

Tip Sheet for Bargaining Over the Implementation of Health Care Reform

The new health care reform law requires that certain provisions must be implemented in employer-sponsored, union-negotiated health plans. The employer is responsible for implementing the changes. The union is not obligated to reopen the contract in order to implement the health care reform provisions. Union bargainers must determine whether it is in the best interests of bargaining unit members to negotiate over implementation or to allow the employer to unilaterally implement the changes. Here are some things to keep in mind when making this decision:

When Bargaining Under the National Labor Relations Act

- The union can demand to bargain over the implementation of reforms - health benefits are a mandatory subject of bargaining.
- The union can bargain to improve upon the minimum requirements of the new law, but the employer does not have to agree.
- The employer must implement the terms of the new law even if the parties don't reach agreement.
- The union should consider the pros and cons of bargaining over implementation compared to allowing the employer to unilaterally implement the new law.
- Even if agreement is not reached, the company still must implement the law.

When Bargaining Under the Railway Labor Act

- If the contract is closed, without a health care reopener, either party can refuse to bargain.
- If the contract is open, either party can make proposals on health care.
- Even if agreement is not reached, the company still must implement the law.

When Dealing with a Public Sector Unit

- The law applies to health plans for public employees, too.
- Collective bargaining will depend on the rules for that jurisdiction,
- The employer must implement the law whether or not it negotiates with the union.

Check for Contract for Pertinent Contract Clauses

- Relating to health care benefits
- Relating to reopeners
- “Me too” clauses
- Past practice provisions
- Management rights
- Joint health care committees
- Benefit terms
- Savings & severability clauses
- Letters of understanding

Prepare an Information Request on the Impact of Reform

- What are the employer’s plans for implementation?
- Verify that they plan to make all the required changes, but no more.
- Is the coverage self insured or insured?
- Is dental and vision coverage integrated with the medical plan?
- See CWA’s sample request
- Consider requesting the information regardless of whether you bargain over implementation

Understand “Grandfathering” for the Employer and Plan

- Grandfathered plans are those that were in place on the day the law became effective, March 23, 2010
- Collectively bargained plans are treated the same as any other plan; changes bargained prior to March 23, 2010 but effective after that date will not affect grandfathered status.
- Grandfathered plans are limited in how much more cost can be shifted to employees
- Loss of grandfathered status may incur some additional requirements (e.g., preventive care with no out of pocket costs for employees, third party appeals process, etc)
- Employers will consider whether it is in their interest to retain grandfathered status or to avail themselves of the possibility of shifting costs to employees.

Some Reforms Will Add to Plan Costs

- Expansion of dependent coverage
- Elimination of lifetime and annual limits

Some Reforms Will Reduce Plan Costs

- Retiree reinsurance
- Medicare preventive coverage, Medicare Rx coverage improvements
- Small business tax credits
- Health insurance exchanges