Health Care Reform and the Basics of Benefits

Presented by
Jenny Arthur, MBA, SPHR

Agenda

• The Benefits Landscape
• Benefits Compliance
• Health Care Reform
• Cheat Sheets
• Q & A

The Benefits Landscape

What's included in "benefits"?
Required Benefits: General
• Often not thought of as benefits because they are
  standard and required
• Laws usually made on a state level, though there
  are similarities

Required Benefits: The Core
• Social Security
• Unemployment Insurance
• Workers’ Compensation Insurance

Required Benefits: More Variable
• State leaves:
  • Family leave
  • Jury or Witness leaves
  • Sick leave
  • Other leaves
  • Disability Insurance
Non-Traditional Benefits

• Tuition assistance
• Expanded PTO, personal leave of absence, and sabbaticals
• Profit-sharing and bonuses
• FSAs, HSAs, and HRAs
• Expanded retirement options (stock options, etc.)
• Employee Assistance Program (EAP)
• Transportation benefits
• Employee discounts, events, tickets
• Student loan reimbursement
• On-site gym, on-site daycare
• Food and beverages
• Company vehicle use
Benefits Compliance
The basics of following the benefits rules.

ERISA: Overview

- Goal: protect the interests of participants in employee benefit plans
- Plan sponsors must:
  - Provide participants with certain information about the plan (SPD)
  - Meet certain standards of conduct (including non-discrimination)
  - Report on plan to federal government (5500s)
  - Provide disclosures to participants (numerous – see next slide)

ERISA: Disclosure Notices Responsibilities

Employer
- Summary Plan Description (SPD); Summary of Material Modifications (SMM); Summary Annual Report (SAR); Plan Document; Special Enrollment Rights Notices; Notice of Patient Protections (usually in SPD); Notice of Creditable/Non-Creditable Prescription Drug Coverage; Children’s Health Insurance Program (CHIP) Notice (only required in some states); Newborns’ and Mothers’ Health Protection Act (NMHPA) Notice (usually in SPD)

Carrier and Self-Insured Employers
- Explanation of Benefits (EOB); Mental Health Parity and Addiction Equity Act (MHPAEA) Notice

Carrier or Employer (check with carrier)
- Women’s Health and Cancer Rights Act (WHICRA) Notice
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ERISA: FAQs

Is our health plan covered by ERISA?

Who is the "plan sponsor?"

What is an SPD Wrap Document?

Can the employer exclude certain employees or certain classes of employees from the health insurance plan?

Section 125: Overview

• Section 125: Part of the IRS Code that allows for many benefits to be provided on a "pre-tax" basis
• To enjoy favorable tax treatment, a written cafeteria plan must be in place (POP or FSA)
• Tradeoff for favorable tax treatment: limits when plan changes may be made to qualifying events and special enrollment periods
• Only means by which an employer can offer a choice between taxable and nontaxable benefits

Section 125: the Cafeteria Options

Unless noted, all are exempt from FICA, FUTA, Medicare tax, and income tax withholding:

| Adoption Assistance (subject to FICA, Medicare, and FUTA taxes) | Medical Insurance |
| Flexible Spending Account (FSA) | Dental Insurance |
| Dependent Care Flexible Spending Account (DCFSA) | Vision Insurance |
| Health Savings Account (HSA) | Disability Insurance |
| Cash/Opt-Out/Declination Pay (subject to all employment taxes) | Life Insurance (group term life $50,000+ is subject to FICA and Medicare taxes) |
Section 125: FAQs

Do I have to do any filing with the federal government to establish or maintain my Section 125 plan?

What is the consistency rule?

Does the employer establish a separate written Cafeteria Plan for each benefit it offers (health, dental, and vision)?

If an employee receives reimbursement for their entire FSA election in the first month of the plan year and then quits, can the employer recoup the money?

COBRA: Overview

- **COBRA**: Consolidated Omnibus Budget Reconciliation Act of 1985
  - Federal COBRA applies to employers with 20+ employees
  - Allows employees and family members losing coverage to continue coverage by paying the full amount of the premium to the employer
  - Notices must contain new verbiage with May 2014 update

- **Two main notice requirements**: Initial COBRA Notice and COBRA Notice Election Form

COBRA: FAQs

What is the difference between COBRA and State Continuation Coverage?

How long do we have to get a COBRA Notice to a terminating employee?

What is the penalty for a late COBRA Notice?

What if the entire health plan is discontinued and a new one is not obtained?

Is it true you don’t have to offer COBRA to employees terminated for gross misconduct?
Health Care Reform
What employers need to know about the Affordable Care Act.

Lactation Breaks
- Requires almost all employers to provide reasonable break times for an employee to express breast milk for their nursing child
- Applicable up to one year after the birth of a child
- Exemptions for small employers (less than 50) if able to demonstrate undue hardship
- Amends the Fair Labor Standards Act (FLSA)

New Notices
- “Apples to apples” approach
- Carrier makes/employer distributes
- Open enrollment and new enrollees

- Two templates
- All new employees within 14 days of hire
- Applies to all employers
**90-Day Waiting Period**

- No more than a 90-day waiting period for coverage for new employees
- Applies to all group health plans, regardless of group size
- Applies to both Grandfathered and Non-Grandfathered Plans
- Current guidance does not allow "first of the month following 90-day" waiting period

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**ACA: Small Business Tax Credit**

- Up to 50% tax credit on employer-paid premiums (up to 35% for nonprofits)
- Tax credit, not a deduction
- To be eligible, the employer must:
  1. Contribute at least 50% of the cost of health care single coverage;
  2. Pay average annual wages below $50,000;
  3. Have less than the equivalent of 25 full-time employees; and
  4. Purchase coverage through the state SHOP exchange

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**State Health Care Exchanges**

- All states have one (some set up by Federal government, others by the state, and some by both)
- Virtual/competitive marketplace offering health plans
- Individuals and small employers (less than 50 FTEs) may shop in exchanges (some states allow groups of less than 100)
- States have some flexibility regarding the set up of the exchange(s) and participation requirements
State Health Care Exchanges: The Marketplace

- Next open enrollment: 11/1/17 – 1/31/18
- Pursuit the employer health insurance contribution, but may be eligible for federal premium subsidy
- No payroll deduction available for Marketplace Plans

State Health Care Exchanges: The Shop

- Small business Health Options Program
- For groups with less than 50 or 100 employees
- May shop with or without a broker, cost is the same to the employer
- Small business tax credit only available for plans purchased through the SHOP
- Enroll anytime throughout the year

State Health Care Exchanges: The Shop

- Employees may enroll anytime during the year
- If enrolled by the 15th of the month, coverage may begin as soon as the 1st of the next month
- Must offer plan to all full-time employees working 30+ hours/week
- In many states, at least 70% of the full-time employees must enroll in the SHOP plan to maintain eligibility
Reimbursements for Individual Health Plans

- Per IRS Notice 2013-54 and Notice 2015-17, employers are no longer allowed to reimburse employees for Individual or Marketplace plans.
- Small employers that can’t offer a health plan: set up bona fide HRA to provide $4,950 (for individuals) or $10,000 (for families) per year on a pre-tax basis under the 21st Century Cures Act.
- Penalty: $100 per employee per day.
- May increase taxable wages as long as:
  - Increase is not conditioned upon purchase of health insurance, and
  - Substantiation of health insurance not required for increase.

Finding Full Time Equivalent Employees (FTEs)

\[
\text{Full-Time Equivalent Employees} = \text{Part-Time Employees} + \text{Full-Time Employees} - \text{Owners}.
\]

Penalties

- A Penalty: When a plan that meets minimum coverage requirements is not offered.
  - $2,260 annually for each full-time employee, excluding the first 30 employees.
  - \([\text{total # of employees in the firm} - 30] \times 2,260\).
- B Penalty: When minimum coverage is provided but it is not affordable.
  - $3,390 annually for each employee who actually receives a federal premium subsidy.
- Overall Penalty: the lesser of A Penalty or B Penalty (calculated monthly but paid annually).
1. Immunizing the Plan
   - Minimum Essential Coverage
   - Affordable Rate
   - All Full-Time Employees

2. Minimum Essential Coverage
   - Health insurance plan design, not employer contribution to the plan
   - Health insurance carrier must pay for at least 60% of treatment costs (60% actuarial minimum value)
   - "Bronze level" plan

3. Affordable Rate
   - Exclusively refers to employee contribution to the plan
   - Misconception: certain contribution % required
   - Coverage is considered "affordable" if employee contributions for employee-only coverage do not exceed 9.69% of an employee's household income in 2017
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Affordable Rate

There are three safe harbor methods for determining affordability:

1. **W-2 Wages**: 9.69% of an employee’s W-2 wages (reduced for salary reductions under a 401(k) plan or cafeteria plan)

2. **Rate of Pay**: 9.69% of an employee’s monthly wages (hourly rate x 150 hours per month)

3. **Federal Poverty Level**: 9.69% of the Federal Poverty Level for a single individual

All Full-Time Employees

Minimum essential coverage at an affordable rate must be offered to all full-time employees regularly working at least 30 hours per week following the 90-day waiting period.

Also, it must be offered to their dependent children, but not spouses.

No requirement to offer insurance to part-time employees—less than 30 hours

Reporting Requirements

- Began in 2015 tax year and only applies to employers with 50+ full-time equivalent employees and small self-funded groups.
- The forms were filed for the first time in early 2016 for the 2015 calendar year.
- Electronic filing required unless the employer is only submitting fewer than 250 1095-C forms for the year.
### Reporting Requirements

Large Employers - Section 6056 of the Tax Code requires:

1. One Transmittal Form (IRS Form 1094-C)
2. Employee Statements (IRS Form 1095-C – top half only)

It may help you to think of the 1094-C as similar to the W-3 (a transmittal form) and the 1095-C as similar to the W-2 (a separate return for each employee)

*Self-funded plans require additional reporting under Section 6055 of the Tax Code

### Who Does What? (Small Groups)

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The Tenuous Future of the ACA

• Hours after inauguration, President Trump signed Executive Order 13765
• EO 13765 instructs the Executive Branch to not enforce any provision or requirement of the ACA that would impose a financial burden on individuals or organizations
• The American Health Care Act (which, among other things, would have removed the employer mandate fines) was pulled from the House floor in late March
• Currently, all provisions discussed today remain in effect, including the employer mandate and the 1094-C and 1095-Cs

Cheat Sheets
Provisions by employer size.
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Cheat Sheet #1
Provisions for Small Employers (<50 employees), without Health Insurance Plan:
1. Notice of Exchanges and Subsidies
2. Lactation Breaks
3. No reimbursements allowed for Individual or Marketplace health plans unless bona fide HRA established

Cheat Sheet #2
Provisions for Small Employers (<50 employees), without Health Insurance Plan:
1. Notice of Exchanges and Subsidies
2. Lactation Breaks
3. Small Business Tax Credits (if less than 25 employees)
4. Summary of Benefits and Coverage
5. New COBRA Notice Language
6. 90-Day Waiting Period

Cheat Sheet #3
Provisions for Small Employers (<50 employees), without Health Insurance Plan:
1. Notice of Exchanges and Subsidies
2. Lactation Breaks
3. Summary of Benefits and Coverage
4. New COBRA Notice Language
5. 90-Day Waiting Period
6. Employer Mandate (effective 1/1/15 for 100+ employees and 1/1/16 for 50–99 employees)
7. Employer Mandate Reporting
MBA, SPHR, SHRM-SCP | HR Consultant

Over her 15 years of experience, Jenny has specialized in helping small to mid-sized businesses across a variety of industries reduce their risks and manage employee relationship issues. Jenny holds a Bachelor’s of Business Administration (BBA) degree in Human Resources Management from the University of Georgia and a Master of Business Administration (MBA) degree with a concentration in Human Resource Management from Georgia State University.