



Countdown to 2014: Prepare for the Affordable Care Act Now

By Steve Gerlach and Karen Aframe | Published in New Hampshire Business Review
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The Affordable Care Act is the most important piece of employee benefits legislation since the passage of ERISA in 1974. And in the past few months, Bernstein Shur's ACA team has conducted focus groups with business and nonprofit community leaders representing higher education, health care, high tech and hospitality. From these groups, we learned that employers in every industry are taking steps now to comply with the ACA's pay-or-play rules, which become effective on Jan. 1, 2014.

Employers are forming teams that include decision-makers from finance, human resources and tax. They are working with advisers to model options, collect data, keep up to date on recent guidance and put compliance systems into place.

For practical purposes, the steps employers are taking fall into three large categories: planning, compliance and documentation.

Planning

Many employers are faced with difficult decisions that may have a substantial impact on their bottom line. For example, some employers are deciding whether or not to hire a 50th full-time employee, knowing that the hire will trigger the pay-or-play rules. Some employers are considering, as Darden Restaurants did recently, making all of their hourly employees part-time to avoid having to cover those employees under the company's health insurance (Darden no longer holds that position). Others are considering cutting coverage completely and simply paying the excise tax.

Some employees do not fall easily into the categories of part-time and full-time -- per diem nursing staff and adjunct professors, for example. Often these employees are excluded from the employer's health coverage, whether or not they work 30 hours per week. But there is no exception for per diem workers or adjunct professors under the ACA. As a result, these employers may be faced with covering a large group of employees who were not previously covered, or paying very large excise taxes.

In light of such potentially onerous results, many employers are taking a more sophisticated approach to planning. They are developing compliance systems that inform decision-making and examining subtleties in the regulations for opportunities.

For example, a company with a high turnover rate may consider using the look-back period to weed out those employees who turn over quickly.

Finally, employers are planning for the bottom-line impact by examining financial resources and perhaps reallocating. Many employers are considering offering required coverage, but shifting the cost onto other forms of employee compensation.

Compliance

Employers are addressing compliance with the pay-or-play rules by addressing three separate criteria: offer of coverage; affordability; and minimum value.

Under the offer of coverage criterion, employers are required to offer minimum essential coverage to 95 percent of their full-time employees. The hotspot in this rule is the determination and tracking of who is full-time. Employers are considering whether to determine and track full-time status on a month-to-month basis, or use the IRS look-back safe harbor to determine who must be covered.

Most employers are using the safe harbor because, although complicated, it is more administrable than going month-to-month.

In addition, many employers are modeling various structures for their compliance systems to determine which will give the best outcome. In this modeling, an employer may vary the length of the look-back period (and subsequent coverage period) based on prior years' information and determine if a shorter or longer look-back period makes most sense.

Under the affordability requirement, the employee's share of the premium cost for self-only coverage may not exceed 9.5 percent of the employee's household income. The IRS has issued three safe harbors with respect to this rule -- the W-2 safe harbor, the rate-of-pay safe harbor and the federal poverty level safe harbor. Each of these approaches has its strengths and weaknesses. As with the offer of coverage, many employers are modeling which of these approaches makes most sense for them.

Under the minimum value rule, employers are required to pay 60 percent of the total cost of coverage under the plan. Many employers are comparing this requirement to the coverage they are providing and estimating whether they must increase their share of the costs, or whether they may decrease their share.

Documentation

Knowing that the IRS is charged with enforcing the pay-or-play rules, employers are putting compliance systems into place and ensuring they are documenting the coverage decisions they make, the offers of coverage and the affordability and value of that coverage. Employers also are amending plan documents and employee handbooks to ensure compliance with ERISA requirements and provide consistent messaging to employees.

Finally, employers are looking ahead to 2015 and the new reporting requirements that will be in effect under the pay-or-play rules.

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