



## EMPLOYMENT LAW UPDATES WEEK OF April 12-16

### Health Care and Education Reconciliation Act

The President has signed the Health Care and Education Reconciliation Act of 2010 that now contains the changes to the Senate's health care reform bill that was requested by the House.

Below are some of the changes brought to the Patient Protection and Affordable Care Act (PPACA) by the Reconciliation Act:

- **Employer Mandate** – The Reconciliation Act increased the penalties to be paid by employers if they fail to offer qualifying health coverage to their employees.
- **Waiting Period Restrictions** – Employers are prohibited from imposing a waiting period of more than 90 days.
- **Individual Mandate** – The PPACA requires individuals to purchase qualifying health coverage. The Reconciliation Act increased the penalties to be paid by individuals who do not purchase coverage.
- **Health Care Spending Accounts** – The PPACA contains a change in the definition of “qualified medical expense” that affects reimbursements and withdrawals under all types of health care accounts, such as flexible spending accounts, health reimbursement arrangements, health savings accounts, and Archer medical savings accounts.
- **Elimination of Lifetime Caps** – The PPACA eliminates lifetime caps on essential benefits provided under group health plans.
- **Preexisting Condition Exclusions** – Group health plans may not impose preexisting condition exclusions for children under the age of 19.
- **Dependent Coverage** – The Reconciliation Act changes dependent coverage under group health plans. Group health plans must offer coverage to adult children up to age 26 regardless of whether they qualify as the employee's tax dependent. The child must not

be eligible for coverage under another employer's health plan until 2014, when that restriction will expire.

- **Subsidies for Small Employers** – The PPACA gives small employers (fewer than 25 employees) tax credits for purchasing group health insurance for their employees.
- **Automatic Enrollment** – Employers with more than 200 employees will be required to automatically enroll their employees in their group health plans. Employees will then have the option of opting out of the plans.
- **W-2 Reporting** – Employers will be required to report the value of health coverage received by each employee on the employee's W-2.
- **“Cadillac-plan Tax”** – The legislation will impose a 40% tax on the value of overly generous group health plans beginning in 2018.

### **National Labor Relations Board**

Wilma Liebman was just designated the Chairman of the National Labor Relations Board. The Board now consists of three Democratic appointees and one Republican appointee. Some topics that will be looked into by the Board include:

- **Human resources policies and procedures**
- **Weingarten rights of non-union employees**
- **Voluntary recognition**
- **Supervisory status**
- **Corporate campaigns**
- **The ability of unions to engage in secondary activity through the use of banners**
- **The ability of employers to limit non-employee access to their premises**

In anticipation that the Board may adopt new positions, employers should consider the following proactive steps:

- Review all personnel policies and handbooks and modify any ambiguous policies that may be interpreted as interfering with employees' exercise of Section 7 rights to clarify that they polices are not intended to do so and will not be applied in an unlawful manner. Also consider including a disclaimer in employee handbooks that make clear to

employees that the handbook policies are not intended to interfere with employees' Section 7 rights.

- Review both written job descriptions and the actual duties performed by front-line supervisors to ensure that they have sufficient authority and responsibility. Develop a record-keeping system to document when and how these supervisors exercise their independent judgment in performing supervisory duties.
- Review your e-mail policies to ensure that they are state-of-the-art, as well as to ensure that they are consistently enforced.
- Consider whether the adoption of a policy allowing non-union employees to be accompanied by another employee during an investigatory interview is preferable to potentially being retroactively subject to unfair labor practice charges should the Board return the rule adopted by the Clinton Board.
- Conduct periodic attorney-client privileged labor-relations audits to ensure compliance with new decisions issued by the Board.

Rajkowski Hansmeier provides **complimentary** audits of human resource policies and practices. The audit includes a review of your human resource policies and practices and includes general recommendations to improve your human resource policies. The process involves a short meeting with you to gather information and a summary of recommendations presented by one of our experienced employment law attorneys. There is no cost to you unless and if you decide to work with us on completing items defined in the audit. To schedule your complimentary audit, contact Jan Phillips at 320-251-1055 or [jphillips@rajhan.com](mailto:jphillips@rajhan.com).

*Disclaimer: The content of these audits are intended to convey general information about your human resource policies, and does not guarantee compliance with all federal and state employment law requirements.*

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