



Trump Issues Executive Order Regarding the ACA

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On his first day in office, President Trump issued an executive order instructing regulatory agencies with authority over the Affordable Care Act (ACA) to take any action possible “to the maximum extent permitted by law...to waive, defer, grant exemptions from, or delay the implementation of...[the ACA].” The order itself does not actually change any current rules or regulations. It also does not grant agency heads any additional regulatory authority over what they already possess. However, it signals the Administration’s plan to make changes to the law through regulatory action as quickly as possible, even while Congress tries to address issues that will require statutory changes.

Timing Issues and Possible Impact on Employers

Many of the Administration’s choices to head various agencies are not yet in place. It also will take some time to plan, draft, and release official guidance. Although regulatory agencies cannot repeal aspects of the ACA, they could make significant changes through various methods, such as issuing enforcement delays and changing current agency interpretation of various aspects of the law.

A good example is the ACA definition of a full-time employee. The IRS cannot change the fact that a full-time employee is defined in the law as an employee working an average of 30 hours per week. That provision is contained in the statute itself. But the IRS could change current regulatory guidance such as the use of a look-back measurement period to define the 30 hours. The look-back measurement period rules were created by the IRS in previous released regulations and are not part of the statute itself.

Summary

It is impossible to predict exactly what changes will be made by the regulatory agencies, and how fast those changes will occur. For now, employers should stay the course until more formal steps are taken. Once the Administration’s agency leadership choices are in place, employers should pay close attention to what will likely be a steady stream of agency guidance and enforcement delays that could significantly impact portions of the ACA that affect employer sponsored plans.

Please be aware that this does not represent legal or tax advice and is only Frenkel's interpretation of the laws, regulations and statutes. It is highly recommended that you seek the advice of your legal and tax professional as to the applicability of this information to your particular situation.