

# Monday Morning Quarterback



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### HEALTH CARE

#### The Health Care Reform Bill Is Final... Now What?

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act ([H.R. 3590](#)) and shortly thereafter the Health Care and Education Reconciliation Act of 2010 ([H.R. 4872](#)), which changes health care as we know it. In the coming years there are many adjustments that construction companies need to be aware of in order to comply with the new law.

***Please note: While this article is intended to provide you with information, it was written with the members in mind, so please feel free to pass it along to your membership.***

#### The Process

On March 21, 2010, the House voted to pass the health care reform bill that was previously passed by the Senate in December 2009, which made the bill available for the president to sign into law. After passing the Senate bill, as is, the House then passed a “reconciliation” bill that made several changes to the law. It was then sent to the Senate, modified and passed again by the House.

While there is a lot of information and commentary about state lawsuits and other efforts to repeal portions of the law, the fact of the matter is that on March 23, 2010, health care reform became “the law” and employers will have to begin complying. Now that the dust has settled on the bill, AGC will continue to seek regulatory guidance and compliance assistance tools for its members as information becomes available.

#### Is your company required to provide health insurance to employees?

The quick answer is “No,” companies don’t have to provide health insurance to employees. But if your company chooses not to, beginning on January 1, 2014, there may be stiff penalties to pay. Under the new law, employers with 50 or more employees who choose not to offer **qualified health coverage** to employees will have to pay \$2,000 per full-time employee, excluding the first 30 employees from the assessment, each year if at least one full-time employee receives income-based premiums assistance to purchase coverage through an Exchange. The number of full-time employees can be determined by adding the number of employees who work an average of 30 hours per week in a month to the calculated number of part-time workers. This calculation requires employers to divide the total number of hours worked in a month by employees who work fewer than 30 hours per week, by 120. Originally, there was a requirement that only construction contractors with fewer than five employees be exempt from the penalty, but AGC worked with other construction trade groups to repeal this provision that targeted the industry. Now, all companies

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with fewer than 50 employees are exempt from the penalty.

#### **Example 1**

Scenario: 40 employees working 30 or more hours per week  
 20 employees working 20 hours per week (a.k.a. PT)

Calculation: 20 PT X 20 hours worked per week = 400 total hours worked per week  
 400 total hours worked per week X 52 weeks = 20,800 hours worked per year  
 20,800 / 12 months = 1733.333  
 1733.33 / 120 = 14.444 employees  
 40 full-time employees + 14.444 part-time equivalents = 54.44 total employees.  
 54.44 employees minus the 30 employee allowance = 24.44 employees

Conclusion: ***This employer would have to provide qualified benefits to its employees or pay a penalty of \$49,000 (\$2,000 x 24.44 = \$49,000).***

#### **Example 2**

Scenario: 35 employees working 30 or more hours per week  
 20 employees working 20 hours per week (a.k.a. PT)

Calculation: 20 PT X 20 hours worked per week = 400 total hrs. worked per week  
 400 total hours worked per week X 52 weeks = 20,800 hours worked per year  
 20,800 / 12 months = 1733.333  
 1733.33 / 120 = 14.444 employees  
 35 full-time employees + 14.444 part-time equivalents = 49.44 total employees.

Conclusion: ***The 30 employee allowance is not applicable here because the employer has fewer than 50 total full-time equivalent employees. Because this number is less than 50, the employer is exempt from the mandate and does not have to provide qualified coverage or pay a penalty.***

Available small business pooling options and tax incentives designed to entice those small businesses to offer health coverage may do just that. For example, by 2014, a Travelocity-like health care *exchange* system will be created for businesses with fewer than 100 employees to pool together and shop for affordable healthcare plans. Until then, companies with 10 or fewer employees earning less than an average of \$25,000 will be eligible for a tax credit of 35 percent of health insurance costs. Companies with 11-25 employees with an average wage up to \$50,000 are eligible for partial tax credits. Once the exchange is created, the tax credit will increase to 50 percent for the first two years coverage is purchased through the exchange and then the credit would end. While these tax credits are retroactive to January 1, 2010, it has not been determined how the credit will be claimed.

In addition to the tax credits, grant programs will also be created to help small and

mid-sized companies develop and strengthen workplace wellness programs.

What if your company already provides health insurance?

If your company already provides health insurance coverage for employees, there are still a few things to consider and anticipate. For example, beginning in 2014, employers who offer health benefits but have at least one employee who applies for a federal subsidy to purchase insurance on their own would be subject to an annualized penalty of \$3,000 for each employee who has qualified for subsidized coverage. Employees are eligible for the federal subsidy if the employer provided plan does not have an actuarial value of at least 60 percent or if the employee share of the premium exceeds 9.5 percent of their income. In addition, employers may still be required to help low and middle-wage earners who opt out to buy coverage on their own. Specifically, an employee who earns less than four times the federal poverty level, \$88,200 for a family of four, will have the option to purchase coverage through the exchange. In turn, the company would have to provide a “free-choice voucher,” which must be equal to the amount paid to provide coverage to all other participating employees. Furthermore, companies with more than 200 employees will be required to automatically enroll new hires into the health plan, but the new hire can voluntarily opt-out after enrollment if they choose. There is no penalty for workers in a waiting period, but employers must limit the period to 90 days beginning in 2014.

Plans that were in effect on the date of enactment, March 23, 2010, are grandfathered-in and able to keep their existing coverage; however, they must still comply with the following requirements on their respective effective dates: no lifetime limits, restrictions on annual limits, restrictions on coverage rescissions, coverage of dependent adult children, coverage of dependent children with pre-existing conditions, coverage of adults with pre-existing conditions, and maximum 90 day waiting periods.

So, what should be done now?

The good news is that most of the major changes won't occur until January 1, 2014, so there isn't much that employers have to do right away. There are several plan changes that insurance companies are required to make on your plan's renewal date, so expect to receive communication regarding these changes and communicate them to your employees and new hires appropriately. The timeline below provides an explanation of when changes are expected to occur that may affect employers.

Tax Years 2010-2013	<ul style="list-style-type: none"> <li>· Employers with fewer than 25 employees may take advantage of tax credits in exchange for providing healthcare benefits.</li> </ul>
June 23, 2010 through December 31, 2013	<ul style="list-style-type: none"> <li>· Employers will be able to participate in an incentive program to provide coverage for retirees over the age of 55 who are not eligible for Medicare.</li> <li>· A temporary high-risk insurance pool will be created to provide health care to individuals with pre-existing medical conditions who have been uninsured for at least six months.</li> </ul>
Effective for plan years beginning on or after September 23, 2010 or for calendar year plans beginning January 1, 2011.	<ul style="list-style-type: none"> <li>· Insurers will not be able to deny coverage to children who have pre-existing medical conditions.</li> <li>· Insurance companies will have to provide coverage for dependent children up to the age of 26, regardless of educational or marital status. However, the adult child must not be eligible to enroll in another eligible employer-sponsored health plan.</li> </ul>

	<ul style="list-style-type: none"> <li>· Plans can no longer set “lifetime limits” on essential benefits regarding how much they will pay, except in cases of fraud.</li> <li>· Health insurance plans will be required to cover preventative services such as immunizations for children and cancer screenings for women.</li> <li>· Policies cannot be cancelled for those who get sick.</li> </ul>
January 1, 2011	<ul style="list-style-type: none"> <li>· The federal tax on individuals who spend money from Health Savings Accounts (HSAs) on ineligible medical expenses will double to 20 percent.</li> <li>· The Aggregate cost of applicable employer-sponsored coverage must be reported annually on the employee’s Form W-2.</li> </ul>
January 1, 2013	<ul style="list-style-type: none"> <li>· The limit on how much individuals can contribute to flexible spending accounts (FSAs) will be set at \$2500.</li> <li>· The Medicare tax rate will increase from 1.45% to 2.35% on earnings over \$200,000 for individuals and \$250,000 for families.</li> </ul>
January 2, 2014	<ul style="list-style-type: none"> <li>· Companies with 50 or more employees will be required to pay a penalty (\$2,000 annualized) for each employee if the company does not provide a health insurance plan. (<i>The threshold for construction companies was increased from 5 to 50 as a part of the reconciliation process.</i>)</li> <li>· Companies with 50 or more employees would pay a fine if any of their full-time workers qualified for federal health care subsidies.</li> <li>· A state-based health care exchange system will be created as a marketplace for uninsured individuals and small businesses to comparison shop for insurance policies.</li> <li>· Health plans will be required to meet minimum benefits standards covering a minimum of 60 percent of costs.</li> <li>· All annual limits must be eliminated from health plans.</li> <li>· Adults with pre-existing conditions can no longer be denied coverage.</li> <li>· Employers must automatically enroll employees into the company’s health plan. Employees may opt out later.</li> <li>· Waiting periods of more than 90 days are not permitted.</li> </ul>
January 1, 2018	<ul style="list-style-type: none"> <li>· A 40 percent tax would be imposed on healthcare plans that cost more than \$11,850 for individual coverage and \$30,950 for family coverage. This</li> </ul>

amount is higher for construction employers than most other industries because construction is one of many high-risk industries and excludes the value of dental and vision benefits.

States may choose to allow large companies with 200 or more employees to purchase coverage through the exchanges.

*Note: While this article focuses mainly on the requirements for employers, for companies that self-insure, both the insurer and employer requirements are applicable.*

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