

Compliance Alert



First Step: Trump Signs ACA Executive Order

January 23, 2017

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One of President Trump's first pen strokes upon taking office Friday was to sign an executive order related to the ACA. The full text of the executive order is [available on the White House website](#).

Summary of the Order's Content

In short, the order directs all executive agencies within the new Trump administration (including the three key players with respect to ACA: The Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury) to **“minimize the unwarranted economic and regulatory burdens of the [ACA].”**

The order begins with an acknowledgement of the administration's intent **“to seek the prompt repeal of the [ACA].”** As we have discussed at length in [our earlier webinar on this topic](#), there are a number of proposals for the eventual “replace” legislation that many Republicans are now hoping to push simultaneously with the ACA repeal.

The order then directs the Departments to **“exercise all authority and discretion available to them to waive, defer, grant exemption from, or delay the implementation of any provision or requirement of the [ACA] that would impose...a cost, fee, tax, penalty, or regulatory burden”** on essentially any individual or other entity that could be affected by the ACA.

The order also makes clear that all Departments must continue to comply with the notice and comment process required by law under the Administrative Procedures Act for the ACA's now voluminous library of implementing regulations.

Summary of the Order's Effect

We encourage employers to view this executive order as **primarily symbolic**.

The ACA's provisions that affect employers are almost all fully effective and implemented with final regulations at this point. **There is little that any executive action could do to immediately provide relief to employers with respect to the key features of the ACA that create potential liability—including the employer mandate pay or play rules and the ACA reporting requirements.**

In other words, we strongly suggest that ALEs continue to:

- 1) Offer minimum essential coverage that is affordable and provides minimum value to full-time employees if they want to avoid [the large potential pay or play penalties under §4980H](#); and

- 2) Prepare for distribution and filing of the 2016 Forms 1094-C and 1095-C (generally due to individuals by March 2 and the IRS by March 31) to avoid potential penalties associated with failure to complete the ACA reporting. Although the IRS previously issued a notice stating its intent to [extend the good faith efforts standard to this second round of filing](#), that guidance continues to require that employers distribute and file the forms by the applicable deadlines for the safe harbor to apply.

What is Next?

The ACA's repeal and replacement is the next order of business for the new Trump administration. Stay tuned for updates as the legislative process develops.

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