On March 23, 2010, President Barack Obama signed into law comprehensive health care reform legislation, the Patient Protection and Affordable Care Act (H.R. 3590) passed in the Senate. The Health Care and Education Reconciliation Act of 2010 (H.R. 4872) is a reconciliation bill passed by Congress to make changes to the PPACA, signed into law in March 30, 2010. Together, these bills represent the completed health care reform Act. The summary below lists the main provisions of the Act that directly affects employers.

SHARED RESPONSIBILITY FOR EMPLOYERS

- Effective Jan 1, 2014

- No mandate, but assessment fee for "large" employers (more than 50 FTEs) if employer has at least 1 FTE who receives credit through an Exchange. The idea is that "large" employers help offset the costs to the American taxpayer if a firm has employees who access taxpayer supported health programs (i.e. in an Exchange).

  [Note: This should affect a small section of "large" employers since more than 96% of "large" employers offered coverage in 2008, according to the Kaiser Family Foundation].

- FTE is defined as an employee who is employed on average at least 30 hours of service per week.

  - "Large" Employers NOT offering health coverage to its FTEs (and their dependents) AND at least 1 FTE is receiving a tax credit through the Exchange, will be assessed a fee of $2,000 per FTE (whether the other FTEs are receiving credit or not);

  - "Large" Employers that DO offer health coverage to its FTEs (and their dependents) AND have at least 1 FTE who received a premium credit through the Exchange are required to pay the *lesser* of $3,000 for each FTE who received the credit AND enroll in an Exchange or $2,000 for each FTE.

  *[Note: Because the assessment applies to FULL time employees only, the law includes a mechanism to prevent employers from evading the fee by decreasing the work hours of their employees to PT. The law requires that a measure of FTE "equivalents" be counted to determine whether the employer is subject to the assessment. The "FTE equivalent" is calculated by totaling the number of hours paid divided by the number of available regular hours a FTE could have worked for the year (or $2080, a maximum limit established by this law). With this measure, FTE "equivalents" can include more than one employee, which means that the total number of "FTE equivalent" does not equal the head count of each employee. In other words, BOTH the number of PTEs and FTEs are considered when determining whether the employer employed an average of at least 50 FTEs. For example, if the work year is defined as 2,080 hours, then one worker occupying a paid FT job all year would consume one FTE; two employees working for 1,040 hours each would consume one FTE between the two of them. This "FTE equivalent" scale, however, is **not** counted when determining the amount of the penalty. Also, no penalties apply to PTEs.]*

- It is against the law to discriminate against low-income workers that qualify for the tax credit or cost-sharing subsidy that can be used in an Exchange.

- The first 30 FTEs are excluded when calculating the amount of the penalty.

- An employee is eligible for Tax Credit or a Cost Sharing Reduction for use in an Exchange if:

    - The employee's household income range is from 133-400% of the federal poverty level (FPL) and,
    - If the employer does offer coverage, but the employee's required premium for coverage in unaffordable (exceeds 9.5% of their household income) or,
    - The employer does not pay for at least 60% of the allowed costs under the plan.

  The employer does not determine if employee is eligible for premium tax credit based on income; instead, the employer is notified by the exchange if the FTE qualifies.

- Large employers are <u>not</u> required to have a standard benefits package or make minimum contributions to premiums. BUT, if the employer pays less than 60% of the plan's premium, the employee may be eligible for subsidy in an Exchange (depending on their income), which then trigger the fee assessment for employers (except in the case where employer offers Free Choice Vouchers, see below).

- Employers that DO offer coverage will be required to automatically enroll employees into the employer's lowest cost premium plan (employee may opt out).

- Employers that DO offer minimum essential coverage and pay a portion of the cost of the premium are required to provide a "<u>FREE CHOICE VOUCHER</u>" to employees to be able to buy insurance in an Exchange,

    - IF:
        - Employee's income is less than 400% Federal Poverty Level (FPL), AND
        - If the employee's share of the premium is greater than 8% but less than 9.8% of their income or the employers plan pays less than 60% of the premium cost AND
        - Employee opts out of the employer-sponsored plan into an Exchange

    - Voucher amount equals what the employer would have paid to provide coverage (for individual or family coverage).

    - Voucher amount will be used by employees to cover the premium costs for the plan they choose in the Exchange. The amount of the voucher used by the employee to purchase a plan in an Exchange is not taxable to the employee; any amount left over not applied to the premium cost of that plan will be taxable to the employee.

    - Employers that provide "free choice vouchers" will <u>not</u> be penalized for employees who receive credits in the Exchange (i.e. no assessment payment imposed employer for employees who choose to take the voucher).

    - Employers pay the credit amount of voucher to the Exchange for the premium of the plan. If the amount of the free choice voucher exceeds the amount of the premium of the plan, employers must pay that excess directly to the employee. If premium in an Exchange ends up being more than what the employer would have contributed to the employer-sponsored plan, employees pay that difference out-of pocket.

- Employees who receive voucher would not also qualify for a premium tax credit in the Exchange.

- Many of the details are to be worked out in regulation. One issue will be to determine the amount the employer must contribute and which plan to consider if employees costs falls between 8-9.8% of income.

[Note: The idea behind the voucher is to allow low income individuals to have more options in purchasing insurance]

- Employers with 200 or more FTEs must automatically enroll their employees in the employer-offered lowest cost health care plan. Employees may opt out.

- Any employer offering employer-sponsored insurance may not impose any waiting period in excess of 90 days (for both individual and family coverage). However, there will be no fee imposed on employers that require waiting periods up to 90 days before employees could enroll in an employer-sponsored plan.

- Employers are required to disclose the value of health benefits on employees' W-2 tax forms.

- Employers with 50 or less employees are exempt from this assessment.
[Note: less than 50% of these "small" employers offer health insurance]

EMPLOYER REQUIREMENT TO INFORM EMPLOYEES OF COVERAGE OPTIONS

- Effective March 1, 2013

- All employers (not just large employers) must provide a written notice to all employees about the existence of an Exchange, including information on how to contact the Exchange to request assistance and their potential eligibility for a tax credit or cost sharing reduction if the employer covers less than 60% of the allowed costs under the plan. This notice must contain information on an employee's eligibility for a tax credit or cost sharing reduction through the Exchange.

PROTECTIONS FOR EMPLOYEES

- No employer is allowed to discharge or discriminate against any employee with respect to salary (i.e. discriminating in favor of higher wage employees), terms, conditions, or other privileges of employment, including credit or subsidy to buy in an Exchange. If employee believes that he/she was unlawfully discharged, they may seek relief in accordance to the law.

SMALL BUSINESS TAX CREDIT: FOR EMPLOYEE HEALTH INSURANCE EXPENSES OF TAX-EXEMPT SMALL EMPLOYERS

- Effective January 1, 2010 (effective immediately)

- Eligible employer: "small" employers with no more than the equivalent of 25 FTE (a firm with fewer than 50 half-time workers would be eligible) AND average annual wages below $50,000 for FTEs and covers at least 50% of the total premium cost.

  [See information on Pg 1 on how the FT "equivalent" number of employees is determined – this scale allows employers to account for PTEs so that an employer with more than 25 employees may qualify for this credit].

- Phase I:
  - For 2010 – 2013: Credit of up to 25% for non-profit employers (35% for for-profits) of employer's average premium contribution toward the employee's health insurance premium. For non-profit employers, credit amount is based on the payroll taxes of the employer – non elective contributions for premiums paid for health insurance coverage

- Phase II:
  - 2014 on: for businesses who purchase coverage through the Exchange, credit of up to 35% (50% for for-profits) of employer's contribution toward the employee's health insurance premium if employer contributes at least 50% of the total premium costs

- The requirement that the employer pays at least 50% of the total premium cost applies to the premium for single coverage for the employee, even if employee has family coverage.

- There are special rules in calculating the credit for a tax-exempt qualified employer. The amount of the credit (25% of employer's premium expenses) cannot exceed the total amount of income and Medicare (i.e. Hospital Insurance) tax the employer is required to withhold from employees' wages for the year plus the employer share of Medicare tax on employees' wages.

- Any premium paid as a salary reduction arrangement under a section 125 cafeteria plan is not treated as paid by the employer, therefore not subject to this tax credit.

- Premiums paid by the employer in the 2010 year before the new health care reform law was signed in March 23, 2010, CAN be counted in calculating the credit.

- For tax-exempt employers that have no taxable income, the credit is a refundable credit. The IRS will provide further detail on how to claim the tax credit since they can't claim it on the annual income tax return.

  [Note: the credit rates are lower for non-profits to ensure that the value of the credit is approximately equal to that provided to for-profit firms that cannot claim a tax deduction for the amount of the credit claimed]

- The amount of the credit gradually phases-out based with average wage between $25,000 and $50,000 and for firms with the equivalent of between 10 and 25 FTEs.

- An employer's eligible contribution is limited to the average cost of health insurance in that state. This is to avoid an incentive to choose a high-cost plan.

- For more detailed information on the tax credit for small businesses, visit the IRS website.

EXCHANGE-ELIGIBLE EMPLOYERS

"Exchanges" are new entities that create organized and regulated marketplaces that will allow small employers and employees not covered through their employers to shop for insurance at more competitive rates than is currently available.

- Effective Jan 1 2014;
- First Year – small employers with 100 or fewer employees, but before 2016, it's up to the state to limit eligibility to employers with no more than 50 employees;
- Beginning in Jan 2017, states can choose to allow employers with more than 100 employees to participate in the Exchange;
- Once an employer is permitted to participate in an Exchange, that employer may continue to be "Exchange-eligible" regardless of the number of employees it employs in the future.

OTHER PROVISIONS

Group health plans that impose certain exclusions will no longer be allowed. Grandfathered group health plans are also subject to most requirements. Although group health plans will be responsible for complying with all the provisions of the law, employers also have the responsibility of ensuring that the plan(s) they sponsor abide by the Act. Some provisions are effective this year, but most don't take effect until January 2014. Some of the main provisions are listed below:

- Group health plans must now cover unmarried dependent children up to age 26 who have no access to other employer-sponsored health coverage, beginning in Sept 23, 2010. The law does not require coverage for the child of a child who is receiving dependent coverage. The law does not specify whether employers must contribute toward the child's premium – this is something that will be further addressed in rule making.
- Group health plans can no loner impose life time or annual limits on plan benefits, effective September 23, 2010;
- Group health plan can no longer exclude anyone due to pre-existing conditions, effective September 23, 2010 to children, effective January 2014 to all persons;
- Free preventive care under Medicare and private plans – no co-pays and exempt from deductibles; effective September 23, 2010;
- The law limits health care reimbursement account contributions to $2,500 per year and no longer allows over-the-counter drugs to be reimbursed through health reimbursement account or health saving account unless prescribed by a doctor;
- The law provides a temporary reinsurance program (until Exchanges become available in January 2014) for early retirees (ages 55- 64) and their dependants that provides reimbursement to participating employment-based plans for a portion of the costs of providing health insurance coverage. This temporary program is created to help companies maintain health coverage for early retirees. The reimbursement to the employment-based health plans equals 80% of the cost of benefits per enrollee that is between $15,000 and $90,000. This provision is effective June 23, 2010;

- The law creates a Simple Cafeteria Plan available for employers with less than 100 employees. This Simple Cafeteria Plan is a new program for smaller employers to be able to offer this tax-free benefit to their employees in a way that reduces the administrative burden of sponsoring such plans; effective Jan 1, 2011;

- The law creates a temporary national high-risk pool insurance coverage for eligible individuals until Exchanges are up and running (in January 2014), effective June 23, 2003. Eligible individuals are those who have pre-existing conditions and have not been covered under any plan as of March 23, 2010. Employers are prohibited from disenrolling employee from employer-sponsored plan or encouraging employees to disenroll from employer-sponsored plan for the purpose of applying for coverage through this high risk pool.
- Healthcare flexible savings contribution from each employee will be limited to $2,500 per year, effective January 2013;

- A nondeductible excise tax equal to 40% of the combined cost of the annual employer and employee premium that exceeds the limit of $10,200 for individual coverage and $27,500 for family coverage (not counting dental and vision plans). The limits for retirees and high-risk professionals are between $11,850 and $30,950). The insurance company will be taxed, not the employer; effective January 2018;

- Eliminates the tax deductions for employers who receive Medicare Part D retiree drug subsidy payment, effective January 2013.

- There will be an increase in the Medicare tax for high income employees. Effective 2013, for employees earning more than $200,000/yr, this increase in Medicare tax will be levied on the employee's share of the income. Employers will be required to withhold this additional tax from the employee's income.

[Note: In the case of health insurance coverage under "collective bargaining" agreement (negotiation between employer and trade union), that was ratified prior to law's enactment date (March 23, 2010), will not be subject to the Act until agreement expires].