices to Employees and Dependents

Please contact your carrier or employment law attorney if you have questions about these notices.

- **Summary of Benefits and Coverage (SBC).** Starting with plan years and open enrollment periods beginning on or after September 23, 2012, provide participants and beneficiaries a [summary of benefits and coverage](#) at [specified times during the enrollment process](#) and upon request.
 - *Note:* Insured group health plans may satisfy this requirement if the issuer provides a timely and complete SBC to the participant or beneficiary.
- **Notice of Plan Changes.** Additionally, if any material modification is made in any of the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC, and that occurs other than in connection with coverage renewal or reissuance, the plan or issuer must provide notice to enrollees not later than 60

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days prior to the effective date of the change.

- **Availability of Health Insurance Exchanges.** Beginning March 1, 2013, provide each new employee at the time of hiring (and each current employee no later than March 1) a [written notice](#) containing certain information about a Health Insurance Exchange.
 - *Note:* The DOL is expected to issue a model notice that employers may use to satisfy this requirement along with regulations, which may delay the March 1 compliance deadline.

4. Report Employer-Provided Health Plan Coverage on Forms W-2

This requirement does not apply to employers that were required to file fewer than 250 Forms W-2 for the preceding calendar year, unless and until the IRS publishes further guidance giving at least 6 months' advance notice of any changes.

- Beginning with calendar year 2012 Forms W-2 (required to be furnished to employees in January 2013), employers that provide a group health plan to their employees are generally required to [report the cost of the coverage provided](#) to each employee annually.

5. Other Action Items for 2013

The following additional items may be of significance for certain employers and group health plans.

- **Additional Medicare Tax for High Earners.** Employers are required to withhold [Additional Medicare Tax](#) (at a rate of 0.9%) on wages or compensation paid to an employee in excess of \$200,000 in a calendar year, for taxable years beginning after December 31, 2012.
- **Medical Loss Ratio (MLR) Rebates.** Employers who receive rebates, as a result of insurance companies not meeting specific standards related to how premium dollars are spent, may be [responsible for distributing the rebates](#) to eligible plan enrollees. Rebates are due to employer-policyholders by August 1 each year.
- **Simple Cafeteria Plans.** If eligible, consider whether your company could benefit from establishing a [simple cafeteria plan](#), which may be treated as meeting certain IRS nondiscrimination requirements.
- **Small Business Health Care Tax Credit.** Determine if your company qualifies for the [small business health care tax credit](#). For tax years 2010-2013, the maximum credit is 35% for small business employers.

Stay up-to-date on the latest information by visiting our section on [Health Care Reform](#).

New Guidance on Employer "Pay or Play" Requirements

Newly issued [proposed rules](#) and a set of related [questions and answers](#) provide guidance for employers regarding the shared responsibility ("pay or play") requirements under Health Care Reform. Under the proposed rules, an employer who is subject to the requirements would generally be treated as offering coverage to its full-time employees for a calendar month if, for that month, it offers coverage to **at least 95% of its full-time employees**.

Background

Beginning in 2014, employers with **50 or more full-time employees** (including full-time equivalents) may be required to pay a penalty tax, also known as a "[shared responsibility payment](#)," if any of the employer's full-time employees are certified to receive a premium tax credit or cost-sharing reduction for enrolling in coverage through a Health Insurance Exchange.

Determining Whether the Penalty Applies

Under the [proposed rules](#), an employer who meets the 50 full-time employee threshold would be liable for the penalty only if:

- The employer does not offer health coverage or offers coverage to less than **95%** of its full-



time employees, and at least one of the full-time employees receives a premium tax credit;
or

- The employer offers health coverage to at least **95%** of its full-time employees, but at least one full-time employee receives a premium tax credit, which may occur because the employer did not offer coverage to that employee or because the coverage offered was either unaffordable or did not provide minimum value.

After 2014, these provisions would apply to large employers that do not offer health coverage or that offer coverage to less than 95% of their full time employees **and the dependents of those employees**. (Note that "dependent" is defined in the proposed rules as an employee's child who is under 26 years of age, and does not include an employee's spouse).

Other Key Issues Addressed in the Proposed Rules

Additional issues addressed in the [proposed regulations](#) include:

- Determining which employers are subject to the "pay or play" requirements;
- Determining who is a full-time employee, including approaches that can be used for employees who work variable hour schedules, seasonal employees, and teachers who have time off between school years;
- Determining whether coverage is affordable and provides minimum value; and
- Calculating the amount of the penalty due and how the penalty will be assessed.

The proposed rules also provide a number of **transition relief provisions**, including for employers sponsoring plans that do not operate on the calendar year (i.e., fiscal year plans), as well as relief to help employers that are close to the 50 full-time employee threshold determine their options for 2014.

Employers may rely on the proposed rules for purposes of compliance with the "pay or play" requirements; any final rules that are more restrictive will be applied prospectively and employers will be given sufficient time to come into compliance.

For More Information

Due to the complexity of the law in this area, and the absence of finalized guidance, **employers are strongly advised to review their benefit plans with a knowledgeable attorney or trusted benefits advisor** to prepare for the changes ahead. Additional information regarding the penalty is featured on our [Employer Shared Responsibility](#) page.

5 HR Compliance Resolutions for 2013

The New Year is a great time to take stock of your company's compliance with important federal and state labor law requirements. Keep these resolutions in mind to help your company stay in shape in 2013:

1. **Give your poster wall a thorough check-up.** Make sure all of your federal and state posters are up-to-date and the correct size. Check with your [state labor department](#) for any industry-specific poster requirements that may apply to your business.
2. **Stay on top of notice requirements.** From summary plan descriptions (SPDs), to COBRA- and FMLA-related notices, employers are required under various federal and state laws to provide employees with certain information about their benefits and responsibilities. Confirm that your employee communications are accurate, consistent, and in compliance with applicable law.
3. **Keep up with recordkeeping.** In addition to being a good business practice, employers are required to maintain certain types of employee records in order to comply with both federal and state law. Verify that your recordkeeping procedures address any requirements related to confidentiality and how long to keep records.
4. **Review policies and procedures.** Be sure your company policies and procedures comply with federal and state labor laws related to employee leave, equal employment opportunity, sexual harassment, worker safety and other requirements.
5. **Confirm that your workers are classified properly.** Misclassifying employees as [independent contractors](#) can result in costly legal consequences. Also remember that an employee's [exempt or nonexempt](#) status is based on his or her compensation and specific

job duties--not job title.

Employers who have specific concerns are encouraged to consult a knowledgeable employment law attorney. Our [HR Compliance Quick-Check](#) includes even more tips for staying on track with compliance this year.

Reminder: Employee Payroll Tax Cut Expires

The Social Security payroll tax cut for employees (which had been in effect since 2011) has **expired as of the end of December 2012**. As a result, the [combined FICA tax rate](#) for employees in 2013 is 7.65%, with the Social Security portion of the tax at 6.2% of earnings up to the first \$113,700 of wages. And don't forget that under Health Care Reform, for taxable years beginning after December 31, 2012, employers are required to withhold an [Additional Medicare Tax](#) (at a rate of 0.9%) from wages paid to an employee in excess of \$200,000 in a calendar year.

Employers should confirm that payrolls will reflect the new tax rate(s) and watch for further updates on [IRS.gov](#).

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