Part II of III - After The Supreme Court Decision – What Should Employers Do Now?

08.23.2012

This article is the second of a three part series on what employers should do now to comply with the Patient Protection and Affordable Care Act (the "Act") following the U.S. Supreme Court decision in the National Federation of Independent Business, et al., v. Sebelius (567 U.S. ___ (2012)) upholding the Act's Constitutionality. In Part I of III, published in the July 2012 NewsFlash, we provided a list of the components of the Act that require immediate attention. This Part II is focused on components that go into effect in 2013, but also includes components that do not require attention or action and are only included for informational purposes.

**Preventive Care for Women**

On or after August 1, 2012, certain health plans must implement preventative care requirements for women, including controversial contraceptive benefits.

**Health FSA Limit to $2,500**

Beginning for plan years on and after January 1, 2013, salary reduction contributions to health flexible spending accounts ("Health FSA's") will have a limit of $2,500 per year, which limit will be indexed for inflation in following years. Interestingly, because of the lower limits, the IRS and the Treasury Department are reexamining the "use it or lose it" rule for Health FSA's and may allow participants to carry over unused contributions to future plan years. We will watch this closely and keep you advised as the IRS publishes additional guidance.
Increased FICA Tax

Beginning January 1, 2013, the Medicare tax withholding will increase by .9% on employee wages that exceed $200,000 ($250,000 for married couples filing jointly). For married couples filing separate returns, the income is in excess of $125,000. There are a couple notable distinctions to this tax increase: First, the increase only applies to the employee portion of the FICA Medicare tax. The employer’s portion does not increase. The increase also applies to self-employed individuals at the same limits. Second, although the increase applies to the combined wages of the employee and the employee’s spouse when filing a joint return, employers must only withhold at the higher rate if the employee receives wages in excess of $200,000 (i.e., the employer does not need to be concerned about the amount of wages received by the employee’s spouse). Further guidance on this tax increase is undoubtedly forthcoming. We will watch this closely and keep you advised.

New FICA Tax on Investments

The Act also imposes a 3.8% Medicare contribution tax on unearned income effective for tax years after December 31, 2012. The tax is imposed on the lesser of an individual’s (i) net investment income from passive investments such as royalties, interest, dividends, etc. or (ii) modified adjusted gross income in excess of $200,000 ($250,000 for married couples filing jointly or $125,000 for married couples filing a separate return).

Increased Tax on Certain HSA / Archer MSA Distributions

Distributions from health savings accounts (HSAs) and Archer Medical Savings Accounts (Archer MSAs) that are not used for qualified medical expenses are included in participant’s gross income and subject to an additional tax of 20%. However, any such income is not included as taxable wages on Form W-2. Instead, such income is reported on Form 8889 or 8853 depending on the plan. Employers who sponsor such plans should ensure the plan participants are made aware of this additional tax during open enrollment.