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# The Health Care Law

## What You Need to Know and Do!

### CONGRESS APPROVED, AND THE PATIENT PROTECTION AND AFFORDABLE CARE ACT WAS SIGNED INTO LAW IN MARCH 2010. AND BIG CHANGES ARE ON THE WAY!

The Act mandates fundamental changes for people in the United States, including small and large company employees, private clubs employees, individuals, including those currently uninsured, and others.

The law is explained in something like 20,000 pages of regulations. So how do employers, especially employers like private clubs, find their way through the maze?

The changes have already begun and for private clubs these will intensify over the next few years. So here's some of what private club boards, members, management and employees need to know.

Initially, January 2014 was a key date, but as of July 2, 2013, that key date was changed, for most, if not all private clubs. It has been moved back one full year on instructions from the White House administration.

To wit: *On Tuesday, July 2, the White House announced the delay in the implementation of the Employer Shared Responsibility Excise Taxes until 2015. Valerie Jarrett, Senior Advisor to the President, shared:*

*"We believe we need to give employers more time to comply with the new rules. Since employer responsibility payments can only be assessed based on this new reporting, payments won't be collected for 2014. This allows employers the time to test the new reporting systems and make any necessary adaptations to their health benefits while staying the course toward making health coverage more affordable and accessible for their workers."*

Originally set to take effect on January 1, 2014, these taxes penalize businesses with more than 50 employees (or full-time equivalents) who fail to provide health care coverage to employees who work 30 or more hours. If an employee receives a subsidy to purchase insurance through newly created health insurance exchange, the business would be subject to a per employee fine.

Other provisions of the bill will still go into effect as scheduled. Review these provisions through our FAQs.

#### Links:

*Valerie Jarrett*

*<http://www.whitehouse.gov/blog/2013/07/02/we-re-listening-businesses-about-health-care-law>*

*FAQs - <http://www.cmaa.org/blogs.aspx?blogid=258752>*

### ASSESS YOUR SITUATION

Still clubs should already be assessing their employment situation and determining how this law will affect the coverage that they offer to employees says Melissa Low, senior director, communications and government relations with the Club Managers Association of America.

"Clubs need to know their number of employees and their hours worked. For many clubs, this will be complex given the seasonal nature of the business and the transitory nature of their workforces," Low added.

So what should you be telling your employees about the health care law?

"Clubs are required to provide notice to each new employee at the time of hiring beginning October 1, 2013. For existing employees, clubs are required to provide the notice no later than October 1, 2013," Low said.

"The notice must be provided in writing in a manner that can be understood by the average employee. It may be provided by first-class mail or electronically if it meets the requirements of the Department of Labor's electronic disclosure safe harbor policies. The good news is that the DOL has released two model notices for employers currently offering health insurance and for those who do not."

*These can sample notices are available at <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>*

*or <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>.*

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The CMAA representative says, if a club chooses to draft its own version, it must include:

- The name of the plan and the name, address and telephone number of the plan's COBRA administrator;
- Identification of the qualifying event;
- Identification of the qualified beneficiaries (by name or by status);
- An explanation of the qualified beneficiaries' right to elect continuation coverage;
- The date coverage will terminate (or has terminated) if continuation coverage is not elected;
- How to elect continuation coverage;
- What will happen if continuation coverage isn't elected or is waived;
- What continuation coverage is available, for how long and, if it is for less than 36 months, how it can be extended for disability or second qualifying events;
- How continuation coverage might terminate early;
- Premium payment requirements, including due dates and grace periods;
- A statement of the importance of keeping the plan administrator informed of the addresses of qualified beneficiaries; and

• A statement that the election notice does not fully describe COBRA or the plan and that more information is available from the plan administrator and in the plan's summary plan description (SPD).

"Contact your broker and request assistance with determining affordability right away so you have time to develop a compliance action plan to prevent any penalties and unnecessary costs," says Rick Ladendorf, president of Prevo Health Solutions, a wellness solutions provider.

"The first step is to count how many employees that are considered full-time. Any employer over 50 must offer credible health coverage to the employees. An employer with 30 full-time employees and seasonal or part-time employees could end up over 50 employees. Present the financial projections to the board for input.

"If employer has less than 50, the employees will need to get insurance through the exchange or through an individual plan if not offered by the employer or they will end up paying a yearly fine of \$95 or one percent of household income. This fine increases every year. They may be eligible for subsidy on the exchange too. If over 50 employees, there is nothing the employee needs to do," Ladendorf explained.

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“Clubs need to immediately determine if they are an applicable large employer, reiterated Terri Burdine, CPA, Partner, Tax Services with McGladrey LLP, Melbourne, FL.

“If they employ at least 50 FTEs (full time equivalent) then the ACA will apply to them. They should also meet with their health insurance company to determine if their plan meets the requirements of the ACA. Does it meet the minimum value standards, is it considered affordable?” Burdine queried.

“Employees should know whether your current plan is in compliance, they should also know that the new law is going to require some disclosure of income information from them in order for the employer to determine whether they will be eligible for health care subsidy as well as eligibility for the using the health exchange.”

So clubs also must consider threshold numbers, part-time and seasonal employees. To wit, the CMAA’s Melissa Low:

“Now beginning in 2015, under the Employer Shared Responsibility Excise Tax, clubs with more than 50 employees (or full-time equivalents) will be required to offer health care coverage to full-time employees and their dependents or pay a \$2,000 fine per employee if just one employee receives a subsidy to purchase insurance through newly created health insurance exchanges.

“In the Affordable Care Act, part-time employees are taken into account as ‘full-time equivalents,’ defined as working 30 hours per week.

“Caveat for seasonal employees - An employer is not considered an ‘applicable large employer’ if the employer’s workforce exceeds 50 full-time employees for 120 or fewer days during the calendar year, and the employees in excess of 50 during that period were seasonal workers. A full-time employee is defined as someone who is employed on average at least 30 hours per week.

“Part-time employees are taken into account as full-time equivalents for purposes of the 50 employee threshold (but not for penalty calculation purposes) by dividing the total number of hours worked by non-full-time employees during the month by 120.

“It is important to note that for the purposes of determining penalties, part-time employees are not included in the calculation (they are included only in determining whether an employer is an applicable large employer).”

There’s also a requirement for clubs to report the cost of employer-sponsored health insurance coverage on W-2 forms. This officially began with the W-2s issued in January 2013, except for employers who filed fewer than 250 forms for the previous year.

In 2012, the IRS issued a temporary exemption for these employers. If a club filed fewer than 250 W-2 forms in January 2012, the club did not need to report this information on the January 2013 W-2s. The Internal

Revenue Service (IRS) is still considering how this will be handled for this exempt group in the future. Once finalized, the IRS will give six months’ notice of any changes to the existing exemption.

And there are a few other points that your clubs should consider.

“Educate and empower the employees to understand how to make better choices, when it comes to selecting a service provider. Every dollar spent affects the claims which in turn determine the premiums,” explained Ladendorf.

“Premiums determine how much the employer pays and more importantly the percentage the employee pays. As costs go up, employers shift cost increases to the employee in the form of higher deductibles or higher premiums

“Prevention is the most effective way to lower claims as the insured has no reason to visit the doctor, which in turn lowers premiums, and there are 2014 wellness incentives. Employers can offer rewards of up to 30-50 percent of premiums to employees who take part in wellness programs and meet health standards.

“Employers need to be aware of the affordability of the plan(s) offered and have them checked. If the employer’s share of the premium on the lowest cost plan fails to meet the affordability threshold, the company will be

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# OVERVIEW OF THE HEALTH CARE 10 STEPS TO TAKE NOW

## **1. DON'T ASSUME YOU'RE TOO SMALL TO BE COVERED.**

Most restaurant operators (private clubs) understand the law requires employers with 50 or more full-time-equivalent employees to offer "minimum essential coverage" to their full-time employees (and their dependents) or face potential penalties. However, many employers with more than one business entity don't realize that they might need to consider all of their employees as one group. That could push you over the 50-FTE threshold.

**2. CONSULT YOUR TAX ADVISER.** If you're part of a business with multiple entities, contact your tax attorney or accountant to ask whether you need to combine all employees to figure out whether you're covered by the employer mandate.

**3. KNOW YOUR WORKFORCE.** The new law requires a series of calculations to see whether you're covered by the law's employer mandate — and if you are, which employees must be offered health care coverage. Take time to understand the law's new definitions for full-time employment. Gather the right data: How many full-time employees do you have, including seasonal employees? What are the hours of service for your non-full-time employees, including seasonal employees? The answers to these questions will help you better understand the potential impact of the law on your business.

**4. CONSULT YOUR INSURANCE BROKER.** Consider whether you should make any changes to your current health plan(s), either to save costs or to come in line with the law's new requirements. "Applicable large employers" who want to avoid penalties must offer plans that meet minimum-value and affordability standards. Your broker or agent can help you with designing plans that meet the new requirements. Ask them about the new "Summary of Benefits and Coverage" and to let you know about upcoming nondiscrimination rules for fully insured plans.

**5. LEARN WHAT THE LAW WILL REQUIRE OF EMPLOYEES.** The law requires almost all Americans to obtain "minimum essential coverage" starting in 2014. Tax penalties for individuals who fail to obtain coverage for 2014 start at \$95 a year, or 1 percent of a person's taxable income, whichever is greater. Employees with incomes between 100 percent and 400 percent of the federal poverty level may qualify for federal subsidies to buy coverage on exchanges in their states. If a full-time employee qualifies for tax subsidies to buy a plan on an exchange because the employee can't get affordable coverage at work, large employers face potential penalties.

**6. DEVELOP A STRATEGY TO TALK ABOUT THE HEALTH CARE LAW WITH EMPLOYEES.** Employers subject to the Fair Labor Standards Act must issue written notices to employees that tell them about the exchange in their state, how to access it and more. This requirement takes effect Oct. 1. Your employees might look to you for answers to their questions about the health care exchanges and the coverage you offer. It is wise to think about who will be the point person(s) within your company to answer these questions, and about how you will explain the impact of the law on your business.

**7. EVALUATE YOUR INFORMATION TECHNOLOGY CAPABILITIES.** Employers with 50 or more full-time-equivalent employees will be required to comply with complex new reporting rules. Every Jan. 31, beginning in 2015, those employers must report information to the IRS about individual full-time employees and their dependents. That could include information from your payroll system, health benefit plans and other sources. Consider what information will need to come from which system or third-party vendor. How will you set up a process to aggregate this information to then report it to the IRS and your employees? Consider how much lead time you might need before reporting begins.

**8. UNDERSTAND YOUR STATE EXCHANGE.** Exchanges will have a major impact on both employers and employees. States had the option for 2014 of operating their own exchange, partnering with the federal government, or having the federal government run the state's exchange. As of mid-May 2013, it appears that the federal government will operate 26 state exchanges, while 17 states and the District of Columbia will run their own exchanges. Seven state exchanges will be run through state-federal partnerships. Exchanges will be contacting employers when any employee receives a subsidy. Be prepared by knowing who will handle any inquiries.

**9. TELL YOUR STORY: LET YOUR ELECTED OFFICIALS KNOW HOW THE LAW AFFECTS YOU.** The law affects the restaurant industry as it does no other because of the unique characteristics of the restaurant workforce. Explaining the business decisions you face will help lawmakers understand the urgent need to mitigate the law's impact on employers' ability to create jobs.

**10. STAY UP TO DATE ON NEW DEVELOPMENTS AT RESTAURANT.ORG/HEALTHCARE.** The National Restaurant Association's Health Care Knowledge Center is your one-stop shop for information about the law and related regulations.

*From the National Restaurant Association and reprinted with permission.*

required to increase its contribution or pay a penalty," Ladendorf said.

"There's another note that needs to be considered by clubs, effective in 2014, added the CMAA's Low.

"Group plans can no longer apply waiting periods of more than 90 days. Thus, if you hire a full-time employee, you must put them on your club's insurance within 90 days.

"There is a lot of information to be digested by employers on this topic. *However, I recommend the Pay to Play Guide published by Quarles & Brady, available at: [http://www.quarles.com/files/Uploads/Documents/Pay\\_or\\_Play\\_Guide\\_Current\\_Version.pdf](http://www.quarles.com/files/Uploads/Documents/Pay_or_Play_Guide_Current_Version.pdf).*

"In addition, CMAA members have access to a number of resources including the recording of the recent webinar conducted by John Barlament at Quarles & Brady."

Also there will be a further presentation at CMAA's Leadership/Legislative Conference in Boston, MA, September 7-9, 2013, as well as at CMAA's 87th World Conference and Club Business Expo in February 2014.

### PUBLISHER'S FINAL THOUGHTS

I have conversed with many associated with private clubs about Obamacare over the last few months, and the vast majority plan on providing their employees with health care. They believe, in order to attract and retain the best employees, they will need to provide health care.

Some clubs looking at alternatives staffing solutions, including many in Florida that will be looking further into hiring temporary seasonal employees from other countries. Others are looking at outsourcing their golf course maintenance.

As this article was being prepared, Obamacare regulations were being updated...revised for business. As noted early in this story, the initial plan called for any business with 50 or more employees to be required to provide affordable healthcare for their respective employees or pay a penalty. That law has been delayed until 2015, from January 2014.

This revision will also bring the national health care debate back to the forefront in the coming months. We will continue to update you in the future. Currently the National Restaurant Association provides great resources regarding Obamacare and the impact the health care act will have upon groups like restaurants and private clubs.

At least that's the way I see it! **BR**

John G. Fornaro, publisher

If you have comments on this article or suggestions for other topics, please contact John Fornaro at (949) 376-8889 or via email: [johnf@apcd.com](mailto:johnf@apcd.com)

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