



Healthcare Reform Upheld Time to Get to Work

Presented by:
Jeff Smith
Fisher & Phillips LLP

and

Paul Nachtwey
Todd Associates, Inc.

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

www.laborlawyers.com • Phone (949) 851-2424

Healthcare Reform Upheld—Time to Get to Work

Today's Agenda—

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

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

www.laborlawyers.com • Phone (949) 851-2424

Healthcare Reform Upheld—Time to Get to Work

Supreme Court Decision

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

www.laborlawyers.com • Phone (949) 851-2424

Healthcare Reform Upheld—Time to Get to Work

Supreme Court Decision

- Individual mandate is constitutional under the power of Congress to “lay and collect” taxes
- Some limits on the power of Congress to withhold Medicaid funding
- Provisions that affect employers remain intact

FISHER & PHILLIPS LLP
ATTORNEYS AT LAW
Solutions at Work®

www.laborlawyers.com • Phone (949) 851-2424

Healthcare Reform Upheld—Time to Get to Work

“Big Ticket” Items for Employers

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

www.laborlawyers.com • Phone (949) 851-2424

Healthcare Reform Upheld—Time to Get to Work

The “Big Ticket” Items—

Employer “Play or Pay” Mandate

Nondiscrimination Requirements

Automatic Enrollment

FISHER & PHILLIPS LLP
ATTORNEYS AT LAW
Solutions at Work®

www.laborlawyers.com • Phone (949) 851-2424

Healthcare Reform Upheld—Time to Get to Work

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
- In order to “play” and avoid the possibility of “paying,” an employer must offer adequate and “affordable” group health plan coverage to all full-time employees and their dependents
 - Plan covers at least 60% of the cost of benefits
 - Employee premium cost does not exceed 9.5% of “household income”

Healthcare Reform Upheld—Time to Get to Work

Recent Guidance on Employer “Play or Pay” Mandate—

- Lookback and stability periods for determination of full-time status
- Employers may use W-2 income in lieu of household income for affordability test
- Application of 9.5% affordability requirement

Healthcare Reform Upheld—Time to Get to Work

Employer “Play or Pay” Mandate—

- If an employer fails to “play” by not offering coverage to ALL full-time employees and their dependents AND at least one full-time employee receives Federal premium assistance for purchasing coverage through an insurance exchange, then the employer will “pay” an annual penalty tax 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 Reform Upheld—Time to Get to Work

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 insurance exchange, then the employer will “pay” an annual penalty tax equal to the lesser of (i) \$3,000 per full-time employee receiving assistance OR (ii) \$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 Reform Upheld—Time to Get to Work

Common questions and considerations on the Employer

“Play or Pay” Mandate—

- What about small employers?
- Impact of related employers
- What about seasonal employees?
- Any special rules for temps?
- Any obligations for part-time employees?
- Considerations for a “play or pay” comparison

Healthcare Reform Upheld—Time to Get to Work

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 Reform Upheld—Time to Get to Work

Immediate Compliance Issues for Employers

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

www.laborlawyers.com • Phone (949) 851-2424

Healthcare Reform Upheld—Time to Get to Work

Reporting Cost of Coverage on W-2s

- Applies to 2012 W-2s to be distributed in January of 2013
 - Exempt if employer filed less than 250 W-2s in 2011
- Includes major medical and generally any other nontaxable “group health plan” coverage for which COBRA coverage is offered, other than stand-alone dental and vision coverage
- Reported cost is total cost, including employer and employee portions

Healthcare Reform Upheld—Time to Get to Work

Medical Loss Ratio (MLR) Rebates

- Checks generally issued to employer, as the policyholder
- Disposition of rebate is a fiduciary act
- Impact of plan documents and premium structure on—
 - Whether rebate is a plan asset
 - Whether rebate must benefit employer and/or plan participants
- Allocations to plan participants

Healthcare Reform Upheld—Time to Get to Work

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
- Final guidance and templates just issued
- Very detailed requirements
- Need to coordinate with carriers and/or TPAs and counsel

Healthcare Reform Upheld—Time to Get to Work

Healthcare Flexible Spending Account Limit

- Reduced to \$2500 effective January 1, 2013
- Applies to FSA plan year beginning 2013
 - Plan year change?
- Must adopt plan amendment by end of 2014

Healthcare Reform Upheld—Time to Get to Work

Keeping up with the “Moving Target”

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

www.laborlawyers.com • Phone (949) 851-2424

Healthcare Reform Upheld—Time to Get to Work

Healthcare Reform is still a “moving target”...

- Possibility of legislative changes
- Ongoing regulatory efforts—
 - Federal level—
 - IRS
 - DOL
 - HHS
 - State level

FISHER & PHILLIPS LLP
ATTORNEYS AT LAW
Solutions at Work®

www.laborlawyers.com • Phone (949) 851-2424

Healthcare Reform Upheld—Time to Get to Work

Be sure to keep up with the “moving target”

- Monitor developments in the law
- Address immediate compliance issues
- Evaluate impact of “big ticket” items—
 - Employer “play or pay” requirement
 - Nondiscrimination requirements
 - Automatic enrollment

FISHER & PHILLIPS LLP
ATTORNEYS AT LAW
Solutions at Work®

www.laborlawyers.com • Phone (949) 851-2424



Healthcare Reform Upheld Time to Get to Work

Presented by:

Jeff Smith

Fisher & Phillips LLP

jdsmith@laborlawyers.com

and

Paul Nachtwey

Todd Associates, Inc.

pnachtwey@toddassociates.com

FISHER & PHILLIPS LLP

ATTORNEYS AT LAW

Solutions at Work[®]

www.laborlawyers.com • Phone (949) 851-2424