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WEDNESDAY, NOVEMBER 7, 2012

Why Small Businesses Should Plan Now for Obamacare Compliance

With the election behind us, it is clear that the Patient Protection and Affordable Care Act (“Obamacare”) is here to stay. That means that businesses of all sizes should start planning now for Obamacare’s new employer mandates. For many businesses, the most important new requirement is the so-called “play-or-pay” mandate that requires all employers with more than 50 full-time employees (or full-time-equivalent employees) to offer affordable, minimum health coverage to all full-time employees or else pay a potentially hefty penalty. For employers who offer no coverage, the yearly penalty will be \$2,000 times the total number of full-time employees less thirty (i.e., \$2,000 x [Total Full-Time Employees – 30]).

Although this play-or-pay mandate does not take effect until January 1, 2014, most businesses at or near the 50 full-time-equivalents threshold should beginning planning now. Here are two reasons why:

[The Makeup of Your Workforce in 2013 Matters](#). It is always tempting to procrastinate when there is regulatory uncertainty. And to be sure, many details about Obamacare remain uncertain as federal agencies slowly promulgate regulations and guidance to fill in the statutory gaps. However, one thing that is quite clear from the Obamacare statute is that the structure of a business’s workforce in 2013 will determine whether or not it is subject to the play-or-pay mandate in 2014. The statute provides that an employer is considered “large” and subject to play-or-pay if it employed an average of at least 50 full-time-equivalent employees during the preceding calendar year. (The statute grants an exception for employers whose workforce exceeded 50 full-time equivalents for 120 days or fewer during the preceding calendar year or where the employees

JOE CONLEY



Joe Conley is an attorney based in Austin, Texas, who advises small businesses on Obamacare compliance.

Find out more at

www.joeconleylaw.com.



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in excess of 50 full-time equivalents during such 120-day period were seasonal workers.) Thus, employers that are near, or slightly in excess of, the play-or-pay threshold may want to take a close look at the makeup of their workforce and the structure of their business entities in 2013.

The Structure of your Business in 2013 Matters. Small business owners may also want to give close consideration to the legal and ownership structure of their organizations well in advance of 2014. That is because before counting employees to determine whether the play-or-pay threshold has been reached, one must first determine *whose* employees must be counted. Certain businesses that have a parent-subsidiary relationship or that reach a certain level of common ownership will be treated a single “employer” under Obamacare, meaning that all of their employees are aggregated for purposes of play-or-pay. The applicable Treasury regulations here are complex and require individualized analysis tailored to the structure of your organization. But this rule undoubtedly will bring into Obamacare’s fold many small and family-owned businesses that have overlapping ownership.

To sum up, while we will learn much more detail about Obamacare implementation in the coming months, there are good reasons for small business owners to begin taking steps now to plan for Obamacare's employer mandate.

This post is intended to provide information about current legal developments of general interest and consists of the opinions of the author. It should not be construed as legal advice, and readers should not act upon the information contained herein without consulting professional counsel.

Posted by Joe Conley at 7:04 AM 

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