

# Compliance Alert



## Will President Elect Trump Make Employee Benefits Great Again?

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What's the number one most likely item to be addressed by the incoming Trump administration? There's a good argument that it's repealing and "replacing" the ACA.

This means that our industry could very well be the most quickly and directly affected by the Trump agenda.

Most of what's yet to come is still a matter of speculation at this point. So let's speculate.

### Why the ACA Will Likely Be (Mostly) Repealed

The GOP has won a clean sweep of the House, Senate, and White House—just like President Obama had at the start of his first term. That's when we got major legislation like the stimulus bill (ARRA), Dodd-Frank, and the ACA.

However, the Republicans do not have a 60+ filibuster-proof majority in the Senate. That means most legislation will require some reaching across the aisle to receive a few Democrats' support.

Here's the key: Most of the ACA can be repealed through a special budget legislation process called **reconciliation**. This is the same process that Democrats used in 2010 to pass the ACA. Reconciliation bills cannot be filibustered, and therefore can be passed by a simple majority. In summary, Republicans can repeal the ACA without any Democrat support.

Speaker Ryan has been quoted many times stating that the reconciliation process could repeal roughly 85% of the ACA. Expect that to be a top priority for President Elect Trump immediately upon taking office.

### What Does that Mean for Employer-Sponsored Group Health Plans?

What doesn't it mean? It will change our industry entirely.

The most consequential changes will likely be repeal of:

- Pay or Play (a.k.a. Employer Mandate, Employer Shared Responsibility)
- ACA Reporting
- Prohibition of Lifetime and Annual Dollar Limits on Essential Benefits
- Essential Benefits Coverage Requirements for Small Group Plans
- Cadillac Tax (2020)
- Fully Insured Medical Nondiscrimination

## What About the Trump “Replace” Plan?

Candidate Trump was very sparse in his discussion of a potential replacement. Furthermore, the replacement will likely need Democrat support because it cannot be part of the reconciliation repeal bill.

So where does that leave us? First of all, expect for some form of the ACA prohibition on preexisting condition exclusions to remain. Also expect the ACA’s tax exclusion for child coverage to age 26 to remain (perhaps without the mandate).

Beyond that, here are the key positions from President Elect Trump’s [campaign materials](#) that relate to employer-sponsored plans:

- Permit Sale of Health Insurance Across State Lines
- Permit Individuals to Fully Deduct Health Premium Expenses (currently available only in excess of 10% of adjusted gross income)
- Expand the Use and Benefit of Health Savings Accounts (HSAs)

The Trump website provides shockingly few details on how he intends to expand the use of HSAs, given that it appears to be a centerpiece of his proposal. The only change discussed on his website relates to the estate planning issues for HSAs. However, we can also expect some effort to broaden eligibility for HSAs, permit tax-free medical distributions from a HSA for premiums, and increase the HSA contribution limits significantly.

## How Could Tax Reform Affect Employer Plans?

The full exclusion from income for employer-sponsored health coverage and benefits is always in jeopardy in any tax reform proposal. Some form of cap on the exclusion has been discussed on both sides of the aisle for years. It’s a likely revenue raiser option.

Furthermore, if individuals can fully deduct individual premium expenses, the tax incentives for most Americans to receive coverage through their employer begin to diminish. Keep a close eye on these two items going forward.

## Ivanka’s Child Care Plans

Anyone in our industry is all too familiar with the complaint that the current \$5,000 dependent care FSA limit is wildly insufficient to cover modern daycare expenditures. Here’s an area where Ivanka Trump’s proposals can likely garner some Democrat support.

### Child Care Expense Deduction

This proposal would permit working parents to deduct child care expenses for four children and elderly dependents. It would be available to anyone earning less than \$250,000 (or \$500,000 if filing jointly) annually. Rebates would be available for those eligible for the Earned Income Tax Credit. It would also be available for stay-at-home parents.

### Dependent Care Savings Accounts

Here’s a new acronym to learn: DCSAs. Piggybacking on the overwhelming popularity of HSAs, the DCSA would allow individuals to make deductible contributions to a savings account that grows tax-free and permits tax-free dependent care distributions. The triple-tax advantage!

Unlike dependent care FSAs, DCSAs would not be subject to the use-it-or-lose-it rule and would be available even for those who are not offered the benefit through an employer. Presumably, employers could contribute to the accounts tax-free, and employees could contribute to the accounts on a pre-tax basis through payroll—much in the same manner as HSAs.

### Paid Maternity Leave

Only a small handful of states mandate some form of paid family leave. Ivanka’s proposal would create a new federal program to cover all employees.

The proposal would provide six weeks of paid maternity leave. The benefit amount would equal current unemployment benefit levels, which are less than a worker's regular wages (varies by state). Funding would come from offsetting benefit reductions to the current unemployment insurance contributions paid by employers.

### **What About Right Now?**

We still have to comply! The ACA is still the law in 2016, and it will be at least into the beginning of 2017. That means Applicable Large Employers still need to be careful to avoid the large A Penalty by offering coverage to at least 95% of full-time employees, and they still need to prepare for distributing and filing Forms 1094-C and 1095-C in early 2017.

The horizon looks very different from those cold, hard compliance realities of the present. But don't lose sight of the forest for the trees. This landscape will not shift overnight, and there is significant work to continue in the meantime.

Stay tuned for many more alerts and webinars from us in the near future.

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