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Health Reform Act Impact on Employer Obligations

The Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the 2010 Health Reform Act) is best known for its broad impact on future health insurance obligations throughout the nation. Given its length, the 2010 Health Reform Act also contains a number of lesser-known modifications to insurance and employment law. Despite their obscurity, these lesser-known provisions of the Act will have a substantial and immediate impact on the workplace. This article focuses on two of those provisions: modifications to the Fair Labor Standards Act (FLSA) related to unpaid breaks for nursing mothers, and the taxation of insurance coverage for dependents that have not attained the age of 27.

Specifically, the Nursing Mother Amendment in the 2010 Health Reform Act amends the FLSA to specify that an employer shall provide a reasonable break time for an employee to express breast milk for one year after her child's birth. This Amendment took effect on March 23, 2010.

Generally, school districts and municipalities are covered employers for purposes of the FLSA; however, the amendment specifies that an employer with less than 50 employees is not subject to the amendment if it would impose an undue hardship on the employer. The amendment defines undue hardship as an

event causing an employer significant difficulty or expense when considered in relation to the size, resources, and nature of the employer's business.

Additionally, the application of the Nursing Mother Amendment requires consideration of the employee's exempt status under the FLSA. This new requirement does not apply to certain classes of employees, including executive, administrative, and professional employees who are exempt from the FLSA overtime provisions. Thus, the Nursing Mother Amendment applies to employees in non-exempt, hourly positions.

Under the Amendment, an employer must provide a place, other than a bathroom, which may be used by an employee to express breast milk. This place shall be shielded from view and free from intrusion by co-workers and the public. A reasonable break must be provided each time the employee has a need to express milk. While breaks must be provided as needed by the employee, an employer is not required to pay an employee during the break time.

The Nursing Mother Amendment does not preempt any state law that provides greater protections to employees. Currently, Wisconsin does not have any law relating to the provision of breaks for nursing mothers. The amendment would not prevent future state legislation in this area.

In the December 2009 FYI, we discussed the taxation of health insurance provided by an employer to an adult child of an employee. We stated that if the child is not a dependent of the employee for income tax purposes, the value of the insurance coverage provided to the child is included in the employee's taxable compensation.

The Health Reform Act changes the taxation of health insurance provided by an employer to an adult child of an employee. The Act provides that the general income tax exclusion for employer-provided health insurance is extended to any child of an employee who has not attained age 27 as of the end of the year. For this purpose, a "child" means a person who is the employee's son, daughter, step son, step daughter or eligible foster child. The effective date of the Health Reform Act for this purpose is March 30, 2010.

However, the new federal exemption provided under the Health Reform Act and the Wisconsin mandate of coverage of an adult child up to age 27 do not match perfectly. There are still two instances where coverage provided to an adult child will be subject to federal income tax. First, the change in the federal income tax definition of a dependent is not retroactive. Therefore, for the year 2010, employers must value the coverage provided before March 30, 2010, for a child who did not qualify as the employee's income tax dependent. That value will need to be included on the employee's Form W-2 as taxable compensation. Second, while

Wisconsin requires that coverage be offered up to age 27, the Health Reform Act provides that such coverage is excluded for federal income tax purposes as long as the child has not attained age 27 as of the end of the year. In other words, if a child is born in August and reaches age 27 in 2010, that child will be eligible for coverage until the child's birthday in August, but may not qualify as a dependent for income tax purposes in 2010 (the exclusion under the Health Reform Act will no longer apply). If that child does not qualify as an income tax dependent, then the coverage provided between January 1, 2010, and the child's birthday in August must be valued and included in the employee's taxable compensation for federal tax purposes.

Wisconsin has not adopted the exemption contained in the Health Reform Act. The Wisconsin legislature is adjourned. It is anticipated that the Wisconsin legislature will consider whether or not to adopt the provisions of the Health Reform Act in the next session which will begin in January 2011. Until the provisions of the Health Reform Act are adopted by Wisconsin, employers should include the value of health care coverage provided to adult children of employees in taxable compensation for Wisconsin income tax purposes, unless the child qualifies as a tax dependent of the employee. The employer should withhold for Wisconsin income tax purposes based on this additional Wisconsin taxable compensation. The employer must include this additional compensation on Form W-2 for Wisconsin purposes.

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