

Obamacare Chaos: Two Lessons for Employers

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Dysfunctional websites. Low enrollment numbers. Public outrage over cancelled health policies. Mea culpas. Presidential administrative “fix.” Competing Congressional solutions. Finger pointing. It’s enough to make your head spin!

As an employer, you may be wondering what the recent flurry of activity surrounding the Affordable Care Act (a.k.a. Obamacare) means for your business. This post presents the two most important lessons that employers should keep in mind following last week’s events.

First a brief recap:

The mid-November headlines have focused on low enrollment numbers and growing discontent among millions of consumers whose health plans have been cancelled because they did not comply with the ACA.

Regarding the enrollment issue, the federal government last week reported that only 106,185 individuals nationwide have “selected” an [Obamacare exchange plan](#). The term “selected” appears in quotes because the government is counting people who have navigated the exchanges’ problematic websites and placed plans in their shopping carts — not necessarily people who have actually enrolled and paid premiums.

The figure is far lower than the government had projected. It also likely includes a disproportionate number of individuals who had difficulty purchasing insurance before, i.e. the sick and elderly. The economic viability of Obamacare depends on young, healthy individuals signing up in droves to balance the risk pool. It remains to be seen whether enrollment will increase when (and if) the federal government corrects the technical snafus plaguing its exchange websites.

Next is the issue of cancelled policies. During his campaign for Obamacare, the President repeatedly promised that individuals who liked their existing plans would be able to keep them. This turned out to be false. Millions of consumers, including more than a million in California, have had their plans nixed because they did not meet Obamacare’s regulatory mandates.

This has mushroomed into a major problem for Democrats, many of whom are up for re-election next year in swing districts. President Obama on Thursday attempted to stem the damage by (1) apologizing for his unfounded assurances and (2) unilaterally changing the rules to allow insurers to continue offering their existing plans for another year.

Sounds good — but this “fix” is fraught with complications. First, insurers have been restructuring their plans to meet the Obamacare mandates since 2010. As a practical matter, insurers may not be able to stop on a dime and reinstate the cancelled policies. Second, Obama’s directive did not guarantee continued coverage; it simply gave states the *option* of whether or not to allow insurers to offer nonconforming coverage. It remains to be seen whether state insurance commissioners – especially those who are loyal to the president and his signature legislative achievement — will go along.

In California, Insurance Commissioner Dave Jones said he would follow Obama’s directive. The final decision, however, rests with a newly formed board of the state’s new insurance exchange, which is scheduled to discuss the issue next week.

Meanwhile, on Friday the U.S. House of Representatives — including 39 Democrats — approved a measure, [H.R. 3350: Keep Your Health Plan Act of 2013](#), that would allow insurers to continue offering existing non-conforming plans and also enroll new individuals into those plans. The president has vowed to veto the measure in the unlikely event it passes through the Senate. Senate Democrats have offered a competing fix that appears to be on the back burner for now.

So how does all this affect you as an employer? We see two important takeaways.

Takeaway No. 1. Sit Back and Watch

To a large degree, the current maelstrom is not your problem (yet). Because of the postponement of the employer mandate until January of 2015, employers have the luxury of sitting back and watching events unfold — and you may actually benefit from any cosmetic or structural fixes to the ACA made between now and the implementation date.

The current fray primarily involves plans for individuals and small businesses. These policy holders, and the individual marketplace in general, have essentially become the guinea pigs for the ACA. Ideally, the healthcare landscape will become more clear and certain by the time employer mandates under the ACA kick in.

Takeaway No. 2. Stay Flexible

Plan assiduously for ACA implementation, but keep in mind that the specific requirements may change.

The future of the ACA has never been more uncertain. The low enrollment numbers coupled with the prospect of too few healthy individuals opting for coverage have shaken the very foundations of the law. Though Obama Administration officials assert that the ACA has built-in safeguards to prevent a “death spiral,” the prospect of the law sinking under its own weight — or outright repeal — have never seemed so possible.

Obamacare's rocky rollout also raises questions about the premiums insurers will be able to offer, making planning more difficult for all stakeholders. Moreover, President Obama has demonstrated a willingness unilaterally to rewrite key provisions of the ACA to suit his immediate political needs.

All this creates uncertainty for employers, which is never good for business. We recommend that you move forward aggressively with a prudent business plan to satisfy the ACA employer mandate. You don't want to risk penalties for being unprepared at the implementation date. Just don't carve your plan in stone under current political climate.

Machinations in Washington may necessitate major or minor adjustments to your approach. It will be important to communicate with counsel in the coming months to better understand your options.

Topics

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