

# Legislative Brief

## HCR - AUTOMATIC ENROLLMENT

November 2015

### ACA AUTOMATIC ENROLLMENT REQUIREMENT REPEALED

#### SUMMARY:

- On Nov. 2, 2015, the ACA automatic enrollment requirement was repealed.
- Under the ACA automatic enrollment requirement, large employers (i.e., employers subject to FLSA who have 200 or more full-time employees and at least one health benefit plan) would have been required to automatically enroll employees in coverage upon a final rule being issued.
- Employer may still implement an automatic enrollment process provided employees are given adequate notice and an opportunity to opt out.

#### Background

The Affordable Care Act (ACA) originally amended the Fair Labor Standards Act (FLSA) to require certain large employers to:

- Automatically enroll new full-time employees in one of the employer's health benefit plans (subject to any waiting period authorized by law); and
- Continue the enrollment of current employees. FLSA §18A, as added by ACA §1511.

The automatic enrollment requirement applied to employers that: (1) are subject to FLSA<sup>1</sup>; (2) have more than 200 full-time employees; and (3) have one or more health benefit plans. Employers would have been required to provide "adequate notice" to employees, and employees were to be given an opportunity to opt out of coverage. FLSA §18AB as added by ACA §1511. This requirement was not yet effective; it was required to take effect once final regulations were issued and applicable.

**On Nov. 2, 2015, President Obama signed into law the [Bipartisan Budget Act of 2015](#), which included a provision repealing the ACA's automatic enrollment requirement. The repeal ensures that no employers will be required to comply with the ACA's automatic enrollment requirement at any point.**

#### Impact of the Repeal on Employers

If the ACA's automatic enrollment requirement had been implemented, employers that offer group health plan coverage would have been required to automatically enroll new employees in the coverage, and re-enroll current employees who may have previously waived coverage, even if those employees did not elect coverage.

#### Employers May Still Choose to Implement an Automatic Enrollment Provision

The IRS has issued guidance which employers may still rely upon if they desire to implement an automatic enrollment process. (Rev. Rul. 2002-27 and 72 FR 43938 (Aug. 6, 2007)). Adequate notice prior to enrollment and an opportunity to opt out will be required.

For more information regarding automatic enrollment, please contact your Client Executive.

<sup>1</sup>FLSA applies to all employees of certain "enterprises." Enterprises include: (1) a federal, state or local government agency; (2) a hospital or an institution primarily engaged in the care of the sick, the aged or the mentally ill or developmentally disabled who live on the premises (it does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit); (3) a pre-school, elementary or secondary school, or institution of higher learning (e.g., college) or a school for mentally or physically handicapped or gifted children (it does not matter if the school or institution is public or private or operated for profit or not for profit); and (4) a company or organization with annual dollar volume of sales or receipts in the amount of \$500,000 or more.

Health Care Reform—the Affordable Care Act (ACA)—has many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of the health care reform requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding health care reform and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances.

Issued by the Compliance Department of Kapnick Insurance Group (11.04.2015)