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SPECIAL NEWS EDITION

Implications of the Affordable Care Act on ESAs and their Members: To Pay or Play - That is the Question

Although I hold a health insurance agents license, attend continued insurance seminars and meetings, participate with some of the state and nations' foremost experts on the ACA regularly and read on the subject often, I am not an insurance expert. I am not an attorney, but I do love to learn. I would like to thank our benefits attorney Mark Kinney for his continued work with us and assistance with this article. Identified here are thoughts regarding ACA's implications on service agencies and their members.

When the federal government released the final "employer shared responsibility" rules on February 10, 2014, they provided additional flexibility for ACA implementation, but only a little more clarity and much more complexity. The flexibility was primarily in the form of transitional relief delaying some implementation of the ACA until 2016. Some political pundits felt that the delay until 2016, a national presidential election year, might provide the opportunity for additional relief or even repeal of the "Pay or Play" rule, but that is not very likely. While the ACA may be amended, tweaked and certainly tried, the truth is that the ACA is now very engrained into the fabric of health insurance coverage in the country.

Pay or Play Rule

The ACA expands health insurance coverage in part by defining "full-time employees" as those who work an average of 30 or more hours per week. To avoid penalties, employers with at least 50 full-time employees (including full-time employee equivalents) must offer coverage to at least 95% of their full-time employees and their dependents. The coverage itself must provide "minimum value" and be "affordable." These concepts are explained in a 227-page final regulation and preamble (the "Pay or Play Rule"). The Pay or Play

Rule includes transition relief which delays or limits application of some of the requirements in 2015.

Penalty Scheme

The Pay or Play Rule imposes a two-tiered penalty scheme on "applicable large employers," as follows:

- Up to $3,000 per year for each full-time employee who enrolls in an exchange and receives premium tax credits (if they are not offered affordable coverage that meets minimum value).

- Up to $2,000 per year x (all full-time employees - 30) if even one full-time employee receives premium tax credits and the employer does not offer coverage to at least 95% of full-time employees.

Penalties are pro-rated on a monthly basis. Of the two penalties above, the $2,000 penalty has the greatest potential for harm. Employers will need to take a very close look at who works an average of thirty hours or more per week, because if they get it wrong by more than 5%, the penalty is applied by taking into account all full-time employees across the workforce, including those with coverage.

Applicable Large Employers

Generally, an "applicable large employer" is an employer that employed an average of at least 50 full-time employees, including full-time equivalent employees ("FTEs"), on business days during the preceding calendar year. For this purpose, the number of full-time employees in any one-month is the number of employees who work an average of 30 hours per week. The number of FTEs in any one-month is determined by adding the total number of hours of service of employees who are not full-time employees and dividing that number by 120.

While this determination may seem simple, complex issues swirl around questions such as how to count hours of service, who is an employee, whether the employer is part of a controlled group, and whether to include seasonal employees. Transition rules allow school districts to use just six months from 2014 (including over the summer break) to determine whether they are applicable large employers in 2015.

Safe Harbors and Shortcuts

The Employer Responsibility Rule contains various so-called "safe harbors"

and shortcuts for determining who is a full-time employee, how hours may be counted, and whether coverage is affordable. The "Lookback Measurement Method" is among the more complex of these rules, and may require employers to track 13 (or more) separate calendars for current employees and new hires to determine whether they are eligible for coverage during "stability periods." In many cases, employers may apply different rules for different classifications of employees. A full description of these rules exceeds the scope of this summary, but school districts must develop or hire the expertise to understand and apply them if they want to avoid penalties under the ACA.

Transition Rules

A. Small Employers
(1 - 49 Full Time and FTEs)

The Pay or Play Rule does not apply in any part to employers who are categorized as Small Employers. Small employers with self-funded plans, however, may be required to file new Form 1095-B in early 2016 for the 2015 plan year (see below).

B. Mid-Size Employers
(50 - 99 Full Time and FTEs)

If they qualify for transition relief, Mid-Sized Employers will not be subject to penalties for plan years beginning in 2015 if they fail to offer coverage to the requisite percentage of full-time employees that meets minimum value and is affordable. The requirements that an employer must meet in order to qualify for transition relief include, but are not limited to, maintaining a comparable level of health insurance coverage through December 31, 2015.

C. Large Employers
(100+ Full Time and FTEs)

Large Employers are subject to most of the Pay or Play Rule provisions for plan years beginning in 2015. Under transition rules, however, such employers need only offer affordable coverage that meets minimum value to 70% of their full-time employees (rather than 95%) for plan years beginning in 2015. Other penalties continue to apply if any full-time employee enrolls in a state or federal health care exchange and receives premium tax credits. Thus, Large Employers will still be subject to a $3,000 penalty for every full-time employee who enrolls in an exchange and receives a premium tax credit if they were not offered coverage that meets minimum value and is affordable.

Requirements for Reporting to the IRS and Employees

The ACA includes requirements for reporting information on minimum essential coverage to the IRS and to employees. These requirements are described in draft IRS Forms 1095-B and C and instructions, as well as regulations under new Code sections 6055 and 6056. Like Form W-2, these returns must be furnished to individuals by January 31, and filed with IRS by February 28th (March 31 for electronic filing).

Conclusion

Because of the 30 hour rule, many school districts and other employers will have to expand offers of health insurance coverage to employees (and their dependents) that may not have been eligible for benefits in the past. Because of the enormous complexity of the ACA, however, most employers will incur expenses for legal fees, payroll upgrades, and personnel who can devote significant time to learning and implementing the ACA's requirements.

In light of the tumultuous history and continuing political opposition to the ACA, the law is likely to undergo many more changes. But school districts need to remain diligent in their efforts to timely bring their organizations into full compliance with the law as we know it today.

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