



SBLC WEEKLY

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MANDATES

Congress continues its effort to pass major health care reform. The latest development was the release of a draft bill by the House leadership. It, like the different draft language being considered by the Senate Health, Education, Labor and Pension Committee, and the different summary being considered by the Senate Finance Committee, is notable for the items "to be filled in later." In all three cases, one of the key blanks is at what level of employment will employers be required to provide health care benefits. On page 151 of 852, the House bill has this rather simple but significant placeholder statement to be filled in later: "(4) EXCEPTION FOR SMALL EMPLOYERS.—(There will be an exemption for certain small businesses)" Sigh!

At the moment, nothing has changed; mandates are coming, a public option "lite" is coming and some employee benefit taxation is coming. While I have not mentioned it too often, on the positive side, there will be assistance and incentives to help small business participate in the health care delivery system. The question is whether there are enough macro health cost containment initiatives to make comprehensive reform affordable.

ABSENTEE HOTLINE

You will have to install one to handle the volume of calls from your

employees if H.R. 2460, the "Healthy Families Act," introduced by Representative Rose DeLauro (D-CT), and the companion bill, S. 1152, introduced by Senator Edward Kennedy (D-MA), are passed by Congress.

The purpose of this legislation is to require an employer to provide each employee with not less than 1 hour of accrued paid sick time for every 30 hours worked up to a total of 56 hours of paid sick time in a calendar year.

The proposal includes part time employees. If the normal workweek of such an employee is less than 40 hours, the employee shall earn paid sick time based upon that normal work week.

An employer is any "person" engaged in commerce or in any industry or activity affecting commerce who employs 15 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.

For the purpose of counting employees for coverage, an employee is basically anybody on the payroll for any amount of time. This aspect of the definition has its roots in the Fair Labor Standards Act definition which is much broader than other employee definitions such as those found under equal opportunity laws.

Employees will be eligible to earn paid sick time at the commencement of their

employment. An employee shall be entitled to use the earned paid sick time beginning on the 60th calendar day following commencement of the employee's employment. After that 60th calendar day, the employee may use the paid sick time as the time is earned. An employer may, at the discretion of the employer, loan paid sick time to an employee in advance of the earning of such time by such employee.

Paid sick time earned shall carry over from one calendar year to the next however the proposal is not be construed to require an employer to permit an employee to accrue more than 56 hours of earned paid sick time at a given time.

There are definitions of what constitutes sick time. An employer may request certification of the need in certain circumstances.

Lest we forget about the plight of our poor lawyers, the bill provides for a civil action to recover damages by one or more employees or individuals or their representative for and on behalf of the employees or individuals; or the employees or individuals and others similarly situated.

This is not the first time this bill has been introduced; however, in these economic times it is particularly difficult to understand the logic behind introduction.