CLIENT NEWS BRIEF

The Affordable Care Act "Employer Mandate": Are you Prepared for 2015?

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In 2015, the "employer mandate" of the federal Affordable Care Act (ACA) goes into effect. Under this mandate, large employers that do not offer ACA-compliant insurance coverage to full-time employees may be subject to penalties under section 4980H of the Internal Revenue Code, also known as an "assessable payment" or a "shared responsibility payment." Employers will also need to start collecting relevant information in the 2015 calendar year in order to satisfy their Internal Revenue Service (IRS) and employee reporting requirements in 2016. This Client News Brief serves as a reminder of some of these upcoming requirements.

The Employer Mandate

The ACA requires "applicable large employers," or employers with at least 50 full-time or full-time equivalent employees, to offer affordable, minimum value, minimum essential health care coverage to eligible employees and their dependents or risk paying penalties. The ACA includes two types of penalty calculations:

(1) Failure to offer coverage (26 U.S.C. § 4980H(a))
(2) Coverage offered is unaffordable or does not provide minimum value (26 U.S.C. § 4980H(b))

These penalties are triggered if one or more full-time employees receive a premium tax-credit or cost-sharing reduction for coverage through enrollment in California's state-based "exchange"- Covered California. If an employee enrolls in an employer-sponsored minimum essential coverage plan, then the employee will not qualify for a tax-credit or cost-sharing reduction. Note that the ACA prohibits an employer from retaliating against an employee because he or she has received a tax-credit or cost-sharing reduction.

Currently, a full-time employee under the ACA is an employee that works an average of 30 or more hours per week or 130 hours per month. The ACA contains two methods to calculate hours of service for employees, including employees that work varying schedules:

(1) A monthly measurement period whereby an employer determines each employee's status as a full-time employee by counting the employee's hours of service for each calendar month; and
(2) A look-back measurement period whereby an employer determines an employee's full-time status during a future period ("stability period") based upon the employee's hour of service in a prior period ("measurement period").

The final regulations regarding the employer mandate, which were issued by the IRS on February 12, 2014, offer some transitional relief to employers for the 2015 plan year. For example,

- Applicable large employers with 50-99 employees will not be


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subject to certain penalties for the 2015 plan year as long as they meet certain conditions.

- Employers with 100 or more employees that offer ACA-compliant coverage to 70% of their full-time employees for the 2015 plan year will not be subject to a penalty for failure to offer coverage. Beginning in 2016, this number will rise from 70% to 95%. Note that this transitional relief for employers with 100 employees or more does not include relief from the penalties for offering coverage that is unaffordable or does not provide minimum value.

Additional forms of transitional relief included in the regulations address such issues as non-calendar year plans, offers of coverage to dependents, and offers of coverage in January 2015. To view the complete draft of the final regulations implementing employer shared responsibility, please visit the IRS Employer Shared Responsibility Web Page.

Reporting Responsibilities

The IRS will determine compliance with the ACA and assess penalties based on the information reported by the employer, individuals, and insurers in their relevant tax returns. If the IRS determines that an employer owes a penalty, the employer will receive notice and an opportunity to respond before any liability is assessed or demand for payment is made. The ACA contains three different provisions that establish annual reporting requirements for employers: sections 6051, 6055, and 6056 of the Internal Revenue Code. Section 6051 is currently effective for certain employers and sections 6055 and 6056 will be effective for coverage offered in the 2015 calendar year. The IRS also encourages employers to voluntarily comply with the reporting requirements for 2014.

- **Section 6051** requires employers that offer applicable employer sponsored coverage under a group health plan to report the aggregate cost of the coverage on its employees' Form W-2s. Current transition relief limits this requirement to employers that filed at least 250 Form W-2s for the prior calendar year and offered medical benefits to their employees, at least until the IRS issues further guidance or regulations on this topic.

- **Section 6055** requires any entity, including self-insured employers, that provide minimum essential coverage to an individual during a calendar year to file an information return (Form 1095-B) and transmittal (Form 1094-B) with the IRS and a statement to the insured person. The IRS will use this information to determine under which months, if any, individuals were covered by minimum essential coverage for purposes of administering the individual shared responsibility provisions of the ACA.

- **Section 6056** requires applicable large employers to file an information return (Form 1095-C) and transmittal (Form 1094-C) with the IRS and a statement to the insured person regarding employer-offered health care coverage. Self-insured employers that are also subject to section 6056 may use the Form 1095-C to satisfy the return and transmittal requirements under section 6055 as a way to streamline the reporting process. The IRS will use the information reported by employers pursuant to section 6056 to administer the section 4980H penalties and the premium tax credit program.

On March 5, 2014, the IRS also issued final regulations regarding the employer reporting requirements, which included certain optional "alternative methods" for section 6056 information reporting to simplify the process for eligible employers. For example, an employer that offers affordable, minimum value, minimum essential coverage to at least 98% of its full-time employees will not have to indicate in the transmittal form how many of its employees are full-time per calendar month. This is known as the "98% Offer Method." An employer must still file individual returns for each full-time employee.

In addition, the IRS has issued draft forms and instructions that address sections 6055 and 6056 information reporting. The IRS instructs reporters not to rely on the draft instructions for filing. However, the drafts are indicative of the information that the IRS will eventually require in the final forms and instructions. For draft forms and instruction, please visit IRS Draft Forms and Instructions, and enter in the relevant form number.

Important Steps to Take

The very first step an employer needs to take is to determine whether or not it is an applicable large employer under the ACA. If the answer to this question is "yes," then the employer will need to determine precisely which employees qualify as full-time under the ACA, and what type of coverage the employer is offering to each individual employee and their dependents.

The ACA is a complex and an evolving overhaul of the health care system. There are many provisions beyond the scope of this Client News Brief that are not yet effective, or that indirectly impact employers. Employers should also keep in mind that changes involving health care coverage for its employees may implicate the bargaining process with an employer's relevant bargaining units.

For assistance in dealing with ACA matters, please contact one of our eight offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.