How is the Affordable Care Act Going to Affect Your Business?

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Overview

The Affordable Care Act was passed as part of the budget reconciliation process on March 3, 2010. This law is meant to redefine how healthcare is delivered in the United States. There are many provisions of this law that remain unanswered, either due to ambiguity in language or lack of regulations released. There are multiple governing bodies and agencies that share responsibility for the enforcement of the different provisions of this law. My focus is mainly from the IRS enforcement perspective. Many of the regulations that we will discuss are “proposed regulations” and are subject to interpretation and change.
Individual Mandate

- This was probably the most contentious part of this legislation. But may be the least costly.
- Is this a tax? Administration says NO, and then YES at the Supreme Court. Supreme Court agrees that it is constitutional as a tax. This will be assessed as a federal income tax penalty.
- Penalty will be calculated in two ways and the individual will be subject to the greater of (i) the sum of an applicable dollar amount per individual taxpayer (and spouse on joint return) and each claimed dependent (or, if less, 300% of the applicable dollar amount) or (ii) a percentage of the taxpayer’s household income for the year.
  - Applicable dollar amount, 2014-$95, 2015-$325 and 2016 and beyond is $625 indexed for inflation.
  - Percentage of taxpayers’ household income is an amount equal to a percentage of the household income in excess of the tax filing threshold for the year (which percentage is phased in at 1% in 2014, 2% in 2015, and 2.5% after 2015).
- Will this encourage individuals to get health insurance?
- There are exceptions
- Effective January 1st 2014
Expansion of Medicaid

• The federal government attempted to force the states to expand their Medicaid programs. The law originally was going to require the states to do so or lose all Medicaid funding. This was deemed unconstitutional, the result was that the states now have a choice and many have declined.

• Why? The federal government will only fund the newly eligible participants for the next three years. To many of the states the $$ don’t add up.
State Insurance Exchanges

- Exchanges are being set up to provide a market place for individuals and small businesses.
- Exchanges are scheduled to be open for business in October. (Small business utilization has already been delayed)
- Navigators will help participants choose the most applicable coverage.
- What is this market place suppose to look like?
  - The policies offered are supposed to be offered at four different levels, Bronze, Silver, Gold and Platinum. The distinction between the different levels is the amount of total allowed cost of benefits the plan will cover; 60%, 70%, 80% and 90%.
- The law has given the states the ability to (a) set up their own exchange (b) collaborate with other states to set up regional exchanges (c) run their exchange by partnering with the federal government (d) have the Department of Health and Human Services (DHHS) operate their exchange from the federal level.
  - Many states have elected not to set up their own exchange and let DHHS do it. (Only 17 states have committed to establishing their own exchanges)
  - DHHS is not currently funded to perform this function.
  - DHHS has proposed a 3.5% user fee for the premiums on the federally run exchange.
The Federally-Run Exchange

- How will I know if my employees are eligible to obtain health insurance on the Federally-run Exchange?
- What if I have employees in other states?
Premium Assistance

- Affordable Employer Sponsored Coverage
- “Affordable” for employee
- Employee contribution for single (employee only) coverage in an employer plan is no more than 9.5% of household income
- NEW DEVELOPMENT - “Affordable” for family members eligible for employer sponsored coverage
- IRS guidance released January 30, 2013
- An employee’s family member is also not eligible for subsidy if the contribution for single (employee only) coverage in an employer plan is no more than 9.5% of household income.
- This IRS interpretation significantly limits the number of lower income family members who will be eligible for subsidized coverage.
Employer Shared Responsibility Payment

• Starting in 2014, Large employers must offer affordable health coverage to their full-time employees or a shared responsibility payment may apply. There are two distinct determinations, please be careful not to get the terms and regulations confused.

• Large Employer Calculation
  – A company that employs 50 or more full-time or full time equivalent (FTE) workers on business days during the preceding calendar year.

• Full-Time Status Evaluation
  – These set of rules are used to determine if an individual is to be considered a full time employee in a given month. This determination is specifically used for penalty calculation and eligibility determination.
Large Employer Calculation

Determine how many full-time employees (FTEs) and how many part-time employees (PTEs) you have on staff:

| # Full-Time Employees (FTEs) | # Part-Time Employees (PTEs) |

Example: You determine you have 45 FTEs and 10 PTEs, then:

45 FTEs + 10 PTEs × 60 hrs/mo = 600
÷ 120 = 5 Full-Time Equivalents (FTEEs)

= 50 Full-Time Employees under the Shared Responsibility Rules
Large Employer Calculation (cont.)

• Attribution Rules
  – Same rules as qualified retirement plans, related entities will be aggregated for purposes of determining large employer status. However, penalties will be assessed as individual entity level.

• Look Back Rules
  – There is a six consecutive month look-back rule in determining average number of FTE’s for your 2014 calculation. This does not exist for future rules.

• Seasonal Employees Exception
  – This exception is written in order to provide relief to employers that employ larger workforces for less than 120 days per year. However, it is written to disqualify the exception if abuse is present.
Full Time Status Evaluation

• An employee’s status is determined by hours of service. These hours include any hours that the employee was being paid, should have been paid or is entitled to payment. This includes sick days, vacation, holidays, layoff, jury duty, disability, military duty and leave of absence.

• In the case of hourly employees actual hours are used. In the case of salaried employees you can use:
  – Actual hours
  – Days worked equivalency of 8 per day, or
  – Weeks worked equivalency of 40 hours per week.
Full Time Status Evaluation (cont.)

• Employers may utilize different methodologies for different groups of non-hourly employees.
• Other methods may be necessary for employees that are paid solely on production, such as a sales staff paid on commission only.
• Please also be aware that there are specific provisions for the following situations as well.
  – Employees whose employment status materially changes during the measurement period.
  – Retired employees.

The IRS is continually updating the Anti Abuse and Whistle Blower provisions as they relate to ACA as a whole, and more specifically, the full time status determination. There are a number of examples that they have provided that have already been determined to be abusive.
Employer Shared Responsibility – 2014
Penalties for not offering affordable coverage under the ACA

- START HERE -
Does employer have >50 Full-Time Equivalent Employees (FTEs)
[Controlled Group Rules]

YES

Does employer offer qualified coverage to every FTE?
30 hrs/week; 130 hrs/month

NO

Employer NOT subject to Pay-or-Play employer mandate

NO

Has at least one employee received a Federal subsidy to purchase coverage in an Exchange?

YES

NONDEDUCTIBLE EMPLOYER PENALTY OF
Cap $2,000 x Total FTEs Less 30

NONDEDUCTIBLE EMPLOYER PENALTY OF
$3,000 x Number FTEs Who Purchase Coverage in an Exchange
Cap $2,000 x Total FTEs Less 30

NO

Does plan cover at least 60% of covered health care expenses?

YES

Qualifying FTEs may choose to purchase coverage in an Exchange by receiving a Federal subsidy (if household income < 400% of FPL*)

YES

Employee subsidy eligibility if household income < 400% of FPL and not offered affordable coverage (9.5% or 60% of covered expenses)

NO

NO PENALTY

NO

Do any FTEs pay >9.5% of household income* for the lowest cost employee-only coverage?

YES

NO PENALTY

*Household Income Defined As: Employee Only W-2 Income
Pay or Play – Section 4980H(a)

• Applies if an applicable employer does not offer minimum essential coverage to at least 95% of its full-time employees and their dependents for any calendar month and the employer receives a Section 1411 Certification with respect to any full-time employee.

• Penalty is computed monthly and its annual total is $2,000.
Pay or Play – Section 4980H(b)

• Applies to an applicable large employer that offers its full-time employees the opportunity to enroll in minimum essential coverage for a calendar month and receives a Section 1411 Certification for any full-time employee for the month.
• Penalty is $3,000 per year, computed monthly.
• Penalty **CAN BE AVOIDED** if the employee’s required contribution for the year for the lowest cost individual coverage does not exceed 9.5% of the employee’s W2 wages for the year (*W2 Box 1 wages*). (There is a wage safe harbor as well calculated the same way not taking into consideration pre tax deductions)
• If an employer offers multiple coverage plans, this 9.5% test applies **ONLY** to the lowest cost option available to the employee that also meets minimum coverage.
Pay or Play – The Calculation

• Assume average salary of lowest paid full-time employee is $12.50 per hr.
• Approximately $26,000 per year
• 9.5% of wages is $2,470
• $205 per month is the maximum out-of-pocket premium cost that you can impose for your lowest cost minimum coverage option for this employee.

The premium responsibility levels can be based on individual’s compensations limits if they are not discriminatory to the lower compensated wage earners.
New Taxes Under ACA

- Net Investment Income Tax 3.8% “Wealthy Only”
- Additional Medicare Tax .9% “Wealthy Only”
- Medical Device Excise Tax
- Excise Tax on Indoor Tanning Services
- Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers
- Limitation on Deduction for Compensation Paid by Certain Health Insurance Providers
- Employer Shared Responsibility Payment
Executive Focus

- Are you a large employer? Do you expect to be in the near future?
- Have you taken into consideration related entities?
- Penalties are non-deductible, they were designed to be a deterrent.
- Not providing the minimum coverage may be bad for business; what are your competitors doing?
- The Affordable Care Act will redefine how the individual insurance market is priced.
- Understand where and how you can shop for the low cost MEC plan.
- Is your HR department ready to answer the employee’s questions concerning ACA?
- Evaluate the allocation of your health care dollars currently and prospectively. Make sure that you are not being discriminatory.
IRS Resources

• IRS Q&A on Employee Shared Responsibility Provisions

• Affordable Care Act Tax Provisions
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Questions?

Thank you!

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