

## **The Affordable Care Act – What You Need to Know Checklist**

This checklist provides a list of questions to ask an employer with respect to ACA compliance. The checklist starts with by identifying the employer's health plans, affiliates, and workforce.

### **I. Review Employer Information**

#### **A. Employer's Health Plans**

1. Identify the employer's health plans that may be subject to the ACA.
  - What is the main medical plan and are there multiple options (HMO, PPO, high-deductible health plan, etc.).
  - Does the employer have a retiree medical plan?
  - Does the employer have a health reimbursement arrangement (an HRA)?
  - Does the employer have an employee assistance program (an EAP) that provides significant medical benefits or allows employees to receive counseling? (Note: Whether an EAP is a health plan for purposes of the ACA is complex and should be reviewed. There currently are proposed regulations as to when an EAP would be an excepted benefit.)
  - Does the employer make contributions to health flexible spending accounts?
2. Are the health plans insured or self-insured?
  - An insured health plan is a health plan where the insurer bears the risk of claims. The smaller the employer the more likely it is that the employer's health plan is insured.
  - A self-insured health plan is a health plan where an employer usually hires an insurance company or other third-party administrator to administer the plan, but the employer is responsible for the claims. To limit its risk, the employer usually purchases stop-loss insurance.

#### **B. Employer's Corporate Structure and Workforce**

1. Identify the employer's corporate structure.
  - Does the employer have subsidiaries, affiliates, or joint ventures?
  - Are these other entities under common control with the employer?  
In general, an entity controls another entity if it owns 80% or more of the other entity. This is referred to as a parent-subsidiary controlled group. In addition, entities with similar owners may be under common control. This is referred to as a brother-sister controlled group.

2. Identify the employer's workforce
  - Does the employer have collectively bargained or union employees?
  - Does the employer have seasonal or temporary employees?
  - Does the employer have on-call employees?
  - Does the employer have paid interns?
  - Does the employer have leased employees?
  - Does the employer have independent contractors?

## **II. Fees**

### **A. Employer Shared Responsibility Fee**

1. Does the employer have 50 or more full-time equivalent employees?  
Note: For 2015, there is transition relief if an employer has less than 100 full-time equivalent employees.
2. Does the employer's health plan cover at least 95% of the employer's full-time employees (employees working 30 hours a week or more)?  
Note: For 2015, there is transition relief if an employer's health plan covers at least 70% of the employer's full-time employees.
3. Does the employer's health plan cover dependents (children)?
4. Does the employer's health plan cover all employees working 30 hours a week or more?
5. Does the employer's health plan cover all exempt employees?  
Note: If not, then the employer has to apply the equivalency rules for determining hours. For simplicity, the employer may wish to cover all exempt employees.
6. Has the employer determined whether it will use the look-back measurement method or the monthly measurement method?
  - a. Does the employer have a significant number of variable hour employees?  
If so, it may wish to use the look-back measurement method.
  - b. Does the employer have a significant number of seasonal employees?  
If so, it may wish to use the look-back measurement method.
7. Does the employer use long-term leased employees?  
If so, the employer should review its leased-employee agreement to assure that the leased employees have health coverage and that it is clear the employer is paying extra for the cost of the coverage (see the regulations for the guidance on this).
7. Does the employer use independent contractors?  
If so, the employer should review its classification of these workers.

**B. Transition Reinsurance Fee**

If the employer has a self-insured health plan, has the employer budgeted for the transition reinsurance fee?

For 2014, the cost will be approximately \$150 per employee covered under the health plan. Note: If the employer has multiple health plans (for example, an insured plan and a health reimbursement arrangement), the employer may owe a fee for each plan.

**C. PCOR Fee**

1. If the employer has a self-insured health plan, has the employer budgeted for the PCOR fee?

For 2013 and 2014, the cost will be approximately \$5 per employee covered under the health plan. Note: If the employer has multiple health plans, the employer may owe a fee for each plan.

2. If the employer has a self-insured health plan, has the employer paid the PCOR fee for the 2012 plan year (due July 31, 2013)?
3. If the employer has a self-insured health plan, has the employer paid the PCOR fee for the 2013 plan year (due July 31, 2014)?

**D. Cadillac Tax**

Has the employer examined the current value of its health plan coverage and projected these costs forward to 2018 to determine whether the coverage may be subject to the Cadillac tax?

- a. If the employer has retiree medical benefits, this is more important to consider.
- b. If the employer has union employees covered under a multiemployer plan, this is more important to consider.
- c. If the employer has employees in states where health care costs are higher (for example, the Northeastern United States, California, or Florida), this is more important to consider.

**III. Mandates**

**A. In General**

Has the employer gone through its health plan to assure it complies with the mandates (covers adult children if children are covered, no annual or lifetime limits on essential health benefits, offers external review of claims denied on appeal, etc.)?

## **B. Selected Mandates**

1. Does the employer have a system in place to assure that a summary of benefits coverage is distributed to each new employee and at open enrollment? (Failure to do so can result in a fine.)
2. Has the employer reviewed whether any of its employees [live check work] in counties where more than 10% of the population have a primary language other than English?
  - a. If they have employees in such a county, do communications (SPDs, claim letters, etc.) include the sentence noting assistance is available in the other language?
  - b. Has the employer assured that its insurer or administrator can handle calls in the other language?
3. Does anyone (employee, spouse, or dependent) need to wait more than 90-days before they can become covered under the health plan?
4. If the employer has a wellness program, has it reviewed it in light of the new wellness regulations?
  - a. Has the employer updated the disclosure language regarding the wellness program?
  - b. Does the wellness program satisfy the new reasonable alternatives requirements?
5. If the employer offers incentives to employees who do not use tobacco, are the incentives within the new restrictions on such incentives?

## **IV. Additional Points**

### **A. Medical Loss Ratio Rebate**

If the employer's plan is insured:

- a. Has the employer received a medical loss ratio rebate?
- b. If so, did the employer allocate the rebate according to the DOL and other guidance?

### **B. Nondiscrimination**

If the plan is insured:

- a. Does the employer provide better insurance coverage for executives?
- b. Does the employer have executive agreements that provide for coverage after termination from employment?

## **V. Communications**

### **A. Exchange Notice**

Has the employer revised the exchange notice to indicate the value of employer-provided health coverage (employer payment of part of the premium and pre-tax payment of the premium)?

### **B. COBRA Notice**

Has the employer revised its COBRA notices to indicate that as an alternative to COBRA the employee can elect coverage under an exchange?

DISCLAIMER: This presentation was created by Dorsey & Whitney LLP, Kearns Building, 136 South Main Street, Suite 1000, Salt Lake City, UT 84101. This presentation is intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. An attorney- client relationship is not created or continued by sending and/or receiving this presentation. Members of Dorsey & Whitney will be pleased to provide further information regarding the matters discussed in this presentation.