

## The Trump Administration: The (Huge) Issues for Employee Benefit Plans

Today's Program – February 28, 2017  
Speaker Biographies



**Juliana Reno, Partner, Venable LLP**

Juliana Reno represents clients in all areas of benefits issues. Juliana regularly counsels companies on health and welfare plans, including the Affordable Care Act, ERISA, COBRA and HIPAA. She also advises clients concerning the mental health parity rules and the regulation of cafeteria plans. She has drafted model administrative services agreements, and trained in-house legal and sales staff on benefits issues.

Juliana also advises clients on benefits-related litigation, including disputed cutbacks to retiree health benefits, alleged prohibited transactions and breaches of fiduciary duty, and claims for benefits under ERISA and non-ERISA plans.

In addition to her private practice, Juliana taught an elective employee benefits course for many years as an adjunct professor at Creighton University School of Law in Omaha, and taught a course in welfare benefits at John Marshall Law School in Chicago.



**James A. Woehlke, COO & General Counsel, MBL Benefits Consulting**

With over 30 years of legal and accounting experience, Jim leads MBL Consulting's legal and compliance teams. Prior to joining MBL he was general counsel for the New York State Society of Certified Public Accountants for eleven years and their director of tax policy for the four years. He also served four years as a technical manager in the American Institute of Certified Public Accountants' Tax Division. Jim practiced law with the Wichita, Kansas, law firm of Fleeson, Gooing, Coulson & Kitch and accounting with KMG/Main Hurdman, including one year with that firm's Washington National Tax Office. Jim is currently licensed in New York as an attorney and CPA and held ASAE's Certified Association Executive designation through 2013.

Jim graduated cum laude from Grove City College. He received his J.D. and M.B.A. from Drake University and a Master of Law–Taxation with distinction from Georgetown University Law Center

### **Marjorie Ajero, VP Human Resources, Group Nine Media**

Marjorie Ajero is an accomplished Human Resources executive with over 15 years of experience within the digital media, eCommerce and publishing industries. For over three years she has led the human resources team at Group Nine Media (previously Thrillist Media Group), a high-growth environment, through various mergers and acquisitions. During this time, she has successfully executed the human resource requirements for due diligence, labor relations, integration and cultural alignment.

Marjorie's expertise transcends multiple HR functions including strategy, planning and execution, organizational development, change management, performance and talent management, leadership training and team development, and benefits, including the adoption of ACA compliance strategies. Prior to her role at Group Nine she was the Senior Director of Human Resources at Everyday Health where she helped facilitate the HR requirements for the company's IPO.

She has been a mentor coach with New York Needs You, mentoring low-income college students, for over five years.

## **Thomas Hochberg, Senior Manager, Payroll & Benefits, Group Nine Media**

Thomas is a seasoned human resource professional with 10+ years of Payroll and Benefits experience. He has lead Group Nine Media's (previously Thrillist Media Group) administration for over four years. He oversaw the adoption and implementation of ACA compliance for the company. He was instrumental in identifying, selecting, and transitioning to a new payroll/HRIS platform, benefits plans and payroll cycle to support the company's hyper-growth. Thomas audits payroll results and oversees employee enrollments and terminations in benefits plans for the company.

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## **SAVE THE DATE – UPCOMING VENABLE EVENT**

### **Breakfast Roundtable on The Importance of Cyber Due Diligence in Deals**

**March 14, 2017**

8:30 a.m. Registration and Breakfast | 9:00 – 10:00 a.m. Program

With the threat and effects of a data breach increasing, so too do the necessity for and importance of a detailed cybersecurity risk assessment in the context of due diligence for M&A transactions both for a seller before initiation of a sale process and for a buyer during one.

As a seller prepares itself for a sale, it must make a hard-headed determination of what policies and procedures it has in place to protect its data as well as the data of its customers. Well-constructed cybersecurity policies and procedures will reassure potential buyers that the company is not a potential reputational and liability trap and help the target maximize its sale price.

Similarly, purchasers should be increasingly focused on cybersecurity audits of targets to ensure that both the technology being purchased and the data of customers and employees is well protected. Relying merely on standard contractual protections such as a strongly worded representation and indemnity may not be sufficient if pre-closing breaches of the representation manifest themselves post-closing, given their potential for enormous reputational harm, legal liabilities as well as the loss of the proprietary nature of highly confidential and sensitive intellectual property.



# The Trump Administration: The (Huge) Issues for Employee Benefit Plans

February 28, 2017

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## Road Map

- Health Reimbursement Arrangements
- Paid Leave
- LGBT Benefits
- Affordable Care Act
- Q&A

## Health Reimbursement Arrangements

- 21<sup>st</sup> Century Cures Act (effective January 2, 2017\*)
  - Signed December 13 – passed with significant bi-partisan support
  - Streamlines medical device approval by FDA
  - NIH \$8.75 billion budget boost
  - Directs FDA to explore “real world evidence”, a possible streamlining of current drug approval process, “randomized clinical trials”.
  - Raises awareness of mental illnesses
  - \$1.8 billion over five years for “cancer moonshot”
  - Expansion of HRAs for employers under 50

\* Previously banned under ACA because did not meet creditable coverage rule

## Paid Leave: Federal

- FMLA
  - Currently UNPAID
- Trump Campaign Proposals
  - 6 weeks paid maternity leave
  - Deductible Dependent Care Expenses

## Paid Leave: State and Local

- New York State - Paid Family Leave
  - Phase-In: 8 weeks in 2018, 10 weeks in 2019, 12 weeks in 2020
  - Employers of any size
  - Employees who have worked 26 weeks or more for the employer
- New York City - Paid Sick Leave
  - Employers with 5 or more employees
  - Employees who have worked 80 hours or more in a calendar year
  - Accrue 1 hour of sick time for every 30 hours worked
  - Accrual and carryover may be capped at 40 hours

## LGBT Benefits

- Human Rights Campaign - Corporate Equality Index
- Federal Nondiscrimination Laws
  - Title VII of the Civil Rights Act
  - “Recipients of Federal Funds”
  - Section 1557 of the ACA
- State and Local Nondiscrimination Laws



# The Affordable Care Act

## The Good

- No pre-existing conditions exclusions
- No lifetime Maximum (unlimited benefits)
- Annual Maximum out of Pocket [MOOP]
- Coverage of dependents to age 26
- Set minimums for what insurance policies should cover
- Affordability benefits for the poor
  - Tax credit
  - Premium reductions

## The Bad and the Ugly

- The Bad...
  - Little emphasis on health-cost containment
  - “Cost-plus thinking” left in the system
- The Ugly...
  - YEAR-END REPORTING
  - Individual mandate
  - Employer penalties
  - Essential health benefit “loophole”
  - Health plan fees
    - PCORI (or CERF) Fee
    - Transitional reinsurance fee
  - Cadillac tax

# What Changes Should Employers Watch For in Repeal/Replace Bills?

## Repeal of Below Will Almost Surely Happen

- Employer mandate/penalties
- Individual mandate/penalties
- Reporting
- Cadillac tax

## Changes to Covered Care

- Cutbacks to Essential Health Benefits
- Cutbacks to “Preventive Care”
- Pre-Existing Conditions

## Changes to Limits

- Maximum Deductibles
- Maximum Out-of-Pocket
- No Annual Maximums
- No Lifetime Maximums

## Other Potential Changes

- Some of the legislative proposals we may see:
  - Expanded usefulness of HRAs and HSAs
  - Permission for insurance companies to sell across state lines
  - Increased reliance on consumer-driven health care
  - Increased pooling options for business
  - Shoring up employer self-funding options
  - Tort reform



# Thank You!

For questions, please contact:

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# Six Reasons to Have an Annual Exam

February 21, 2017

Over the years the importance of an annual physical exam has become debatable. At the end of the day, prevention is key. Taking a yearly look at your blood pressure, cholesterol, glucose levels and weight (to name a few) are strong indicators of potential ailments to come. With a few modifications, it's possible to change the path of your health and improve your future.

## Below are some ways that prevention keeps employees happier while increasing productivity and decreasing costs:

1. Patient's history and physical are the most important factors in arriving at a correct diagnosis for future ailments, without an annual physical there is no patient history(1)
  - Carriers often incentivize annual exams – gift cards, cash, other rewards
2. Indirect costs of employee poor health (2):
  - Lower productivity
  - Higher rates of disability
  - Higher rates of injury
  - Asthma, high blood pressure, smoking, obesity:
    - Reduce annual productivity by between \$200 and \$440 per person
    - Workers with diabetes average two more work days absent per year
3. Disease screening tests help to detect diseases in their early, most treatable stages and can prevent more serious illness
4. Healthy diets, weight and maintaining an active lifestyle are behaviors proven to be essential for a healthy life (3)
5. Absenteeism costs are reduced by approximately \$2.73 for every dollar spent on workplace wellness programs (4)
6. Annual exams allow employees to form a trusting relationship with a physician which leads to a higher likeliness that they will visit the doctor when they are ill and comply with treatment plans

A Rand Study (5) commissioned by the Department of Labor and Department of Health and Human Services found that lifestyle management interventions as part of workplace wellness programs can reduce risk factors, such as smoking, and increase healthy behaviors, such as exercise. They found that those effects are sustainable over time and clinically meaningful.

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1. <https://www.surgeongeneral.gov/priorities/prevention/strategy/appendix1.pdf>
2. <http://yalemedicine.yale.edu/winter2009/features/feature/51079/>
3. [http://www.ehintl.com/blog/importance\\_of\\_regular\\_physical\\_exams](http://www.ehintl.com/blog/importance_of_regular_physical_exams)
4. <https://hbr.org/2014/02/in-defense-of-corporate-wellness-programs>
5. <https://aspe.hhs.gov/pdf-report/report-congress-workplace-wellness>



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# The Importance of the Right Care at the Right Place

February 14, 2017

Educating employees about their healthcare options can lower costs while increasing productivity. This often starts by simply getting the right care at the right place.

Receiving the most cost-effective care benefits both the employee and the employer. The employee feels the immediate difference in costs with their copay, and usually thereafter with their coinsurance and/or reaching their deductible. The employer is impacted by the cost of the claim directly in the case of the self-funded, or driving up premiums in the case of the commercially insured.

**The difference between receiving care at an urgent care (UC) facility vs. the emergency room (ER) paints a clear picture of how disparate the cost of care can be based on the location of its delivery ([debt.org](http://debt.org), 2014).**

- Upper Respiratory Infection – \$111 (UC) vs. \$486 (ER)
- Urinary Tract Infection – \$112 (UC) vs. \$665 (ER)
- Strep Throat – \$111 (UC) vs. \$531 (ER)
- Sinusitis – \$112 (UC) vs. \$617 (ER)
- Pink Eye – \$102 (UC) vs. \$370 (ER)
- Allergies – \$97 (UC) vs. \$97 (ER)
- Acute Bronchitis – \$127 (UC) vs. \$595 (ER)
- Earache – \$110 (UC) vs. \$400 (ER)

Cost efficient care delivery often translates to expediency of care making it a more appropriate and pleasant experience for the patient. There are now a wealth of 24/7 care solutions that exist to treat common ailments with a physician diagnosing, treating and prescribing to treat an illness remotely. Most common are the telehealth models such as Teladoc and One Medical's concierge services complimented by their virtual care.

**Healthiest You** is a great example of a telehealth provider integrating cost comparison and tracking tools into their platform to provide the most accessible, affordable and appropriate care to patients. Healthier employees are happier employees!

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# Focusing on Financial Wellness

February 7, 2017

The term “wellness” has become an often over-used word in the workplace. However, it seems the definition is frequently siloed into healthcare and overlooks overall wellness which includes financial wellness, amongst other lifestyle considerations.

A recent PwC study reflected 45% of working adults cite their finances as a stress factor in the workplace. Another report by GoBankingRates.com reflects 69% of those surveyed had little or no savings, \$1000 or less, with a large segment with \$0 savings.

So why do employers need to focus on financial wellness? A 2015 Harris Poll reflects 86% of employees think that it’s important for their employer to offer some kind of financial wellness program.

## **Below are some suggestions for Financial Wellness Strategies:**

- Retirement planning – perhaps the most common, 401(k) programs don’t have to include an employer match, just giving an employee access to such tools will get them going
- Healthcare planning – education on the importance of FSAs, HSAs, selecting a PPO vs. EPO vs. HDHP plan (weighing out premiums to be paid and necessary benefits)
- Cross-departmental task forces – use to define value of employer benefits and educate employees on how to define personal financial goals
- Confidential employee financial self-assessment tools – surveys that help employees evaluate personal financial data, tax planning, employee benefits, retirement, family care, home buying, etc.
- Credit report programs and tools
- Fraud protection tools
- College savings plans
- Student loan education and repayment tools
- Tracking tools for financial goals
- Financial education (customized for individual employee needs)

Its important to monitor participation and the ROI for implementing various strategies. One thing to remember, incentives drive adoption. Incentives don’t have to be financial in nature, they can simply be defined through expanded learning opportunities and access to additional tools and resources.

**After all, Knowledge is Power!**

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# Maternity Leave Basics

January 31, 2017

The Family Medical Leave Act (FMLA) went into effect in 1993 ensuring your job would be protected for up to twelve weeks for medical leaves of absence including maternity leave. Beyond the FMLA, employers and employers' states occasionally expand on the benefit.

Most people outside of HR don't realize that compensation during maternity leave often falls under short-term disability (STD) insurance since it falls outside of the description typically covered by health insurance. However, in the absence of a paid maternity-leave program, STD replaces some income for up to six to eight weeks, the length depending on the type of delivery. FMLA doesn't itself require compensation during leave; when the law does apply, it merely ensures a job will still be available for the employee up to twelve weeks.

Whether you have a formal maternity-leave program or are thinking about one, here are some tips:

- The [FMLA](#) protects an employee if
  - He or she works at a company with 50 or more employees within 75 miles of the employee's workplace
  - The employee worked there for at least twelve months and
    - For a minimum of 1,250 hours during the twelve-month period preceding the leave.
- Only 16% of private employers fund paid maternity leave programs. ([2014 Working Mother study](#)).
- Some facts about STD policies:
  - Some are paid by employers, others may be partially paid by employers, offering an employee the ability to purchase additional coverage.
  - Often require the employee to foot the bill or to purchase those policies *before* the employee becomes pregnant.
  - Typically STD policies cover only a portion of an employee's salary during their leave.
  - Some states have disability laws that cover a woman's pregnancy and the birth of a child and you can learn about those states' laws here: [New York](#), [New Jersey](#), [California](#), [Illinois](#), [Hawaii](#) and [Rhode Island](#).
    - In New York, beginning at 50% of the employee's wage, limited to 50% of the average wage throughout the state—for some period—in [New York](#) 12 weeks; in [California](#), six. At least one city, [San Francisco](#), has augmented its state's program by requiring employers to pay the remainder of the employee's salary for the applicable period—in California the benefit runs for 6 weeks.
- The employer must continue to keep the employee on its health insurance plan while an employee is on FMLA, provided the employee pays the employee portion of their [health insurance](#). However, the company may have the legal right to ask for the reimbursement of health insurance premium payments if the employee does not return after FMLA leave.
- FMLA does not require accrual of benefits or time toward seniority when an employee is on leave.
  - This applies to vacation accrual, qualifying for raises based on seniority, participation in a 401(k) plan or the vesting of a employer's matching investment, or stock options.
- Employees cannot contribute to a 401(k) or flexible spending account while on FMLA leave because they're not receiving a paycheck from the employer and can't contribute pre-tax dollars.
- Most employers that offer fully-paid, maternity leave (that is, not through STD policies) also [pay to cover employee benefits during this period](#).

You can learn more about what other companies are offering from [this crowdsourced maternity leave policy resource center](#).

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## AUTHORS

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# Employee Benefits and Executive Compensation Alert

January 26, 2017

## What's Happening with the Affordable Care Act?

*Originally published January 25, 2017 on the Employee Benefits Legal Resource Site of Venable Counsel Carol V. Calhoun*

The recent flurry of activity around the Affordable Care Act (ACA) has many people confused about where it stands, and what the employer's obligations are. The following summarizes the activity so far.

### Legislative Repeal Activity

A popular meme suggests that the Senate voted to eliminate virtually all of the provisions of the ACA, including the ability to obtain insurance in spite of pre-existing conditions, the requirement to cover adult children up to the age of 26, etc. This is not the case.

On January 12, the U.S. Senate passed S. Con. Res. 3, a concurrent budget reconciliation resolution. The U.S. House of Representatives passed the resolution on January 13. By its terms, the resolution does not amend (or even mention) the ACA. Instead, it instructs the Senate Finance Committee; the Senate Health, Education, Labor and Pensions Committee; the House Ways and Means Committee; and the House Energy and Commerce Committee to draft Budget Reconciliation legislation that would reduce the deficit "by not less than \$1,000,000,000" and to reconcile such legislation among the respective committees no later than January 27, 2017.

The actions to which the meme refers are that the Democrats introduced various amendments to the resolution in the Senate that would have protected various provisions of the ACA from being cut as part of Budget Reconciliation. All of these amendments failed on a party line vote. However, the amendments were mostly symbolic — a way of putting the Republicans on record as being opposed to popular provisions of the ACA. Legally, the votes on them had no effect; any changes to the ACA would have to come through the Budget Reconciliation Act (which has not yet been drafted, much less passed) or other legislation.

There are two practical issues facing the Republicans with respect to repeal of the ACA. First, not all repeal provisions can be included in Budget Reconciliation. Congressional rules limit Budget Reconciliation provisions to those which affect the budget. Thus, for example, the ACA provisions regarding pre-existing conditions and coverage of adult children cannot be repealed by a Budget Reconciliation Act. While they could in theory be repealed by other legislation, the Budget Reconciliation Act is the only legislation which the Democrats cannot filibuster. The Republicans do not have enough votes in the Senate to overcome a filibuster. Thus, repeal of such provisions would require the cooperation of at least some Democrats.

The second practical issue is that President Trump said in his first news conference after the election that the ACA should be repealed and replaced "essentially simultaneously." Several Republican Senators have indicated that they are opposed to simply repealing ACA without a replacement. It is unclear whether at least some Republicans might cross party lines to oppose a bill that repealed ACA provisions without providing a replacement.

Finally, any repeal legislation is likely to have a delayed effective date on at least some of its



provisions. Individuals and businesses have already obtained insurance for 2017. There is reluctance among many Republicans to have a major change become effective in 2018, the year of mid-term elections. Thus, even to the extent that repeal legislation passes, current law is likely to remain in effect for some period of time.

### Legislative Replacement Activity

One of the issues with "repeal and replace" is that there is as yet no agreement on what the replacement might be. **President Trump has proposed the following:**

- . Elimination of the individual mandate.
- . Modify existing law that inhibits the sale of health insurance across state lines.
- . Allow individuals to fully deduct health insurance premium payments from their tax returns.
- . Allow individuals with high deductible health plans to use Health Savings Accounts (HSAs).
- . Require price transparency from all healthcare providers, especially doctors and healthcare organizations like clinics and hospitals.
- . Block-grant Medicaid to the states.
- . Remove barriers to entry into free markets for drug providers that offer safe, reliable and cheaper products.

By contrast, before the election, Congress passed **H.R. 3762, the Restoring Americans' Healthcare Freedom Reconciliation Act of 2015**, which would repeal portions of the Affordable Care Act (ACA). That Act would have eliminated the law's mandate penalties and subsidies, including Medicaid expansion. However, it would have left several of the ACA's market reforms in place. Insurers who sold plans either through the marketplaces or directly to consumers would still be required to:

- . Provide specific benefits and amounts of coverage;
- . Not deny coverage or vary premiums because of an enrollee's health status or limit coverage because of preexisting medical conditions; and
- . Vary premiums only on the basis of age, tobacco use, and geographic location.

Thus, President Trump's proposals are rather different than those previously introduced in Congress, and it is not clear what shape future proposals might take.

The situation is further complicated by the fact that **the Congressional Budget Office's analysis of H.R. 3762** indicated that:

- The number of people who are uninsured would increase by 18 million in the first new plan year following enactment of the bill. Later, after the elimination of the ACA's expansion of Medicaid eligibility and of subsidies for insurance purchased through the ACA marketplaces, that number would increase to 27 million, and then to 32 million in 2026.
- Premiums in the nongroup market (for individual policies purchased through the marketplaces or directly from insurers) would increase by 20 percent to 25 percent—relative to projections under current law—in the first new plan year following enactment. The increase would reach about 50 percent in the year following the elimination of the Medicaid expansion and the marketplace subsidies, and premiums would about double by 2026.

To the extent that opposition to the ACA has been grounded in a theory that the ACA has been

responsible for increases in health insurance premiums, Congress might be reluctant to adopt a proposal that its own analysis suggests would lead to further substantial premium increases.

### **Executive Order**

On January 20, President Trump issued an "Executive Order Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal." The executive order directs the heads of Secretary of Health and Human Services and the "heads of all other agencies (agencies)" to exercise all authority and discretion available to them to:

- . Waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications. (The Executive Order does not mention employers as one of the categories to be protected.)
- . Provide greater flexibility to States and cooperate with them in implementing healthcare programs.
- . Encourage the development of a free and open market in interstate commerce for the offering of healthcare services and health insurance.

There were, however, several limitations on the effect of the Executive Order:

- . The heads of the relevant agencies to whom the Executive Order is directed have not been confirmed yet.
- . The order is to be implemented consistent with applicable law and subject to the availability of appropriations. Thus, the agencies cannot merely disregard the law pending repeal.
- . To the extent that carrying out the directives in the order would require revision of regulations issued through notice-and-comment rulemaking, the heads of agencies must comply with the Administrative Procedure Act and other applicable statutes in considering or promulgating such regulatory revisions.

### **Conclusions**

It is clear that President Trump, and the majority of Republicans in Congress, want to pass some sort of repeal of the ACA as quickly as possible. However, neither the resolution passed by Congress nor the Executive Order makes any changes in current law. Many of the provisions of the ACA would be difficult or impossible for Republicans to repeal without Democratic support. And with only a narrow majority in the Senate, it is not even clear that the votes are there for repeal before a replacement plan can be developed. Thus, for now, employers should continue to assume that they will need to comply with the ACA mandates.



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## Employee Benefits and Executive Compensation Alert

February 21, 2017

### Reminder: February and March Deadlines!

For employers and other sponsors of group health plans, important deadlines are right around the corner.

#### MEDICARE PART D: Creditable Coverage Notice to the Centers for Medicare & Medicaid Services (CMS)

If an employer group health plan provides prescription drug coverage to anyone who is enrolled in Medicare, the employer must notify CMS as to whether the prescription drug coverage is "creditable" or "non-creditable." The notification is due within 60 days after the end of the plan year—by **March 1, 2017**, for calendar-year plans.

- The rule applies if any person covered by the plan is enrolled in Medicare Part A or Medicare Part B, and lives within the service area of a Medicare Part D plan.
- It does not matter whether the person is enrolled in Medicare on the basis of age or on the basis of disability.
- Most individuals are automatically enrolled in Medicare Part A (which is free) on or near their 65th birthday.
- Most employer group health plans cover at least one person who is age 65 or at least one person who is disabled and therefore will need to notify CMS.

Notification to CMS is given electronically. [Click here to be taken to the starting point.](#)

#### HIPAA: Breach Notice to the Secretary of Health and Human Services (HHS)

Virtually all employer group health plans are subject to HIPAA's rules requiring that various people be notified when there is a breach of unsecured protected health information (PHI). Although employers are understandably most concerned with the immediate need to notify the affected individuals, employers should not lose sight of the need to notify HHS on an annual basis. Specifically, for breaches of unsecured PHI involving fewer than 500 individuals, employers are required to notify HHS no later than 60 days after the end of the calendar year—by **March 1, 2017**, for calendar-year plans.

Notification to HHS is given electronically. [Click here to be taken to the starting point.](#)

#### AFFORDABLE CARE ACT: Large Employer Reporting

A large employer must send an individual report (Form 1095-C) to each employee who was full-time for at least one month in 2016.

- The deadline for providing this report is **March 2, 2017**.

The employer must also file the individual reports, together with a transmittal report (Form 1094-C), with the IRS. Employers who issue 250 or more individual reports must file electronically. These deadlines have not been extended and are much earlier than they were last year!

- The deadline for paper filings is **February 28, 2017**.

- The deadline for electronic filings is **March 31, 2017**.

A large employer must comply with these reporting obligations regardless of whether it offered health coverage or whether the coverage was fully-insured or self-funded.

If a large employer is also subject to minimum essential coverage reporting (see below), all of the information should be combined on the Form 1094-C.

## **AFFORDABLE CARE ACT: Minimum Essential Coverage Reporting**

Any entity that provided minimum essential coverage to any individual in 2015 must send an individual report (Form 1095-B) to each person who was covered for at least one month in 2015.

- The deadline for providing this report is **March 2, 2017**.

The entity must also file the individual reports, together with a transmittal report (Form 1094-B), with the IRS. Entities that issue 250 or more individual reports must file electronically. These deadlines have not been extended and are much earlier than they were last year!

- The deadline for paper filings is **February 28, 2017**.

- The deadline for electronic filings is **March 31, 2017**.

An employer that offered self-funded coverage must comply with these reporting obligations whether it is "large" or "small." (However, exceptions may apply to employers whose self-funded coverage was through a multiemployer or multiple-employer welfare arrangement.)

## **QUESTIONS?**

If you have any questions about this alert, please contact the authors or any member of Venable's [Employee Benefits and Executive Compensation Practice Group](#).



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## Employee Benefits and Executive Compensation Alert

December 14, 2016

### The 21st Century Cures Act: Great News for Small Employers

President Obama has just signed the 21st Century Cures Act (the Cures Act). Effective January 1, 2017, the Cures Act allows small employers to once again offer health reimbursement arrangements (HRAs) to their employees.

Before the Affordable Care Act (the ACA), companies were allowed to offer stand-alone HRAs. Unlike flexible spending accounts (the use-it-or-lose-it accounts), these HRAs were paid for only by the company and could roll over from year to year. Employees could use these HRAs to pay for health insurance premiums or medical expenses that were not otherwise covered, like deductibles. Under the ACA, stand-alone HRAs were almost completely prohibited.

The Cures Act once again makes HRAs permissible for small employers, though in a somewhat modified form. The major provisions are as follows:

- **Who is a qualifying small employer?** An employer that has fewer than 50 full-time equivalent employees and does not offer a group health plan.
- **Must all employees be eligible for the HRA?** No. However, only certain employees may be excluded. For example, the company can exclude employees who have been employed for less than 90 days, are under 25 years old, are part-time or seasonal, are covered by a collective bargaining agreement, or are resident aliens without U.S. source income.
- **May the employee contribute to the HRA?** No. Salary reduction contributions are not permitted. The HRA must be funded only by the company.
- **What expenses can be reimbursed by the HRA?** Expenses that constitute "medical care," including health insurance premiums, incurred by the employee or one of the employee's family members.
- **Is there a maximum benefit?** Yes. The HRA may reimburse up to \$4,950 per year for an employee with employee-only coverage, and up to \$10,000 per year for an employee with coverage for the employee and at least one dependent. These amounts are pro-rated if the employee is not covered by the HRA for the entire year. (These amounts are indexed to inflation and will increase in future years.)
- **Are the reimbursements taxable income to the employee?** No, provided that the employee is enrolled in minimum essential coverage. Reminder: "Minimum essential coverage" includes most individual and group health insurance, but does not include dental-only coverage, vision-only coverage, or coverage for a specified disease or illness.
- **Must employees lose their unspent HRA balances at the end of year?** No. A company may design the HRA so that the year-end balance carries over, or not.

- **Is a notice required?** Yes. Employees eligible for the HRA on the first day of a given year must be given notice at least 90 days before the first day of the year. However, notice will also be considered timely if it is given within 90 days after the Cures Act was adopted. This client alert covers only the highlights of the HRAs permitted by the Cures Act. Please contact any of the attorneys in our **Employee Benefits and Executive Compensation Group** if you have any questions regarding this HRAs or the Cures Act.



## Labor & Employment News Alert

December 29, 2016

### Effective December 31, New York Substantially Increases Salary Threshold for Exempt Employees

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While the implementation of the U.S. Department of Labor's intended revisions to the FLSA's overtime regulations remains on hold due to **pending litigation**, the New York State Department of Labor has taken matters into its own hands and, earlier today, published a final rule substantially increasing the salary threshold necessary for exemption under both the administrative and executive exemptions. These changes go into effect almost immediately, on December 31, 2016.

#### The Revised Regulations

As expected, New York State's new regulations create differing salary threshold requirements based on an employer's size and geographic location within New York State. For example, larger employers in New York City will be subject to a higher exemption threshold, whereas smaller New York City employers will be subject to a lower threshold. (Employer size is not relevant to employers outside of New York City.) Further, employers in New York City will be subject to a higher exemption threshold than employers outside of New York City. The new thresholds will be phased in incrementally over a number of years, with employers in New York City expected to phase in a higher exemption threshold most quickly.

Below is a summary of the new exemption threshold schedule:

#### Small Employers in New York City (10 or fewer employees)

- \$787.50 / week (\$40,950 / year) – Effective 12/31/16
- \$900.00 / week (\$46,800 / year) – Effective 12/31/17
- \$1,012.50 / week (\$52,650 / year) – Effective 12/31/18
- \$1,125.00 / week (\$58,500 / year) – Effective 12/31/19

#### Large Employers in New York City (11 or more employees)

- \$825.00 / week (\$42,900 / year) – Effective 12/31/16
- \$975.00 / week (\$50,700 / year) – Effective 12/31/17
- \$1,125.00 / week (\$58,500 / year) – Effective 12/31/18

#### Employers in Westchester, Nassau, and Suffolk Counties

- \$750.00 / week (\$39,000 / year) – Effective 12/31/16
- \$825.00 / week (\$42,900 / year) – Effective 12/31/17
- \$900.00 / week (\$46,800 / year) – Effective 12/31/18
- \$975.00 / week (\$50,700 / year) – Effective 12/31/19
- \$1,050.00 / week (\$54,600 / year) – Effective 12/31/20
- \$1,125.00 / week (\$58,500 / year) – Effective 12/31/21

#### Employers Outside of New York City, Westchester, Nassau and Suffolk Counties

- \$727.50 / week (\$37,830 / year) – Effective 12/31/16
- \$780.00 / week (\$40,560 / year) – Effective 12/31/17
- \$832.00 / week (\$43,264 / year) – Effective 12/31/18
- \$885.00 / week (\$46,020 / year) – Effective 12/31/19
- \$937.50 / week (\$48,750 / year) – Effective 12/31/20

#### **What Does This Mean for Employers?**

As noted, the new regulations become effective on December 31, 2016. Therefore, New York employers must quickly assess whether the currently salaries of their exempt administrative and executive employees fall at or above the new threshold. If they fall below the threshold, employers must decide whether to raise such employees' salaries in order to meet the threshold or instead to reclassify such employees as non-exempt.

Even after addressing this most pressing issue, employers must continue to regularly assess the exempt status of their "administrative" and "executive" employees, as the salary thresholds will continue to rise on an annual basis and the penalties for non-compliance can be severe. It is also important to note that the current injunction that applies to the revised FLSA regulations has no effect on the revised New York regulations; New York employers must quickly comply, regardless of the outcome of the federal litigation over the FLSA regulations.

We will continue to provide updates as the New York State Department of Labor sets forth instructive guidance on its new regulations.





## Employee Benefits and Executive Compensation Alert

November 2, 2016

### 2017 Dollar Limits on Compensation and Benefits

The Internal Revenue Service has announced the 2017 annual dollar limitations on benefits, contributions, and compensation. The key limits for 2017 (as well as the limits that applied in 2016) are listed in the table below:

Code Section	Limit	2017	2016
§401(a)(17)(A)	Annual Compensation	\$270,000	\$265,000
§402(g)(1)(B)	401(k)/403(b) Elective Deferrals	\$18,000	\$18,000
§414(q)(1)(B)(i)	Highly Compensated Employees	\$120,000	\$120,000
§414(v)(2)(B)(i)	Age 50+ "Catch-Up" Contributions	\$6,000	\$6,000
§415(b)(1)(A)	DB Annual Benefits	\$215,000	\$210,000
§415(c)(1)(A)	DC Annual Additions	\$54,000	\$53,000
§416(i)(1)(A)(i)	Key Employee/Officer	\$175,000	\$170,000
§457(e)(15)(A)	457(b) Elective Deferrals	\$18,000	\$18,000
§223(b)(2)	HSA Annual Contribution Levels		
	Individual	\$3,400	\$3,350
	Family	\$6,750	\$6,750
Social Security Wage Base		\$127,200	\$118,500

Please contact any of the attorneys in our [Employee Benefits and Executive Compensation Group](#) if you have any questions regarding this Alert.

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