Strategies for the Impact of the Barack Obama Administration

By Liz Tascio
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The change in the administration of the United States has already meant major changes in health care – its costs for employers and employees, its benefits, and who pays for what – and politicians and industry leaders alike say there's more change to come.

In a special edition of The HR Roundtable, held at the Union League Club in Manhattan and co-sponsored by United Healthcare, ADP, and Martin Benefits, three high-profile speakers gave insight into why these changes are happening and what they mean for companies.

They covered these important topics for human resources professionals:

- Why health care reform is an economic issue
- Immediate major changes to COBRA and other health care requirements
- Proposed changes to union-organizing, worker exemptions, and more

Where the changes are coming from

Doug Sosnik, former senior advisor to President Bill Clinton, pointed out that just a few weeks after the inauguration of President Barack Obama, the United States is a different country already, thanks to massive economic changes under way and also to the actions of the new administration.

For example: Between election day and inauguration day, the country saw 2 million jobs lost, multiple bailouts, and the bankruptcies of major companies, Sosnik said.

In the first six weeks of the new administration:

- Congress passed a $700 billion stimulus package
- President Obama set a timetable for troops to leave Iraq
- President Obama released his first proposed budget, which included $634 billion for health care reform

"I think the veil has been lifted," Sosnik said. "It certainly makes it clear … what his priorities are and how he's going to govern."

The roots of these dramatic changes can be traced back much further than November 5, he pointed out.

“The revolution that happened in this country, the change that happened, didn’t happen in 2008,” Sosnik said. “The real revolution happened in 2006,” when voters in the mid-term elections overwhelmingly chose new, mostly Democratic leaders. The 2008 presidential election was another call for change, and the next mid-terms, in 2010, could continue the trend.

Even if the 2010 election results are not as clear-cut, it’s likely the country will give Obama a second term in 2012, Sosnik said.

“The country has a history of making a turn and a change, and giving that president ample time to enact that change,” he said. “So, if history is any precursor, history suggests that Obama is going to have eight years to make all this happen.”

Health Care Reform: Behind the Numbers

President Obama said in his very first Congressional address that health care reform is a major priority for the country. And he hasn’t been slow about beginning that reform.

“Perhaps more has been enacted in the last eight weeks in health care reform … than has been enacted in the last 10 years,” said Tim Meyers, National Vice President of Government Affairs for United Healthcare.

It’s important to note that health care reform isn’t just a political issue, it’s an economic issue, he said: You can see it in the numbers.

- The American Recovery and Reinvestment Act, for example, includes a COBRA subsidy of 65 percent for those laid off during a particular time period, to be reimbursed to the employer through tax credits
- and a temporary increase in federal funding of state Medicaid through 2010; New York state alone will receive $11 billion for Medicaid.
- The Act creates a special coordinator for Health Information Technology, and sets a goal to develop a personal digital health record for every American by 2014.
- Providers who use HIT correctly in Medicare and Medicaid programs can tap into $17 billion set aside for them.
- The Act establishes an office for prevention and wellness, aimed to help contain costs of health care.

Plus, President Obama has proposed a $634 billion reserve fund dedicated to health care reform, to be spent over a 10-year period. The administration understands “that this is just a down payment,” Meyers said. In fact, outside estimates put the cost closer to $1.5 trillion.

The money would come from three places, one of which would be moving Medicare Advantage to a competitive bidding program in 2012.

The goals of health care reform under the Obama administration are to contain costs, improve access, and improve quality, and it will be guided by these principles:

- Protect the financial health of Americans
- Aim for universal coverage
- Maintain portability

- Provide choice of plans and providers
- Invest in wellness
- Improve patient safety and quality of care
- Ensure reform is fiscally sustainable and responsible.

The last federal attempt at widespread health care reform came in the first years of the Clinton administration; that effort failed in part because the reform package was presented for Congress's approval in one large bill, Meyers said. The Obama administration has been presenting smaller, detailed proposals for Congressional debate.

As the planning for health care reform continues, keep an eye on changes coming from state governments, especially in Albany, Meyers said. At the state level, one of the goals is to keep a cap on administrative costs of health care.

"On the one hand, they want the personal health records; they want all the technology; they want all the bells and whistles," Meyers said. "All those things are administrative expenses. But they want carriers to keep administrative costs in the neighborhood of … less than 3 percent. There's a contradiction there."

For example, he said, in New York:

- $800 million in additional health care taxes were proposed by Gov. David Paterson this year. $343 million of those have been enacted. The rest will be decided soon.
- Exchanges and connectors for portability will be a hot topic between states.
- Each of the tristates may mandate treatment of autism by the end of the year.

A Labor/Employment Tsunami

Jed L. Marcus, Esq., with Bressler, Amery & Ross, P.C., who represents management in labor disputes, discussed a major piece of federal legislation that will affect employers: the Employee Free Choice Act, which would change the process for union organizing, in some ways making it easier for a union to form.

Marcus said the EFCA is likely to pass, and it needs employers' attention now.

"The EFCA is sort of the labor/employment version of a tsunami," he said. "If you as the employer are not currently thinking about ways to deal with the Employee Free Choice Act … then you are not serving your company very well, because by the time it is enacted, it will be too late."

Marcus describes the current law this way:

- Under the current law, employees fill out cards that ask whether they'd like to unionize.
- If enough employees have said yes on the cards, then a vote, by secret ballot, is scheduled four to six weeks later.
- In the weeks before the vote, employers get a chance to discuss the issues with employees.

Under the new law, Marcus says:

- Workers still fill out the cards, but if 50 percent plus one of those cards say yes to a union, the union board confirms the count and workers are unionized, without a secret ballot and without time for dialogue with the employer.
- Future conflicts between the employer and the union are more likely to go to mandated, binding arbitration.
- An arbitrator appointed by the Federal Mediation and Conciliation Service creates a two-year contract.

"There's a whole lot of rights that employers have in bargaining that are flushed down the drain in interest arbitration," Marcus said.

Marcus also discussed the problem of how to designate employees, a common issue for employers who have had to lay off full-time employees and supplement their remaining staff with independent contractors or freelancers.

Many employers make mistakes in designating employees as an independent contractor versus an employee, or as exempt or non-exempt, Marcus said.

Employers can use tax codes and labor codes as guides for definitions, Marcus said, and should either do a self-audit or hire someone to audit the employee rolls. A proposed bill may further narrow the definition of a supervisor.

The changes to COBRA require employers to go back to recently laid-off employees within 60 days – and possibly any employee who's been "involuntarily terminated" since Sept. 1, 2008 – and give notice about the new 65 percent subsidy available to them, Marcus said.

Employers won't have to pay back premiums, they just need to offer the option to former workers, he said.

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