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Unions brace for complicated labor negotiations under health care law

By Laura Hautala

One of the primary goals of the Affordable Care Act is to check runaway health care costs by forcing employers to scale back generous benefits and look for ways to rein in long-term expenses.

But the landmark legislation, which includes penalties for businesses that offer high-end health insurance plans, could also alter the playing field in union contract negotiations by slimming the benefits companies offer at a time when workers are hoping to reap compensation after forgoing raises during the recession.

By the same token, the excise tax, or so-called "Cadillac tax," strikes at the heart of what organized labor can offer workers as unions try to reverse a decades-long slide in membership.

A resolution approved Wednesday at the quadrennial AFL-CIO convention in Los Angeles would seek to eliminate the tax and other fees.

The "ACA Excise Tax, Reinsurance Fee and other fees will drive the costs of collectively bargained, union administered plans, and other plans that cover unionized workers, to unsupportable levels, resulting in pressure to shift costs to workers, cut wages," the resolution said.

"To a certain degree we're seeing management use the Affordable Care Act as an excuse in order to do what they've been trying to do all along," said Ken Jacobs, chairman of the UC Berkeley Labor Center who spoke during a panel discussion on the topic Tuesday. Jacobs emphasized that while companies have for years been trying to reduce the value of health care benefits, this gives them another reason to cite for proposing smaller benefits.

Employers may have good reason to fear the tax on valuable health insurance plans - it would leave them on the hook for a 40 percent assessment on the value of health

benefits over a certain threshold. The tax takes effect in 2018 and unions and management may push for it to be changed in the intervening time.

While it's too early to know exactly how labor negotiations will be impacted as the health care law comes into effect, lawyers who sit at the bargaining table say there will be increased tension. Employers will want to offer less valuable health insurance, but unions already feel their members have gotten a raw deal with the concessions they've made over the last five years.

The recent strike over Bay Area Rapid Transit workers' contracts hinged on this struggle: The transit agency offered workers their first raise in five years, but the unions are unhappy because management wants to simultaneously rein in fringe benefits.

The ongoing negotiations have shown that unions will still view cuts to health care as a pay cut.

What's more, by pressuring managers to lower the value of insurance benefits, the law deals a blow to what unions offer their members, said Sarah Flocks, policy coordinator with the California Labor Federation, an umbrella group representing AFL-CIO and Change to Win unions throughout the state.

"For years and years, unions and members have negotiated with employers, and they've forgone wage increases to put that money into benefits," she said.

Flocks doesn't think union members will get those wages back as employers wrestle with keeping health care costs down. Steve M. Berliner, a partner with Liebert Cassidy Whitmore in Los Angeles, agreed that the overall amount offered to workers will go down, especially if employers must pay the excise tax.

"Anything that raises the costs to the employer is going to have reverberations throughout the system," Berliner said. "There's going to be a takeaway somewhere else, or those expensive benefits are not going to be there. Something's gonna give."

Union lawyers who negotiate for health care on behalf of entertainment and construction workers are especially concerned. These unions often join up with several employers to administer a single health care plan so that workers who jump from job to job can maintain coverage as long as they belong to the union.

These multiemployer plans will be taxed at the same rates as other plans, but Pete Dickinson, a partner who represents construction and entertainment unions at Bush, Gottlieb, Singer, Lopez, Kohanski, Adelstein & Dickinson in Glendale, said the law makes them less appealing to management.

"Some of these plans catering to low-income workers may just be driven out of business," Dickinson said. "Employers may provide their own health care, or they may say, 'Go onto the exchanges.' Undocumented workers aren't even able to participate on the exchanges."

What's more, workers may also no longer find the multiemployer plans appealing. Lawyers like Dickinson are concerned this may in turn make union organizing harder, with workers seeing less value in the benefits won through collective bargaining.

Dickinson also said the law taxes all plans alike, even though multiemployer plans often provide benefits to low-income workers.

"That's the inherent unfairness of a law that was intended to cover the underinsured or the uninsured, which is a great and laudable goal," he said. It raises the cost of all plans, even the ones that were already striving to cover this same demographic. "It impacted this group of health plans which were just fine, thank you. They worked quite well."

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