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Employment Law Alert

March 31, 2010

What the Health Care Reform Bill Means to Employers

On March 23, 2010, President Obama signed into law the Patient Protection and Affordability Act (H.R. 3590), a health care reform bill impacting individuals and employers. On March 30, 2010, the law was amended by the Health Care and Education Reconciliation Act of 2010 (H.R. 4872). The complex new health care reform measures have important consequences and changes for employer group health plans, and include an unrelated provision requiring employers to provide lactation breaks to nursing mothers. Here is a look at some of the key provisions:

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- **Pay or Play:** As of 2014, employers with more than 50 employees will be required to provide health care coverage or pay a penalty of $2,000 a year per each full-time employee. Employers who offer health plans and have more than 200 full-time employees must automatically enroll new full-time employees in a plan and continue current enrollees in their existing plans (although employees can opt out). Additionally, individuals will be required to obtain health care coverage or pay a penalty.

- **Tax Credits for Small Employers:** Beginning this year, employers with fewer than 25 employees may be eligible for a tax credit for providing group health insurance for their employees.

- **Small Business Health Options Programs:** By 2014, states must set up "Small Business Health Options Programs" -- or SHOP Exchanges -- where small businesses and individuals may purchase coverage.

- **Vouchers:** In 2014, employers will be required to provide "free choice vouchers" -- equal to the amount the employer pays for participant coverage under the company's health care plan -- to certain low-income employees who cannot afford coverage under the employer's plan. Employees would use the vouchers to purchase coverage in the SHOP Exchanges.

- **Coverage for Children:** Effective for plan years beginning on or after September 23, 2010 (generally 2011 for calendar year plans), a health plan offering dependent coverage must make it available to unmarried children up to age 26. The new law also amends the Internal Revenue Code so that health care coverage of children is

tax-free to the covered employee until the calendar year in which the adult child turns 27 years old. The Internal Revenue Service recently issued Notice 2010-38 regarding this and other questions raised by the new laws. The IRS Notice can be found here: http://www.irs.gov/pub/irs-drop/n-10-38.pdf.

- **Preexisting Conditions:** Effective for plan years beginning on or after September 23, 2010 (generally 2011 for calendar year plans), group health plans may not impose exclusions for preexisting conditions for children under age 19, and starting in 2014, may not impose such exclusions upon anyone.

- **Flexible Spending and Other Similar Accounts:** Beginning in 2011, over-the-counter medications will no longer be a "qualified medical expense," and thus, not eligible for reimbursement under flexible spending accounts, health reimbursement accounts, and health savings accounts. Furthermore, starting in 2013, employee pre-tax contributions to health care spending accounts will be capped at $2,500.

- **Lactation Breaks at Work:** Buried in the health care reform law is a new Fair Labor Standards Act provision, 29 U.S.C. 207(r)(1), requiring employers to provide "reasonable" unpaid breaks to nursing mothers to express breast milk for infants under one year old. Additionally, nursing mothers must be provided with a private location in the workplace (other than a bathroom) to express milk. The law contains an exemption for employers with fewer than 50 employees if compliance with the break requirements would cause the employer undue hardship (*i.e.* significant difficulty or expense). Many states already have similar requirements regarding lactation breaks. Under California Labor Code section 1030, for example, every employer must provide lactation breaks, and a private area, unless doing so would "seriously disrupt the operations of the employer."

The new law establishes major provisions that impact employers. While many of the provisions do not become effective immediately, employers should educate themselves now about the changes ahead and begin planning for the new requirements.

For over a decade, Miller Law Group has devoted its practice exclusively to representing business in all aspects of California employment law and related litigation. If you have questions about these new developments or your workplace obligations, please contact Michele Ballard Miller (mbm@millerlawgroup.com) or Carolyn Rashby (cr@millerlawgroup.com), or call 415-464-4300.

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