

What keeps me up at night about the Affordable Care Act?

One would think that after a little more than 26 years of practicing employee benefits law, I would have everything figured out. I should be answering client's questions off the top of my head, my desk should be free of volumes of IRS regulations, and every night I should be sleeping like a baby.

But March 23, 2010 changed everything for me, and for the employers I advise. The Patient Protection and Affordable Care Act (lovingly referred to as the "ACA") was the latest and most significant attempt by the federal government to expand access to health care.

While I was alive when Medicare and Medicaid came into being upon President Johnson's signing of the Social Security Act of 1965, I had yet to begin working on my client roster. Fast forward to 1986 when a sweeping overhaul of the Internal Revenue Code brought us Code Section 89, which for the first time imposed nondiscrimination and coverage rules on employer-sponsored group health plans. My first standing ovation as a practicing attorney came when I told a room full of medical clinic administrators that "This morning, Section 89 has been repealed!"

The fifth anniversary of the enactment of the ACA is fast approaching. What could possibly be keeping a seasoned employee benefits attorney up at night? Well, any one of these things is enough.

Are my clients throwing away their COBRA notices?

No, the ACA did not make COBRA obsolete. Group health plan sponsors still need to provide COBRA notices and election forms. But I'm hearing rumblings of employers wondering why bother with offering



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COBRA, when generally the Marketplace coverage is cheaper (and offers the potential of premium assistance). Unless and until COBRA is repealed, the obligation to provide notices is still there.

Is the variable employee rule for determining full-time status being overused?

I encourage those of you with access to the regulations (you know who you are) to review the guidance on variable hour employees. The ability to put such employees on an initial measurement period only applies to NEW variable hour employees. It is not available when an ongoing employee switches to variable hours.

I have been asked whether employees who switch from regular hours (full-time or part-time) to a varied work schedule can be required to sit through an initial measurement period to "requalify" for full-time status. The answer is no.

Once an employee is an ongoing employee (has been employed for an entire standard measurement period) then the only measurement period that can be applied to that individual is the standard measurement period. So, when the employee switches to a varied work schedule, their status is determined by the hours paid for during the standard measurement period, just like everyone else.

Will I be swarmed with requests to help employers complete Form 1094-Cs and 1095-Cs next January?

For everyone's benefit and sanity, I certainly hope not. Even though these forms (used by applicable large employers to report full-time employees and the coverage — if any — offered to those employees) are not due until January 2016, the information which must be included on those forms is not always readily accessible, or in a format that lends itself to completing the forms quickly.

What has become quite evident as I speak to employers around the state is that there is no one source for all of the information needed to complete these forms. And in no case can an employer rely on an insurance carrier or third party administrator for this information; those entities will not have information on all of an employer's employees.

Am I doing more harm than good?

Sometimes I get looks from attendees at my presentations, like the look my puppy gives me when I'm trying to explain something to her. She doesn't understand much other than "good girl" and "wanna go outside?"

Do the phrases "applicable large employer" and "minimum essential coverage" mean anything to my audience? Am I just making them more confused? I sure hope not. I do know that every opportunity I have to talk about the ACA, and answer questions, makes me understand it a little more.

And helps me sleep better.

Schill has counseled public and private sector employers on the effect of health care reform on their group health plans, including identification of applicable large employer status and full-time employees. She frequently presents on the topic, in addition to blogging about it at blueinklaw.com, with the aim to uncomplicate a complicated piece of legislation.



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