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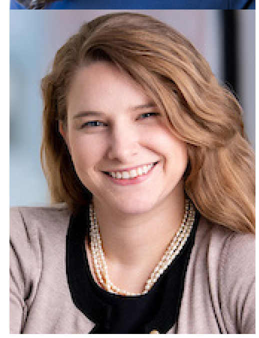

Groundhog Results Are In: An Early Spring Means It's Time for Health and Welfare Spring Cleaning!

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1. Thought You Were in the Clear? CA's Individual Mandate Replaces the ACA Individual Mandate for CA Taxpayers

Although the federal government effectively removed the individual mandate under the Affordable Care Act by setting the penalty to zero (effective January 1, 2019 under the Tax Cuts and Jobs Act of 2017), California decided to pick up the slack and create its own individual mandate. On June 27, 2019, California passed Senate Bill 78 ("SB 78"), which created the "Minimal Essential Coverage Individual Mandate," generally applicable for all California residents who are required to file a state tax return, and their dependents, effective January 1, 2020. S.B. 78, 2019 Leg. 2019-20 Sess. (Cal. 2019). Similar to the federal individual mandate, California's new law requires each resident to be enrolled in health plan coverage that is considered "minimum essential coverage" starting on January 1, 2020, or pay a penalty generally equal to the lesser of 2.5% of the individual's adjusted gross household income or $695.

What Does That Mean for Employers?

The California Franchise Tax Board (FTB) will require annual reporting by "applicable entities" that provide "minimum essential coverage." That description includes insurers, employers, and other sponsors of employment-based health plans, like multiemployer plans. We expect the Form 3895, California Health Insurance Marketplace Statement will be similar to the Forms 1094/1095-B and C (according to the FTB, employers can submit the ACA reporting forms in lieu of Form 3895), and the first cycle of reporting will be due by March 31, 2021 for 2020 coverage information.

2. California Expands Its Definition of Domestic Partner

California passed Senate Bill 30 on July 30, 2019, which changes the definition of domestic partnership. S.B. 30, 2019 Leg. 2019-20 Sess. (Cal. 2019); see also CAL. FAM. CODE § 297; 298; 299 (2020). Previously, any same-sex couple that met the domestic partnership requirements could register in CA, but opposite-sex couples could only register if one of the partners was age 62 or older. The new California domestic partnership definition eliminates that age requirement for opposite-sex domestic partners, expanding domestic partnership eligibility as of January 1, 2020.

Takeaways

- For employers who offer fully-insured plans, CA law requires those fully-insured plans that offer coverage to spouses of their California employees to offer coverage to registered domestic partners on the same terms. Accordingly, there may be employees who are enrolling their newly qualified CA domestic partners under those employer plans.
- If any employer materials (e.g., Domestic Partnership guides or forms) included the previous definition of domestic partners, then those documents should be amended as applicable.
- Finally, this is a chance for employers to revisit federal and state taxation considerations for enrolling domestic partners into their plans. The details are beyond the scope of this article, so please contact us if you have any questions about whether your payroll department is properly imputing income for the cost of domestic partnerhealth care coverage.

3. Cadillac Tax Repealed as We Cruise into 2020

The unpopular "Cadillac tax," which was supposed to impose a non-deductible 40% excise tax on high cost employer group health plans beginning in 2018 (subsequently postponed to 2020 and then to 2022), has finally been repealed. It was a part of the Further Consolidated Appropriations Act of 2020, H.R. 1865, 116th Cong. (2019), which was signed on December 20, 2019. See also 26 U.S.C 4980I (2020).

4. PCORI Fees: It's Not Just Your Clock That Springs Forward

Just when you thought they were done, the Patient Centered Outcomes Research Institute (PCORI) fee, originally set to expire in 2019, has been extended to 2029. Internal Revenue Code Section 9511, 26 U.S.C. 9511(b) (2020). For self-insured health plans, employers must calculate the PCORI fees owed each year. The PCORI fees are calculated by multiplying the average number of covered lives and the PCORI fee rate set by the IRS for that plan year. For self-insured plans, the average number of covered lives can be determined using three alternative methods: (1) the actual count method; (2) the snapshot method; or (3) using the Form 5500. See *IRS, Patient-centered outcomes Research Institute Fee*. The last fee rate (i.e., for the plan year ending on or after October 1, 2018 but before October 1, 2019) was $2.45 per covered life. No rate has yet been set for the next PCORI fee due. We will update you when the new rate is available.

5. For Employers Who Took Advantage of the Employer Credit for Paid Family and Medical Leave, You're in Luck! It Has Been Extended to 2020

If you took advantage of the short-term employer credit for Paid Family and Medical Leave granted through the Tax Cuts and Jobs Act of 2017, then that quick action paid off. The employer credit has been extended for another year! To learn more about the employer credit, see Jennifer Truong, "IRS Issues FAQs Clarifying New Employer Tax Credit for Paid Family and Medical Leave."

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