Hamilton Insurance Agency

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Hamilton News

Stimulus Package and HR Impacts

Congress's recently enacted $789 billion stimulus package, officially known as the American Recovery and Reinvestment Act of 2009 (or ARRA), is intended to spur economic growth through a combination of spending programs and tax cuts. Investments range from infrastructure and science projects, education, job assistance, transportation and veterans' affairs. Tax cuts reach citizens through a new home buyer credit, reduction in payroll taxes, extension of alternative minimum tax exclusions, elimination of tax on a portion of unemployment income, and bonus depreciation for companies making capital investments.

In addition to these direct investments and tax reductions, other requirements were included in the bill, several of which impact employers in the very short term:

- Providing a 65% subsidy to certain terminated employees' benefit continuation under COBRA for up to nine months;
- Imposing more stringent privacy and security restrictions on business associates' handling of protected health information under HIPAA;
- Adjusting tax withholding tables to provide a rebate/credit for 2009 and 2010 to provide increased take-home pay for certain workers (in lieu of the government mailing another round of stimulus checks);
- Creating parity in commuter benefits employers can offer tax-free to employees by increasing the transit exclusion to equal that of parking;
- Limiting executive compensation for top executives of companies who receive TARP funds; and
- Postponing requirement for federal contractors to utilize the E-Verify employment verification system.

While these changes require employers and/or their service providers to modify business processes almost immediately, other changes may have a longer term impact on overall business costs:

- Enriching unemployment benefits, including adding weeks of eligibility, increasing the maximum weekly benefit, temporarily exempting the first $2,400 from federal income taxes, and expanding eligibility to lower-paid or part-time workers; and
- Reauthorizing and expanding the Trade Adjustment Assistance program for workers who lose their jobs due to movement to other countries, including skill training programs, increasing the Health Care Tax Credit (from 65% to 80%), more flexible program enrollment deadlines, and inclusion of service workers in this protection.

As employers begin to digest the scope of this significant legislation, in some cases noted as more broad-reaching than the New Deal, additional impacts to businesses will be understood.

Identity Theft Red Flag Rules

The FTC announced that enforcement of its Identify Theft Red Flag Rules will now be implemented as of May 1, 2009. Covered entities must comply with the mandate to develop and implement a written identity theft prevention program. A covered entity, defined as any financial institution or "creditor" with "covered accounts," is required to meet these standards. A "creditor" is any entity that regularly extends, renews, or continues credit, with "credit" defined as the granting of a right to defer payment for any purchase or service and a "covered account" is one used mostly for personal, family or household purposes and involves multiple payments or transactions. These broad definitions would mean that automobile dealers, utility companies, and non-profits, government entities and health care providers that allow customers to defer payments come under these regulations.

These organizations must develop a written program that identifies and detects warning signs (i.e., "red flags") of identity theft, such as unusual account activity, dubious personal information, or attempted use of suspicious account application documents. HIPAA privacy and security measures are not sufficient for health care providers to comply. Once the red flags are identified, the company must determine appropriate responses to each that would avoid or mitigate the crime. Programs must be approved by the Board of Directors and overseen by a senior executive or Board appointee, including plans for staff training and ongoing updates. Guidance has been provided by the FTC, NCUA and other entities to help identify possible red flags at ftc.goc/opa/2007/10/redflag.shtm.

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COBRA Subsidy

Nearly all employers will be subject to the new regulations offering a temporary COBRA subsidy for any employee involuntarily terminated from September 1, 2008 through December 31, 2009 who would have otherwise been eligible for COBRA. This subsidy (funded by the government, not the employer) is equal to 65% of the COBRA premium for up to nine months, effective the first coverage period after ARRA was enacted (in most cases, March 1, 2009). Eligibility is limited by income and the employee is solely responsible for complying with the means testing requirement.

This subsidy applies to plans covered by federal COBRA regulations, government plans and state mini-COBRA regulations covering small employer plans.

Employers are not required to, but may allow, former employees to enroll in benefit coverage options other than the one they were covered by at the time of the qualifying event, as long as the premiums are the same or less than the original coverage. This subsidy covers medical, dental, vision and other types of plans, but excludes Flexible Spending Accounts provided through cafeteria plans. The COBRA participant pays their 35% share and the balance is obtained through a payroll tax credit or reimbursement if the tax liability is insufficient to cover the costs of the subsidy.

The law clarifies that the entity to whom the reimbursement is payable is:

(1) the multi-employer group health plan;
(2) the employer maintaining a group health plan that is subject to Federal COBRA requirements or is self-insured; or
(3) the insurer providing coverage under a plan that is not covered in either (1) or (2).

Only this entity is eligible to offset its payroll taxes by the amount of the subsidy.

Companies will be required to offer a special enrollment window for eligible individuals who have not previously elected COBRA. A notice of their modified rights must be provided no later than April 18, 2009. Employers must report details on individuals receiving the subsidy with their payroll tax report (Lines 12a and 12b of the new Form 941).

Failure to comply with these regulations can subject employers, plan sponsors and insurers to significant penalties, For more information, contact HR Business Solutions.

CHIP - *Group Health Plan Premium Assistance*

The State Children's Health Insurance Program (SCHIP) has been reauthorized and changed to the Children's Health Insurance Program (CHIP) effective February 4, 2009, with the signing of the Children's Health Insurance Program Reauthorization Act. CHIP programs provide health care coverage to otherwise uninsured children. This Act allows states to subsidize the cost of employer group health coverage for employees' dependent children who qualify for CHIP, instead of covering them under CHIP. High-deductible health plans, health FSAs, and plans where the employer does not cover at least 40% of the cost are excluded. The employer may choose to receive the premium assistance directly from CHIP or, for practical purposes, let the employee receive it directly from CHIP. The amount of premium assistance available is equivalent to the employee's difference in cost between employee-only and employee+child(ren) coverage.

In Virginia, the CHIP program is known as FAMIS (www.famis.org or 1-866-873-2647 (87FAMIS)), 8 am – 7 pm M–F, 9 am – 12:00 pm Sat). A premium assistance program already exists - called FAMIS Select. For other state CHIP programs, contact the state's Department of Health and Human Services.

<u>EMPLOYEE'S RESPONSIBILITIES</u>: To qualify for this income-based program, the employee must:

- Apply for and request premium assistance from CHIP;
- Request coverage in the group health plan (if eligible, but not enrolled) within 60 days of termination of CHIP or Medicaid coverage due to loss of eligibility; or,
- Request coverage in the group health plan (if eligible, but not enrolled) within 60 days of being determined eligible for CHIP premium assistance.

<u>EMPLOYER'S RESPONSIBILITIES</u>:

- Notify employees of their special enrollment rights specific to gaining or losing eligibility for CHIP or Medicaid or CHIP premium assistance (not required until Model Notification Form is available from DHHS);
- Notify employees of premium assistance available under Medicaid and CHIP (once Model Notification Form is available from DHHS);
- Update group Welfare Plan documents and Cafeteria Plan documents to include the special enrollment rights (<u>by April 1, 2009</u>); and
- Comply with requests from CHIP for verification of group health plan information (again, after Model Disclosure Form is available from DHHS).

HIPAA

While employers expected changes impacting COBRA, many were caught off guard with the substantial revisions to the privacy and security provisions of the Health Insurance Portability and Accountability Act (HIPAA). Past regulations have made specific distinctions between covered entities and business associates with regard to HIPAA's rules. ARRA, however, eliminates that separation and includes provisions that:

- Impose on "business associates" most of the security requirements that apply to covered entities;
- Specify that the privacy requirements set forth in each business associate agreement apply by both statute and agreement;
- Subject business associates to comparable penalties as covered entities;
- Require the department of Health and Human Services (HHS) to issue guidance within 60 days of the date the law is signed specifying technologies and methodologies that render protected health information (PHI) unusable, unreadable or indecipherable to individuals;
- Require the covered entity or business associate that fails to follow this guidance and has its PHI breached to notify impacted individuals and the HHS;
- Introduce specific security and business associate agreement requirements applicable to vendors of personal health records; and
- Tighten the "minimum necessary" rules, expand the right to restrict certain uses and disclosures of PHI, and establish additional rules related to an individual's access to his own PHI, and other modifications.

Employers will be challenged to update business associate agreements to ensure that they essentially treat business associates as covered entities and that their agreements now comply with these new regulations.

Laws affecting the breach of privacy or security of protected health information historically did not dictate significant action by the covered entity or business associate. Now, a covered entity or business associate that has a specified breach will be required to notify each individual by mail or, if preferred by the individual, email. If the impacted organization lacks current contact information, it may be required to post a notice of the breach on its website, newspaper or other broadcast media. For certain large breaches (involving more than 500 residents in a particular area), a "prominent media outlet" and HHS must be notified of the breach.

The law also creates a new term, "electronic health record," which is an electronic record of health-related information "created, garnered, managed, and consulted by authorized health care clinicians and staff." It applies significantly more disclosure accounting requirements related to these records, *including if the disclosure is for treatment, payment or healthcare operations* (which are currently excluded from tracking).

For many companies, compliance with HIPAA is in a "maintenance" mode, with much of the administration established and on-going. These new regulations require that they, at a minimum, modify their policies, training and agreements to treat business associates as covered entities.

"Making Work Pay" Tax Credit / Rebate

The "Making Work Pay" Tax Credit cuts taxes for more than 95% of working families in the United States. For 2009 and 2010, the bill would provide a refundable tax credit of up to $400 for working individuals and $800 for working families. This tax credit would be calculated at a rate of 6.2% of earned income, and would phase out for taxpayers with adjusted gross income in excess of $75,000 ($150,000 for married couples filing jointly). Taxpayers can receive this benefit through a reduction in the amount of income tax that is withheld from their paychecks, or through claiming the credit on their tax returns. Employees do not need to submit modified W-4 forms to see this credit reflected in their take-home pay.

The IRS has released updated tax withholding tables and will provide additional guidance to employers by mid-March. Employers are asked to start using these new tax tables as soon as possible, but no later than April 1. Taxpayers will not get a separate, special check mailed to them from the IRS like last year's economic stimulus but see the benefit immediately in their paycheck.

Other HR Impacts

Incentives to Hire Unemployed Veterans and Disconnected Youth: Under current law, businesses are allowed to claim a work opportunity tax credit equal to 40 percent of the first $6,000 of wages paid to employees of one of nine targeted groups. The bill creates two new targeted groups of prospective employees: (1) unemployed veterans; and (2) disconnected youth. An individual would qualify as an unemployed veteran if they were discharged or released from active duty from the Armed Forces during the five-year period prior to hiring and receiving unemployment compensation for more than four weeks during the year before being hired. An individual qualifies as a disconnected youth if they are between the ages of 16 and 25 and have not been regularly employed or have not attended school in the past 6 months.

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