

# BEST PRACTICES IN Compensation & Benefits

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## Healthcare Reform Leaves a Lot to the Imagination

Read any good books lately? Here's a suggestion: You might want to read the 2,700+ page tome, the Patient Protection and Affordable Care Act, commonly known as healthcare reform.

Even better, part two—tentatively titled The Regulations—is likely to be released over the next several years, allowing you plenty of material to peruse as you relax by the fire.

We spoke with labor and employment attorney Gregory B. Robertson, a partner at Hunton & Williams LLP and head of the firm's labor and employment practice. While there are a few things we know for sure with regard to implementation of healthcare reform, much remains obscured, as much by the detailed provisions of the law itself as by the fog of extreme distance.

"It's very difficult at the moment to safely predict how this is all going to work," he says. "What we can say today is based on some assumptions from our reading of the language used, and that can often be misinterpreted. Until the regulations come out, we just don't know for sure.

"Having said that, though," Robertson continues, "my overall observation is that the law is extraordinarily back-end loaded, in terms of revenues. For provisions that don't take effect until, say, 2018, we could be into our third [presidential] Administration by then.

"With the various political winds blowing in different directions, I think there is a possibility that a number of the things that are in the law today could change. They may all stay the same; but it would be shocking to me if, in the next

8 years, Congress doesn't change one or more of the provisions."

Robertson does have two immediate expectations. One is that health insurance premiums are likely to increase more in the near term than they would have without reform. The other is that your employees are likely confused about what reform really means.

### Premiums Likely to Increase

"There is nothing in the legislation at the moment that allows the federal government in any way to regulate premiums," Robertson says.

"That may turn out to be one of the ironies of the legislation. A couple of the insurance companies were seeking to put large premium increases into effect, and that added new life to the whole healthcare debate.

"But I don't think there is anything in this legislation that would prevent those increases from being put into effect. And if you add to that some of the reform requirements, which I believe are going to be pretty costly, it seems likely that the premium increases will end up even larger."

How much larger? That's hard to predict, Robertson says. "Everything I've read seems to suggest that a number of the changes that are mandated in the first year are likely to bring about increased costs, which the insurance companies are not likely to eat. I've seen some estimates that say, for example, covering dependents up to age 26 may add somewhere between 1% and 2%.

*(continued on page 2)*

“There is a provision that says employers cannot insist that employees share in the cost of preventative treatments, and if that’s the case, employers who had been providing that kind of coverage may see premiums go up another 1% to 2%.

“Collectively, estimates are that these changes could add 5% or 6% to total premiums, in addition to the increased costs associated with the last 12 months of experience.”

### Get the Facts, Pass Them Along

Robertson’s advice? Start talking. The first conversations should be with your insurance carrier. “I think what employers need to do right now is to sit down with their insurance carrier and review all of this.

“Figure out what the increased costs will be. Ask them if you keep the same coverage, along with the mandated additional coverage and their experience rating and the like, what that will mean in terms of premiums.

“When you have the final word on that, you’re going to have to decide how to deal with the employees—how much you are going to absorb versus how much to pass along to the employees.”

The potential for immediate cost increases may not be expected by employers or by employees. “One of the concerns of the folks who have and who continue to support the legislation is that along with more expansive coverage, there is likely to be a higher price tag. And it isn’t a price tag that people voluntarily accepted, but one that’s imposed on them.

“It could really backfire if the economy doesn’t pick up by August or September when employers have to make final decisions about what they’re going to offer next year.

“They may have to remain in serious cost-cutting mode. It could cause

them to reduce other programs they offer. Employees could wind up with fewer benefits at either the same or greater cost.”

So the next conversations should be with your employees. Robertson recommends keeping them informed as much as possible.

“From an employee relations standpoint, this is one of those things where you need to keep it as open and transparent as you possibly can. If you wind up in a situation where premiums have to go up or benefits are reduced, with or without health-care reform, you are going to have a lot of consternation from employees.

“Now overlay it with what was an extraordinarily confusing debate over this legislation. If you have to make tough decisions, you want to be sure you don’t have to take all the responsibility for it if it is attributable to things beyond your control. The more open and communicative you can be with employees, the better off they’re going to be.

“And I wouldn’t wait until the end,” Robertson continues. “I wouldn’t predict doom and gloom, and I wouldn’t say it’s a bad or a good idea. It is what it is. But if it will have an impact on your employees, then the more transparent it is to them, the better. You want to minimize the damage to the employer/employee relationship.”

### No One Knows for Sure

Further complicating the problem is that no one truly understands what the new legislation will do, and that includes your employees.

Robertson says understanding ranges from the knowledge that premiums are likely to increase (at least in the near term) to an incorrect notion that health care is now free.

Therefore, communication about reform is critical. “The amount of misinformation put out by all sides about

this leaves virtually everybody, from the most highly educated to the least educated among us, entirely confused,” he says.

Meanwhile, staying on top of the details as they emerge and communicating with employees is crucial. “One of the biggest unknowns with this legislation, really, are the regulations that will accompany it,” Robertson says.

“The devil is in the detail. The regs are going to be directive, interpretive, contextual... in other words, they’re going to take those 2,700 pages and add who knows how many more pages, to figure out what a lot of these terms and directives really mean.” Better start reading.

### Free 2011 Pay Budget Survey Report!

Each year, BLR surveys employers on their plans for merit increases in the coming year as well as actual increases they gave in the current year. Employers that participate in the online survey by completing it at [www.blr.com/budget\\_survey](http://www.blr.com/budget_survey) will receive a free copy of the report. The deadline for responses is June 25, 2010. Take BLR’s **confidential 2011 Pay Budget Survey** today!

### Going to SHRM? Meet BLR!

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