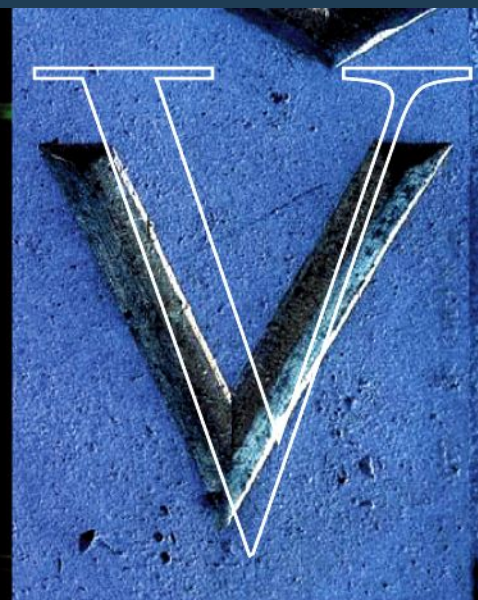
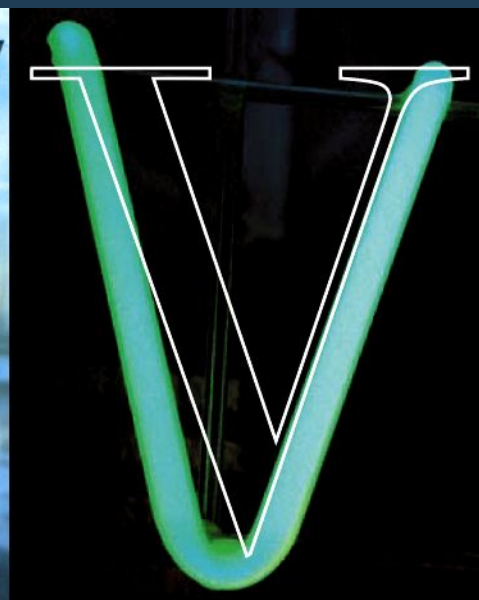
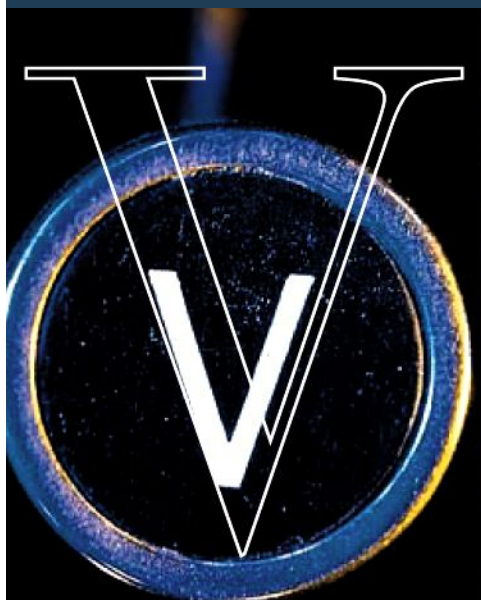


The Changing Landscape for Employer Health Plans

Wednesday, January 23, 2013



Agenda

- The Venable Team
- Demystifying the Health Care Exchanges
- Preparing for the Employer Mandate
- Planning for New Assessments
- Evaluating Your Plan Design
- Next Steps
- Questions & Answers



Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- Intended to be a *marketplace* for the purchase of health insurance
- Goals include:
 - Reducing administrative cost
 - Promoting competition by attracting multiple insurance carriers
 - Lowering premiums



Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- A state-based Exchange may be structured as a governmental agency or an independent non-profit entity
- If a state does not elect to operate a state-based Exchange, HHS will offer coverage within that state through a “Federal Exchange”
 - Not clear if a Federal Exchange can deliver premium subsidies



Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- HHS has also proposed a Federal-State partnership model where states are not prepared to have a fully-operational exchange in place by January 1, 2014
- State functions under this model include:
 - Plan management (e.g., certifying QHPs)
 - Consumer assistance
- Federal functions under this model include:
 - Eligibility determinations for enrollment and premium subsidies
 - Medicaid screening and enrollment
 - Management of website and call center



Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- Functions of an Exchange include:
 - Facilitating the purchase of health insurance
 - Determining eligibility for premium subsidies
 - Screening for Medicaid eligibility and enrolling eligible individuals in Medicaid
 - Establishing and maintaining a website and call center to field consumer questions
 - In some states, monitoring premiums to ensure premium increases on insurance sold through the Exchange are not “unreasonable”



Demystifying the Health Care Exchanges

WHAT IS AN EXCHANGE?

- New “insurance standards” apply to individual and small group plans sold inside AND outside of an Exchange
- Insured plans must provide “essential health benefits” and are subject to limits on cost sharing
- Premium rating rules prohibit rating based on health status
 - Rates may only vary based on age, tobacco use, coverage tier (i.e., family or individual) and rating area



Demystifying the Health Care Exchanges

EXCHANGES AND EMPLOYER HEALTH PLANS

- Exchanges will initially service individuals and families through the individual market and small employers
- In 2017, states may elect to provide large employers access to their Exchange, but this is not required



Demystifying the Health Care Exchanges

EXCHANGES AND EMPLOYER HEALTH PLANS

- In 2014, “small employers” may access Small Business Health Option Programs (SHOP Exchanges) through which they can offer fully-insured health coverage to their employees
- Generally, to qualify as a small employer, an employer must have fewer than 100 employees (however, states can limit participation to businesses with not more than 50 employees until 2016)



Demystifying the Health Care Exchanges

EXCHANGES AND EMPLOYER HEALTH PLANS

- A SHOP Exchange allows employers to select a “level of coverage” (i.e., bronze, silver, gold, platinum) to make available to their employees
- Employers can elect how much “choice” to pass through to their employees
- SHOP Exchanges guarantee small business a choice of qualified health plans to offer employees and provide employers access to detailed pricing and quality information



Demystifying the Health Care Exchanges

EXCHANGES AND EMPLOYER HEALTH PLANS

- If a state elects to allow large employers access to its Exchange in 2017, employers will be able to purchase fully-insured products through the Exchange
- All products made available to large employers will be subject to the same insurance standards that are otherwise applicable to products sold through an Exchange



Demystifying the Health Care Exchanges

NOTICE AND REPORTING REQUIREMENTS

- Exchanges are required to notify employers if an employee qualifies for a subsidy
- This determination is generally made based on information provided to the Exchange by employees
- HHS will establish an appeals process for employers



Demystifying the Health Care Exchanges

NOTICE AND REPORTING REQUIREMENTS

- The notice from an Exchange to an employer must include:
 - The identity of the employee
 - A determination that the employee is eligible for the subsidy
 - A statement that the employer may be liable for a “play or pay” penalty
 - Notice of the opportunity to appeal



Demystifying the Health Care Exchanges

NOTICE AND REPORTING REQUIREMENTS

- Employers will be required to report to the IRS
 - Names and dates of coverage for individuals covered by an employer plan
 - Portion of the premium paid by employer
- Large employers must report to the IRS
 - Whether employee coverage is offered
 - Length of waiting period
 - Lowest cost option
 - Plan's actuarial value
- Additional notice required to HHS



Preparing for the Employer Mandate

DECIDING TO PLAY OR PAY – AND AVOIDING DOING BOTH

- Penalty for Failure to Provide Coverage
 - Effective January 1, 2014 for calendar year plans, large employers (50 or more full-time employees) must offer health coverage to all “full-time” employees (and their children)
 - If greater than 5% of “full-time” employees (or 5, if greater) are not offered coverage and even ONE “full time” employees obtains a subsidy through an Exchange → the “no coverage” penalty is triggered
 - Penalty applies on a employer-by-employer basis



Preparing for the Employer Mandate

DECIDING TO PLAY OR PAY – AND AVOIDING DOING BOTH

- Penalty for Failure to Provide Coverage
 - Penalty = \$2,000/year * TOTAL number of “full-time” employees
 - Assessed on a monthly basis (\$166.67/employee/month)
 - First 30 “full-time” employees are disregarded



Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- Any individual reasonably expected to work at least 30 hours per week is automatically considered a “full-time” employee
- All other employees = variable hour employees
- “Seasonal employees” also = variable hour employees (even if they are initially expected to work 30 or more hours per week)



Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- Safe harbor for determining if a variable hour employee = “full-time”
 - If a variable hour employee averages 30 or more hours of work per week during a “standard measuring period” → he or she should be treated as “full-time” (i.e., offered coverage) during the subsequent stability period



Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- Standard measuring period = 3-12 months
- Stability period = 6-12 months period immediately following the standard measuring period (and any applicable administrative period)
- Administrative period = up to 90 day period between a standard measuring period and a corresponding stability period



Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

Ongoing Testing for Variable Hour Employees

Standard Measuring Period 1 (11/1/2012-10/31/2013)	AP 1 (11/1/2013-12/31/2013)	Stability Period 1 (1/1/2014-12/31/2014)	
	Standard Measuring Period 2 (11/1/2013-10/31/2014)	AP 2 (11/1/2014-12/31/2014)	Stability Period 2 (1/1/2015-12/31/2015)



Ongoing Testing for Variable Hour Employees

November 1, 2012 – October 31, 2013	<p><u>First Standard Measuring Period</u></p> <p>The hours of all variable hour employees will be measured for this period to determine if they are “full-time” under the new rules (i.e., average 30+ hours per week).</p>
November 1, 2013 – December 31, 2013	<p><u>First Standard Administrative Period</u></p> <p>During this period, the employer will actually perform the calculations on hours worked during the first standard measuring period and will offer coverage to any employee identified as full-time based on hours worked during the first standard measuring period. This coverage offer will extend through the entire first stability period.</p>
November 1, 2013 – October 31, 2014	<p>Second Standard Measuring Period</p>
January 1, 2014 – December 31, 2014	<p><u>First Standard Stability Period</u></p> <p>Coverage will be maintained for all variable hour employees identified as “full-time” based on hours during the first standard measuring period (provided those employees elect coverage and pay applicable premiums). The employer will maintain documentation of the offer of coverage.</p>
November 1, 2014 – December 31, 2014	<p>Second Standard Administrative Period</p>
November 1, 2014 -- October 31, 2015	<p>Third Standard Measuring Period</p>
January 1, 2015 – December 31, 2015	<p>Second Standard Stability Period</p>



Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

- No penalties apply during the first three calendar months of employment
- Initial measuring period = 3-12 months
 - Overlaps with first full standard measuring period after employment begins
- Initial measuring period + administrative period cannot extend beyond the last day of the first calendar month beginning on or after the one year anniversary of the employee's start date ("13-month rule")



Preparing for the Employer Mandate

IDENTIFYING FULL-TIME EMPLOYEES

Testing for New Variable Hour Employees

Initial AP Part 1	Initial Measuring Period	Initial AP Part 2	Initial Stability Period
-------------------	--------------------------	-------------------	--------------------------

Standard Measuring Period	AP	Stability Period
---------------------------	----	------------------



Testing for New Variable Hour Employees

August 15, 2013	Date of Hire
August 15, 2013 – August 31, 2013	<p>Initial Administrative Period, Part 1</p> <p>The purpose of this initial administrative period, Part I, is to begin the initial measuring period on the first of the following month. Essentially, all variable hour employees hired in September will begin their initial measuring period on October 1st. This reduces the number of potential initial measuring periods from 365 to 12.</p>
September 1, 2013 – August 31, 2014	Initial Measuring Period
November 1, 2013 – October 31, 2014	<p>Standard Measuring Period</p> <p>This is the first full standard measuring period commencing after the employee is hired.</p>
September 1, 2014 – September 30, 2014	Initial Administrative Period, Part 2
October 1, 2014 – September 30, 2015	<p>Initial Stability Period</p> <p>Coverage will be maintained if the employee is identified as “full-time” based on hours during the initial measuring period (provided the employee elects coverage and pays the applicable premiums).</p>
November 1, 2014 – December 31, 2014	Standard Administrative Period
November 1, 2014 – October 31, 2015	Next Standard Measuring Period
January 1, 2015 – December 31, 2015	<p>Standard Stability Period</p> <p>Coverage will be maintained if the employee is identified as “full-time” based on hours during the standard measuring period (provided the employee elects coverage and pays the applicable premiums).</p>



Preparing for the Employer Mandate

AFFORDABLE COVERAGE AND MINIMUM VALUE

- Penalty for Providing “Unaffordable” Coverage
 - Applies if:
 - Employee’s share of the premium for lowest-cost employee-only coverage would exceed 9.5% of the employee’s income, or an “affordable” plan does not provide “minimum value”—pay at least 60% of the allowed costs under the plan, AND
 - The employee receives a subsidy from an Exchange



Preparing for the Employer Mandate

AFFORDABLE COVERAGE AND MINIMUM VALUE

- Penalty for Providing “Unaffordable” Coverage
 - Penalty = \$3,000/year/employee
 - Only applies to employees who actually receive subsidized coverage through an Exchange
 - Assessed on a monthly basis (\$250/employee/month)



Preparing for the Employer Mandate

AFFORDABLE COVERAGE AND MINIMUM VALUE

- Safe harbors for determining if the cost of coverage exceeds 9.5% of employee's income
 - Form W-2 Compensation
 - Rate of Pay
 - Federal Poverty Limit



Planning for New Assessments

PCORI Fees

- For calendar year plans applies from 2012 through 2018
- Annual fee based on average number of covered lives
 - \$1 for first year
 - \$2 for subsequent years (as adjusted for inflation)
- Reported on IRS Form 720 (Quarterly Federal Excise Tax Return) and paid annually
- Generally due by July 31



Planning for New Assessments

TRANSITIONAL REINSURANCE PROGRAM FEES

- Three year fee to fund transitional reinsurance pool (2014-2016)
- Proposed uniform contribution rate of \$63/year/covered life for 2014
- Collected annually



Planning for New Assessments

ADDITIONAL MEDICARE TAX

- Effective January 1, 2013
- Additional 0.9% tax applies to wages and compensation above a threshold amount (\$200,000/\$250,000)
- Employer must withhold on amounts paid to an employee in excess of \$200,000
- No “employer match”



Planning for New Assessments

“CADILLAC” TAX

- First applies in 2018
- 40% non-deductible tax on “excess benefits”
- Excess benefit = benefits provided in excess of annual limit (\$10,200/\$27,500 for 2018)



Evaluating Your Plan Design

SATISFYING BENEFIT MANDATES

- Prohibitions on:
 - Pre-existing condition exclusions
 - Lifetime and annual dollar limits on essential health benefits
 - Rescission
- Limits on:
 - \$2,500 cap on medical FSAs
 - Waiting periods (no more than 90 days)
 - Cost-sharing



Evaluating Your Plan Design

SATISFYING BENEFIT MANDATES

- Required coverage for:
 - Children through age 26
 - If not grandfathered:
 - Preventive care (on a first-dollar basis)
 - Direct access to OB/GYN
 - Certain emergency care
 - Clinical trials for cancer and other life-threatening diseases



Evaluating Your Plan Design

ADDING AUTOMATIC ENROLLMENT

- Applies to employers with over 200 employees
- Plans will be required to automatically enroll new full-time employees and continue the enrollment of current participants
- Notice and opportunity to opt-out is required
- Effective date is unclear—waiting on guidance



Evaluating Your Plan Design

STRUCTURING ENHANCED WELLNESS PROGRAMS

- New proposed rule memorializes existing wellness plan guidance
- Reward increased from 20% to 30%
 - 50% for programs designed to prevent/reduce tobacco use
- ADA considerations



Next Steps

- Determine how/if to offer employer-based health coverage
 - Small employers → investigate options to provide coverage through a SHOP Exchange
 - Large employers → analyze financial impact of employer mandate and assessments on plans, and implement systems to track employee status if election is made to continue offering coverage



Next Steps

- Costs of Providing Coverage
 - Employer share of premiums
 - Benefit payments for self-insured plans
 - ASO fees and stop loss premiums for self-insured plans
 - PCORI and transitional reinsurance fees
 - Compliance
 - Tracking full-time employees
 - ERISA requirements (e.g., Form 5500s and SPDs)
 - Summaries of benefits and coverage
 - W-2 reporting



Next Steps

- Costs of NOT Providing Coverage
 - Non-deductible penalties
 - For an employer with 1,500 full-time employees penalty would =
 $\$2,000 * (1,500 - 30)$ or \$2,940,000/year
 - Competitive advantage
 - Employee goodwill
 - Employee productivity



Next Steps

- Update systems to facilitate payment of new assessments
 - PCORI Fees/Transitional Reinsurance Program Fees (may need to coordinate with insurer/third-party administrator)
 - Additional Medicare Tax (update payroll system)
- Evaluate plan design and plan for the implementation of appropriate changes



QUESTIONS & ANSWERS



Contact Information

YOUR VENABLE TEAM



Charles J. Morton, Jr.
Partner

cjmorton@Venable.com

410.244.7747



Thora A. Johnson
Partner

tajohnson@Venable.com

410.244.7747



Christopher E. Condeluci
Of Counsel

cecondeluci@Venable.com

202.344.4231



Jennifer Spiegel Berman
Associate

jsberman@Venable.com

410.244.7756

www.Venable.com



Thank you for your participation!





Don't Play and Also Pay: Navigating the Employer-Sponsored Health Coverage Mandate

Authors

Harry I. Atlas
hiatlas@Venable.com
410.528.2848

Thora A. Johnson
tajohnson@Venable.com
410.244.7747

Christopher E. Condeluci
cecondeluci@Venable.com
202.344.4231

Jennifer Spiegel Berman
jsberman@Venable.com
410.244.7756

Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes—businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d)—on compensation and benefit-related issues.

On Friday, August 31, the Internal Revenue Service (IRS) issued much anticipated guidance regarding the application of the employer-sponsored health coverage mandate (often called the “play or pay rules” under health care reform). Employers need to begin planning for these rules as soon as possible. While the employer coverage mandate itself does not apply until 2014, it may be necessary to begin tracking the hours of employees as soon as this October in order to facilitate compliance.

The Play or Pay Rules Generally

The employer-sponsored health coverage mandate is designed to require “applicable large employers”¹ either to provide employees with adequate and affordable health coverage or to require those employers to pay certain penalties for their failure to do so. Specifically, penalties are triggered if:

- (1) An employer fails to offer all of its “full-time employees” the opportunity to enroll in an employer-sponsored health plan; or (2) the employer-sponsored health plan offered to “full-time employees” is “unaffordable” or fails to provide “minimum value”; AND
- Any employee impacted by such a failure purchases individual health insurance coverage through a State-based or Federally-facilitated Exchange and qualifies for a subsidy.²

Failure to Provide Coverage

Employers who fail to provide coverage to all of their “full-time employees” are subject to a penalty of \$2,000 per year (assessed on a monthly basis) multiplied by their total “full-time employee” count.³ For employers that provide health coverage, the challenge with respect to this rule is identifying all of their “full-time employees”—and making sure all such employees are offered coverage. In the event that even one “full-time employee” is not offered coverage and subsequently attains subsidized coverage through an exchange, the penalty is applied to all “full-time employees.” Thus, with respect to any employees who do receive employer-sponsored coverage, the employer could end up “playing” and “paying.”

Generally, health care reform defines a “full-time employee” as any employee working on average at least 30 hours a week. The new IRS guidance clarifies that this definition not only includes those individuals who can be reasonably expected to work on average at least 30 hours a week, but may also encompass certain “variable-hour employees.”

The guidance provides a safe harbor for determining if an employee is full time that allows employers some relief from the need to monitor employee status on a monthly basis. This is especially useful for those employers with high turnover and a significant number of variable-hour employees. Specifically, the guidance allows an employer to monitor the hours of a variable-hour employee over a three-to twelve-month “measurement” or “look-back” period to determine if the employee averaged 30 or more hours per week during that period. The employer can then rely on those results for purposes of determining whether coverage should be offered to that employee during a subsequent six-to twelve-month “stability period” to avoid the no coverage penalty.

The new guidance also introduces the concept of an administrative period between a measurement period and its corresponding stability period to allow employers to enroll employees determined to be full time based on the prior measurement period. Depending upon the length of the measurement, stability, and administrative periods elected, the first measurement period for some employers may begin as early as October 1, 2012.

Failure to Provide Affordable/Adequate Coverage

The second penalty under the play or pay rules applies to employers who offer all of their full time employees coverage, but such coverage is too expensive or deemed inadequate. The penalty, \$3,000 per year (assessed on a monthly basis), applies only with respect to those full time employees who actually receive subsidized health coverage through an exchange.

For purposes of this rule, coverage is deemed to be “unaffordable” if the employee premium for the lowest-priced “employee only” plan option available through an employer exceeds 9.5% of that employee’s household income. The new guidance issued last week confirms that employers do not have to actually determine an employee’s household income for purposes of administering this rule. Instead, an employer can assume that an employee’s household income is equal to the W-2 income provided to that employee by the employer for purposes of determining if the coverage it offers is affordable.

This penalty is also triggered if the coverage provided through an employer-sponsored plan does not provide “minimum value.” A plan fails to provide minimum value if the plan’s share of the total allowed costs of benefits provided under the plan is less than 60% of such costs. Definitive guidance on how to make this determination has not yet been issued; however, preliminary indications from the government suggest that a calculator will be made available for purposes of making these determinations.⁴ In addition, the government has suggested that certain safe-harbor checklists will be issued to allow employer-sponsored plans to confirm they offer minimum value without performing any calculations.

Additional Guidance Regarding the Limitation of Waiting Periods

Health care reform prohibits employer-sponsored health plans from imposing waiting periods of greater than 90 days. The Departments of the Treasury, Labor, and Health and Human Services issued joint guidance last Friday on the prohibition of extended waiting periods for participation in employer-sponsored plans. Among other things, the new guidance describes the interaction of this rule with the no-coverage penalty discussed above. It clarifies that the use of properly designed measurement periods will not be deemed to be a violation of the 90-day waiting period limitation. It also provides additional information about how this rule should be applied in practice, including with respect to part-time employees.

Preparing for 2014—Avoiding Penalties Is Not as Simple as Merely Providing Coverage

To avoid this result, it is necessary for employers to evaluate which employees are eligible for coverage under existing plans, track the hours of any excluded employees, monitor the income of low-paid full-time employees in relationship to plan premiums, and, once further guidance is issued, confirm their plan offers adequate coverage. This is no small task, but with thorough planning, employers can implement the required plan changes and tracking systems necessary to avoid penalties.

Venable’s [Employee Benefits and Executive Compensation Group](#) looks forward to helping employer-clients continue to navigate health care reform as they prepare for 2014. For additional guidance on how the play or pay rules will impact your employer-sponsored plan, please contact your Venable attorney or any member of our group listed below.

Harry I. Atlas hiatlas@Venable.com 410.528.2848	Jennifer S. Berman jsberman@Venable.com 410.244.7756	Bradford S. Cohen bcohen@Venable.com 310.229.9942	Christopher E. Condeluci cecondeluci@Venable.com 202.344.4231
Robin C. Gilden rcgilden@Venable.com 310.229.9967	Kenneth R. Hoffman krhoffman@Venable.com 202.344.4810	Thora A. Johnson tajohnson@Venable.com 410.244.7747	Jessica E. Kuester jekuester@Venable.com 410.244.7476
Gregory J. Ossi gossi@Venable.com 703.760.1957	Barbara E. Schlaff beschlaff@Venable.com 410.244.7494	Lisa A. Tavares latavares@Venable.com 202.344.4075	John A. Wilhelm jawilhelm@Venable.com 703.760.1917

1) The term “applicable large employer” means any employer with fifty (50) or more full-time equivalent employees during the preceding calendar year. For this purpose, the hours of part-time employees are aggregated.

2) Individuals/families with income of up to 400% of the federal poverty level may qualify for a subsidy. For 2012, this amount is \$44,680 for an individual and \$92,200 for a family of four. Exchanges are the new marketplaces that will offer individual health coverage in 2014.

3) This penalty applies on a controlled group basis, meaning that all full-time employees within a group of closely related companies may need to be counted for purposes of calculating the penalty.

4) Plans with nonstandard features will be able to rely on actuarial certifications in lieu of relying on the calculator.

If you have friends or colleagues who would find this alert useful, please invite them to subscribe at www.Venable.com/subscriptioncenter.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

© 2012 Venable LLP. This newsletter is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING.

575 7th Street, NW, Washington, DC 20004

© 2012 Venable LLP | www.Venable.com | 1.888.VENABLE

**Authors**

Christopher E. Condeluci
cecondeluci@Venable.com
202.344.4231

Thora A. Johnson
tajohnson@Venable.com
410.244.7747

Gregory J. Ossi
gossi@Venable.com
703.760.1957

The Honorable Bart Stupak
bstupak@Venable.com
202.344.4226

Jennifer Spiegel Berman
jsberman@Venable.com
410.244.7756

Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes—businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d)—on compensation and benefit-related issues.

Health Care Reform: Large Employer and the New Health Insurance Exchanges

Historically, employers have adopted a number of strategies intended to control the ever-increasing cost of health care, including self-insuring their own employees' health risks, implementing wellness programs, and shifting more and more costs onto their employees. In the wake of the enactment of the Patient Protection and Affordable Care Act ("PPACA"), employers are examining a number of new strategies to control costs (e.g., "private" health insurance exchanges). Click [here](#) to review a recent alert on private exchanges. Large employers¹ are also trying to understand whether they can leverage the new State-based Exchanges (or Federally-facilitated Exchange, as the case may be) that are being created under PPACA. Below are some common questions we have heard from our clients about the new Exchanges.

Q: Can a large employer offer health coverage sold through an Exchange?

A: Initially, no. Beginning in 2014, an Exchange is intended to offer health coverage to (1) individuals (and families) in the fully-insured individual market and (2) employees of small employers in the fully-insured small group market. In 2017, a State may elect to permit the sale of fully-insured group health plans to employees of large employers through the Exchange, but a State is not required to do so. As a result, a large employer will not be able to offer a fully-insured group health plan to its employees through an Exchange until 2017, at the earliest. It is important to point out that self-insured group health plans can never be offered through an Exchange.

Q: Can an employee purchase health coverage sold through an Exchange?

A: Yes. An employee may opt out of the employer's group health plan and purchase a fully-insured individual policy through an Exchange.

Q: If an employee opts out of the employer's plan and purchases health coverage through an Exchange, will the employee receive a government subsidy?

A: In general, no. If an employee is offered a group health plan by its employer that (1) is "affordable" (i.e., the plan does not exceed 9.5% of the employee's W-2 income) and (2) provides "minimum value" (i.e., the coverage pays for at least 60% of the benefits under the plan), then the employee is not eligible for the government subsidy for health insurance. In addition, it is likely that the employee would lose the contribution that the employer would otherwise make towards the cost of coverage because he or she opted out of the employer's health plan.

Q: What happens in cases where the employer's plan is "unaffordable" or does not provide "minimum value"?

A: In this case, an employee may opt out of the employer's group health plan, purchase a fully-insured individual policy through an Exchange, and obtain a government subsidy for health insurance, if income eligible.² Here, the employer would be subject to an annual \$3,000 penalty tax under the "shared responsibility" requirement (otherwise known as the "employer mandate") for each employee that obtains a subsidy.

Q: Can the employer fund the employee's purchase of a fully-insured individual policy through an Exchange on a pre-tax basis?

A: It depends on how the purchase of the fully-insured individual policy is funded. PPACA prohibits the pre-tax purchase of individual health insurance through an Exchange with a Section 125 cafeteria plan. However, unless the Department of Treasury indicates otherwise, an argument can be made that an employer may be able to fund the purchase of a fully-insured individual policy through an Exchange on a

tax-free basis with a health reimbursement arrangement (“HRA”). It is important to note that PPACA enacted a number of new rules that may adversely affect the use of HRAs as a funding mechanism for the purchase of a health plan – namely the restriction on annual dollar limits on the “essential health benefits” and the employer mandate. Therefore, large employers interested in this type of arrangement should consider advocating for regulations that resolve these legal uncertainties.

Q: Can an employer fund its retirees’ purchase of health coverage through an Exchange on a tax-free basis with an HRA?

A: Yes, so long as the arrangement is a “retiree-only” health plan (i.e., a plan that has less than two participants who are current employees). A retiree-only plan is not subject to many of the new requirements under PPACA. As a result, an employer could fund – through an HRA – its retirees’ purchase of health insurance policies on an Exchange without having to worry about the restriction on annual limits. In addition, this arrangement would not trigger the employer mandate.

Q: How can Venable help?

A: At Venable, we have attorneys who previously worked in Congress and participated in the development of the Exchanges created under PPACA. As a result, we have a deep understanding of the technical rules and the policy associated with these new marketplaces. Our Venable team also includes experts on all matters relating to employer group health plans and fully-insured individual policies. Contact members of our [Employee Benefits and Executive Compensation](#), [Legislative](#) or [Healthcare](#) groups for assistance.

Harry I. Atlas hiatlas@Venable.com 410.528.2848	Jennifer S. Berman jsberman@Venable.com 410.244.7756	Bradford S. Cohen bcohen@Venable.com 310.229.9942	Christopher E. Condeluci cecondeluci@Venable.com 202.344.4231
Robin C. Gilden rcgilden@Venable.com 310.229.9967	Kenneth R. Hoffman krhoffman@Venable.com 202.344.4810	Thora A. Johnson tajohnson@Venable.com 410.244.7747	Jessica E. Kuester jekuester@Venable.com 410.244.7476
Gregory J. Ossi gossi@Venable.com 703.760.1957	Barbara E. Schlaff beschlaff@Venable.com 410.244.7494	Lisa A. Tavares latavares@Venable.com 202.344.4075	John A. Wilhelm jawilhelm@Venable.com 703.760.1917

[1] Generally, a large employer is a company with more than 100 employees. Until 2016, however, states have the option to define a large employer as a company employing more than 50 employees.

[2] In general, the government subsidy for health insurance is only available to an individual whose income is 400% or less of the Federal Poverty Level (that is for 2012, \$44,650 for an individual and \$92,200 for a family of four).

If you have friends or colleagues who would find this alert useful, please invite them to subscribe at www.Venable.com/subscriptioncenter.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

© 2012 Venable LLP. This newsletter is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING.

575 7th Street, NW, Washington, DC 20004

© 2012 Venable LLP | www.Venable.com | 1.888.VENABLE

**Authors**

Lisa A. Tavares
latavares@Venable.com
202.344.4075

Harry I. Atlas
hiatlas@Venable.com
410.528.2848

Jessica E. Kuester
jekuester@Venable.com
410.244.7476

Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes—businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d)—on compensation and benefit-related issues.

IRS Releases Updated Retirement Plan Correction Procedures

The IRS recently released the long-awaited updated version of the Employee Plans Compliance Resolution System (EPCRS), Revenue Procedure 2013-12. EPCRS allows the sponsor of a tax-deferred retirement plan to voluntarily correct plan qualification failures. The primary change to EPCRS is the expansion of the correction methods available for 403(b) plans. In addition, there are a number of other key changes, some of which are described below. The new EPCRS applies as of April 1, 2013, although plan sponsors may choose to use it now.

Correction of 403(b) Plan Document Failures Now Available

Prior to January 1, 2009, 403(b) plans were not required to have written plan documents. As such, there was no concept of a “403(b) plan document failure” in the prior versions of EPCRS. As of January 1, 2009, however, 403(b) plans must have written plan documents, but there has been no way to correct the failure to timely adopt a 403(b) plan document until now.

The new EPCRS allows 403(b) plan document failures to be submitted to the IRS under the Voluntary Correction Program (VCP). During 2013, a 403(b) plan sponsor that did not timely adopt a plan document (by December 31, 2009) may submit a VCP application and pay only 50% of the generally applicable VCP fee based on plan size. After 2013, the full fee will apply.

The new EPCRS also extends to 403(b) plans certain other EPCRS concepts previously applicable only to qualified plans.

Corrective Employer Contributions (QNECs and Otherwise)

Corrective contributions to remedy a failed ADP or ACP nondiscrimination test must be qualified non-elective contributions (QNECs). That is, the contributions may *not* be made through allocating existing forfeitures within the plan, but rather, must be newly contributed by the plan sponsor. Moreover, such contributions must be fully vested when made, and subject to the distribution restrictions applicable to employee elective deferrals.

By contrast, corrective contributions to remedy certain employer contribution failures are no longer required to be QNECs. That is, such contributions may be made through allocating existing forfeitures within the plan. Moreover, such contributions need not be fully vested when made, and need not be subject to the distribution restrictions applicable to employee elective deferrals.

Streamlined Application Process

EPCRS now requires VCP applications to be submitted using new IRS Forms 8950 and 8951. These forms are intended to streamline the application process, by ensuring standardization and completeness in submissions. VCP applications must now be sent to a central processing location in Covington, Kentucky (in a manner similar to determination letter applications).

The new EPCRS also modifies the rules for when determination letter applications must (and may) be submitted with VCP applications addressing corrective amendments.

Defined Benefit Plans Subject to Code Section 436 Restrictions

Underfunded defined benefit plans may be subject to certain benefit restrictions imposed by Section 436 of the Internal Revenue Code. The new EPCRS provides correction methods for certain benefit payments made in violation of Section 436, and also addresses instances where a corrective action would otherwise

violate Section 436.

Investment Losses

The new EPCRS changes the requirements, in certain instances, regarding adjustments to reflect investment losses.

457(b) Plans

The IRS will continue to accept 457(b) plan submissions outside of EPCRS under standards similar to EPCRS. However, generally, only governmental 457(b) plans, not tax-exempt entity 457(b) plans, will be accepted.

Missing Participants

As of August 31, 2012, the IRS Letter Forwarding Program was discontinued as a means to search for missing participants and beneficiaries. The new EPCRS contains conforming changes. Specifically, plan sponsors must attempt to send certified mail to the individual's last known mailing address, and if that is unsuccessful, use an additional search method (e.g., the Social Security letter forwarding program, a commercial locator service, a credit reporting agency, Internet search tools, etc.).

Our attorneys have extensive experience with correction of plan qualification failures. If you have any questions about the new EPCRS, please contact any member of the [Employee Benefits and Executive Compensation Group](#).

Harry I. Atlas hiatlas@Venable.com 410.528.2848	Jennifer S. Berman jsberman@Venable.com 410.244.7756	Bradford S. Cohen bcohen@Venable.com 310.229.9942	Christopher E. Condeluci cecondeluci@Venable.com 202.344.4231
Robin C. Gilden rcgilden@Venable.com 310.229.9967	Kenneth R. Hoffman krhoffman@Venable.com 202.344.4810	Thora A. Johnson tajohnson@Venable.com 410.244.7747	Jessica E. Kuester jekuester@Venable.com 410.244.7476
Gregory J. Ossi gossi@Venable.com 703.760.1957	Barbara E. Schlaff beschlaff@Venable.com 410.244.7494	Lisa A. Tavares latavares@Venable.com 202.344.4075	John A. Wilhelm jawilhelm@Venable.com 703.760.1917
Jean Y. Yu jyyu@Venable.com 310.229.9924			

If you have friends or colleagues who would find this alert useful, please invite them to subscribe at www.Venable.com/subscriptioncenter.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com

© 2013 Venable LLP. This newsletter is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address. ATTORNEY ADVERTISING.

575 7th Street, NW, Washington, DC 20004

© 2013 Venable LLP | www.Venable.com | 1.888.VENABLE



Authors

Thora A. Johnson
tajohnson@Venable.com
410.244.7747

Harry I. Atlas
hiatlas@Venable.com
410.528.2848

Gregory J. Ossi
gossi@Venable.com
703.760.1957

Christopher E. Condeluci
cecondeluci@Venable.com
202.344.4231

Jennifer Spiegel Berman
jsberman@Venable.com
410.244.7756

Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes—businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d)—on compensation and benefit-related issues.

Limited Relief for Employers under Health Care Reform’s “Play-or-Pay” Rules

Proposed regulations issued by the Internal Revenue Service on December 28, 2012 provide some relief to large employers subject to the employer-sponsored coverage mandate under health care reform. The employer mandate is described in detail in our prior alert that can be accessed at the following link: [Don't Play and Also Pay: Navigating the Employer-Sponsored Health Coverage Mandate](#). Although issued as proposed regulations, employers may rely on these rules pending the issuance of final regulations or other applicable guidance. Below are highlights of some of the key changes to the employer mandate incorporated in the proposed regulations.

Key Changes Relating to the Implementation of the No Coverage Penalty

In the event that an employer becomes subject to the no coverage penalty, the employer is generally required to pay a monthly penalty of \$166.67 (adjusted for inflation) multiplied by its total number of full-time employees (excluding the first 30). The new guidance reduces this potential burden in two key ways.

First, the statute states that the no coverage penalty applies if a large employer “fails to offer to its full-time employees (and their dependents)” health coverage. Therefore, the statute could have been interpreted by the IRS to mean that the no coverage penalty was triggered where an employer failed to offer coverage to even just one of its full-time employees. The proposed regulations indicate that the IRS has adopted a more liberal approach—thereby reducing the risk to an employer of triggering the no coverage penalty by providing that the penalty applies only if an employer fails to offer coverage to more than 5% (or, if greater, five) of its full-time employees. Thus, provided at least 95% of full-time employees (and their children)¹ are offered coverage, the no coverage penalty will not apply. This clarification provides employers with a much needed “margin for error” in applying the complex IRS rules defining full-time employees for penalty purposes. Notably, however, if one of these full-time employees who were not offered employer-sponsored coverage purchases health insurance through a state-based or federally-facilitated exchange, the unaffordability penalty may be triggered.

Second, the proposed regulations clarify that the no coverage penalty is not calculated on a controlled group basis. Instead, the penalty is applied company-by-company. Thus, if a company within a controlled group becomes subject to the no coverage penalty, the penalty will be calculated based only on that company’s full-time employee count (minus its allocable share of the 30-employee reduction). While the determination of whether an employer is “large” for purposes of the employer mandate (and thus subject to the mandate) continues to apply on a controlled group basis, this change provides significant relief to companies that are part of large controlled groups. The change also provides a planning opportunity for employers who wish to limit their potential overall exposure to the no coverage penalty.

The new guidance also provides significantly more detail on how the IRS will implement its existing guidance defining a “full-time” employee for purposes of applying the no coverage penalty. The regulations incorporate and refine the prior guidance on a safe-harbor for determining full-time status based on a “look back” measurement period. They provide detailed rules on how hours and leaves will be calculated, as well as how breaks in service will be treated. These rules require employers to make nuanced plan design decisions. To ensure consistent application, these decisions will likely need to be captured in plan documents or policies.

New Safe Harbors Apply to the Unaffordability Penalty

Even if an employer offers health coverage to its full-time employees (and their children), it can be subject to penalties if that coverage is deemed “unaffordable” or does not provide “minimum value.” Specifically, the employer is required to pay a monthly penalty of \$250 (adjusted for inflation) multiplied by the number of full-time employees who purchase health insurance through a state-based or federally-

facilitated exchange and receive a government subsidy. Generally, coverage is defined as “affordable” if the required employee contribution towards self-only coverage is not more than 9.5% of the employee’s household income. A plan fails to provide minimum value if the plan’s share of the total allowed costs of benefits provided under the plan is less than 60% of those costs. The proposed regulations do not address minimum value, and the IRS plans to propose additional guidance on minimum value in the future.

The proposed regulations do, however, set out three basic safe harbors on which employers can rely in setting employee premiums for self-only coverage at an affordable level without knowing the employee’s “household income.” First, under the W-2 safe harbor, the premium for self-only coverage is affordable unless it exceeds 9.5% of the Box 1 wages reported by the employer for the employee for a given year (or shorter period if the employee was not covered for the full year). Second, a new safe harbor allows an employer to measure the 9.5% against the employee’s rate of pay. Specifically, coverage is deemed affordable if monthly premiums do not exceed 9.5% of the employee’s hourly rate of pay times 130 (or, if salaried, the employee’s monthly salary). Finally, coverage is deemed affordable if it does not exceed 9.5% of the federal poverty line for a single individual.

Transitional Relief

The new proposed regulations will be particularly welcomed by sponsors of non-calendar year plans, in that they provide that, in most cases, the employer penalties will not apply prior to the beginning of the first plan year beginning in 2014. The transitional relief also provides special rules relating to the use of “look back” periods for the 2014 plan year. These rules allow employers some flexibility to shorten their 2013 “look back” periods.

The proposed regulations discussed above are just one small piece of the significant body of guidance relating to the implementation of health care reform issued in the closing weeks of 2012. Please join Venable as we discuss this and other guidance in more detail at the *Changing Landscape for Employer Health Plan* events later this month. **Please [click here for more information and to register](#).**

Harry I. Atlas hiatlas@Venable.com 410.528.2848	Jennifer S. Berman jsberman@Venable.com 410.244.7756	Bradford S. Cohen bcohen@Venable.com 310.229.9942	Christopher E. Condoluci cecondoluci@Venable.com 202.344.4231
Robin C. Gilden rcgilden@Venable.com 310.229.9967	Kenneth R. Hoffman krhoffman@Venable.com 202.344.4810	Thora A. Johnson tajohnson@Venable.com 410.244.7747	Jessica E. Kuester jekuester@Venable.com 410.244.7476
Gregory J. Ossi gossi@Venable.com 703.760.1957	Barbara E. Schlaff beschlaff@Venable.com 410.244.7494	Lisa A. Tavares latavares@Venable.com 202.344.4075	John A. Wilhelm jawilhelm@Venable.com 703.760.1917
Jean Y. Yu jyyu@Venable.com 310.229.9924			

[1] The proposed regulations require that employer plans offer coverage to dependents—specifically children of employees—to avoid running afoul of the no coverage penalty. In contrast, coverage does not need to be offered to spouses. The proposed regulations define an employee’s dependents for this purpose as employee’s children who are under 26 years of age. (There is a transitional rule that provides some relief to plans that do not currently offer dependent coverage until plan years that begin in 2014.) It is important to note, that the unaffordability penalty, however, remains triggered only if the employee’s required contribution for self-only coverage is more than 9.5% of his or her household income for the taxable year.

If you have friends or colleagues who would find this alert useful, please invite them to subscribe at www.Venable.com/subscriptioncenter.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com



Thora A. Johnson

Partner

Baltimore, MD Office

T 410.244.7747 F 410.244.7742

tajohnson@Venable.com

AREAS OF PRACTICE

Employee Benefits and Executive Compensation

Tax and Wealth Planning

Healthcare

Business Transactions Tax

Tax Controversies

Tax Policy

Tax-Exempt Organizations

Wealth Planning

INDUSTRIES

Nonprofit Organizations and Associations

BAR ADMISSIONS

Maryland

District of Columbia

EDUCATION

J.D., *with honors*, University of Maryland School of Law, 1996

Notes & Comments Editor,
Maryland Journal of International Law and Trade

M.A., Middlebury College, 1993

B.A., *magna cum laude*, Brown University, 1992

Phi Beta Kappa

Thora Johnson focuses on tax-exempt organizations, employee benefits and executive compensation matters. She advises clients on the establishment and operation of tax-exempt organizations, including private foundations, public charities, trade associations, and title holding companies. She also counsels clients on the establishment and operation of qualified and non-qualified deferred compensation plans and health and welfare benefit plans. She routinely reviews and drafts employee benefit plans, summary plan descriptions, and other employee communications and negotiates vendor contracts. She also regularly works with clients to structure comprehensive compliance programs and procedures to comply with the privacy and security requirements of HIPAA.

REPRESENTATIVE CLIENTS

Ms. Johnson represents, among others, Allegis Group, Bank of America Corporation, General Dynamics Corporation, and Greater Baltimore Medical Center.

HONORS

Recognized in the 2012 edition of *Chambers USA* (Band 2), Employee Benefits and Executive Compensation, Maryland

Recognized in the 2011 edition of *Chambers USA* (Band 2), Employee Benefits and Executive Compensation, Maryland

Recognized in the 2010 edition of *Chambers USA* (Up and Coming), Employee Benefits and Executive Compensation, Maryland

ACTIVITIES

Ms. Johnson is a member of the Maryland State Bar Association and its Study Group for Employee Benefits, as well as the Tax Section of the District of Columbia Bar, the Tax Section of the American Bar Association, and the American Health Lawyers Association. She also regularly assists in pro bono matters involving charitable organizations and employee benefits. She is a trustee of the Friends School of Baltimore and has served as a director of a local charity whose mission is to help individuals find and keep entry-level, nonprofessional jobs.

PUBLICATIONS

- January 2013, Limited Relief for Employers under Health Care Reform's "Play-or-Pay" Rules, Employee Benefits and Executive Compensation Alert
- October 2012, Health Care Reform: Large Employers and the New Health Insurance Exchanges, Employee Benefits and Executive Compensation Alert

- September 2012, Private Exchanges: You Have Questions, We Have Answers, Employee Benefits and Executive Compensation Alert
- September 2012, Don't Play and Also Pay: What Nonprofit Employers Need to Know about Navigating the Employer-Sponsored Health Coverage Mandate
- September 2012, Don't Play and Also Pay: What Independent Schools Need to Know About Navigating the Employer-Sponsored Health Coverage Mandate, Independent School Law Alert
- September 2012, Don't Play and Also Pay: Navigating the Employer-Sponsored Health Coverage Mandate, Employee Benefits and Executive Compensation Alert
- April 2012, New Health Plan Rules to Keep in Mind When Planning for the 2013 Open Enrollment Season, Employee Benefits and Executive Compensation Alert
- December 2011, Health Care Reform: Defining "Essential Health Benefits", Employee Benefits and Executive Compensation Alert
- July 2011, Health Care Reform: More Changes to the Claims and Appeals Process, Employee Benefits and Executive Compensation Alert
- June 2011, Health Care Reform: June 30 Compliance Deadline Fast Approaching, Employee Benefits and Executive Compensation Alert
- April 2011, Health Care Reform: Form W-2 Reporting of Employer-Provided Group Health Coverage, Employee Benefits and Executive Compensation Alert
- March 2011, Health Care Reform: Another Extended Grace Period, Employee Benefits and Executive Compensation Alert
- November 2010, Year-End Wrap-Up for Benefit Plans, Employee Benefits and Executive Compensation Alert
- October 2010, Interview, "Changes to group health plans: Strictly adhere to new regs or lose time and money," *Nonprofit Business Advisor*
- October 2010, Extended Grace Period Available (What internal claims procedures apply now?), Employee Benefits and Executive Compensation Alert
- September 2010, New Federal External Claims Review Procedures (What does a health plan have to do?), Employee Benefits and Executive Compensation Alert
- August 2010, New Preventive Care Coverage Rules Under Health Care Reform, Employee Benefits and Executive Compensation Alert
- August 2010, Material Changes Now, More Material Changes Coming, Employee Benefits and Executive Compensation Alert
- July 2010, Grandfathered Status For Your Group Health Plans Under Health Care Reform: What is at Stake?, Employee Benefits and Executive Compensation Alert
- July 2010, Highlights of the New "Patient's Bill of Rights" Regulations Implementing Key Features of Federal Health Reform, Employee Benefits and Executive Compensation Alert
- May 2010, First Come, First Served: New Early Retiree Reinsurance Program, Employee Benefits and Executive Compensation Alert
- April 2010, Mental Health Benefits: More Changes Needed to Your Health Plan, Employee Benefits and Executive Compensation Alert
- March 2010, Important Changes to Form 5500 Filing Requirements, Employee Benefits and Executive Compensation Alert
- March 2010, Important April 30, 2010 Deadline for Employers Who Have Adopted Pre-Approved Retirement Plans, Employee Benefits and Executive Compensation Alert
- January 2010, IRS Issues Section 409A Plan Document Correction Procedures With Potential Advantages To Correction By December 31, 2010, Employee Benefits and Executive Compensation Alert
- December 2009, Federal COBRA Subsidy Expanded, Employee Benefits and Executive Compensation Alert
- November 2009, Effective Date of Normal Retirement Age Regulations Extended for Governmental Plans, Employee Benefits and Executive Compensation Alert
- August 2009, Update on Legal Developments Affecting Employee Benefit Plans, Employee Benefits and Executive Compensation Alert

- July 2009, Looking Toward 2010 - Key Legal Changes to Keep in Mind While Designing Your 2010 Health Plans, Employee Benefits and Executive Compensation Alert
- July 2009, Important News for 403(b) Plan Sponsors, Employee Benefits and Executive Compensation Alert
- March 19, 2009, Department of Labor Issues Model Notices on COBRA Subsidy, Employee Benefits and Executive Compensation Alert
- March 2009, Supreme Court Rules Plan Documents, Not Divorce Decree, Control in ERISA Beneficiary Dispute, Employee Benefits and Executive Compensation Alert
- February 25, 2009, What Every Employer Needs to Know (and Do) About the New COBRA Subsidy Provisions in the Economic Stimulus Act, Employee Benefits and Executive Compensation Alert
- December 2, 2008, Year-End Checklist for Benefit Plan Sponsors, Employee Benefits and Executive Compensation Alert
- November 20, 2008, Venable Employee Benefits Lawyers Selected as *Best Lawyers in America*, Employee Benefits and Executive Compensation Alert
- October 28, 2008, 2009 Dollar Limits on Compensation and Benefits, Employee Benefits and Executive Compensation Alert
- October, 2008, Roundup of Important Developments Affecting Health Plans, Employee Benefits and Executive Compensation Alert
- September 25, 2008, Tax-Exempt Healthcare Prepares for 2009: Key Compensation and Reporting Points
- September 22, 2008, The New IRS Form 990: What Does It Mean for Your Organization?
- September 2008, The Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART" Act), Employee Benefits and Executive Compensation Alert
- July 2008, More Items for Your Section 409A Compliance Checklist, Employee Benefits and Executive Compensation Alert
- May 19, 2008, The New IRS Form 990: What Does It Mean for Your Nonprofit Organization?
- May 2008, Highlights of Retirement Plan Distribution Changes for 2008, Employee Benefits and Executive Compensation Alert
- March 2008, 401(k) Participants Can Sue Plan Fiduciaries For Losses To Individual Accounts, Employee Benefits and Executive Compensation Alert
- March 4, 2008, The New IRS Form 990: What Does It Mean for Your Nonprofit Organization?
- December 2007, Year-End Wrap-Up for Qualified Plans, Employee Benefits and Executive Compensation Alert
- October 26, 2007, Section 409A Final Regulations Delayed to 2009, Employee Benefits and Executive Compensation Alert
- October 2007, 2008 Dollar Limits on Compensation and Benefits, Employee Benefits and Executive Compensation Alert
- September 2007, Form 990 Executive Compensation Reporting – Prepare for Change, Employee Benefits and Executive Compensation Alert
- August 2007, Important Developments Affecting Health Plans, Employee Benefits and Executive Compensation Alert
- July 2007, DOE Cost Reimbursement Policy and Cost Accounting Standards for Pension Plan Contributions Required Under New Funding Rules, Employee Benefits and Executive Compensation Alert
- July 2007, Section 403(b) Tax-Sheltered Annuity Final Regulations Expected This Week, Employee Benefits and Executive Compensation Alert
- April 2007, Current Regulatory and Legislative Developments Could Dramatically Affect Employment and Benefit Issues for Government Contractors, Employee Benefits and Executive Compensation Alert
- April 10, 2007, Final Regulations Regarding Deferred Compensation Under Section 409A Released Today, Employee Benefits and Executive Compensation Alert

- April 6, 2007, Tidbits from the Trenches: Indemnifications, Gross-Ups and Code Section 409A, Employee Benefits and Executive Compensation Alert
- April 3, 2007, Final Regulations Regarding Deferred Compensation Under Section 409A Expected Shortly, Employee Benefits and Executive Compensation Alert
- November 2006, Pension Protection Act of 2006: Provisions of Interest to Exempt Organizations
- October 2006, November 14th Deadline for Sending Annual Medicare Part D Notice Fast Approaching, Employee Benefits and Executive Compensation Alert
- October 18, 2006, IRS Announces 2007 Dollar Limits on Compensation and Benefits, Employee Benefits and Executive Compensation Alert
- October 2006, The IRS Extends Deferred Compensation Plan Deadlines Under §409A, Employee Benefits and Executive Compensation Alert
- September 1, 2006, Landmark Pension Reform Law Enacted: How Your Retirement Programs Will Be Affected, Employee Benefits and Executive Compensation Alert
- July 2006, Good News for Plans, Employee Benefits and Executive Compensation Alert
- May 2006, Revised Model Medicare Part D Notices Are Now In Effect, Employee Benefits and Executive Compensation Alert
- January 2006, New Guidance and Reminders for Health and Welfare Benefits: Military Leave, CMS Notification of Creditable Coverage, HIPAA Portability, Privacy and Security Compliance, and more, Employee Benefits and Executive Compensation Alert
- August 2005, Recent Health and Welfare Changes: New Notice Obligations, A Valuable Subsidy for Retiree Programs, and More Flexibility for FSAs, Employee Benefits and Executive Compensation Alert
- February 15, 2005, It's Déjà Vu All Over Again: HIPAA Security Standards Take Effect on April 20, 2005, Employee Benefits and Executive Compensation Alert
- February 2005, New Automatic Rollover Rules for Mandatory Cashout Distributions from Retirement Plans, Employee Benefits and Executive Compensation Alert
- December 2004, New Definition of "Dependent" Affects Employee Benefit Plans, Employee Benefits and Executive Compensation Alert

SPEAKING ENGAGEMENTS

- January 24, 2013, The Changing Landscape for Employer Health Plans: What Employers and Plan Sponsors Need to Know
- January 23, 2013, The Changing Landscape for Employer Health Plans: What Employers and Plan Sponsors Need to Know
- November 16, 2012, "How Health Care Reform Affects Your Business and Bottom Line" for *Baltimore Business Journal*
- July 24, 2012, "The Supreme Court's Ruling on the Affordable Care Act and What It Means for Your Health Plans" for Kelly Benefit Strategies
- July 9, 2012, "Supreme Court Healthcare Ruling: What's Next," webinar for Thomson Reuters
- June 29, 2012, After the Supreme Court Healthcare Ruling: What's Your Next Move?
- February 8, 2011, Legal Quick Hit: "International Grantmaking: Avoid Legal Pitfalls When Doing Good Overseas" for the Association of Corporate Counsel's Nonprofit Organizations Committee
- September 16, 2010, "Healthcare Reform 2.0: Redesigning Your Health Plan and Open Enrollment" webinar hosted by Venable LLP
- April 29, 2010, "How Will the New Healthcare Reform Law Impact Employers?" webinar for Associate Builders and Contractors, Inc. (ABC)
- April 22, 2010, Health Care Reform: What It Means for Employers and the Health Plans They Sponsor (Webinar)
- October 1, 2009, The Changing HIPAA Landscape: Seminar on October 1, 2009 in Baltimore, MD

- September 23, 2009, The Changing HIPAA Landscape: Seminar on September 23, 2009 in Washington, DC
- April 20, 2009, Mid-Year Seminar of the International Municipal Lawyers Association
- February 10, 2009, Legal Quick Hit: Lobbying Tax Rules for 501(c)(3) Organizations - A Refresher
- October 1, 2008, The New IRS Form 990: What Does it Mean for Your Organization?
- September 22, 2008, The New IRS Form 990: What Does It Mean for Your Nonprofit Organization?
- May 22, 2008, The New IRS Form 990: What Does It Mean for Your School?
- May 19, 2008, New IRS Form 990 Audio conference
- April 2008, "Unrelated Business Income Tax and Form 990-T" sponsored by the Maryland Association of CPAs
- September 2006, "HIPAA for Employers and HR Departments" at Lord Fairfax Community College
- August 10, 2006, Goodbye Medical Savings Accounts, Hello Health Savings Accounts, Health Reimbursement Accounts and Flexible Spending Accounts
- September 15, 2004, The Consumer-Directed Healthcare Seminar: A New Approach to Managing Healthcare Costs
- 2004, "Health Savings Accounts" sponsored by insurance brokerage firm Armfield, Harrison & Thomas
- February 26, 2003, National Business Officers Associations Annual Meeting "HIPAA"
- 2002, In-house HIPAA seminar to Society for Human Resource Management



Charles J. Morton, Jr.

Partner

Baltimore, MD Office
Washington, DC Office

T 410.244.7716 F 410.244.7742
202.344.4499 202.344.8300

cjmorton@Venable.com

Chuck Morton co-chairs Venable's Corporate Practice Group, splitting his time between Venable's Washington and Baltimore offices. He has a national practice, solving complex problems faced by lenders, investors, and entrepreneurs as they create, build, and buy or sell businesses. He routinely advises on mergers and acquisitions and financings, including every flavor of equity investment. He regularly acts on behalf of private equity groups and banks.

In 2012 *Legal 500* recognized Chuck Morton as one of eleven "Leading Lawyers" doing middle-market M&A transactions of less than \$500 million. *Legal 500* describes him as "extremely knowledgeable... and a great negotiator." *US News and World Report* also named Chuck the Maryland Venture Capital Lawyer of the Year. In other publications, clients describe him as "unwavering in his commitment to us" (*Chambers USA 2010*), "smart, pragmatic, responsive and creative" (*Chambers USA 2012*) and "one of the most skilled M&A attorneys I have worked with... always astutely prepared and able to frame the issues in a manner that provides comfort to the client, ever-mindful of the "big picture" (2012 *US News & World Report/Best Lawyers in America*). In addition to recognition by *US News & World Report/Best Lawyers in America* for his skills working in the venture community, he is acknowledged in the publication in five other categories (Corporate Law, Leverage Buyouts and Private Equity Law, Mergers and Acquisitions Law, Structured Finance Law, and Technology Law). Each year since 2008, he has been tapped as one of five top M&A lawyers in Maryland by Maryland Super Lawyers. He has been Martindale-Hubbell AV Peer Rated (the highest possible rating) since 2000.

Chuck is a Life Fellow of the American Bar Foundation. The Fellows is an honorary organization of attorneys, judges, law faculty, and legal scholars who have demonstrated outstanding achievement and dedication to the welfare of their communities and to the highest principles of the legal profession. Membership in the Fellows is limited to one-third of one percent of lawyers licensed to practice in each jurisdiction. Members are nominated by Fellows in their jurisdiction and elected by the Board of the American Bar Foundation. He has been similarly recognized by the Maryland State Bar Association and the Bar Association of Baltimore City.

AREAS OF PRACTICE

Corporate
Mergers and Acquisitions
Technology Transactions and Outsourcing
Junior Capital / Mezzanine Finance
Corporate Finance and Securities
Investment Management
Finance
Advertising and Marketing

INDUSTRIES

Life Sciences
Green Businesses
Emerging Companies: Venable
Venture Services

BAR ADMISSIONS

Maryland
District of Columbia

COURT ADMISSIONS

U.S. Court of Appeals for the Fourth Circuit
U.S. Supreme Court

EXAMPLES OF RECENT MATTERS

- Represented a professional engineering firm in its growth and subsequent exit.
- Represented RWD Technologies, LLC in the sale of its business, which provides human and operational performance improvement solutions, to General Physics Corporation for approximately \$28 million.
- Represented an IT solutions company in the \$200 million sale of its software suite to a portfolio company of a private equity firm, which specializes in investing in a variety of sectors including business services, consumer products, media, technology and telecom.

EDUCATION

J.D., University of Maryland School of Law, 1990

Myerowitz Moot Court Award

National Moot Court Team

Moot Court Board

Cunningham Award

B.A., University of Vermont, 1987

JUDICIAL CLERKSHIPS

Honorable Joseph C. Howard, U.S. District Court for the District of Maryland

Honorable Deborah K. Chasanow, U.S. District Court for the District of Maryland

MEMBERSHIPS

American Bar Association

Maryland State Bar Association

Bar Association of Baltimore City

- Represented an early stage, direct response, online marketing firm as it secured its first round of outside investment.
- Represented a cyber-security firm as it navigated through a minority shareholder dispute and recapitalization.
- Representing, as lead counsel, a syndication of five banks in a loan of up to \$250 million to a leading consumer products company secured by domestic and international assets.
- Representing the borrower in a music publishing transaction including a \$330 million equity investment and a senior subordinated financing of \$70 million in the context of a workout.
- Represented an advertising agency in its growth and subsequent exit.
- Representing, as lead counsel, subordinated lenders in transactions totaling hundreds of millions of dollars. These transactions have been secured and unsecured, with equity (including warrants) and without. The investments have been made by SBIC's and private equity groups.
- Representing, as lead counsel, an electronics manufacturer in its sale to a Fortune 100 company for \$165 million.
- Representing, as lead counsel, a private equity firm in its equity investment in a specialty food company.
- Representing, as lead counsel, the junior generation in an intra-family purchase of a successful consumer products company with a transaction value of approximately \$20 million.
- Representing, as lead counsel, a computer gaming company, founded by Sid Meier, in its sale to a publicly traded entity for a value, including earn-outs, of more than \$22 million.
- Representing, as lead counsel, the majority shareholders in a multi-year dispute with a minority shareholder.
- Representing, as lead counsel, the junior generation in an intra-family business dissolution involving more than \$100 million in assets.
- Representing, as lead counsel, the borrower in a \$35 million second lien financing.
- Representing, as lead counsel, one side in the dissolution of a leading regional accounting firm.
- Representing leading life-science researchers in their approved outside activities, before Congress, in their departure from government employment and affiliation with a university, and in the development, financing and growth of their private sector business.
- Representing, as outside general counsel, hundreds of growing firms through the United States.

HONORS

- Recognized in *Best Lawyers* as Venture Capital Law Lawyer of the Year, 2012
- Recognized in *Chambers USA*, Corporate/Mergers & Acquisitions, Maryland, 2010 - 2012
- Listed in *Best Lawyers in America* for Corporate Law, Leveraged Buyouts and Private Equity Law, Mergers & Acquisitions Law, Structured Finance Law, Technology Law and Venture Capital Law, (Woodward/White), 2010 - 2013
- Selected for inclusion in *Maryland Super Lawyers*, 2008 - 2013
- Recognized as "Leading Lawyer" in the 2012 edition of *Legal 500*, M&A: Middle-Market (Sub-\$500m)
- Recognized in *Legal 500*, M&A: Middle-Market (sub-\$500m), 2011 - 2012
- Named a "Top Rated Lawyer" in Mergers and Acquisitions, American Lawyer Media, 2012
- Leadership in Law, *The Daily Record*, 2007
- Maryland's Legal Elite, *Smart CEO Magazine*, 2005 - 2006 and 2010 - 2011
- 40 Under 40, *Baltimore Business Journal*, 2002

- Innovator of the Year, *The Daily Record*, 2002
- Fellow of the American Bar Foundation
- Life Fellow, Maryland Bar Foundation
- Life Fellow, Bar Association of Baltimore City Foundation
- AV® Peer-Review Rated by *Martindale-Hubbell* since 2000

ACTIVITIES

Outside of Venable, Chuck is the Chairman of the global board of directors of the Association for Corporate Growth. ACG's 14,000 members are the investors, lenders, advisors and leaders of more than 20,000 middle-market companies. Founded in 1954, the Association for Corporate Growth is a global organization with 56 chapters. Chuck also has a faculty appointment at the Johns Hopkins University, where he teaches various business classes, serves as the Vice-Chair of the Technology Development Corporation of Maryland (TEDCO), and is the General Counsel for the Maryland Chamber of Commerce.

Chuck lives in Baltimore with his wife and four children where he is active in many charitable organizations, including serving as Past Chair of the Pastoral Council at the Cathedral of Mary Our Queen.

PUBLICATIONS

Mr. Morton is a prolific author. He recently wrote a chapter on how to represent growing technology companies in *Technology Law Client Strategies: Leading Lawyers on Strategizing For Cases, Resolving Disputes, and Effectively Working With Clients*. The book was published by Aspatore Books in 2007 as part of the Inside the Minds™ catalog. He is also a contributing author to *Maryland Technology Transactions: The Venable Practice and Forms Manual* released in 2002. Mr. Morton has published more than 100 articles in periodicals on various business-related issues and is regularly featured as a speaker at conferences and seminars.

- July 30, 2012, A Tale of Two Middle Markets, *CNBC.com*
- October 2011, Legal Considerations for Carve-Out Transactions, *Corporate Alert*
- July 2009, Sub-Debt Alert
- March 31, 2009, Treasury and the SEC Intend to Require Managers of Hedge Funds to Register
- March 24, 2009, Treasury's Public / Private Investment Program: What You Need to Know and Do Today
- October 2008, Sub-Debt Report
- October 2007, Sub-Debt Report
- September 28, 2007, Technology Law Client Strategies: Leading Lawyers on Strategizing for Cases, Resolving Disputes & Effectively Working with Clients (Inside the Minds)
- February 16, 2007, Growing To Scale. Planning Your Exit
- October 20, 2006, Escrows, Survival, Caps and Baskets: Making Sense of Indemnification Provisions, *Baltimore Business Journal*
- November 1, 2005, MD Technology Transfer Opportunities Continue to Flourish, *The Daily Record*
- October 21, 2005, More Borrowers Look to Second Lien Loans as Their First Funding Option
- October 5, 2005, How to Structure Your Deal, *The Daily Record - Tech Link*
- October 3, 2005, How to Structure Your Deal
- July 8, 2005, Did Your Firm Pull Off the Best Deal In MD Recently?
- June 17, 2005, With the End in Mind, Consider How Your Company is Going to Prosper
- March 2005, Tech Transfer Primer
- March 2005, Tech Transfer Primer

- February 18, 2005, Know Your Place In Line When It Comes To Intercreditor Agreements
- December 1, 2004, Thirty-Three Flavors of Money
- November, 1, 2004, Secrets Can Help Build Your Business
- October 2004, Keep Your House (Or Lab) In Order, *The Daily Record*
- September 2004, Risky Business of Tech Development, *The Daily Record*
- December 5, 2003, Is Your Team Thinking Outside the Box?, *The Daily Record*
- November 10, 2003, Redux: Getting Scientists, Businesspeople to Sing from the Same Lab Book, *The Daily Record*
- October 17, 2003, Eliminate the Gray Area in Copyright Discussions, *Baltimore Business Journal*
- October 3, 2003, From the Perspective of the Tech Transfer Office, *The Daily Record*
- September 5, 2003, Getting Scientists, Businesspeople To Sing From the Same Lab Book, *The Daily Record*
- August 1, 2003, Technology Transfers: Intellectual Property Protection Part II, *The Daily Record*
- July 3, 2003, Technology Transfers: Intellectual Property Protection, *The Daily Record*
- June 6, 2003, Technology transactions: exploring equity investments and joint ventures, *The Daily Record*
- May 2, 2003, Financing Technology Transfers: Finding the Dollars That Make Sense, *The Daily Record*
- April 5, 2003, Tech Transfers: Does Your Team Have the Right Stuff?, *The Daily Record*
- March 4, 2003, Tech Transfers: A Diamond In The Rough, *The Daily Record*
- February 28, 2003, Mind Your M&A's
- November 2, 2002, How to make your joint venture a success, *The Daily Record*
- October 29, 2002, Maryland Technology Transactions
- October 5, 2002, Pay Attention to the Legal Basics, *The Daily Record*
- October 5, 2002, The Dotted Line – Pay Attention to the Legal Basics
- September 7, 2002, Tech transfers: handle with care, *The Daily Record*
- July 6, 2002, Taking a bruising – Mosh pit introduces students to the harsh world of business, *The Daily Record*

SPEAKING ENGAGEMENTS

- January 24, 2013, The Changing Landscape for Employer Health Plans: What Employers and Plan Sponsors Need to Know
- January 23, 2013, The Changing Landscape for Employer Health Plans: What Employers and Plan Sponsors Need to Know
- December 3, 2012, "Growth Equity" at the Brookings Institution
- May 9, 2012, "Carve-Outs in M&A Deals," hosted by Strafford Publications and Seminars
- April 25, 2012 - April 27, 2012, ACG InterGrowth 2012
- February 21, 2012, "Mezzanine Financing: Legal Considerations for Middle Market Deals" for Strafford
- October 12, 2011, "Preparing Your Middle-Market Company for a Sale," hosted by Venable LLP
- September 28, 2011, "Effective Use of Patents to Raise Capital and Protect R&D" at the Annual Water Innovations Alliance Conference
- September 27, 2011, "Preparing Your Middle-Market Company for a Sale," hosted by Venable LLP

- August 22, 2011, The Life of an IP Lawyer – Servicing Client Needs, Driving Business, Problem Solving and Helping Foster Technology and Creativity
- June 7, 2011, "Venture Services for Technology Companies – A Tale of Two Clients" hosted by Larta Institute
- May 16, 2011, "Effective Use of Patents to Raise Capital and Protect R&D" at the Dayton Water Conference
- December 10, 2009, How To Secure SBIC Money For Your Next Fund Webinar
- April 19, 2009, Johns Hopkins Scientific Community
- March 17, 2009 - March 18, 2009, DealFlow 2009 Conference
- March 11, 2009, Bar Association of Baltimore City's Milton Talkin Lecture Series
- November 12, 2008, Corporate Finance in Tumultuous Times
- September 23, 2008, The Private Equity Conference
- July 15, 2008, Creating a Biotech Enterprise
- October 30, 2007, Mastering Due Diligence – 25 Seasoned Experts Reveal Ways to Improve the Odds
- October 11, 2007 - October 12, 2007, Equity and Sub-Debt Market Update Seminar
- February 20, 2007, 2007 Leadership Program
- November 30, 2006, Panelists, "Power and Authority Opinions," Program on "Using & Drafting Opinion Letters And The New 2006 Draft Report," MICPEL
- November 21, 2006, Program on "The Power of Angel Investing"
- March 18, 2004, Internet, Nonprofits and the Law
- June 10, 2003, Intellectual Property Basics
- February 20, 2003, Consulting Engineer's Council Leadership Development Program
- January 20, 2003, Going From Mind to Market Seminar
- January 14, 2003, The Lynn C. and Joseph R. Reynolds Jr. Intersession Series
- November 1, 2002, Legal Implications of Early Stage Investing
- September 2, 2002, National Business Institute 2002
- September 1, 2002, Going From Mind to Market Seminar



Christopher E. Condeluci

Of Counsel

Washington, DC Office

T 202.344.4231 F 202.344.8300

cecondeluci@Venable.com

AREAS OF PRACTICE

Employee Benefits and Executive Compensation

Healthcare

Legislative and Government Affairs

Tax and Wealth Planning

Tax Policy

GOVERNMENT EXPERIENCE

Staff Member, United States House of Representatives, Office of Representative Richard R. Chrysler (R-MI)

Tax and Benefits Counsel, United States Senate, Finance Committee

BAR ADMISSIONS

District of Columbia

Maryland

EDUCATION

J.D., LL.M, Employee Benefits Law, with honors, John Marshall Law School, 2003

B.A., Pennsylvania State University, 1995

Christopher Condeluci focuses his practice on employee benefits and tax policy, with a specific emphasis on health care reform, retirement and compensation policy. As former Tax Counsel to the Senate Finance Committee, Chris actively participated in the health reform debate and he is one of the few senior staffers to join the private sector since the enactment of the Patient Protection and Affordable Care Act.

Through his experience on Capitol Hill and the development of this important legislation, Mr. Condeluci helps clients with compliance with the new health care law. He can also advise on shaping any future health care-related legislative initiatives that may affect his clients. Furthermore, Mr. Condeluci has significant technical experience in retirement planning, more specifically tax-qualified retirement plans.

His experience also includes offshore deferred compensation, payroll taxes, education tax incentives (including 529 plans), cafeteria plans and health flexible spending and dependent care arrangements, health savings accounts, fringe benefit programs, and worker classification.

Prior to joining Venable, Mr. Condeluci served as Tax and Benefits Counsel for the U.S. Senate Finance Committee, where he represented the Senate Finance Committee in negotiating details of legislative policy changes on matters relating to health care, retirement, executive compensation, education tax incentives, payroll taxes, insurance tax, S Corporations, and other tax policy issues with Senate Leadership; the Senate Health, Education, Labor and Pensions Committee; the U.S. House of Representatives Committee on Ways and Means; and the U.S. House of Representatives Committee on Education and Labor.

Mr. Condeluci has written articles about retiree medical benefits and the defined benefit pension plan funding rules prescribed under the Pension Protection Act of 2006. He is also the co-author of a chapter on fiduciary issues in welfare plans in an ABA-commissioned book entitled *ERISA Fiduciary Law* and was a significant contributor to the *Health Savings Account Answer Book* and the *ERISA Fiduciary Answer Book* - relating health care reform issues. Mr. Condeluci frequently serves as speaker and commentator on a wide variety of health care, employee benefits and tax policy topics.

HONORS

Recognized in the 2012 edition of *Legal 500*, Employee Benefits and Executive Compensation

PUBLICATIONS

- January 4, 2013, "Private" Health Insurance Exchanges: Alternative Strategies for Employers, *Bloomberg BNA's Tax Management Compensation Planning Journal*

- January 2013, Limited Relief for Employers under Health Care Reform's "Play-or-Pay" Rules, Employee Benefits and Executive Compensation Alert
- December 11, 2012, Exchanges under Health Care Reform and "Private" Exchanges: What Does My Nonprofit Need to Know?
- December 2012, Private Health Insurance Exchanges: Alternative Strategies for Employers, *Health Insurance Underwriter*
- October 2012, Health Care Reform: Large Employers and the New Health Insurance Exchanges, Employee Benefits and Executive Compensation Alert
- September 2012, Private Exchanges: You Have Questions, We Have Answers, Employee Benefits and Executive Compensation Alert
- September 2012, Don't Play and Also Pay: What Nonprofit Employers Need to Know about Navigating the Employer-Sponsored Health Coverage Mandate
- September 2012, Don't Play and Also Pay: What Independent Schools Need to Know About Navigating the Employer-Sponsored Health Coverage Mandate, Independent School Law Alert
- September 2012, Private Health Insurance Exchanges: What Makes Them Successful?, *Health Insurance Underwriter*
- September 2012, Don't Play and Also Pay: Navigating the Employer-Sponsored Health Coverage Mandate, Employee Benefits and Executive Compensation Alert
- August 2012, Private Health Insurance Exchanges, *PLC Employee Benefits & Executive Compensation*
- July 2012, What Do Healthcare Reform and the "Fiscal Cliff" Have In Common? Tax Increases, Client Alerts
- May 2012, The Health Insurance Exchange and Related Requirements under Health Care Reform, *Practical Law Company (PLC)*
- April 2012, Legal Issues and the State-Based Exchange – Enhancing Your State's Readiness, Client Alerts
- December 2011, Health Care Reform: Defining "Essential Health Benefits", Employee Benefits and Executive Compensation Alert
- December 2011, Prepare Summaries of Benefits and Coverage for Group Health Plans, *PLC Employee Benefits & Executive Compensation*
- September 29, 2011, Advice to Large Employers on Health Insurance Exchanges: 'Be Aware', *BNA's Pension & Benefits Daily*
- July 29, 2011, Multiemployer Pension Plans: Unions and Their Retirees, Management, and Policymakers Must Share the Burden, *BNA's Pension & Benefits Daily*
- July 2011, The New Health Insurance Exchanges: Business Opportunities Abound, Don't Be Short-Changed, Client Alerts
- June 2011, Now or Never: The Waiver Program for Annual Limits on Essential Health Benefits is Ending, Employee Benefits and Executive Compensation Alert
- June 27, 2011, The Top 5 Tax Changes Under The Healthcare Reform Law, *Tax Notes*
- June 20, 2011, The New Health Exchange: What Will the Success of the Exchanges Mean for Large Employers?, *BNA Tax Management Memorandum, Vol. 52, No. 13*

SPEAKING ENGAGEMENTS

- January 24, 2013, The Changing Landscape for Employer Health Plans: What Employers and Plan Sponsors Need to Know
- January 23, 2013, The Changing Landscape for Employer Health Plans: What Employers and Plan Sponsors Need to Know
- December 13, 2012, "Employer Participation and Responsibilities" at the Mississippi Insurance Department's Health Care Reform Symposium
- December 11, 2012, Exchanges under Health Care Reform and "Private" Exchanges: What Does My Nonprofit Need to Know?

- December 6, 2012, "Exchanges as Facilitators or Marketplace Disruptors? The Role of Private Exchanges in Transforming How Health Insurance Coverage is Provided" at AHIP's Exchange Conference
- November 15, 2012, "Faceoff: Healthcare Exchanges and Medicaid Expansion" at the 2012 Legal Action Seminar
- November 13, 2012, "Tax Reform and Taxes Under the Patient Protection and Affordable Care Act" at the Council for Electronic Revenue Communication Advancement Fall 2012 Meeting
- November 8, 2012, Election Impact Conference, CQ Roll Call
- October 25, 2012, "Health Exchanges" at the U.S. Chamber of Commerce's 1st Annual Health Care Summit
- October 12, 2012, "Insurance Exchanges: How the States are Reacting to / Handling Health Care Reform" at the ABA's 23rd Annual National Institute on Health and Welfare Benefit Plans
- October 11, 2012, "PPACA: Federal Legislation – What May Happen" at the ABA's 23rd Annual National Institute on Health and Welfare Benefit Plans
- October 4, 2012, "Staying Competitive in the Changing State Regulatory Environment," AIS Health Business Roundtable
- July 12, 2012, ACG Webinar Series: "The Future of the Affordable Care Act: An Analysis of the Supreme Court Decision"
- July 9, 2012, "Supreme Court Healthcare Ruling: What's Next," webinar for Thomson Reuters
- June 29, 2012, After the Supreme Court Healthcare Ruling: What's Your Next Move?
- June 25, 2012, "Private Exchanges" at the National Association of Health Underwriters (NAHU) Annual Convention
- June 20, 2012, "How the Supreme Court Decision Impacts Private Health Benefits Exchanges" at AHIP's Exchange Conference
- June 7, 2012, "Health Insurance Exchanges" at The Health Management Academy's Government Relations Forum
- May 16, 2012, "The Supreme Court and the Health Care Reform Law: Impact on the IRS" at the CERCA Spring Meeting
- April 25, 2012 - April 27, 2012, ACG InterGrowth 2012
- March 27, 2012, Quality-based Dental Care: An Uncertain Future of Opportunity
- March 8, 2012, "Preparing for Exchanges" at the Private Exchanges in the Post-Reform Environment conference for AHIP
- February 14, 2012, "How Defined-Contribution Benefit Design Can Help Insurers, Employers and Enrollees" for Atlantic Information Services (AIS)
- December 1, 2011, "Health Reform Options: Private Health Exchanges, Health Care Compacts and other Health Reform Options" at the National Conference of State Legislatures (NCSL) Fall Forum
- November 1, 2011, "Insurance Exchanges: How the States are Reacting to and Handling Health Care Reform" at the 22nd Annual National Institute on Health and Welfare Benefit Plans
- October 31, 2011, "Federal Legislative Update: What's Been Passed? What's on the Horizon?" at the 22nd Annual National Institute on Health and Welfare Benefit Plans
- October 12, 2011, National Journal LIVE/Blue Cross and Blue Shield Association Policy Summit
- September 27, 2011, "Navigating the Current Regulatory Environment - Health Care Reform" at the Financial Executives Institute, Washington Policy Conference
- September 21, 2011, "Summaries of Benefits and Coverage under Health Care Reform: Your Guide to the New Requirements" for Practical Law Company
- June 22, 2011, "The Nuts and Bolts of the Exchange – A Brief Summary" at the DC Bar Healthcare Section CLE Luncheon
- May 19, 2011, "The New Health Exchange: What Will the Success of the Exchanges Mean for Large Employers?" BNA Tax Management Advisory Board Meeting



Jennifer Spiegel Berman

Associate

Baltimore, MD Office

T 410.244.7756 F 410.244.7742

jsberman@Venable.com

Jennifer Berman is a member of the firm's Employee Benefits and Executive Compensation Group. She handles a broad range of employee benefits and executive compensation matters including tax-qualified retirement plans, executive compensation arrangements, cafeteria plans and health and welfare benefits plans. Among other things, Ms. Berman routinely drafts employee benefit plans, summary plan descriptions and employee communications; and advises clients on tax, ERISA, HIPAA and COBRA issues.

AREAS OF PRACTICE

Employee Benefits and Executive Compensation

BAR ADMISSIONS

District of Columbia
Maryland

EDUCATION

J.D., *cum laude*, University of Pennsylvania Law School, 2006

Editor-in-Chief, *Journal of Labor and Employment Law*

Recipient, The George Shechtman Prize, Contracts

Recipient, The M.H. Goldstein Memorial Prize, Best Paper in Labor Law

B.A., *magna cum laude*, University of Pennsylvania, 2004

MEMBERSHIPS

American Health Lawyers Association

PUBLICATIONS

- January 2013, Limited Relief for Employers under Health Care Reform's "Play-or-Pay" Rules, Employee Benefits and Executive Compensation Alert
- October 2012, Health Care Reform: Large Employers and the New Health Insurance Exchanges, Employee Benefits and Executive Compensation Alert
- September 2012, Private Exchanges: You Have Questions, We Have Answers, Employee Benefits and Executive Compensation Alert
- September 2012, Don't Play and Also Pay: What Nonprofit Employers Need to Know about Navigating the Employer-Sponsored Health Coverage Mandate
- September 2012, Don't Play and Also Pay: What Independent Schools Need to Know About Navigating the Employer-Sponsored Health Coverage Mandate, Independent School Law Alert
- September 2012, Don't Play and Also Pay: Navigating the Employer-Sponsored Health Coverage Mandate, Employee Benefits and Executive Compensation Alert
- April 2012, New Health Plan Rules to Keep in Mind When Planning for the 2013 Open Enrollment Season, Employee Benefits and Executive Compensation Alert
- December 2011, Health Care Reform: Defining "Essential Health Benefits", Employee Benefits and Executive Compensation Alert
- July 2011, Brief Delay of the New Fee Disclosure Rules — What Plan Sponsors Need to Know and Do Now, Employee Benefits and Executive Compensation Alert
- June 2011, Health Care Reform: June 30 Compliance Deadline Fast Approaching, Employee Benefits and Executive Compensation Alert
- April 2011, Health Care Reform: Form W-2 Reporting of Employer-Provided Group Health Coverage, Employee Benefits and Executive Compensation Alert
- March 2011, Health Care Reform: Another Extended Grace Period, Employee Benefits and Executive Compensation Alert
- August 2010, New Preventive Care Coverage Rules Under Health Care Reform, Employee Benefits and Executive Compensation Alert

- July 2010, Grandfathered Status For Your Group Health Plans Under Health Care Reform: What is at Stake?, Employee Benefits and Executive Compensation Alert
- July 2010, Highlights of the New "Patient's Bill of Rights" Regulations Implementing Key Features of Federal Health Reform, Employee Benefits and Executive Compensation Alert
- April 2010, Mental Health Benefits: More Changes Needed to Your Health Plan, Employee Benefits and Executive Compensation Alert
- March 2010, Important Changes to Form 5500 Filing Requirements, Employee Benefits and Executive Compensation Alert
- March 2010, Important April 30, 2010 Deadline for Employers Who Have Adopted Pre-Approved Retirement Plans, Employee Benefits and Executive Compensation Alert
- January 2010, IRS Issues Section 409A Plan Document Correction Procedures With Potential Advantages To Correction By December 31, 2010, Employee Benefits and Executive Compensation Alert
- December 2009, Federal COBRA Subsidy Expanded, Employee Benefits and Executive Compensation Alert
- November 2009, Effective Date of Normal Retirement Age Regulations Extended for Governmental Plans, Employee Benefits and Executive Compensation Alert
- August 2009, Update on Legal Developments Affecting Employee Benefit Plans, Employee Benefits and Executive Compensation Alert
- July 2009, Looking Toward 2010 - Key Legal Changes to Keep in Mind While Designing Your 2010 Health Plans, Employee Benefits and Executive Compensation Alert
- July 2009, Important News for 403(b) Plan Sponsors, Employee Benefits and Executive Compensation Alert
- March 19, 2009, Department of Labor Issues Model Notices on COBRA Subsidy, Employee Benefits and Executive Compensation Alert
- March 2009, Supreme Court Rules Plan Documents, Not Divorce Decree, Control in ERISA Beneficiary Dispute, Employee Benefits and Executive Compensation Alert
- February 25, 2009, What Every Employer Needs to Know (and Do) About the New COBRA Subsidy Provisions in the Economic Stimulus Act, Employee Benefits and Executive Compensation Alert
- December 2, 2008, Year-End Checklist for Benefit Plan Sponsors, Employee Benefits and Executive Compensation Alert
- November 20, 2008, Venable Employee Benefits Lawyers Selected as *Best Lawyers in America*, Employee Benefits and Executive Compensation Alert
- October 28, 2008, 2009 Dollar Limits on Compensation and Benefits, Employee Benefits and Executive Compensation Alert
- October, 2008, Roundup of Important Developments Affecting Health Plans, Employee Benefits and Executive Compensation Alert
- September 2008, The Heroes Earnings Assistance and Relief Tax Act of 2008 (the "HEART" Act), Employee Benefits and Executive Compensation Alert
- July 2008, More Items for Your Section 409A Compliance Checklist, Employee Benefits and Executive Compensation Alert
- May 2008, Highlights of Retirement Plan Distribution Changes for 2008, Employee Benefits and Executive Compensation Alert
- March 2008, 401(k) Participants Can Sue Plan Fiduciaries For Losses To Individual Accounts, Employee Benefits and Executive Compensation Alert
- December 2007, Year-End Wrap-Up for Qualified Plans, Employee Benefits and Executive Compensation Alert
- October 26, 2007, Section 409A Final Regulations Delayed to 2009, Employee Benefits and Executive Compensation Alert
- October 2007, 2008 Dollar Limits on Compensation and Benefits, Employee Benefits and Executive Compensation Alert

- September 2007, Form 990 Executive Compensation Reporting – Prepare for Change, Employee Benefits and Executive Compensation Alert
- August 2007, Important Developments Affecting Health Plans, Employee Benefits and Executive Compensation Alert
- July 2007, DOE Cost Reimbursement Policy and Cost Accounting Standards for Pension Plan Contributions Required Under New Funding Rules, Employee Benefits and Executive Compensation Alert
- July 2007, Section 403(b) Tax-Sheltered Annuity Final Regulations Expected This Week, Employee Benefits and Executive Compensation Alert
- April 2007, Current Regulatory and Legislative Developments Could Dramatically Affect Employment and Benefit Issues for Government Contractors, Employee Benefits and Executive Compensation Alert
- April 10, 2007, Final Regulations Regarding Deferred Compensation Under Section 409A Released Today, Employee Benefits and Executive Compensation Alert
- April 6, 2007, Tidbits from the Trenches: Indemnifications, Gross-Ups and Code Section 409A, Employee Benefits and Executive Compensation Alert
- April 3, 2007, Final Regulations Regarding Deferred Compensation Under Section 409A Expected Shortly, Employee Benefits and Executive Compensation Alert
- October 2006, November 14th Deadline for Sending Annual Medicare Part D Notice Fast Approaching, Employee Benefits and Executive Compensation Alert
- October 18, 2006, IRS Announces 2007 Dollar Limits on Compensation and Benefits, Employee Benefits and Executive Compensation Alert
- October 2006, The IRS Extends Deferred Compensation Plan Deadlines Under §409A, Employee Benefits and Executive Compensation Alert

SPEAKING ENGAGEMENTS

- January 24, 2013, The Changing Landscape for Employer Health Plans: What Employers and Plan Sponsors Need to Know
- January 23, 2013, The Changing Landscape for Employer Health Plans: What Employers and Plan Sponsors Need to Know
- July 24, 2012, "The Supreme Court's Ruling on the Affordable Care Act and What it Means for Your Health Plans" for Kelly Benefit Strategies
- April 7, 2011, "Understanding the Impact of Health Care Reform on Employers" for Lorman Education Services