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Q&A FROM ASSUREX GLOBAL WEBINAR

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NO "REPEAL OR REPLACE" "...MAYBE "REPEAL OR REPLACE"... MAYBE SOMETHING ELSE? WHAT SHOULD THE EMPLOYER FOCUS ON NOW?"

Q. So, if a full-time employee resigns, then is rehired in part-time status in 10 weeks, they are still considered full-time for the rest of the stability period?

A. If this involves an applicable large employer (50 or more FTEs) subject to §4980H offer of coverage requirements, including the break in service rules, an employee who is rehired within less than 13 consecutive weeks (26 for an educational organization), would be considered a "continuing employee". For a "continuing employee", the following rules apply if the employer wants to avoid potential penalties under §4980H:

- If using the look-back measurement method to determine full-time status, the measurement and stability periods continue as if the employee never left, although no hours of service are credited during the break in service unless it was a leave of absence due to FMLA, USERRA or jury duty. So an employee who was previously determined to be full-time would be considered full-time through the end of the current stability period, even if there was a short break in service mid-stability period.
- If the employee was previously covered before the break in service, coverage must be reinstated as by the 1st of the month following rehire if considered full-time upon rehire.
- If coverage was previously waived, another offer of coverage would not be required until the next open enrollment period. This is the case because §4980H rules require an offer of coverage only annually...if the employee waives, there is generally no obligation to make another offer of coverage until the next plan year (unless a HIPAA special enrollment right occurs).

Q. If it's unknown that the break in coverage would be so short (referencing the example of 6 weeks and being rehired is there a grey area on the penalty? It wasn't in an effort to skirt offerring coverage.

A. No. Regardless of whether the break was intentional or not, or the rehire was unexpected, the rules are clear that an employee who returns within less than 13 consecutive weeks (26 for educational organizations) must be treated as a continuing employee to avoid potential penalties.

Q. We are a large employer in the oil & gas pipeline/construction industry. We have a lot of turnover. We do not have part time employees. Is there a time period of lay off in which rehires should not be treated as new hires with a new waiting period?

A. An employee returning to service or rehired after 13 or more consecutive weeks (26 or more for educational organizations) may be treated as a new hire, allowing the employer to impose a new waiting period or initial measurement period as applicable.

Q. Does the Trump requirement that 2 regs must be eliminated for every new reg implemented apply here with potential ACA regulatory changes?

A. It's not clear how closely that is being followed as changes are being made.

Q. Will insurance rates now change for employees based on their age? Will older employees rates be higher than the younger employees?

A. Currently, individual and small group market plans are allowed to impose age rating, charging older employees more than younger employees, but it is restricted to a 3:1 ratio. Under the American Health Care Act (AHCA), restrictions on age rating ratios for individual and small group plans are expanded (3:1 to 5:1, and even more under state waiver). Age rating does not apply to plans sold in the large group market.

In addition, the AHCA would change the tax subsidy program toward coverage through a public Exchange, as well as other individual coverage. Instead of the tax subsidy varying based on household income, the amounts would be something between $2000 and $4000, with less being available to older individuals, again making coverage more expensive for older individuals.

Q. For HSA's, did the new AHCA bill require them to still be tied to high deductible plans or did it allow them to be utilized with a broader range of plans

A. The American Health Care Act (AHCA) does not change the requirement for HSA-eligibility to be tied to enrollment in a high deductible health plan (HDHP). An individual not enrolled in a qualifying HDHP would not be eligible to contribute to an HSA.

Q. I have an individual that I know is getting a subsidy, but our coverage is affordable so I have no idea how this happend. Could we be penalized?

A. Even if the employee is currently receiving a tax subsidy toward coverage through a public Exchange, an applicable large employer who offered minimum value coverage at a cost that is affordable (or meets one of the three affordability safe harbors) will not face a penalty under §4980H(b) for such an employee.

It's possible the employee didn't fill out the application correctly and the subsidy is being provided when it shouldn't be. If that's the case, the employee may have to repay some or all of the subsidy when filing taxes early next year. On the other hand, it's possible that the employer made an offer of coverage that's affordable under one of the safe harbors, but is actually unaffordable based on the employee's actual household income (MAGI). In that case, the employer is protected from a penalty, but the individual may qualify for a subsidy if other requirements are met.

Q. How would the MacArthur amendment affect self-funded plans, who can select any state in the Union to set their EHBs?

A. Very good question…it's not clear how this would work. It's possible that a plan could then choose a state which has applied for the waiver and is not required to include essential health benefits in the benchmark plan. If the legislation passes, more guidance would be needed in this regard and in how to handle the prohibition on annual and lifetime limits.

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Q. I've heard that not only will there be a 30% premium surcharge, but also a 12 month pre-ex waiting period, if more than a 63 day break. Or, choice of Federal High Risk Pool. Is this correct?

A. Under the American Health Care Act (AHCA), those enrolled in coverage through an individual or small group plan who have a break in coverage of more than 63 days in the previous 12 months may face a 30% surcharge on the premium.

Alternatively, the state may waive this and instead, for those enrolled in individual coverage, impose health status underwriting (likely resulting in hefty premium increases and therefore requiring the high risk pools) for those individual with a break in coverage in the previous 12 months.

Q. Should employers know which employee is enrolled in ACA?

A. Not necessarily. Public Exchanges are supposed to send employers a notice if any employees are receiving subsidies toward coverage, but actual processes vary from state to state. In addition, if the employee doesn't list the employer on the Exchange application, the information is not available to inform the employer. Employers may not know for all employees until employer reporting is reconciled.

Q. Is the PCORI fee calculated based on the ERISA plan year? or the contract year?

A. It should be based on the ERISA plan year (the plan year designated in plan documents and used for Form 5500 reporting purposes).

Q. Are employer penalties triggered from reporting or from employees receiving subsidies, or both?

A. Employers are penalized if the §4980H offer of coverage requirements are not met and full-time employees enroll through a public Exchange and receive a tax subsidy.

Employer reporting via Form 1094-C and 1095-Cs provides the IRS with the information necessary to reconcile these things and assess penalties as applicable.