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The Patient Protection and Affordable Care Act and Employers: Is Your Plan Affected and What Changes Will Your Business Have to Make?

Part II: Large Employer Mandates and the Small Business Tax Credit

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The Patient Protection and Affordable Care Act, as modified by the Reconciliation Act, (collectively "the Act") not only regulates employers according to whether your group health plan is grandfathered or a new plan, but also based on workforce size.

Employers are generally regulated by the Act according to two categories: large employers and small employers. However, within these two categories employers are further differentiated based on size.

Large Employer Mandates

Under the Act, an employer with 200 or more employees must automatically enroll new employees in the business' health care plan, though employees can opt-out of coverage. This provision was effective March 23, 2010, but will most likely be enforced when the Department of Labor releases regulations interpreting it, though no deadline for release has been set.

Despite the above requirement, generally a large employer has 50 or more full-time (30+hours/week) or full-time equivalent (as defined below) employees. Effective immediately, the Act amended the Fair Labor Standards Act to require large employers to provide all non-exempt employees "reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." In addition to break time, employers must provide nursing mothers "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public." Nursing mothers do not have to be compensated during these breaks, unless the employee uses compensated break time otherwise offered by the employer. Employers with fifty or less employees are not subject to these requirements if it would impose an undue hardship, such as difficulty or expense.

The following large employer requirements are effective for plan years beginning on or after December 31, 2013. These requirements highlight the need for large employers to offer affordable health care coverage or face penalties and fees.

Large employers who do not offer health care coverage, but have at least one employee receiving a premium tax credit will be subject to a fee of $2,000 per full time employees. However, the first 30 employees can be excluded from that fine. If a large employer does offer health care coverage, but has at least one full-time employee receiving a premium tax credit, the employer may be subject to a fine of the lesser of (1) $3,000 for each employee receiving the credit or (2) $2,000 for each full-time employee, excluding the first 30 full-time employees.

Premium tax credits are available to individuals who have household incomes of less than 400% of the federal poverty level or if the individual's employer-sponsored coverage requires an employee contribution of more than 9.5% of household income or covers only 60% of the total allowed cost of benefits under the plan.

Therefore, a large employer will be subject to penalties/fees if it does not offer health care or does not offer affordable health care for all its employees.

Small Business Tax Credit

The Act provides immediate valuable tax credits to small employers to ease the cost of providing health care coverage to employees. If your business meets all three of the below factors, it is a small employer and is entitled to receive a tax credit of up to 35% of its contribution to employees' health care insurance costs beginning this taxable year:

(1) *Have 25 or less full-time equivalent employees for the taxable year.* To determine the amount of full-time equivalent employees your business has divide the total number of total hours worked by your employees during the taxable year by 2,080. If the result is 25 or less, you satisfy this requirement;

(2) Pay Employees less than $50,000 average annual wages. To determine if your employees earn less than $50,000 average annual wages divide the total amount of wages paid by you to your employees during the taxable year by the number of full-time equivalent employees (i.e. your result in #1 above). If the result is $50,000 or less, you satisfy this requirement; and

(3) Pay at least 50% of each employee's health care insurance premium. Employers with 10 or less full-time equivalent employees, who pay $25,000 average annual wages or less, receive the total 35% tax credit. The tax credit is reduced for every full-time equivalent employee employed over 10 and every dollar of average annual wages paid over $25,000.

Tax-exempt small employers receive up to a 25% tax credit, rather than a 35% credit, of the cost of employee health care insurance contributions, or if lesser, receive a tax credit in the amount of total income tax and Medicare tax withholdings and Medicare tax paid during the calendar year of which the taxable year begins. A tax-exempt small employer is exempt under the Internal Revenue Code Section 501(c) and meets the above three factors.

In 2014, the tax credit increases up to 50% (up to 35% for tax exempt small employers) for small employers buying health care insurance plans through Small Business Health Options Programs ("SHOP Exchanges"). Pursuant to the Act, by 2014 each state must form SHOP Exchanges where small businesses can pool with other small businesses to buy employee health care insurance and by 2017 these or similar exchanges will be open to large employers. Deductibles will be limits to $2,000 for an individual or $4,000 for family coverage. The IRS has not yet issued guidance on this enhanced tax credit.

The Internal Revenue Service has set up a "Frequently Asked Questions" website to help small employers take advantage of this tax credit. The website is available at www.irs.gov/newsroom/article/0,,id=220839,00.html.

Part III of this series will explain early retiree insurance reimbursement available for businesses under the Act.

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