



The ACA's Health Insurance Marketplace Begins Reaching Out To Employers

Insights

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Last week, employers began receiving notices from the Federal Health Insurance Marketplace / Exchange regarding employees who applied for Exchange coverage and were determined eligible for a tax subsidy to defray part of the cost. These notices offer employers a first line of defense against penalties under the Affordable Care Act's (ACA) employer mandate. If you receive a notice, you should act quickly to determine whether an appeal is appropriate.

Who Will Receive A Notice?

Many employers in states supported by the Federal Exchange should expect to receive one or more notices. You should receive a notice if an employee went to the Exchange to buy health coverage and was granted a subsidy for any month in 2016. Generally, the notices are addressed to a company's "Benefits Manager." It is critical to speak with your mailroom or mail sorter to make sure the notices land in the right person's hands.

What Is The Significance Of The Notice?

In most cases, an employee should not be eligible for a tax subsidy if it made an offer of affordable, minimum value coverage. Unfortunately, with the rollout of the Exchange, many employees were either confused or provided incorrect information about the availability of employer coverage, thus resulting in a tax subsidy to which they are not entitled.

If that happens, they will need to pay back these amounts, which in many cases could be thousands of dollars. However, if the benefits determination is not corrected, the IRS may issue penalties to the employer for failing to offer coverage.

How Important Is A Response To The Notice?

These notices are a first step in the process that will eventually result in employers being assessed ACA penalties if they failed to make offers of affordable, minimum value coverage. For those employers that did make qualifying offers, we recommend appealing the determination to cut the penalty process off at the pass. Otherwise, you will be required to challenge the process further down the road after the IRS issues a penalty assessment.

We Received A Notice, Now What?

The deadline for appealing the benefits determination is 90 days after the date of the notice. If you receive a notice for a part-time employee who was not offered coverage, it is important to confirm

the hours the employee actually worked using the guidance provided by ACA regulations. If you receive a notice for an employee who was offered coverage, you should proceed with an appeal as soon as possible.

Employers should take into account all ACA guidance when preparing an appeal, including guidance on how to determine affordability taking into account wellness programs and opt-out payments. Because the employee will have a compelling financial incentive to avoid paying back the subsidy, it is critical to prepare a comprehensive appeal supported by strong evidence, including evidence that the employee was actually offered coverage.

Need Assistance?

Contact Fisher Phillips for assistance with preparing a comprehensive appeal that will help to avoid ACA penalty assessments.

If you have any questions about this development or how it may affect your business, please contact your Fisher Phillips attorney or any member of our Employee Benefits Practice Group.

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