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DECEMBER 2013 LEGISLATIVE UPDATE

By S. Whitney Rahman

1. **ACA Deadline Extended for Small Business Health Options Program ("SHOP").**

On November 27, 2013, the Obama administration announced that SHOP will not be fully available for small employers until November 2014. In states such as Pennsylvania that rely on a federally run health insurance marketplace, small employers will not be able to buy health plans online through the marketplace until November 2014 for plan year 2015. Instead, the Administration has suggested using an agent or broker to find a certified SHOP plan in order to be able to get the small business tax credit available through the ACA.

2. **Supreme Court Hears Oral Argument On Sarbanes-Oxley Issue.**

The Supreme Court heard oral argument on November 12, 2013 in Lawson v. FMR, LLC, No. 12-3, to decide whether the Sarbanes-Oxley Act provides protection against retaliation for employees of private entities that contract with public companies. The law states that no company covered by the law--which applies only to public companies--or "any officer, employee, contractor, subcontractor, or agent of such company may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment" because the employee engaged in any whistleblowing activity. The question is whether this language extends the coverage of Sarbanes-Oxley to the employees of private contractors, or whether it only requires that the contractors not retaliate against the employees of the public company. If the Court decides that Sarbanes-Oxley extends to the employees of private contractors of public companies, this would greatly expand the reach of Sarbanes-Oxley.

3. **Department of Labor Releases Its Fall 2013 Agency Rule List.**

The Department of Labor states that it currently is working on a total of 55 proposed and final rules. Included in these rules are rules that: (1) increase the penalties for failing to post as required under most anti-discrimination laws; (2) renew consideration of the NLRB's rule to speed up the representation election

process; (3) revise OFCCP affirmative action provisions for construction contractors; (4) update OFCCP sex discrimination rules; (5) require employers to file certain injury and illness data electronically under OSHA; and (6) provide procedures for filing whistleblower claims under laws including the ACA.

*****This update should neither be construed as legal advice, nor as lobbying of any sort for or against any Board rules or decisions.*****

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