

Compliance Questions to Consider in Healthcare Reform

5.6.13

The Patient Protection and Affordable Care Act, as amended, carries important implications for employers beginning in 2014, including the prospect of significant tax penalties. Existing guidance is complicated, confusing and incomplete in many respects. Below are some of the key questions for employers, followed by examples of basic compliance hurdles and planning strategies. If you are not able to answer “yes” to all of these questions, or if you have other questions, please contact us.

1. As an employer, do you know whether you will be subject to penalties beginning in 2014 if you do not offer group health plan coverage that is affordable and provides minimum value?
2. Do you know how (and when) to determine whether your business has 50 or more full-time and full-time equivalent employees?
3. Do you know whether you have to consider related businesses in this analysis and how to do it?
4. Does your business offer group health coverage to all full-time employees (not full-time equivalents) and their child dependents?
5. Do you know how and when to determine whether an individual is a “full-time” employee?
6. Do you know how eligibility rules may differ for variable hour/seasonal/temporary employees?
7. Do you know whether the coverage your business offers is “affordable”?
8. Do you know whether the coverage your business offers qualifies as “minimum essential coverage” or provides “minimum value”?
9. Have you considered the pros and cons to your business and its employees of whether to continue or terminate your group health plan?
10. Do you know how rehires must be handled under the new rules?

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Exploring Compliance Issues

The following examples highlight some basic compliance topics that employers will be encountering as more provisions of the Affordable Care Act become effective in 2014.

- **Calculating full-time equivalents**

Example: Employer A has 10 employees who average 30 or more hours per week and 80 employees who average fewer than 30 hours per week but who, combined, average 6,000 hours per month. Employer A is considered to have 60 full-time and full-time equivalent employees, calculated this way: 10 full-time employees who average 30 or more hours per week, plus 50 (6,000 divided by 120) full-time equivalent employees equals 60.

- **Eligible employees**

Example: Employer B requires employees to average 40 hours per week to be eligible for healthcare coverage. Employer B might be subject to penalties for failure to offer coverage to its employees averaging fewer than 40 but at least 30 hours per week.

Example: Employer C offers coverage to all corporate employees, regardless of hours, and does not offer coverage to field employees, regardless of hours. Employer C might* be subject to penalties for failing to provide coverage to field employees who average 30 or more hours per week or 130 hours per month.

- **Affordability**

Example: Employer D offers coverage to all employees who average 30 or more hours per week. The premium for individual coverage is \$125 per month. Employee Z is eligible for individual coverage. Employee Z works 30 hours per week and earns \$1,020 per month (approximately \$8.50 per hour). If Employee Z were covered, he would pay more than 12 percent of his income for healthcare coverage, which is higher than the statutory maximum of 9.5 percent. Accordingly, if Employee Z were to obtain subsidized coverage through an exchange, Employer D might* be subject to penalties.

- **Dependent coverage**

Example: Employer E offers coverage that is affordable and provides minimum value to each employee averaging 30 or more hours per week, the employee's children (including naturally born children, children

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adopted or placed for adoption, stepchildren and foster children), and the employee's spouse if the spouse is not otherwise eligible for employer-sponsored health coverage. Employer E is not subject to penalties for failing to offer coverage to all spouses. Further, Employer E is not required to subsidize coverage for children or spouses of employees.

- **Variable hour employees**

Example: Employer F hires Employee Y and cannot reasonably determine whether Employee Y will average 30 or more hours per week. Employer F could potentially exclude Employee Y from its healthcare plan for 13 and a partial-month period, even if Employee Y averages 30 or more hours during that 13 and partial-month period.

- **Seasonal employees**

Example: Employer G hires Employee X to provide additional assistance for three months during the holiday season. Employer G expects Employee X to average 45 hours per week during the holiday season. Employer G might* be able to exclude Employee X from coverage without penalty, even though Employee X is expected to and does actually average more than 30 hours per week during the holiday season.

- **Multiemployer healthcare plans**

Example: Employer H is party to a collective-bargaining agreement with union, which requires Employer H to contribute a flat dollar amount to the union multiemployer healthcare plan for each employee covered by the collective-bargaining agreement. Employer H might* be subject to penalties with respect to Employer H's employees who are subject to the collective-bargaining agreement if the multiemployer healthcare plan does not provide coverage that is affordable and provides minimum value.

- **Waiting periods**

Example: Employer I allows eligible employees to enroll in healthcare coverage on the first day of the month following 75 days of service. Employee W is hired on June 1 and elects healthcare coverage. Coverage for Employee W begins September 1, which is 92 days from June 1. Accordingly, Employer I will be subject to a penalty for having a waiting period in excess of 90 days.

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- **Common employers**

Example: Shareholder V owns 100 percent of Employer J, which has 35 full-time and full-time equivalent employees and 20 percent of Employer K, which has 20 full-time and full-time equivalent employees. V has an option to purchase an additional 60 percent of K. Employer J and Employer K would be treated as a single employer for purposes of determining whether employer shared responsibility penalties apply, if Shareholder V is treated as owning 80 percent or more of both companies. Both Employer J and Employer K are potentially subject to penalties because the combined number of full-time and full-time equivalent employees of Employer J and Employer K is 50 or more.

- *Example:* In addition to the facts above, Employer J offers health coverage and Employer K does not offer health coverage. Because Employer J and Employer K are separate legal entities, the applicable shared responsibility penalty for failing to provide health coverage is determined with respect to only Employer K's full-time employees.

* The employer would be subject to penalties unless certain exceptions applied.

What This Means to You

Your employment practices and health plan design decisions in 2013 will determine how the Affordable Care Act will affect your business in 2014. Careful planning now can reduce the risk of penalties and may result in health plan cost savings. If you do not fully understand the Affordable Care Act and how it applies to your business, you should seek immediate assistance.

Contact Information

For additional information, please contact your Husch Blackwell attorney.

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