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The New Benefits World: Market Disruption and the Zebra Effect

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In a galloping herd, a Zebra's stripes jumble and seem to intermingle, and the lion, which cannot see color, is often unable to single out a single meal[1]. Zebras run in a herd because their stripes are its best defense.

In the increasingly jumbled world of employee benefits, singling out the right solution at the right price for every employer is like watching a herd of zebras run by. Federal laws, state regulations, and new concepts intermingle with tired, old, broker and insurance industry methods. Business owners, CFOs and HR managers often do not have the time or expertise to do the research necessary to single out the best solutions. Organizations rightfully hire professional benefit consultants and insurance brokers to help, but even singling out a good advisor is not as simple as it used to be. Thus, a new saying has emerged when we uncover an odd decision or a strategic benefits error: "it's the Benefits Zebra Effect." Here are my suggestions to avoid the BZE[2].

Compliance v. Penalties

First and foremost, organizations must understand that the Benefits World has not only changed, it will also deliver severe consequences if compliance isn't taken seriously. Compliance with the new regulations in the Fair Labor Standard Act and the loveable Affordable Care Act, for instance, is only difficult if you ignore it or don't ask for help. There are very good resources from many credible sources available; the trick is that you have to use them and make the necessary adjustments. If you find yourself trying to pound an old, square employment policy through a round compliance hole – please stop. You may need to change your internal policy.

Some of the most dangerous decisions I've seen come from contorting a benefits plan or internal policy in order to hang onto a discriminatory employment classification. Also, we still run into organizations that are clinging to increasingly expensive "Grandfathered" Health Plans when they should have dismounted that dead horse years ago. **Grandfathering isn't doing you any favors and it actually harms both employer and employee.** If you still have one, you most definitely fell victim to BZE. Worse, and I realize not every benefit advisor agrees with me on this, if you offered your employees a MEC[2] (minimum essential coverage) plan to avoid certain ACA penalties, I think you are a victim of BZE. You singled out the wrong solution from the herd. Rather than chase the cheap, preventive-only benefit plan, most employers would be better off limiting new enrollment with higher contribution requirements that meet one of the affordability safe-harbors. Then collect waivers instead of MEC enrollments. Time will tell who's right, but I'm sleeping well knowing that none of my clients adopted a MEC plan.

Self-Funding v. Leasing Health Plans

Another example of organizations paralyzed by BZE is in the area of self-funded health plans. For decades, many employers with more than 100 employees have been hanging onto fully-insured medical premiums when they should have self-funded long ago. **Despite what you've been told, your organization is probably not too small to self-fund.** There are plenty of modern, high quality TPAs in the market, and it's easier than ever to return to the fully-insured world if you ever feel the need. Yes, I have self-funding bias. However, if you have more than 50 employees on your health plan and aren't self-funding in one of its many forms, you probably have BZE.

Seriously, I'm tired of hearing how self-funding isn't for everyone and the employer needs to have a higher risk tolerance, no large claims and much more sophistication internally to manage and benefit from self-funding. Not true! It's like telling someone they need to be a mechanic if they want to buy a new car because new cars are more sophisticated, and therefore, they should continue leasing. Leasing is exactly what a fully-insured health plan employer is doing. They aren't even leasing a health plan, they are leasing the insurer's provider network with annually renewable terms.

Self-funding is like streaming from Netflix or using Uber for the first time, and then wondering what took you so long. If you doubt this, find an advisor with a bunch of self-funded clients and ask for an unbundled and an ASO[2] quote. You will see what I mean when you see YOUR OWN INSURER on the spreadsheet with an ASO (Administrative Services Only) quote at, or close to, your current fully-insured premiums. The only requirement? 50 or more employees enrolled on your health plan. Now, do we really need to talk about the 4% premium tax advantage and the superior strategies you can deploy when you own your own self-funded health plan rather than lease a fully-insured plan?

Employers with less than 50 FTE employees

Employers with less than 50 FTE employees (full time equivalent) will find self-funding options very limited (and probably should avoid self-funding), but they have other distinct advantages for employee benefits. First, employers with less than 50 FTEs are not subject to the pay-or-play penalties for not offering affordable health insurance. Second, they can continue with the fully-insured leasing of health plans like they always have. However, even smaller organizations with fewer options exhibit signs of BZE.

Here's a common example: For years employers have had the ability to pay for, or reimburse, their employee's individual health insurance premiums on a pre-tax basis. With the implementation of the Affordable Care Act, this arrangement does not comply with the requirements under the law. Despite claims from various promoters (sorry Zane), employers who continue to do this leave themselves susceptible to a $100 per day penalty under Section 4980D for each person they reimburse. Due to this penalty, some employers turned to providing reimbursements on an after-tax basis. However, the Department of Labor issued rules in 2014 to addresses the post-tax scenario specifically. **Today, pre-tax and post-tax reimbursement arrangements do not comply with the law and are both subject to the penalty.**

Employers still have the option of grossing up the salaries of employees for the cost of insurance. While this may seem to be an easy fix, employers still have a degree of liability under this arrangement. Because this compensation increase cannot be 'tied' to the employee buying individual coverage, what happens if that employee decides to join the group health plan, or drop the individual coverage and join a spouse's group plan? The employer is left with giving the employee additional compensation that they would not have otherwise. Employers will need to decide if this is an acceptable risk. My advice: don't go there. If you can't afford to offer your employees quality health insurance, then leverage the public exchanges and make it up in other areas where you can more easily control the cost.

The Great 2016 Employer Reclassification

On January 1, 2016, employers with 51 to 100 employees will be reclassified for the purposes of purchasing a health plan. They'll be moved from the large group market to small group. This change is a result of one of the provisions in the Affordable Care Act. It will be a major upheaval for these employers, and is another reason for employers with 51 FTEs enrolled on a health plan to self-fund. We see employers in this size range exhibiting all the signs of BZE. "Is this change really happening?" Yes. While there have been discussions at the federal level about delayed implementation of this change, all of our sources currently indicate that it will happen in Washington State beginning January 1, 2016, as groups renew. **Make plans for this major change accordingly.** For employers moving from the large group market to small who decide not to self-fund, they will need to choose a fully-insured plan with predetermined benefits, rather than being able to customize a plan. Plan customization is only available in the large group market. Instead, they will choose from the portfolio of plans available to the small group market from the various health insurers. That's not such a big deal for most employers. The tougher change will be the shorter reenrollment period. Typically large group clients receive notification months prior to their enrollment period. But as small group plans, they will have to comply with the go-to-market rules set by the Office of the Insurance Commissioner (OIC). That's very different than what many employers are familiar with doing.

With the proper focus, advice and support, no employer should suffer from BZE. With the latest advances in benefit administration systems (better, faster, cheaper) that are integrated with more insurers, TPAs and payroll systems, those tasked with managing employee benefit plans should find life getting much easier very soon. Unless, of course, they fall victim to TZE[3].

[1] Rest in Peace, Cecil.
[2] Just doing my part for the acronym apocalypse.
[3] Technology Zebra Effect

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