

Publications

Businesses With 50 or Fewer Employees are Able to Participate in New York's Small Business Health Options Program (SHOP)

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As of 2014, under the Affordable Care Act (ACA), an Exchange will be fully implemented and operating in every state. An Exchange is an organized marketplace designed to help people shop for and enroll in health insurance coverage. States have the option to implement their own Exchange, or allow the federal government to set up an Exchange in their state.

New York has opted to implement its own Exchange, which will be referred to as the New York Health Benefit Exchange and will allow small businesses to purchase health insurance utilizing the Small Business Health Options Program (SHOP).

The SHOP Exchange will initially be available to businesses with 50 or fewer full-time employees. Due to ACA requirements, New York will be required to expand eligibility to businesses with up to 100 full-time employees commencing in 2016. In 2017, New York will have the ability to allow larger employers to participate in the SHOP Exchange.

Employers will be eligible to purchase insurance through a SHOP Exchange if they meet either of the following requirements: (i) their principal business address is in the SHOP Exchange service area

and the employer offers coverage to all full-time employees through that SHOP Exchange, or (ii) if they offer coverage to each eligible employee through the SHOP Exchange serving that employee's primary worksite. The New York State Department of Health, which is responsible for implementing the SHOP Exchange, has not yet provided guidance as to how this will be implemented.

As of October 1, 2013, businesses will be able to enroll in the SHOP Exchange for employee health insurance coverage that will be effective on January 1, 2014, or the first day of any month thereafter. Unlike the enrollment period for individuals (which ends on March 31, 2014), small businesses may purchase coverage through the SHOP Exchange at any time during the year.

Potential Tax Benefit for Small Businesses

Employers with 25 or fewer full-time employees, who offer employees health coverage through the SHOP Exchange, may be eligible for the Small Business Health Care Tax Credit. As of 2014, SHOP will be the only place an employer will be able to access this tax credit. An employer may qualify for a tax credit of up to 50% (up to 35% for non-profits) of eligible premium expenses to offset the cost of insurance for its employees.

Without taking into account the level of plan (i.e. bronze v. silver), employers are eligible for the tax credit if they:

1. Have 25 or fewer full-time employees (two half-time employees can count as one full-time employee);
2. Pay employees an average of less than \$50,000 per year; and
3. Contribute at least 50% toward employee premium costs (for individual coverage, not family coverage)

Small businesses eligible for the tax credit may also be able to claim a business expense deduction for premiums paid in excess of the credit. Thus employers may qualify for both a credit and a deduction for employee premium payments.

Tarter Krinsky & Drogin LLP will be closely following developments in this area.

For more information on how this may affect any aspect of your welfare benefit plan(s), please contact your Tarter Krinsky & Drogin LLP relationship attorney by phone at 212.216.8000 or Stephen L. Ferszt, Chair of the Employee Benefits and Executive Compensation Practice Group, by phone at 212.216.1101 or by email at sferszt@tarterkrinsky.com.

Stephen L. Ferszt is Chair of the Employee Benefits and Executive Compensation and the Trusts and Estates Practices. He focuses on ERISA and employee benefits matters. He is highly experienced in working with clients on the design, implementation and administration of qualified, non-qualified and welfare benefit plans. He also counsels corporations and executives on executive compensation matters. In June 2011, he was appointed to serve on the IRS Advisory

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Lisa M. McIntyre advises clients on all aspects of qualified retirement and welfare plan matters, including plan design, qualification and administration, plan termination, fiduciary responsibility, disclosure requirements, general ERISA and Internal Revenue Code compliance, government filing requirements and correction programs.

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