



XpertHR Podcast

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Open Enrollment 2017 – Helping Employees Understand Their Options

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David Weisenfeld:

I’m David Weisenfeld for XpertHR.com, published by Reed Business Information and proudly partnered with LexisNexis.

With the fall season upon us, open enrollment will soon be a big topic of discussion in your workplace if it isn’t already. So on this podcast we’ll take an in-depth look at a host of issues surrounding 2017 open enrollment.

One thing that is certain is healthcare costs are continuing to rise. In fact, average annual deductibles for people buying individual coverage through their employer has reportedly risen 255% in the past decade. And some major insurers, including Aetna and United Healthcare, have announced they won’t be participating in some Affordable Care Act exchanges in 2017.

So what’s an employer to do amidst all this tumult? And how can employees know how to choose a plan that’s best for them? For some answers, I’m now joined by Indianapolis employment attorney, Mike MacLean of Faegre Baker Daniels. Mike represents employers in all aspects of employee benefits law, and he speaks frequently on these issues to a variety of audiences.

Mike, thanks for joining us.

Mike MacLean:

Thank you, David.

David Weisenfeld:

Mike, if there’s one word that could sum up open enrollment, it might be ‘confusion.’ Many employees struggle to know what healthcare plan is best for them. So with that said, how can employers do a better job of making things easier? [0:01:49.4]

Mike MacLean:

It’s a great question and a great place to start. It may sound like a broken record, but communication is really still the key with regard to helping employees better understand the options available to them. It’s not news to employers; they know this. But you have less time with employees, you might have only a limited amount of the employee’s attention to convey the options the employee has in front

of him or her. And so the goal is to strive to continue to make these materials as helpful as possible in getting employees to better understand their options. Summaries of benefits and coverage are helpful, and that's kind of a newer push in this area, but even those are not quite as user-friendly as they might otherwise be. So comparisons, examples and scenarios are all helpful to include in those materials.

David Weisenfeld: Mike, you mentioned the importance of communication. What's the number one issue employers need to communicate to their employees when it comes to open enrollment? [0:02:47.2]

Mike MacLean: I think the primary challenge the employer faces each year is to convince each employee to spend the time necessary to familiarize him or herself with the options that the employer's offering. If the employee has been in a plan for a while then the employee may feel like he or she knows already enough. 'I'm just going to stay with the option I elected last year. It was good for me last year; it'll be good for me this year.'

This problem, of course, is that changes happen in many ways in many aspects of the program. Maybe your family situation has changed, maybe the employer has reconfigured the options available under the plan.

Ideally the goal should be for each employee to evaluate the available options and decide what is best for his or her family, and to do that each time open enrollment comes around. That's really what the employer wants.

David Weisenfeld: Mike, I mentioned right at the top that Aetna and United Healthcare won't be participating in some ACA exchanges next year. How do you think that will affect the landscape as a practical matter? [0:03:46.3]

Mike MacLean: The initial reaction might be that if I'm an employee who participates in my employer's plan I might say, 'Well, that's not really likely to affect me very much. It's really more for people who go directly to the exchange and don't have the employer coverage option.'

But we're seeing situations where even employees with access to employer-provided coverage still may want to explore the marketplace to make sure they're getting the best bang for their buck. And when the big insurers leave a market the number of options goes down, and of course when that happens that means there's fewer choices and alternatives available, and I think the fear, of course, is that all other things being equal, fewer choices translates into less competition and ultimately higher costs.

David Weisenfeld: What other effects are you seeing, Mike, on benefits plans as a result of the ACA, now that it appears at least for the time being that it may well be here to stay, depending on the outcome of the presidential election? [0:04:39.3]

Mike MacLean: That's a great question. We haven't seen a lot of discussion about the ACA in the most recent aspects of the presidential election, but it seems to be lurking in the background. I think there have been a lot of

things that the ACA has caused employers to do or think about or change.

First and foremost I think employers look even more deeply at their health plan and their cost structure for offering the health plan, to determine how to structure the benefits most cost-effectively.

We are seeing an even greater focus on wellness and preventive care. That's not brand new, but it's clearly a big trend. More and more employers these days may want to consider whether offering an on-site or near-site clinic is going to be an additional benefit for their workforce that would be cost-effective.

Again, I'm not entirely sure that's simply an ACA-driven issue but certainly it's a current trend, and I think it largely ties back to cost and expense management.

We see employers looking towards even a greater push towards the high-deductible health plan, health savings account combination structure. Is that going to help the employer keep costs down? If so, should the employer use some of the savings it achieves to seed the health savings accounts for those participants? Those are big issues as well.

And you've got a couple more. You've got this big Cadillac Tax issue lurking in the distance. It's an additional tax on high-cost health plans. Right now it's off in the distance and it won't go into effect until 2020; it had been put off from 2018. But in some ways that's still getting pretty close for planning purposes. If you've got a unionized employer, for example, that's in a three-year collective bargaining agreement that ends in early 2017, that employer's going to be negotiating soon for a new agreement that could stretch out into 2020. So this Cadillac Tax issue is going to start becoming more relevant every day.

I do think that this is one of those particular areas under the ACA, though, that there's a good chance of something changing before we get to 2020.

I think those are all things that are either caused by or related to the Affordable Care Act changes.

David Weisenfeld:

Now why do you think that will change before 2020? Do you think employers have just raised so many concerns about it that that's going to move the needle? What makes you say that? [0:06:56.6]

Mike MacLean:

I think that's right, David. I think it is one of those few issues where there seems to be at least some agreement between both political parties, or at least some individuals in both political parties, that the cost is going to burden some types of plans that it really wasn't intended to apply to.

So initially it was intended to apply to very generous employee benefit plans that might be offered to higher-level executives and programs like that, but even a lot of the multi-employer, the unionized health and welfare funds offer very generous benefit structures that might get caught up in this tax, and that certainly wasn't, I think, the intent

when it was initially included in the law. I hesitate to say there's anything on which both political parties can agree generally, but there seems to be folks in both parties that think the Cadillac Tax needs to be tweaked, reduced, eliminated. It seems like there's some basis there for some change.

David Weisenfeld:

Again, we're speaking with Mike MacLean of the nationwide employment law firm of Faegre Baker Daniels. Mike, there are a lot of different groups to consider in the workforce. With that said, is there anything special that an employer should do to design plans for different demographic groups? [0:08:12.8]

Mike MacLean:

I think historically the breakdown seemed to mostly be about full-time versus part-time in terms of benefit structure. 'What benefits are we going to offer our full-time employees? What benefits are we going to offer to the part-timers? Are we going to make a distinction between those two groups?' And that may have been as far as it went.

But these days you see more and more employers considering more details about their workforce, all with an effort I think to try and structure the plan in a way that provides real benefits in a cost-effective way.

The employer might consider, 'Is our workforce more blue-collar or is it more white-collar? Does that affect how our benefits should be structured? Are the employees at or near one central location or are they spread out over a large geographic area, and what would that mean for purposes of how broad our health plan network should be? And maybe what does that mean with respect to our options for other services like an onsite clinic?'

I just think that there's more and more analysis being done on the structure of health plans these days than might have been the case five or 10 years ago.

David Weisenfeld:

And I'd be remiss if I didn't ask about Millennial employees. How about considerations in communicating with them about healthcare plans? [0:09:18.2]

Mike MacLean:

Sure, that's a great point. I think we start by definition that this category represents the youngest group in the workforce, so on average that probably means they're also the healthiest participants-- not everybody, of course, but let's say on average. If that's the case, then that also might mean that on average their health plan participation is, in effect, subsidizing the expenses associated with the participants of less healthy individuals and maybe those people on average might tend to be older. So at the very least that's going to present a communications challenge.

So the employer may want to consider focusing on communications that stress to those younger employees why the plan being offered is a good benefit for them as well as to older employees. Maybe talk more about the focus on wellness or preventive care, or maybe other types of benefits in the program that the younger employees might find attractive.

David Weisenfeld: Mike, I know you speak a good deal about these issues to non-legal audiences. What's a question you hear a lot when it comes to employee benefits at open enrollment time? [0:10:16.8]

Mike MacLean: This will not surprise anyone who works in the employer's HR area or benefits area, but one common employee question is, 'How come my coverage is so expensive?' Sure, costs are going up and that's been the case for many years. But I think keeping an ear to the ground can be helpful. Sometimes if that comment is being repeated numerous times there might be a concern that the comment itself is revealing somewhat of a misunderstanding of the overall cost structure of the benefit program.

It's certainly the case that employees likely have to pay some portion of the premium for coverage. But the employee's portion likely pales in comparison to what the employer's paying overall. So the greater the number of complaints, the more it may make sense to provide the employees with further information on overall costs and not just the employee's portion because these sorts of programs represent a pretty significant non-cash aspect of compensation.

I guess the other thing that we hear a lot of comments about each year is the employees are interested in how the plans have been improved. There seems to be an assumption that the plans are always getting better. There's not much in terms of cutbacks or scaling back and in many ways that is largely true, but that also is a helpful focus of communication piece – what is the employer adding to the plan that might be of benefit to employees? Tele-medicine consultations, centers of excellence for particular types of treatment, wellness preventive care, things like that. And those are typically addressed in communication materials, but they're commonly the basis of employee questions.

David Weisenfeld: One thing that I've noticed, even with our plans in my company – and I suspect for many of our listeners as well – is the introduction of the spousal penalty in recent years. Can you talk a little bit about that and the effect that that's had? [0:12:00.8]

Mike MacLean: Absolutely, David. One of the concerns has been that if an employee's spouse has an opportunity to obtain coverage at his or her workplace, the question becomes whether it's better to have the spouse sign up at his or her workplace, or the employee to sign up under the employer's plan, or to sign a spouse up in both places.

There are cost issues there and so some employers have concluded that, 'If we can limit the spouse's participation in our plan to the extent that the spouse otherwise has access to coverage, that may be a way for us to shave some costs off our plan.' It might be just an additional charge to include the spouse on the plan.

It might be an exclusion that the spouse is not eligible for the employer's plan if the spouse has access to coverage from his or her employer. That type of distinction was not rolled out by the Affordable Care Act, but it also has been in some ways okay-ed by the Affordable Care Act because the Affordable Care Act's employer mandate – which is the rule that requires covered employers to either

offer qualifying health plan coverage or pay an excise tax to its full-time employees – requires that the coverage be offered to employees and dependents. It doesn't require that the coverage be offered to spouses. So I think there was this acknowledgement in the Affordable Care Act structure that some employers already had these spousal exclusions up and going, and it seems like they didn't want to disturb those.

David Weisenfeld:

You mentioned earlier that employees often don't take the time to familiarize themselves with changes in plans. So how can employers – and by extension, HR – help them in this regard? [0:13:43.6]

Mike MacLean:

I do think that is an issue. And I should use myself as the example here. I go in at open enrollment – I'm like, 'Well I was in this plan last year and I'm in the business, right? I mean, I should be looking at things in more detail.' And I try to step back for a minute and remind myself to do that, but you do have these situations where the easiest thing to do in open enrollment is just to continue what you did before.

And in some ways, that may be just fine. Part of it sort of depends on what sort of effort the employee made upfront, when he or she first signed up for the plan, to understand what the different structural options were, what the different costs were, and maybe how attuned that employee has been in tracking and considering the impact of changes from year to year.

So if the employer can know that for certain, then maybe the employer could be more comfortable about this. But again, I think this really does present a challenge in terms of communication pieces during the open enrollment process. Are we clear upfront about what the changes are in the plan? Are we clear upfront about what the differences between these options are? And I think the more of that information – without trying to overwhelm the employee with data – the better.

David Weisenfeld:

And Mike, we've just got a little over a minute or so left, so do you have a final piece of advice to leave our audience with before we let you go? [0:14:59.0]

Mike MacLean:

Well I think one thing that's helpful, if you could do this in a non-intrusive way, is to encourage employees to think about their personal circumstances. The challenge here is that what's good for one employee may not be the right benefits option for his or her colleague that's working right next to him or her in the office or in the workplace.

So employees may want to think about whether they've had some experience with the plan in the past few years, and if they did, if they made some claims, if there were claims that were denied, if there were claims that were paid but they were limited in some way, did that go the way the employee wanted it to go? Was the employee comfortable with the level of deductible? Were the co-pays the way the employee thought they would work? If not, maybe that's a signal that a change might be appropriate, and open enrollment is of course an opportunity for the employer to think about those things.

David Weisenfeld: Okay, we'll let that be the last word. Mike MacLean is a partner with Faegre Baker Daniels in Indianapolis. Mike, thanks so much for your insights on employee benefits plans in 2017 open enrolment.

Mike MacLean: Thank you, David.

David Weisenfeld: I'm David Weisenfeld. We hope you've enjoyed this podcast. Thanks for listening. Continue checking our website regularly for more podcasts on key employment-related topics. Recent programs include "How the Gig Economy is Changing the Workforce," and "Why Sexual Harassment Training Needs a Reboot."

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