Healthcare Reform: To Play Or Pay – That Is The Question

Insights
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Probably the most important mandate for employers is the "play or pay" mandate, also known as the employer-shared responsibility, which will require large employers (those with the equivalent of 50 or more full-time employees) to provide adequate and subsidized group health plan coverage to all full-time employees beginning in 2014. If an employer fails to satisfy this requirement, it will be subject to a penalty. This could have a significant economic impact on many employers. Accordingly, it is very important for employers to now start modeling how this mandate will impact their bottom line in 2014.

Who Is A Large Employer?
The play-or-pay provision only applies to employers with the equivalent of 50 or more full-time employees in the prior calendar year. An employer is determined on a control-group basis. There are two ways an entity can be part of a control group. The first is when the parent owns 80% of the stock of a subsidiary (or in the case of nonprofits, one organization controls 80% of the board of the other organization). The second is when the same 5 or fewer individuals, trusts or estates own together at least 80% of two or more organizations and the total duplicative ownership is at least 50%. The attribution rules apply to determine ownership. An employee is "full-time" if he or she, on average, works at least 30 hours a week (or 130 hours per month).

To determine if you are a large employer, first count the number of employees who work at least 30 hours per week (130 hours per month). To that number, add the number of full-time equivalent employees, which is determined by adding together the number of hours of the non-full-time employees (up to a maximum of 120 hours per month per employee) and dividing by 120. This calculation should be done for each month of the prior year and then the months' totals should be divided by 12 to determine an average.

If the resulting average is 50 or more, the employer is subject to the play or pay provisions. There are, by the way, rules for subtracting seasonal employees if the total number of employees exceeds 50 for only 120 days or less.

Requirements "To Play"
If the employer-shared responsibility provision of ACA applies, the employer must either offer "minimum essential coverage" which provides "minimum value" at an "affordable price" to substantially all of its full-time employees (not full-time equivalents) or risk paying an excise tax.

For a plan to provide minimum value, it must pay 60% of the claims incurred by participants (including co-pays, deductibles, co-insurance, etc.). The IRS and Department of Health and Human Services offer an online minimum value calculator for you to determine if your plan provides minimum value.

To be "affordable," the participant must not be forced to pay more than 9.5% of the employee's household income for the calendar year. Since most employers do not have access to their employees' family financial information, the IRS created affordability safe harbors in its January 2013 proposed regulations.

An employer will be in compliance if it complies with one of these three safe harbors: 1) the annual employee cost of the employee-only tier of the cheapest medical option (providing minimum value) does not exceed 9.5% of the employee's Form W-2, Box 1; 2) the monthly employee cost of the employee-only tier of the cheapest medical option (providing minimum value) does not exceed 9.5% of 130 times the employee's hourly rate of pay; or 3) the monthly employee cost of the employee-only tier of the cheapest medical option (providing minimum value) does not exceed 9.5% of the state-specific, federally-established single individual federal poverty level divided by 12.

What You Pay If You Don't Play

If the employer does not offer qualified coverage to at least 95% of full-time employees, the IRS may levy an excise tax. If the employer does not offer qualified coverage to at least 95% of full-time employees *and* at least one full-time employee qualifies for federal premium assistance for his or her coverage under the Exchange, it will owe the IRS a non-deductible annual payment equal to $2,000 times the number of its full-time employees minus 30.

For purposes of the payment, only full-time employees (not full-time equivalents) are counted. The $2,000 penalty is an annual penalty, imposed monthly, so if you play for some months, you will only pay 1/12 of the $2,000 for those months in which you do not play.

If an employer offers coverage to at least 95% of full-time employees, but that coverage does not provide minimum value or it is not offered at an affordable price, and at least one full-time employee qualifies for federal premium assistance for his or her coverage under the Exchange, or if the employer does offer coverage to 95% of full-time employees but one of the 5% of the uncovered full-time employees qualifies for federal premium assistance for coverage under an Exchange, it will owe the IRS a non-deductible annual payment equal to $3,000 per employee receiving federal premium assistance, up to a maximum of $2,000 times the number of its full-time employees minus 30. An individual or family will qualify for federal premium assistance if their household income is less than 400% of the federal poverty level.

Exchanges, which were mandated under ACA, will exist in every state as of January 1, 2014. Some will be administered by the state itself (usually via contracts with existing insurance companies), some will be administered by the state and federal governments and some will be administered by the federal government on behalf of the state. The Exchange is a new way for anyone to gain the federal government on behalf of the state. The Exchange is a new way for anyone to gain medical insurance coverage. In essence, the state becomes the insurance company: individuals pay premiums to the Exchange for their desired level of coverage and the state guarantees the payment of covered claims. For some, it is the only access to medical coverage they have. For full-time employees, it is most likely one of the available options for medical coverage.

Offering Coverage To Full-Time Employees

To play, the employer must offer qualified coverage to full-time employees. The determination of who is a full-time employee can be rather convoluted and depends on whether the employee is an ongoing or new employee. The IRS' January 2013 proposed regulations set forth the required recordkeeping and administrative requirements for determining full-time status.

For ongoing employees, you must use a standard lookback measurement period of from three to 12 months to determine whether each employee worked, on average, 30 or more hours per week. At the end of each measurement period, the employer determines if each employee will be classified as full-time or part-time for the following stability period, which must be from six to 12 months in length.

But the stability period for full-time employees cannot be shorter than the standard look-back measurement period and the stability period for non-full-time employees cannot be longer than the standard look-back measurement period. You may use an optional administrative period of up to 90 days to make the classification calculations and complete open enrollment for the stability period associated with each standard look-back measurement period, but any administrative period must overlap with the prior stability period to prevent a gap in coverage.

Employees who are determined to be "full-time" at the end of a standard measurement period keep such classification during the associated stability period so long as they remain employed, regardless of the hours worked during the stability period.

If a new employee is expected to work 30+ hours per week, he or she is classified as "full-time" from their start date and must be offered coverage by the 91st day after hire. For new variable-hour and seasonal employees, you must use an initial measurement period of from three to 12 months to determine whether each employee worked, on average, 30 or more hours per week.

At the end of the measurement period, determine if each employee will be classified as full-time or part-time for the following stability period, which must be the same length as the regular stability period for ongoing employees. The stability period for full-time employees cannot be shorter than the initial measurement period and cannot be shorter than six months. The stability period for non-full-time employees cannot be longer than the initial measurement period plus one month and cannot exceed the standard lookback measurement period in which the initial measurement period ends.

You may use an optional administrative period of up to 90 days to make the classification calculations and complete open enrollment for the stability period associated with each initial measurement and complete open enrollment for the stability period associated with each initial measurement period. Once an employee has been working for an entire standard lookback measurement period, he or she is transitioned into the ongoing employee standard measurement period which the initial measurement period ends.

As far as counting hours of service, count the actual hours of service for hourly employees. For non-hourly employees, you may count actual hours oruse equivalencies and credit eight hours for each day worked or credit 40 hours for each week worked. You must count all hours for which you pay an employee, whether they be for services performed or not (vacation, paid leave, etc.). You must also count unpaid hours related to FMLA leave, jury duty and military leave.

Confused?

These new requirements are complex, to say the least. If you need help in determining how, and whether, these rules apply to your operation, give us a call.