Einstein
Advanced Health Insurance Solutions

NEWSALERT

Mar. 2017 | Volume 1 | Issue 2

Affordable Care Act

Republicans Consider Fixing ACA, Not Repealing It

THE STEAMROLLER everyone expected from President Trump and the GOP-led Congress to flatten the Affordable Care Act has been put on idle and what was a promised quick outright repeal has morphed into a plan to "repair" the law.

In particular, Republican lawmakers, huddling while trying to devise a repeal-and-replace plan, have instead found that it won't be so easy, unless they want to cut off millions of people from the health insurance they have purchased on exchanges.

With everything in flux now, employers should continue complying with the ACA as it's looking more and more likely that the law won't be repealed, but will be changed.

Top GOP lawmakers have publicly stated that some parts of the law will remain intact and others will be "fixed."

Surprisingly, the Republican leadership's views on the subject may now likely align more with Democrats who have acknowledged the flaws in the law and that amending the law is the best way to go.

While conservative and Tea Party Republicans say the law can't be fixed and should be repealed, their desired outcome is looking less and less likely. Also, there is no consensus within the GOP on what should come next.

Members of the conservative House Freedom Caucus held a press conference on Feb. 7 saying that Republican legislators should not go soft on their promise to repeal the law and instead should quickly introduce new legislation that would repeal the ACA.

But it's the leadership that decides which bills move forward and out of committee.

For now, Republicans are up against a self-imposed deadline after they passed a measure in January that allowed them to begin putting together a budget process that will undo parts of Obamacare.

Under that deadline, four congressional committees were supposed to have drafted legislation repealing the law by Jan. 27, however no bill was introduced. Now pundits say that may not happen until April.

Republicans are now considering four drafts, language from which they will likely fuse into one bill.

Without Democrats, Republicans are limited in how much they can undo the law.

Congress will have to walk a delicate path and find ways to help middle-class Americans, some of who have complained about high and skyrocketing insurance premiums. Others are worried about repeal because the ACA has given them access to life-saving treatment.

Also, there are other forces at play, including stakeholders like businesses, health insurers, drug companies and the medical industry, which all have their own agendas and will be lobbying hard.

For now, continue complying with the law and cover your employees if you are an applicable large employer – and file your papers with your staff and the IRS on time. ❖

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Employee Choices

Most Workers Want Option to Customize Benefits Package

NEARLY THREE-quarters of U.S. employees would like their employers to offer customized benefit packages that suit their individual needs, a new study has found.

More employers are realizing that offering a one-size-fits-all benefits package does not meet all of their various employees' needs, particularly as baby boomers are working longer and as millennials enter the workforce.

In some workplaces there are four generations of employees working side by side – and you can bet they all have different needs.

The study found that more than half of the workers surveyed were unhappy with their current package of benefits, saying that it was too inflexible.

The study, by the Life Insurance Management Research Association (LIMRA), found that employers can respond to the differing needs of their diverse workforce by offering what's known as a benefits wallet.

The idea behind a benefits wallet is that it would allow workers to divide the amount the employer and employee contributes among a menu of benefits that the employee can choose from.

Under this benefit strategy, employees could divide their benefits among such things as vacation, health care, retirement plans, additional insurance riders, education and training.

For example, older employees might want to spend more on health care and disability insurance, while new-generation workers might want to spend less on health insurance and more on retirement savings and parental leave.

Health care, retirement savings and vacation ranked as the three most popular benefits across all employees surveyed.

DIFFERENT GENERATIONS, DIFFERENT PREFERENCES

A worker's life stage also influences the types of benefits most valued by the employee. The Institute found:

Millennial workers – They prefer education benefits and paid parental leave, reflecting their stage in life of starting families and also dealing with increasingly large student loan debt burdens.

Generation X – They rank financial planning and wellness programs higher than millenials and baby boomers. This generation has many competing priorities including retirement, health and family financial security.

Baby boombers – They say disability insurance is one of their top priorities along with a solid health insurance package that can meet their needs as they age and encounter new medical problems.

Workers would be able to adjust their plan as they age and their needs change.

The LIMRA study noted that one of the drawbacks of benefits wallets is that the flexibility allows employees to delay contributing to their retirement savings in favor of other benefits.

It also concluded that since nearly 90% of workers ranked health insurance and retirement savings plans in their top five most important benefits, employees might ignore life insurance, disability insurance and other valuable benefits. ❖

Regulatory Risk

OSHA Issues New Anti-retaliation Rules for ACA

FED-OSHA has issued final regulations on whistleblowing and employer retaliation under the Affordable Care Act.

The new rules set forth procedures and time frames for reporting and processing whistleblower complaints by employees against their employers and expand the instances in which an employee can sue their employer for retaliation under the ACA.

The new rules are of utmost importance for employers considering OSHA's low bar for what it considers retaliation in the new regs.

they're also important as more employees may be compelled to lodge complaints if they feel slighted after their employers change their health plans or greatly increase the cost-sharing burden on them.

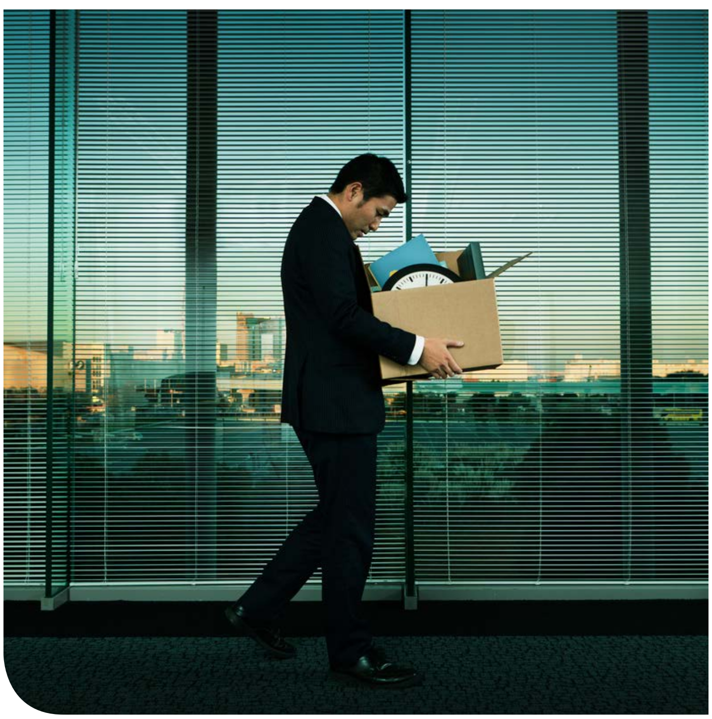
It will be critical to train your human resources staff and managers and decision makers in the new rules.

The New Rules

The ACA whistleblower regulations prohibit employers from retaliating against employees for, among other things:

- Receiving a subsidy for a marketplace plan.
- Raising concerns regarding employer practices that the employee believes violate the ACA.
- Reporting ACA violations.
- Cooperating with a federal investigation.
- Participating and/or cooperating in a proceeding associated with an alleged or actual violation.
- Refusing to participate in a policy that would violate the ACA.
- Receiving a premium tax credit or a cost-sharing reduction for enrolling in a qualified health plan.

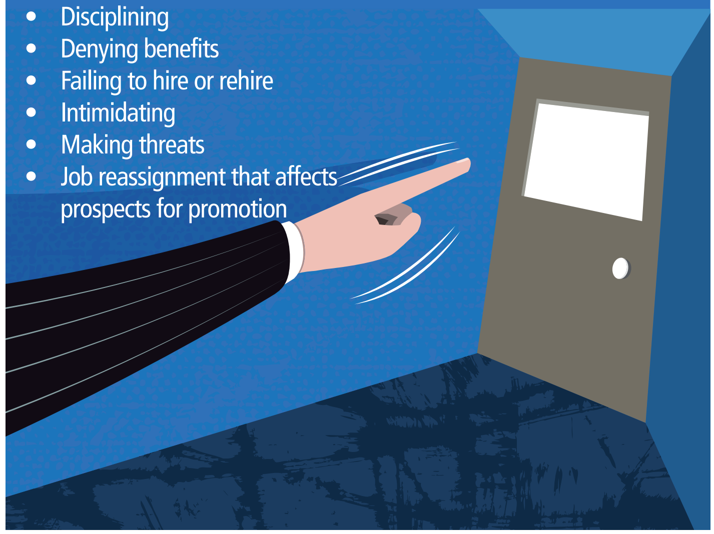
An employee who believes that he or she has been retaliated against has 180 days after the alleged retaliation to file a complaint with OSHA.



What constitutes retaliation?

Retaliation can include several types of actions, such as:

- Firing or laying off
- Reducing pay or hours
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failing to hire or rehire
- Intimidating
- Making threats
- Job reassignment that affects prospects for promotion



Retaliation scenario

Your human resources department is notified by the Department of Health and Human Services that an employee has purchased coverage on a public insurance exchange and received tax subsidies to help pay for it.

An HR manager goes to the employee's manager to complain, saying that it could cost the company a $2,000 penalty. The manager finds an excuse to reduce the employee's hours and reassign him to a lesser position.

What you can do

Make sure that managers and HR personnel ensure strict confidentiality for employees' ACA-related information and do not share it with other managers and supervisors.

Cover the new regulations in your training and meetings for HR personnel, who in turn should train managers to ensure they understand the consequences of taking actions that may be construed as retaliatory.

Train managers on how to respond if an employee complains about their health insurance in light of the ACA. In such cases, the manager should refer the complaint to the HR or benefits personnel responsible for the company's health insurance plan.

OSHA has published the "Filing Whistleblower Complaints under the Affordable Care Act" factsheet on the complaint process. As an employer you should read it to understand the rules. You can find them here:

www.osha.gov/Publications/whistleblower/OSHAFS-3641.pdf

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Answering Notice That Worker Received Premium Subsidy

MORE EMPLOYERS are receiving notices from government insurance exchanges, informing them that one of their employees has received a subsidy to purchase insurance on the exchange and that the employer may be subject to a penalty for not offering employees a health plan that complies with the law.

The notices are not calls to pay a fine – only the IRS can do that – but employers need to respond with documentation to show that they did in fact offer affordable coverage that meets the minimum value requirements of the Affordable Care Act.

If you receive a notice, you will need to file an appeal promptly. If you don't, or if your appeal is eventually rejected, you could receive a demand for payment from the IRS.

You can appeal the finding if you believe the employee was ineligible for the premium subsidy.

Individuals whose employers offered them affordable coverage that meets the minimum value requirements are not eligible for premium subsidies under the ACA.

If they do receive a subsidy and you did offer them compliant coverage, there will be a conflict on your form 1095-C that you have to file with the IRS.

That could prompt the IRS to either go after you for a penalty, or go after the employee, from whom it would demand repayment of the subsidy.

Penalties and the law

First off, there could be some innocuous reason for receiving the notice, such as one of your part-time employees who was not offered coverage may have been eligible for a subsidy on the exchange.

There should only be two reasons that an employee for a large employer that is subject to the employer mandate receives a subsidy on an exchange:

- The plan does not provide minimum value (defined as covering 60% of all health costs).
- The plan is not affordable (less than 9.66% of the employee's income in 2016, and 9.69% in 2017).

The applicable fine would be $3,240 per full-time employee receiving a subsidy or $2,160 per full-time employee (minus the first 30).

Appeal problems

Some employers who have gone through the appeals process report problems. According to the National Association of Health Underwriters' (NAHU) Compliance Cornered blog:

- One employer submitted proof that it had offered coverage to the employee that met minimum value and was affordable. But the exchange asked for proof of this offer in the form of the employee's response to the offer.
- An NAHU review of many decision letters found that decisions often cite "insufficient information" as the basis for rejecting the appeal.
- Other firms have received letters while an appeal is under review that asks for more information to support the appeal.

What you can do

The NAHU recommends that employers develop a checklist of materials that they will provide to ensure that appeals are not lost for want of more information.

Pertinent Documents

Proof that employee was offered coverage

- Form or letter confirming the employee's election of benefits.
- Employer-sponsored coverage declaration form or notice.
- Employee's benefits summary chart.
- Letter from health insurer stating that the employee is enrolled in employer-sponsored coverage.

Proof of income and payments

- Copies of employee pay stubs.
- Payroll ledger or worksheet.
- Previous year's W-2 form.

Proof of affordability

- Rate sheet of employer-sponsored coverage.
- Summary of Benefits and Coverage sheet.
- Pay stubs showing premium deductions.

Proof of minimum value

- Summary of Benefits and Coverage sheet.
- Report of Minimum Value Certification from an actuary.

Remember: Appeal decisions don't automatically trigger IRS penalties, but a successful appeal would be helpful for you if the IRS tries to penalize you. ❖