



January 20, 2015

## **Congress Gets To Work On Affordable Care Act Amendments**

With Republican majority in both House and Senate, the 114<sup>th</sup> Congress appears to be fulfilling its promise to take a fresh look at the Affordable Care Act (ACA). Two bills introduced in the first work week in January demonstrate how quickly they want to do this.

### **Save American Workers Act**

On January 8, 2015, the House passed the Save American Workers Act ("40 Hours Act"), on a 252 to 172 vote. The 40 Hours Act would amend the ACA to redefine the definition of a full-time employee from 30 hours average a week to 40 hours average a week, retroactive to January 2013.

The 40 Hours Act is supported broadly by business groups, associations and employers across the country because it would re-establish the traditional 40-hour workweek as the full-time employee standard for American business. And, legislators who support the 40 Hours Act argue the current 30-hour definition will result in a major shift of the American workforce to "part-time" as employers over the next ten years seek to cut costs by reducing the average work week to below 30 hours.

The 40 Hours Act now goes to the Senate, although there is no word on when the Senate might take up the measure. The bill appears to have the Democratic votes needed to avoid a Democratic filibuster and be passed, but the bill has little real chance of becoming law because the President has vowed to veto it. A two-thirds vote in both chambers of Congress is needed to override a veto. At this time, it is unlikely this bill will receive the support necessary to override the President's veto. Historically, Congress has overridden fewer than ten percent of all presidential vetoes.

President Obama issued a statement earlier in the week expressing his opposition to the legislation because it would increase the deficit, shift health care costs to taxpayers, reduce the number of Americans with employer-based health insurance coverage, and create even more incentive for employers to shift their employees to part-time work. "By moving the threshold to 40 hours, this legislation could cause the problem it claims to solve by greatly increasing the number of workers for whom employers may have an incentive to reduce hours to avoid the requirement," the statement says.

A Congressional Budget Office (CBO) analysis estimates the bill will reduce the number of people receiving employment-based health care coverage by 1 million and increase the number

of people receiving coverage through Medicaid, Children's Health Insurance Program, or health insurance marketplaces by 500,000 to 1 million. It is estimated the shifts in source of insurance coverage and changes in employer mandate penalties would increase budget deficits by \$18.1 billion over the 2015-2020 period and by \$53.2 billion over the 2015-2025 period.

Naturally, this lingering uncertainty is frustrating for employers, many of which have already implemented strategies to comply with the 30-hour average work week provision as of the beginning of 2015. This bill reflects a major change to the ACA and would likely require a further delay in enforcement of the employer "play or pay" mandate because of the impact on regulations and employer compliance. Also, a change in the full-time employee definition would make 2016 strategies challenging and put employers in a difficult position of deciding whether to "take back" or change the medical benefits plans that were put in place in 2015 based on the 30-hour full-time employee definition.

Until the uncertainty is resolved, we suggest employers proceed with business as usual and comply with the current law and regulations. We will keep you informed as soon as more information becomes available so you can plan your strategies for the future.

### **Hire More Heroes Act**

The Hire More Heroes Act of 2015 ("Heroes Act") was introduced to both houses of Congress on January 6. The Heroes Act would amend the ACA to provide that veterans eligible for health care coverage from the U.S. Department of Veterans Affairs or Tricare plans are not counted for ACA purposes when determining whether an employer is an "Applicable Large Employer" (ALE). Only ALE's -- those with 50 or more full-time or full-time equivalent employees -- are subject to the play or pay requirements of the ACA. (In 2015, the play or pay requirements won't apply to most employers with between 50 and 99 full-time or full-time equivalent employees.)

The bill is aimed at small employers and encourages them to hire veterans without risk of tripping into ALE status under the ACA. This creates an instant advantage to veterans because many small employers have been limiting hiring to avoid being subject to the rigorous requirements of the play or pay mandates. The CBO has indicated this bill would cost the government (by reducing revenue) approximately \$858M over a ten year period beginning in 2015. But less than a billion dollars over ten years might seem a small price to pay for a program that will (i) encourage smaller employers to hire new employees and (ii) make our returning veterans even more attractive hires for these employers. It also makes common sense because these new hires, by definition, are not the employees the ACA is concerned with since they are already eligible for federally-supported insurance coverage.

Not surprisingly, the Heroes Act passed easily in the House. As of January 16 it is under consideration in the Senate and should pass easily there. It appears that the President will sign this bill into law when it reaches his desk.

### **PPACA REGULATIONS & GUIDANCE ISSUED IN THE LAST 3 MONTHS**

Nov. 2014: IRS Issues Notice 2014-69 [Minimum Value Plans and Hospital Coverage](#)  
Nov. 2014: ACA FAQs Part XXII – [Premium Reimbursement Arrangements](#)  
Nov. 2014: HHS announces [Extension of 2014 Transitional Reinsurance Contribution Filing Deadline](#)  
Nov. 2014: HHS Issues [Notice of Benefit and Payment Parameters for 2016 Proposed Rule and Fact Sheet](#)  
Nov. 2014: HHS Issues [Draft 2016 Actuarial Value Calculator](#) and [Draft Calculator Methodology](#)  
Nov. 2014: CMS Issues [Guidance on Hardship Exemptions for Individual Mandate](#)  
Nov. 2014: IRS Issues [Final Regulation on Minimum Essential Coverage and Other Rules Regarding Shared Responsibility Payment for Individuals](#)  
Dec. 2014: Agencies Issue Proposed [SBC Regulations, Template and Other Guidance](#)

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