



SBLC WEEKLY

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SHARED RESPONSIBILITY

We have gotten our first inkling of our health care “shared responsibility” future. The Senate Health, Education and Pension Committee is the first committee to tip its hand on what they think an employer mandate should look like. They have released new draft language with a mandate to either provide coverage (play) or pay a penalty for choosing not to do so (pay) that would be required of any employer that employs more than 25 employees on business days during the preceding calendar year.

I have read the draft bill a few times and it does not have a precise definition of what an “employee on business days” means for determining whether an employer has passed the threshold for the mandate - or at least I have not found it yet.

In order to avoid the “pay” penalty (incidentally, not something all employers will try to avoid), the employer must provide a minimum level of coverage and also pay at least 60 percent of the monthly premiums for such coverage for each month.

If the employer does not “play,” the employer must “pay” into a central fund. The annual amount shall be equal to \$750 for each full-time employee and \$375 for each part-time employee which does suggest that under the methodology for counting employees to determine whether an employer has crossed the mandate threshold, it will not be just full time employees that are counted. If this discussion sounds familiar, I mentioned the extraordinarily broad definition of employee used in the mandatory paid sick leave bills when I reported upon their

introduction. My guess is that when the dust settles in this health care reform debate, the employee definition will be quite broad. The demise of part time employment may be one of the unintended consequences of this Congress’ outlook on employer responsibilities.

IMMIGRATION REFORM

While there are some reports the Administration may be interested in immigration reform, an action by the Immigration and Customs Enforcement (ICE) agency may provide the actual spark for discussions. If you have not read it in the general media already, ICE has announced that it is getting back into the I-9 compliance enforcement businesses. The I-9 form is the eligibility-for-employment form that requires verification of certain documents. Increasingly, employers find themselves whipsawed by the I-9 process. Forgeries have become “slicker” than ever. At the same time, employers face discrimination challenges if they adopt any arbitrary rules regarding that verification process. The U.S. Citizenship and Immigration Services agency is the source of information on employment verification requirements. Start with www.uscis.gov for information.

FRANKEN AND CARD CHECK LITE

The common knowledge in Washington for months was that a) there was high probability a compromise version of the bill to do away with secret ballot elections in union organizing efforts would be considered in the Senate and b) we would not see a vote on a compromise until Al Franken became Senator Al Franken (D-MN). (By the way, item b would also tell

you “common knowledge” did not give Senator Coleman (R-MN) much chance of avoiding the moniker “now-former.”)

The dynamics now pivot around whether Senators Ted Kennedy (D-MA) and Robert Byrd (D-WV) are able to vote. Senator Byrd was released from a hospital this week-end. He had gone into the hospital for an undisclosed problem but contracted a staph infection that kept in for a long period of time. The concern involves the filibuster rule. To overcome it, you need 60 votes. More accurately, if the question is “Is it the sense of the Senate that the debate shall be brought to a close?” The answer is the “question shall be decided in the affirmative by three-fifths of the Senators duly chosen and sworn.” “Chosen and sworn;” not present. A compromise is necessary because Senator Arlen Specter (D-PA) is standing by his opposition to the bill in its original form. Is it possible, a compromise could pull over two Republicans so the ability of the two absent senators becomes a moot point? Possible. Will I put a \$2 bet on a vote before August recess? Yes.

What is the compromise? I do not know. I don’t see a small business exemption on the horizon. The secret ballot requirement will be retained. The changes in the rumor mill seem to swim around the process such as giving organizers more access to the workplace; reducing employers’ communication rights and/or increasing organizers communication rights; speeding up the election cycle; or, making it easier to cast the ballots.