Obamacare Blog - News and Analysis on the Affordable Care Act and its Impact on Employers

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Why Employers Should Plan Now for Obamacare

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Beginning in 2014, large employers will be subject to a potential tax penalty under the "shared responsibility" provisions of the Affordable Care Act' ("ACA" or "Obamacare"). This is commonly known as the "play or pay" penalty, because applicable large employers may be subject to the penalty if they fail to offer their full-time employees (and their dependents) minimum essential health coverage, or if the coverage they offer is either unaffordable to the employee or does not provide minimum value.

The IRS recently proposed regulations to implement the ACA's employer mandate, and final regulations are expected later this year. The IRS also issued a series of Question and Answers on the employer mandate. This was the last large piece of the regulatory puzzle to fall into place before play or pay begins next year. Notably, the IRS made clear that it would seek to crack down on an employer's manipulation of the workforce to avoid penalties, for instance, through the use of temporary staffing agencies that might be employers in name only.

Although potential penalties will not accrue until 2014, employers should plan now for Obamacare. Many employers will need to look at both the structure of their workforce and the structure of their business entities in 2013 in order to assess the potential tax penalties and compliance issues when play or pay comes into force. This article discusses a couple key reasons why it is important for employers to begin planning and assessing their options as soon as possible.

The Makeup of Your Workforce in 2013 Matters

The play-or-pay mandate applies to "applicable large employers," defined as employers with more than 50 full-time employees (or full-time-

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equivalent employees). For large employers who do not offer coverage to their full-time workers (and their dependents), the yearly tax penalty could be $2,000 times the total number of full-time employees less thirty (i.e., $2,000 x [Total Full-Time Employees – 30]).

Employers may also be subject to a penalty if they do offer such coverage, but that coverage is either unaffordable or does not provide minimum value (as defined in the ACA and IRS regulations). That tax penalty could amount to $3,000 per year for each worker for whom the offered coverage is either not affordable or does not provide minimum value.

The ACA defines "applicable large employer" as an employer who employed, on average, 50 or more full-time employees (or full-time equivalents) during the *preceding calendar year*. Employers will thus need to look closely at their workforce in 2013 to understand their obligations and potential penalties under play or pay beginning in 2014.

Employers who are near, or slightly in excess of, the 50-full-time-employee threshold should give serious attention to the makeup of their workforce and the structure of their business entities in 2013. Many employers – particularly those with many part-time workers – likely do not know whether they are at the 50-full-time-employee threshold.

Under proposed IRS regulations, employers have the option of determining whether they are an applicable large employer for 2014 by using a reference period of at least 6 consecutive calendar months in 2013. Employers who wish to take advantage of this "transition relief" should take steps now to establish a counting method, count employee hours over a 6-month period, and then consider whether to offer the required coverage or instead pay the tax penalty.

<u>The Structure of Business Entities in 2013 Matters</u>

Many business owners will also want to take a close look at the legal and ownership structure of their business 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 IRS 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 structures.

To sum up, while we will continue to learn more about Obamacare implementation in the coming months, there are good reasons for employers to take concrete steps now to plan for Obamacare.

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