

Bugbee & Conkle, LLP

THE EMPLOYER

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HEALTHCARE REFORM AND THE EMPLOYER

On Saturday November 21, 2009, the U.S. Senate voted, by the slimmest possible margin, to begin full debate on the Patient Protection and Affordable Care Act. If enacted as written, the legislation would have several potentially serious effects on employers.

Unlike the bill passed by the House of Representatives, the Senate's proposal does not require employers to provide health insurance to employees. However, if an employer with 50 or more full-time employees has even one employee that receives a federal subsidy to buy health insurance through the proposed new health insurance exchanges, the employer would have to either provide health insurance to all of its employees or pay a \$750 fine for each of those full-time employees. Another significant change in the Senate's proposal would assess a fine against certain employers that have waiting periods that exceed 30 days before employees can enroll in the employer's coverage, a fine payable for each full-time employee.

The legislation also would create a tax on employer-sponsored high-end insurance plans, a tax based on the extent to which the plan's benefits exceed benefit levels set by Congress. These so called "Cadillac" plans are often the result of years of collective bargaining between an employer and the union representing its employees, and the extent to which this tax (which could be very sizable) would affect future negotiations potentially represents a major huge change in the relationship between unionized employers and their employees.

In addition, the Senate's proposal would:

- Eliminate the "pre-existing condition" exclusions contained in many existing plans;
- Require some employers to provide reasonable break times and appropriate places for nursing mothers;
- Mandate that waiting periods within which employees may enroll for coverage cannot exceed 90 days;
- Require employers with 201 or more full-time employees that offer health benefit plans to enroll new full-time employees automatically;
- Require certain large employers to report to the government the health insurance coverage they offer;

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- Require employers to report the cost of employer-sponsored health coverage on the IRS Form W-2s issued to each employee;
- Establish simple cafeteria plans for small businesses;
- Establish a system of tax credits to help small businesses purchase health insurance for their employees; and
- Make several changes to the individual income tax treatment of health insurance benefits, cafeteria plans, health savings accounts, etc.

The legislation is now on the Senate floor for full debate and amendments. Assuming the Senate passes a bill, it would then have to be reconciled with the House legislation which is, at least at the present, substantially different in many key respects, both as to its substance and the ways in which it is funded.

EEOC NOVEMBER, 2009 POSTER UPDATE

The EEOC, in November of 2009, revised its standard poster. The poster was revised to add information about the Genetic Information Nondiscrimination Act of 2008, which became effective November 21, 2009. The Genetic Information Nondiscrimination Act prohibits health insurers and employers from discriminating on the basis of genetic information. The posters are available at <http://www1.eeoc.gov/employers/poster.cfm>.

For more information concerning healthcare reform or the revisions to the EEOC poster please contact a member of our Labor and Employment law practice group at (419) 244-6788:

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MARCH 11, 2010. SAVE THE DATE!

Bugbee & Conkle, LLP is hosting its annual seminar the afternoon of March 11, 2010, on issues of interest to employers. Speakers and agenda will follow.

THE EMPLOYER is not intended to provide legal advice, but is intended as a service to the clients of Bugbee & Conkle, LLP and to alert them to recent developments affecting the employment relationship, with a particular emphasis on the perspective of the employer.