

The Affordable Care Act: Are you affected? Are you ready?

The Patient Protection and Affordable Care Act (ACA) imposes a number of new obligations on employers. The sweeping obligations of the ACA — as refined by the guidance and regulations which have been, and will be, promulgated by the Internal Revenue Service, Department of Health and Human Services, and Department of Labor — must be carefully examined to assess their applicability and to determine your company's response.



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The effective date for some ACA obligations already has passed, while others are looming.

For example, if you offer health coverage to your employees, you or your insurance issuer must provide all eligible employees with a Summary of Benefits and Coverage (SBC) in the format approved by the Department of Labor. The SBC must be provided during the open enrollment period for the first plan year following Sept. 23, 2012. In addition, by March 1, 2013, all employers must inform their employees of the existence of state exchanges and how employees can access the exchange.

Further, large businesses that file 250 or more W-2 forms per year must begin reporting the employee health benefits value on the W-2 forms, beginning in 2013 for the 2012 tax year. All employers must report this information, beginning in 2014 for the tax year 2013.

Most importantly, beginning in 2014, the employer shared responsibility, or the "play or pay" provisions of the ACA, become effective. That could result in the imposition of large financial penalties on certain employers who don't provide the required health insurance coverage to their employees. The "play or pay" provisions of the

ACA require employers with 50 or more full-time equivalent employees (FTE) during the preceding calendar year to offer their full-time employees affordable, minimum essential health benefits coverage, or face penalties for not doing so.

To determine if your business will be subject to this obligation, you must calculate how many FTEs you have on your payroll. To determine this, you must perform a calculation that takes into account the total number of FTEs (for the "play or pay" provisions, employees that work 30 hours or more per week) and the hours worked by part-time employees in a month.

In addition, if you're considered a single employer under Section 414 of the Internal Revenue Code, all employees must be combined together for purposes of calculating your FTEs. Seasonal workers who work more than 120 days during the taxable year also must be included in the FTE calculation.

If you have 50 or more FTEs, you must offer affordable coverage of minimum value to all of your FTEs (again, those employees that work 30 hours or more per week). If you don't, you'll be assessed the statutory penalty, based upon the total number of FTEs on your payroll. While part-time hours are used to determine your FTE count, you're not required to offer health coverage to part-time employees and such employees aren't counted for purposes of calculating the penalty.

Because the play-or-pay obligation is imminent, the employee analysis should be performed now. If you're close to the 50-FTE threshold or employ a significant number of part-time or seasonal employees, you should determine your FTE

count and, if you meet the threshold, identify your FTEs to ensure they'll be offered appropriate coverage.

The IRS recently released guidance providing safe-harbor procedures for determining who is a FTE, including measurement periods for new, ongoing or part-time employees. The safe-harbor procedures are in effect through at least 2014, but may be modified thereafter.

If you have 50 or more FTEs and you don't offer appropriate coverage, or the coverage you offer is deemed unaffordable, you may be exposed to penalties. If you meet the threshold but don't offer coverage to all full-time employees, and at least one employee receives subsidized coverage through the state exchange, a penalty of \$2,000 per full-time employee will be imposed for every full-time employee, with the first 30 FTEs exempt. Generally, an employee may qualify for subsidized coverage through a state exchange if their household income is less than 400 percent of the Federal Poverty Level (currently \$92,200 per year for a family of four, or \$44,680 for an individual).

If an employee receives subsidized coverage through the state exchange because the employer's plan isn't affordable, the employer must pay a penalty equal to \$3,000 per year for each employee receiving a subsidy. After 2014, the penalty amount may be indexed.

On a positive note, tax credits may be available to small businesses that pay at least 50 percent of the cost of coverage for their full-time (for this section of the ACA, employees that work at least 40 hours per week) and hourly workers.

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