



Updated Thursday, March 12, 2015 as of 12:07 PM ET

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APRIL 8TH | 2:00 PM ET

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Cadillac tax, wellness program clarity top employer priorities

Congress' first week was a busy one, as new lawmakers worked to make changes to the Affordable Care Act — changes employers should bear in mind as they develop their benefit plan and ACA compliance strategies in the coming year.

Some moves have been praised by industry experts, while others say the dust still needs to settle on a number of issues before concrete plans can be put in place.

30 hours vs. 40 hours

Last Thursday the House passed its version of a bill that would amend language in the ACA to increase the hours used to calculate ACA benefits, from the current 30 hours per week per month, to 40 hours.



"The health care law affected more than health benefits, it also affected staffing and the workforce as well," says Steve Wojcik, vice president of public policy at the National Business Group on Health. Employers will see the effects of the ACA on their labor costs unless they can find other ways to cut costs or pass these costs onto consumers, he adds.

But the Jan. 8 vote was just the easy step.

"The two hard steps will be to get it through the Senate and then signed by the president," Wojcik says. "I think it's a common-sense thing, you know, that 40 hours is probably what most people expect to be full time — much more than 30 hours."

Also see: [House passes bill to amend ACA definition of full-time employee](#)

Robert K. Neiman, a partner with the law firm Much Shelist, agrees. "With the Republicans in control of both houses, the bill is likely to pass," he says, "but I certainly think that the president will veto it."

Changing the wording of the ACA isn't going to change how an employer will function, he adds. "The problem with the proposal is that employers can simply schedule their employees to work 39 hours rather than 40 hours to avoid providing health care coverage to employees."

Wojcik says employers generally fall into three camps.

The bulk has already made changes to comply with the 30-hour definition, or has a policy to offer coverage to employees who work less than 40 hours, so no changes will be needed, even if the new bill passes. A second group would welcome the change and will make changes once the bill is passed to make adjustments to comply, he says.

A third, smaller, group would still offer coverage to those employees working 30 hours and will just be happy the government won't be focused on auditing them to see whether or not coverage is being offered to employees working between 30 and 40 hours a week.

Hiring more veterans

One of the very first initiatives from the House last week was H.R. 22, the Hire More Heroes Act of 2015. Introduced and passed on Jan. 6 — Congress' first day — the bill would ease administrative burdens for small employers by allowing employees with military service who receive health care coverage from the U.S. Department of Veterans Affairs or the federal Tricare program to not be counted toward determining whether the employer is large enough to be subject to the employer shared responsibility payments under the ACA.

"The bill is aimed at small employers and encourages those small employers to hire veterans without concern that the hire will trip them over the 50 full-time equivalent mark," says Peter Marathas, a partner in Proskauer's employee benefits, executive compensation & ERISA litigation practice center. "The bill eases the caution of small businesses that limited hiring practices to avoid being subject to the requirements of the play-or-pay mandates."

The Congressional Budget Office and the staff of the Joint Committee on Taxation estimate that enacting H.R. 22 would reduce government revenues by \$858 million over the 2015-2025 period.

"But less than a billion dollars over 10 years might seem a small price to pay for a program that will encourage smaller employers to hire new employees — something they have resisted doing since 2010 — and make our returning veterans even

more attractive hires for these employers,” says Marathas.

Also see: [House bill ties veteran hiring to ACA mandate relief](#)

But NBGH's Wojcik says the bill risks being misinterpreted by some employers that the health care coverage offered through the VA or defense department is good enough so an employer might not feel compelled to offer anything beyond that.

“I was frankly surprised that that was one of the first things coming out of the gates of Congress,” he added. “I think the intentions are good, but it’s a kind of cloudy message,” he says.

The Cadillac tax

But putting everything into perspective, the Cadillac tax — a tax set to go into effect in 2018 on high-end, generous health plans — is the “number one issues for employers,” Wojcik says.

“All the other changes and rules are important,” he notes, “but looking ahead ... many will face that tax and change [their] employee plans unless they can get their costs down.”

Employers are already laying the groundwork to make sure they don’t have to pay the 40% surcharge on health-insurance spending that exceeds \$27,500 for a family or \$10,200 for an individual.

And although employers are struggling to do whatever they can to get their plans below that threshold, there are still some “bells and whistles” Wojcik says that employers can provide.

“We don’t know everything that’s going to be counted toward the tax,” he says. “There could still be things that won’t be counted such as wellness programs ... and generous contribution to health accounts.”

Also see: [Public and union employers' attack plan for ACA excise tax](#)

Wojcik adds that wellness programs are important because they will lower health care costs and help employers stay under that Cadillac tax threshold. But, he cautions, there have been recent developments not totally related to the ACA employers should be aware of.

While the ACA encourages employers to implement wellness programs, recent challenges by the Equal Employment Opportunity Commission to several companies' wellness programs may change employer strategies in the future.

In the case of Honeywell, the EEOC claims the company's wellness program violates the Americans with Disabilities Act and the Genetic Information Nondiscrimination Act by imposing penalties on employees who decline to participate in Honeywell's biometric screening program.

Honeywell called the lawsuit “frivolous” and said the EEOC was out of line.

Also see: [Newest EEOC wellness program lawsuit draws further industry ire](#)

“We have conflicting messages from the government,” Wojcik notes. “On one hand, the ACA is promoting them and on the other hand, the EEOC is saying ‘hey, this is not OK.’”

He says clarity on the matter will be a big priority for employers going forward. If certain wellness programs are off the table, it “ties employers’ hands even more” with regard to the ACA, says Wojcik.

