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Patient Protection and Affordable Care Act Becomes Law

On March 23, 2010, the Patient Protection and Affordable Care Act (Patient Protection Act) was signed into law by President Barack Obama. One week later, the President signed into law the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act), completing reform of the nation's health insurance and delivery systems.

Under the Patient Protection Act, as amended by the Reconciliation Act, starting in 2014, all U.S. citizens and legal residents not covered by employer-provided insurance or Federal programs will be required to obtain health care coverage or pay a penalty, unless they are exempt from the personal responsibility mandate. Families and individuals with incomes below specified levels will be offered premium assistance starting in 2014, and states may create health insurance exchanges through which individuals and small businesses can purchase qualified coverage. While

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Hybrid Defined Benefit/401(k) Plan Debuts in 2010

Starting in 2010, small businesses have the option of sponsoring a tax-advantaged "DB(k)" retirement plan, a hybrid of a defined benefit plan and 401(k) plan. This new plan type could prove attractive to companies that want to provide employees with both a traditional pension plan and a defined contribution plan, but wish to minimize the administrative burdens involved with sponsoring two plans.

The new combined defined benefit/401(k) plan, or DB(k), was established by the Pension Protection Act of 2006 and is available to employers with 2 to 500 employees for plan years starting after December 31, 2009. The plan assets are governed by a single trust and single plan document, but there is separate accounting for the DB and 401(k) components of the trust. Generally, defined benefit rules apply to the defined benefit component of the plan, and defined contribution rules apply to the 401(k) component of the plan.

In a DB(k) plan, the defined benefit must be equal to 1% of final average pay for each year of the participant's service, up to 20 years. Thus, plan sponsors will be required to create a pension fund large enough to pay each participant up to 20% of his or her average annual salary during the last few years of

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a government-provided "public option" was not included in the final bill, the insurance coverage options through these exchanges will be offered by government agencies or nonprofit organizations. No penalty will be imposed on businesses that fail to provide insurance to workers, but companies that employ 50 or more workers will be subject to so-called "pay or play" rules after 2013.

According to the Congressional Budget Office (CBO), the health care reform package may cost the Federal government $938 billion over 10 years, but may reduce the Federal deficit by $143 billion over the same period, largely due to savings in Medicare and new taxes and fees levied in the bill. The CBO estimates that the legislation could provide coverage to 32 million uninsured Americans, but still leave 23 million people uninsured in 2019, one-third of whom would be illegal immigrants.

Effective for 2010

While many of the core provisions of the Patient Protection Act do not go into effect until 2014, others will be effective immediately, or within the next several years. Starting in 2010, small businesses with fewer than 25 employees that pay at least 50% of the health care premiums for their employees qualify for a tax credit of up to 35% of their premiums. This credit will increase to 50% after 2014 if insurance is purchased through an exchange. The amount of the credit for a specific business depends on the number of its employees and the average wage.

Starting in June 2010, individuals who have been unable to obtain insurance due to a pre-existing condition can join a high-risk insurance pool. Beginning this year, insurance providers may no longer deny coverage to children due to pre-existing conditions. This provision is expanded to include adults with pre-existing conditions beginning in 2014. Also starting in 2010, uninsured adult children may remain on their parents' health care plans until the age of 26. Beginning in September 2010, insurance companies are prohibited from imposing lifetime maximum limits on policies and from rescinding policies, except in cases of fraud. Under the new law, the so-called "doughnut hole" in Medicare prescription drug coverage will be closed over the next several years, and beneficiaries who fall through this coverage gap qualify for a $250 rebate in 2010.

Individual Coverage Mandate

Starting in 2014, all U.S. citizens and legal residents who are uninsured will be required to obtain health care coverage, or pay a penalty. Those who already have insurance, individually or through their employers, will not need to make any changes, provided the coverage meets certain minimal requirements. Individuals who fail to purchase and maintain coverage will be required to pay tax penalties that will be phased in over time. An adult who fails to obtain health insurance by 2014 will be penalized $95 or 1% of income, whichever is greater, provided the amount does not exceed the cost of a health care plan with basic coverage. In 2015, the penalty for not having insurance will increase to $325 or 2% of income, and by 2016, the penalty will rise to $695 for an adult or 2.5% of income, whichever is greater. A family's total penalty generally cannot exceed 300% of the adult flat-dollar penalty ($285 for 2014, $975 for 2015, or $2,085 for 2016) or the cost of a basic health care plan. Exemptions to the penalty will be granted to individuals whose income is below the Federal income tax filing threshold; to individuals whose contributions to an employer-sponsored or basic plan through an insurance exchange would exceed 8% of household income; and to members of certain groups, including religious objectors, undocumented immigrants, incarcerated individuals, qualified members of Native American tribes, and certain hardship cases.

To assist those who cannot afford the full cost of premiums, the Federal government will expand the Medicaid program to enroll uninsured individuals with incomes below 133% of the Federal poverty level (FPL). Starting in 2014, subsidies will be provided on a sliding scale to individuals with lower to mid-level

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incomes who do not qualify for Medicaid. Families and individuals with incomes up to 400% of the FPL may be eligible for a premium assistance tax credit to help them purchase basic coverage through an exchange. These subsidies will not be available to individuals who are covered by employer-provided insurance, unless the workplace plan covers less than 60% of total allowed costs or the individual's contribution to the premium exceeds 9.5% of his or her income.

Employer Coverage Requirements

While employers will not be required to offer health care plans, starting in 2014, a business with 50 or more full-time employees (defined as working 30 or more hours per week) will be required to pay $2,000 per worker per year for all workers if even one of the company's employees qualifies for and accepts a Federal health insurance premium subsidy. The first 30 employees are subtracted from the payment calculation. In addition, employers face a potential tax penalty of $3,000 per full-time worker per year for every full-time worker who qualifies for a health insurance coverage premium subsidy. Employers that offer health care coverage may in some cases be required to provide "free choice vouchers" to employees with incomes less than 400% of FPL whose share of the premium exceeds 8%, but is less than 9.8%, of their income and who choose to enroll in a plan in the exchange. Starting in 2011, employers and other entities providing minimum health coverage will be required to report the value of health benefits to the IRS, and this value will appear on employee W-2 forms.

Revenue-Raising Provisions

To help raise revenue to cover the costs of providing subsidies to the uninsured, the new law will broaden the Medicare tax base for higher-income taxpayers starting in 2013. This includes levying an additional Hospital Insurance tax rate of 0.9% on earned income in excess of $200,000 for individuals and $250,000 for married couples filing jointly, as well as a 3.8% unearned income Medicare contributions tax on higher-income taxpayers on the lesser of net investment income or the excess of modified adjusted gross income (MAGI) over the same threshold amounts. Some trusts and estates will also be liable for this 3.8% tax.

An excise tax on high-cost, or "Cadillac," health plans, which was designed to raise revenue and reduce waste, will go into effect in 2018, which allows insurers time to adjust to the requirements. Starting in 2018, a 40% nondeductible excise tax will be imposed on health insurance providers or plan administrators for any health insurance plan with annual premiums in excess of $10,200 for individual and $27,500 for family coverage, with both amounts adjusted for inflation. For employees in certain high-risk professions and non-Medicare retirees age 55 and older, the thresholds increase to $11,850 for individual and $30,950 for family coverage. Insurance providers and plan administrators are permitted to pass along the excise tax to consumers through higher premiums, as an alternative to or in combination with cost-cutting measures.

For taxpayers claiming the itemized medical expense deduction, the new law will increase the threshold to 10% of adjusted gross income (AGI), from the previous 7.5%, starting in 2013. Taxpayers age 65 and older and their spouses will be exempt from the higher threshold until 2017. The new law does not, however, adjust the allowable medical expense deduction floor for AMT purposes, which remains at 10%. Starting in 2011, provisions of the law will modify the definitions of qualified medical expenses for flexible spending accounts (FSAs), health savings accounts (HSAs), and health reimbursement arrangements (HRAs) to conform to the definition used for the medical expense itemized deduction, thereby excluding tax-free reimbursements for over-the-counter drugs not prescribed by a physician. The annual cap for contributions to FSAs will be set at $2,500 starting in 2012, with the amount indexed for inflation in subsequent years.

In other revenue-raising provisions, the legislation levies a 10% tax on indoor tanning services starting in July 2010 and limits the deductibility of compensation for executives of health insurance companies if at least 25% of the insurer's premium fails to meet minimum essential coverage requirements. In addition, annual fees will be imposed on pharmaceutical manufacturers and importers starting in 2011 and health insurance providers starting in 2014. An excise tax of 2.3% will be levied on medical devices, excluding those routinely purchased by consumers, such as eyeglasses and hearing aids.

For more information on the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, contact your qualified tax professionals. $

Rethinking Retirement

Preparing for retirement is a primary reason for long-term saving, and when people think about retirement, finances are often the focus. However, it is important to also look at the *nonfinancial* aspects of transitioning from the world of work to the world of leisure. Specifically, lifestyle changes and self-esteem issues associated with the loss of your professional identity may create difficulties. As you're developing strategies for your future well-being, give some thought to the *kind* of retirement you envision for yourself.

Consider the following questions: What do you find fulfilling? What gets you out of bed in the morning? What are your strengths and weaknesses? Do you work well as part of a team, or do you thrive on solitude? Do you have a lot of physical energy, or do you prefer a more sedentary pace? Do you have a hobby you always wanted more time to pursue? Don't be afraid to think outside the box. This informal self-inventory may hold the key to your vision for retirement.

Challenging Conventions

The concept of retirement in America is changing. Traditionally, retirement has been idealized as a leisurely phase of life, a reward for the many years of working and raising children. This concept is based on the assumptions that people will enjoy themselves in retirement, and that work, as we commonly know it, is the province of younger generations.

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Hybrid Defined Benefit/401(k) Plan Debuts in 2010

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employment. Alternatively, plan sponsors can use an age-weighted cash balance method for determining benefits. These benefits are paid out to retirees in monthly checks, as is typical of a defined benefit plan. An employee's accrued defined benefits are vested after three years of employment with the company.

The 401(k) component of the plan must have an automatic enrollment feature, under which employees automatically contribute 4% of their earnings to the 401(k) portion of the plan, unless they opt out. The plan sponsor is required to match at least 50% of the employee's 401(k) contributions, with a maximum match of 2% of pay. Employer matches vest immediately, and the distributions from these accounts must comply with the rules governing defined contribution plans. Because the DB(k) sets limits for employee salary deferrals and employer matches, these new plans are not subject to the nondiscrimination or top-heavy testing imposed on 401(k) plans.

The DB(k) was developed to give employers the option of providing their workers with guaranteed defined benefits and 401(k) savings in a single plan, without the complex regulatory requirements and administrative tasks involved in operating two separate plans. Assuming the design requirements are met, plan sponsors only have to file one document for the plan and one tax form each year, Form 5500, Annual Return/Report of Employee Benefit Plan.

The new DB(k) plan is established under Section 414(x) of the Internal Revenue Code, where it is referred to as an "eligible combined plan." More information about DB(k) plans is provided in the Internal Revenue Service (IRS) Notice 2009-71. $

Making a Difference in Your Community and Your Bottom Line

Regardless of size, companies benefit when the community in which they do business thrives. For entrepreneurs, giving back to the community is more than just a charitable act; it makes good business sense. If you have been reluctant to get involved in philanthropic activities, fearing it could cost too much and distract your employees, think again. Community involvement can strengthen your company directly by bringing in new business and indirectly by enhancing your company's reputation and improving employee morale.

Crafting a charitable giving strategy for your business involves more than just selecting a worthy organization and writing a check. While you may get a tax deduction on cash donations, your business may get considerably more out of community involvement, especially if you carefully consider the causes you want to support and the organizations that would make appropriate partners for your company.

The type of charitable giving you choose may be influenced by the type of business you operate, the interests of your employees, and the needs of the community. Whether your company produces goods or provides services, organizations within your community could likely benefit from your support. A restaurant or caterer, for example, could choose to donate leftovers to a soup kitchen or homeless shelter. A construction company could donate materials and labor for building a community playground or renovating a youth center. Involvement in such worthy initiatives may be very effective in making a positive influence in the community.

To maximize the impact of your charitable efforts, your company (or the organization your company is helping) may choose to distribute a press release or inform the local media about upcoming events and activities. This often results in free—and positive—publicity for your company. It may also be possible for the charity to help increase your company's visibility through its marketing resources. When partnering with a nonprofit, you may be able to arrange for your company's name and logo to appear on the organization's advertising materials and website.

Ongoing charitable involvement can help attract new customers and engender loyalty within your existing customer base. A company that donates a portion of its profits to worthy charitable causes may gain a competitive advantage. It can generate goodwill among customers and enhance your company's reputation to be associated with important causes in your community, such as helping abused children, improving literacy skills, or finding homes for abandoned pets.

Employee morale can also be improved through charitable initiatives. When deciding which causes your business will support, be sure to include your employees, especially if you want them to participate in events. By asking your employees what causes are close to their hearts, you may discover that some have personal passions that can prove valuable to a charitable campaign. Providing paid time off for charitable work may be considered a valuable benefit by your staff. Having your employees volunteer as a group can serve as a positive team-building exercise, as well as provide a welcome break from the work routine.

Another benefit of giving back to the community is the potential for networking with other local businesses. Through professional clubs or your local chamber of commerce, you may meet other business owners who may want to cooperate with you in organizing events. By participating in charitable events, you and/or your employees may forge valuable friendships with other business owners, staff, and the media.

Regardless of your company's size and resources, you can find a way to make a difference in your community. Even minor gifts—such as allowing your facilities to be used for a school event or donating used equipment—can go a long way toward making your community a better place to live and do business. And that's the bottom line. $

Rethinking Retirement

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However, is this concept realistic for those of us still years away from retirement, and if it is, is it what we really want? Rethinking retirement means reexamining conventional ideals to determine whether they apply to today's reality and what we envision for ourselves.

Intrinsic to the conventional notion of retirement are significant assumptions about work, money, and retirement standards of living. For previous generations, work was thought to be something you did for about 45 years (until roughly age 65), and then, suddenly, you never had to (or wanted to) work again. A company pension, Social Security, and some savings generally provided enough income for funding a comfortable lifestyle in retirement, including leisure, travel, and recreation.

If that's what you want for your retirement, there is nothing wrong with pursuing that goal. However, for some, work is too much a part of their sense of "self" to be suddenly cast aside. Moreover, with so much of their daily lives centered around work, some people have difficulty imagining their life without that structure.

Furthermore, changes in employer-sponsored retirement plans (i.e., the decline of defined benefit plans and the rise of defined *contribution* plans) have altered our expectations about retirement funding. The responsibility has shifted from employ*er* to employ*ee*, which means that an individual's long-term saving for retirement must now be factored in with other savings objectives, like purchasing a house or funding a college education for children, and ongoing financial responsibilities.

Finally, the traditional concept of retirement is based on the belief that one's standard of living will be sustainable in retirement, and it may be for some. For others, however, it may be more practical to ask what standard of living can be maintained based on projected resources. This type of approach might help you see what is realistic (and what may be unrealistic) in your situation, and it may help you set more realistic retirement priorities. For some people, downsizing their standard of living in retirement may be acceptable. For others, however, maintaining the same standard of living during retirement as during their working years may be the goal.

Consider Phased Retirement

As you consider the traditional concept of retirement, you may discover that it doesn't meet your needs. *Phased retirement* is a term coined to describe a range of employment arrangements that allow an employee who is approaching retirement to continue working, usually with a reduced workload, in transition from full-time work to full-time retirement. Many individuals may want to continue some form of work, such as consulting, job-sharing, mentoring, or providing back-up management. Mentoring, in particular, enables an individual to transfer a lifetime of learning and experience to a friend, relative, or younger colleague. Aside from money earned from continued work, phased retirement may help you maintain a feeling of involvement in the world and may provide a sense of purpose.

For some, phased retirement may be an option. For others, it may be a necessity. For still others, phased retirement may provide structure to daily life and the opportunity to explore other activities while maintaining a meaningful role within an organization, the community, or society in general. What's most important, however, is to define your vision of retirement in a way that makes sense to you and is realistic considering your goals and resources. $

Assigning Your Life Insurance Policy

Getting approval for a loan can sometimes depend on one or two very important issues. For example, lenders often ask borrowers the question, "How will this loan be repaid in the event of your death?" Your answer may be to **assign** your **life insurance** policy.* This useful feature of a life insurance contract can help provide necessary security for a lender.

You can freely assign your life insurance policy unless some limitation is specified in your contract (your insurance company can furnish the required assignment forms). Through an assignment, you can transfer your rights to all or a portion of the policy proceeds to an **assignee**. The extent to which these rights are transferable depends on the assignment provisions in the policy, the intention of the parties as expressed in the assignment form, and the actual circumstances of the assignment.

Generally, no interest tax deduction is allowed when the indebtedness is used to purchase or carry a life insurance contract. However, there is an exception that will allow the interest deduction as long as the indebtedness is incurred in connection with a trade or business.

Types of Assignments

There are two types of conventional insurance policy assignments:

1. An **absolute assignment** is generally intended to give the assignee every right in the policy that you possessed prior to the assignment. When the transaction is completed, you have no further financial interest in the policy.

The terminology of absolute assignments differs from contract to contract. In essence, it states that you transfer all rights, title, and interest in the policy to the assignee. Some insurance companies use an "ownership clause" to accomplish this transfer.

2. A **collateral assignment** is a more limited type of transfer. It is a security arrangement to protect the assignee (lender) by using the policy as security for repayment. After the debt is repaid, the assignee releases his or her interest in the policy, and all rights to the policy revert to the owner.

Under the usual procedure, if the collateral assignment is still in force at your death, the assignee informs the insurance company of the remaining debt, including interest, and receives that amount in a lump sum. Any excess proceeds are then payable to your named **beneficiary** in accordance with the beneficiary designation in your policy.

To fully protect the assignee, notice must be given to the life insurance company that the assignment has been made. If a company without notice of assignment pays the proceeds to another assignee or to a named beneficiary, the insurance company cannot be forced to pay a second time.

Policy Provisions

Some typical policy provisions concerning assignments may include the following:

1. The assignment will not be binding until the original, or a duplicate thereof, is filed at the insurance company's home office.

2. The insurance company assumes no obligation as to the effect, sufficiency, or validity of the assignment.

3. The assignment is subject to any indebtedness to the insurance company on the policy.

Thus, it is important to ensure that an assignment is made properly, regardless of whether it is absolute or collateral. For more information, consult your qualified professional advisors. $

**Although loans generally are not taxable, there may be tax consequences if the policy lapses or is surrendered (even as part of a 1035 exchange) with a loan or assignment outstanding. The taxable income from the surrender, 1035 exchange, or lapse of the policy may exceed the cash proceeds received. If the policy is a modified endowment contract (MEC), pre-death distributions from the policy, including loans and assignments, are taxed on an income-first basis, and there may also be a 10% Federal income tax penalty for distributions prior to age 59½.*

Trusts and Your Estate Plan

Arranging for the distribution of assets after death is not a task most people approach eagerly. It is, however, a necessary task. That's where **trusts** can come into play. A trust, simply defined, is an arrangement whereby one person holds legal title to an asset and manages it for the benefit of another. For estate planning, trusts may be used in several ways.

One of the most valued characteristics of a trust is its ability to bridge the gap between life and death. A trust can allow a person to "rule from the grave," so to speak. Generally, a trust may be established to last for many generations, ending 21 years after the death of the last named **beneficiary**, or after a specific number of years as permitted by state law.

Benefiting Yourself

During your lifetime, you could establish a trust for your own benefit. For example, you could use a trust to minimize taxes, obtain professional asset management, or accomplish other goals. You may want to participate in a new business venture with strong potential, but high risk. In this case, you could use a trust to help ensure your income in the event of business failure. As another alternative, you may set up a family trust that provides for your heirs. Finally, though you may be presently capable of managing your affairs, you may choose to establish a **standby trust** in case your needs change in the future.

Benefiting Others

On the other hand, trusts can be established for the benefit of others, such as your spouse, parents, children, or grandchildren. Perhaps you want to provide for beneficiaries who may require extra guidance. This is clearly the case where minors or other dependents with special needs are the intended recipients. But, trusts may also be created for the benefit of independent adults for many reasons, including freedom from management burdens, expert administration, mobility, and other practical purposes, like cash savings. While avoiding **probate** may be a consideration, the estate and gift tax savings associated with the use of trusts may also be important.

A trust can allow a donor to transfer assets to a beneficiary, while simultaneously shielding such assets from creditors. For example, the laws of most states permit the creation of **spendthrift trusts**, which may allow you to place both trust income and principal beyond the reach of the beneficiary's creditors. Generally, these laws prevent the beneficiary from assigning any part of the interest in the income or principal of the trust, since most creditors seek property that could freely be assigned by the beneficiary. Consequently, attempts by creditors to claim assets can be hindered.

When using trusts, planning is essential to ensure that they are properly structured. Therefore, be sure to seek the advice of a qualified, legal professional before making any final decisions. Your legal and tax professionals can be instrumental in creating an estate plan that can help you fulfill your unique planning goals. $

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