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Your Business: Employers should start planning for Affordable Care Act

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The landmark ruling by the U.S. Supreme Court upheld all of the Affordable Care Act except a portion of the Medicaid expansion. Although the headlines focused on the individual mandate and Medicaid expansion, perhaps the most far-reaching effects on employers will come from the pay-or-play provisions.

Effective Jan. 1, 2014, these provisions require employers with 50 or more full-time employees to provide affordable health coverage for employees and pay 60 percent of the cost, or pay an excise tax to the IRS (\$2,000 to 3,000 per employee per year).

Under these rules, "full time" means 30 or more hours per week. Other employees are pro-rated and seasonal employees are generally excluded.

Coverage is "affordable" if the employee's portion of the cost is 9.5 percent or less of the employee's modified adjusted household income.

Pay-or-play may prompt some unexpected decisions by employers. For example, employers may:

- Not provide coverage at all because, generally, the cost of the excise tax will be less than the cost of providing health coverage.
- Provide coverage for some employees, but pay the excise tax with respect to others.
- Choose not to hire the 50th employee. If an employer has 49 employees and covers none of them, there is no excise tax. If the employer hires the 50th employee, it must cover its employees or pay the tax. That 50th employee could cost \$40,000 per year in excise tax (the first 30 employees are not counted for purposes of calculating the tax), or even more in health coverage.
- Limit employees to fewer than 30 hours per week. Many employers, however, will find it inefficient to structure large portions of their work force as part time.
- Try to reclassify employees as independent contractors. This approach should not be taken lightly. For several years now, federal and state agencies (including the Internal Revenue Service and the Department of Labor) have stepped up enforcement of worker classification and assessed significant penalties on alleged violators.
- Reduce other benefits or compensation to adjust for the additional cost (if any) of complying with the pay-or-play rules.

The pay-or-play rules will be enforced by the IRS and will be subject to all of the due process requirements that other tax collection is subject to: notice requirements, assessment and multiple appeals.

Provisions other than pay-or-play will have significant effects on employers, as well. The Congressional Budget Office estimates that small businesses may save about 25 percent by linking their coverage to a state exchange due to the increased bargaining power of the exchange. The proof will be in the pudding, but small employers should consider adding the exchange as an option.

Small-employer tax credits (already in effect) may provide some relief to employers with 25 or fewer employees whose average wage is \$50,000 per year or less. The simple cafeteria plan rules (also in effect) permit employers with 100 employees or fewer to provide pre-tax coverage (including through the exchange, if otherwise qualified), save on FICA taxes and enjoy relaxed nondiscrimination testing requirements. Lastly, W-2 reporting of employer-sponsored health coverage is generally required in 2012 for employers filing 250 or more W-2s.

With these provisions in mind, there are several steps employers can take now to prepare for the new rules:

- Appoint a committee responsible for developing health plan strategies.
- Engage affected departments such as finance, legal, tax and HR.
- Identify strategies to address cost, compliance, tax and compensation issues.
- Compare the relative costs and benefits (including non-financial factors) of paying, playing and combination scenarios.

With so much change imminent, smart employers will start planning now for 2014.

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