

HOSPITALITYLAWYER.COM PRESENTS

2013 THE **HOSPITALITY LAW**
CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

PRESENTER

FISHER & PHILLIPS LLP
ATTORNEYS AT LAW
Solutions at Work[®]

Callan G. Carter



- **Advises clients on plan design, drafting, implementation and termination of qualified retirement plans, health and welfare plans, fringe benefit programs, equity compensation and non-qualified deferred compensation arrangements.**
- **Advises clients on complex applications of qualified retirement and health and welfare plan nondiscrimination and coverage rules, prohibited transactions, fiduciary issues, determination letters, controlled group determinations, and both health and welfare as well as retirement issues involved with mergers and acquisitions.**
- **A member of the Northern California Human Resources Association (NCHRA) and a supporter of 100 Women in Hedge Funds. She authored the firm's HIPAA Privacy and Security booklet.**

HOSPITALITYLAWYER.COM PRESENTS
2013 THE HOSPITALITY LAW CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS
FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Callan Carter

- Practicing exclusively in employee benefits on behalf of plan sponsors since 1997.
- Works with health and welfare as well as retirement (both qualified and nonqualified) and equity compensation plans.
- Authored many of Fisher & Phillips' deliverables, such as HIPAA booklet, compliance kits for HIPAA Privacy, Security and Portability as well as USERRA, Section 125 cafeteria plan and wrap plan document.

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Today's Agenda—

1. “Big Ticket” Items for Employers
2. Immediate Compliance Issues for Employers
3. Keeping up with the “Moving Target”

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

The “Big Ticket” Items for Employers

- Employer “Play or Pay” Mandate
- Nondiscrimination Requirements
- Automatic Enrollment

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Employer “Play or Pay” Mandate

- Effective January 1, 2014
- Applies to “large employers”
 - 50 or more “full-time” employees (including full-time equivalents)
 - “Full-time” means 30 or more hours per week (130 per month)
- In order to “play” and avoid the possibility of “paying,” an employer must offer adequate and “affordable” group health plan coverage to substantially all full-time employees and, as of 2015, their dependents
 - Plan must provide “minimum value” (cover at least 60% of benefits)
 - Plan must offer “minimum essential coverage”
 - Employee premium cost for employee-only tier of coverage may not exceed 9.5% of employee’s household income

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Employer “Play or Pay” Mandate

- Safe Harbors for Affordability
 - 9.5% of W2 Box 1 (annual)
 - 9.5% of 130 X hourly rate (monthly)
 - 9.5% of individual federal poverty level divided by 12 (monthly)

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Employer “Play or Pay” Mandate

- If an employer fails to “play” by not offering ANY coverage to 95% full-time employees (and their dependents) AND at least one full-time employee receives federal premium assistance for purchasing coverage through an Exchange, then the employer will “pay” an annual penalty of \$2,000 per full-time employee, excluding the first 30 full-time employees.
 - An employee may qualify for Federal premium assistance if his or her income is less than 400% of the Federal poverty level (approximately \$88,000 for a family of four)

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Employer “Play or Pay” Mandate

- If an employer fails to “play” by offering inadequate or unaffordable coverage AND at least one full-time employee receives Federal premium assistance for purchasing coverage through an Exchange, then the employer will “pay” an annual penalty of \$3,000 per full-time employee receiving assistance, up to a max of \$2,000 per full-time employee, excluding the first 30 full-time employees.
 - An employee may qualify for Federal premium assistance if his or her income is less than 400% of the Federal poverty level (approximately \$88,000 for a family of 4)

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Employer Play or Pay Mandate: Full-Time Employees Who Must be Offered Coverage - Ongoing Employees

- Standard lookback measurement period of 3-12 months
- Stability period of 6-12 months
 - For full-time employees, can not be shorter than lookback period
 - For non-full-time employees, can not be longer than the lookback period
- Optional administrative period of 90 days
 - Must overlap with prior stability period to prevent gap in coverage
- If employee determined to be “full-time” at end of measurement period, he or she keeps classification during next stability period so long as remains employed, regardless of hours worked during stability period

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Employer Pay or Pay Mandate: Full-Time Employees Who Must be Offered Coverage - New Employees

- If employee expected to work 30+ hours per week, “full-time”
 - Must offer coverage by end of third calendar month
- For new variable hour and seasonal employees
 - Initial measurement period of 3-12 months
 - Stability period length same as for ongoing employees
 - For full-time employees, can not be shorter than initial measurement period or shorter than 6 months
 - For non-full-time employees, can not be longer than the initial measurement period plus one month and cannot exceed standard lookback measurement period in which the initial measurement period ends
- Optional administrative period of 90 days allowed
- Transition from new to ongoing employee once employed for entire standard lookback measurement period
 - Test for status using standard lookback measurement period in which initial measurement period ends

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Employer Pay or Pay Mandate: Full-Time Employees Who Must be Offered Coverage

Hours of Service:

- Hourly Employees
 - Count actual hours
- Non-Hourly Employees
 - Count actual hours OR
 - Use equivalencies
 - Credit 8 hours for each day worked
 - Credit 40 hours for each week worked

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Other “Big Ticket” Items—

Nondiscrimination Requirements

- Relates to “highly paid employees” (similar to retirement plan nondiscrimination requirements)
- Implementation delayed thus far

Automatic Enrollment

- Applies to “large employers” of more than 200 full-time employees
- Guidance indicates that requirement will not be implemented until sometime after 2014

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

HOSPITALITYLAWYER.COM PRESENTS
2013 THE HOSPITALITY LAW
CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS
FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

Immediate Compliance Issues for Employers

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

New Summary of Benefits and Coverage (SBC)

- A four-“page” disclosure, which is in addition to SPD
- Deadline is first open enrollment or plan year on or after September 23, 2012
- Model templates with strict adherence to required format
- Very detailed requirements
- Need to coordinate with carriers and/or TPAs and counsel

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Healthcare Flexible Spending Account Limit

- Reduced to \$2,500 effective January 1, 2013
- Applies to FSA plan year beginning 2013
- Must adopt plan amendment by end of 2014

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

- **As of 2013, claims' responses and SBCs must use “culturally and linguistically appropriate language” when 10%+ or more of employees reside in a county literate only in the same non-English language.**
 - **HHS website provides a list of all U.S. counties which meet or exceed the 10% threshold. List updated annually.**
 - **Spanish, Chinese, Tagalog, and Navajo are the 4 alternative languages.**
 - **A plan sending a claims or appeals response to an address in a county that meets the 10% threshold must:**
 - **include a statement in the non-English language indicating how to access the language services provided by the plan or insurer;**
 - **provide oral language services (such as a telephone customer assistance hotline); and**
 - **provide, upon request, a notice in any applicable non-English language.**
 - **Model claim/appeal denial letters available on DOL website.**

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Employer's Notice of Exchange

- For all new hires starting March 1, 2013, and for all existing employees on or by that date.
- Exchange notices must provide written information:
 - that an exchange exists, including a description of the services provided by the exchange and contact information to request assistance;
 - that if the employer plan's share of the total allowed costs of plan benefits is less than 60 percent of the costs, then the employee may be eligible for a premium tax credit and a cost-sharing reduction if the employee gets coverage through the exchange; and
 - if the employee purchases coverage through the exchange, he or she may lose the employer contribution to employer-sponsored coverage and that there might be tax implications for the employee in that case.

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Additional Medicare Tax

- Effective 2013
- Additional .9% tax on Medicare wages in excess of \$200,000 (or \$250,000 married filing joint)
- Additional tax paid entirely by employee
- Employers must withhold and transmit additional Medicare tax

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Recent Proposed Regs on Wellness Programs

- Effective 2014
- Maximum discount for participation in wellness programs increases from 20% to 30%
 - 50% for tobacco use programs
- Employers must assist and pay for reasonable alternatives to meeting health goal
- Employers must notify employees of reasonable alternative availability
 - Model language provided

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

HOSPITALITYLAWYER.COM PRESENTS
2013 THE HOSPITALITY LAW
CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS
FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

Keeping up with the “Moving Target”

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Be sure to keep up with the “moving target”

- **Monitor developments in guidance**
 - **Exchange notices**
 - **Automatic enrollment**
 - **Nondiscrimination rules for insured plans**
- **Address immediate compliance issues**
- **Evaluate impact of employer “play or pay” requirement**
- **Begin recordkeeping for lookback measurement period**

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

Be sure to keep up with the “moving target”

- **Monitor developments in guidance**
 - **Exchange notices**
 - **Automatic enrollment**
 - **Nondiscrimination rules for insured plans**
- **Address immediate compliance issues**
- **Evaluate impact of employer “play or pay” requirement**
- **Begin recordkeeping for lookback measurement period**

HOSPITALITYLAWYER.COM PRESENTS

2013 THE **HOSPITALITY LAW**
CONFERENCE
FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 11-13, 2013 • HOUSTON, TEXAS

HEALTHCARE ACT AND WHAT IT MEANS TO EMPLOYERS

FEBRUARY 13, 2013

PRESENTED BY:

CALLAN CARTER

FISHER & PHILLIPS LLP

CCARTER@LABORLAWYERS.COM