The Future Has Arrived

What you need to do **now** to get ready for Affordable Care Act changes

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Grandfathered Plan Status

- A grandfathered plan is one that was in existence on March 23, 2010.
- Grandfathered plans are exempt from some of ACA mandates.
- Certain changes to the plan beyond permitted guidelines will cause the plan to lose its grandfathered status.

✓ Review of Grandfathered Status

- ☐ If you have a grandfathered plan, determine whether it will maintain grandfathered status for 2015 plan year.
- ☐ If you will lose grandfathered status in 2015, confirm plan has all additional patient rights and benefits such as preventative care without cost-sharing.
- ☐ Continue to provide Notice of Grandfathered Status in materials provided to participants and beneficiaries (SPD and enrollment materials).

Cost-sharing limits

- Effective 1/1/14, non-grandfathered plans became subject to limits on cost-sharing for Essential Health Benefits (EHB).
- Annual deductible limit for small insured health plans was repealed effective 4/1/14.
- Out of Pocket Maximums (OPM) still apply, including self-insured health plans and insured plans.
- Self-only coverage: $6,600 OPM for 2015
- Family coverage: $13,200 OPM for 2015

✓ Cost-Sharing Limits

- ☐ Review OPM to ensure it complies with 2015 limits.
- ☐ If you have a Health Savings Account (HSA), OPM for HDHP is $6,450 for self-only coverage and $12,900 for family coverage.

✓ Cost-Sharing Limits

- ☐ Confirm the plan will coordinate all claims for essential health benefits (EHB) across service providers and will divide the OPM across categories of benefits , with a combined limit that does not exceed 2015 maximum.
- ☐ Annual deductible limit no longer applies to small insured plans.

Health FSA Contributions

- Flexible spending account employee annual pre-tax salary reduction limit is $2,500 effective 1/1/13. 2015 limit has not been published yet.
- Limit does not apply to employer contributions.
- Limit does not apply to dependent care assistance or adoption assistance.

✓ Health FSA Contributions

- ☐ Monitor IRS announcements on 2015 limit.
- ☐ Confirm health FSA plan will not allow employees to make pre-tax contributions in excess of limit.
- ☐ Communicate 2015 health FSA limit to employees as part of open enrollment.

Employer Penalty Rules: *"Pay or Play"*

Applicable large employers (ALEs) that do not offer health insurance coverage to their **full-time employees (and dependent children)** that is **affordable** and provides **minimum value** will be subject to penalties if **any full-time employee receives a subsidy** through the government Exchange.

ALE Status

- ALEs are employers with 50 or more full-time employees plus Full-Time Equivalents (FTEs) on business days during the preceding calendar year.
- Special rule for 2015: Employer may select a period of at least six consecutive calendar months during the 2014 calendar year (rather than entire 2014 calendar year) to count its FTEs.
- All common law employees must be included. Check independent contractor agreements.

ALE Status

- Employer not an ALE if during the preceding calendar year it:
  - Employed 50 or more full-time employees for 120 days or less; or
  - The employees in excess of 50 for such period were seasonal workers.
- Seasonal workers to be determined based on a reasonable, good-faith interpretation of the term.
- Entities under Common Control (§414 rules) are treated as a single employer for calculating whether an ALE.

ALE Status

- Hours worked includes hours paid, or for which employee is entitled to payment for services or payment for periods in which no duties are performed due to vacation, holiday, illness, incapacity, layoff, jury duty, military leave or leave of absence.

✓ ALE Status

- ☐ Calculate number of full-time employees for each calendar month in the counting period. Full-time employee = at least 30 hours of service per week.
- ☐ Calculate FTEs for each calendar month in counting period by calculating the aggregate number of hours of service (but not more than 120 hours of service for any employee) for all employees who were not full-time. Divide that number by 120.
- ☐ Add number of full-time employees + FTE

✓ ALE Status

- ☐ Add number of full-time employees + FTE for each month in the counting period.
- ☐ Divide the aggregate monthly amount by the number of months in the counting period (disregard any fractions at this point).
- ☐ If result is 50 or more, you are likely an ALE for 2015.

ALE Example

Company X has 35 full-time employees (work 30+ hours). Company has 20 part-time employees who all work 24 hours per week (96 hours per month).

20 employees x 96 hours/120 = 16

16 FTE + 35 full-time employees = 51 FTE

Company X would be a ALE, based on total full-time equivalent count of 51.

Delay for Medium-Sized ALEs

- Shared responsibility rules for ALEs with fewer than 100 full-time employees (including FTEs) have one additional year to comply.
- To qualify, an employer must:
  - Employ a workforce of fewer than 100 full-time employees (including FTEs);
  - Not reduce workforce or overall hours of service in order to qualify;
  - Not eliminate or materially reduce the health coverage, if any, it offered as of 2/9/14 during the maintenance period.

Delay for Medium-sized ALEs

- Employer must certify eligibility for transition relief.
- Certification will be a part of Form 1094-C that ALE is required to file.
- ALEs eligible for this delay must still report under Section 6056 for 2015.

✓ One Year Delay of Medium-sized ALEs

- ☐ Review whether you have fewer than 100 full-time employees (including FTEs) for 2014 and meet other requirements.
- ☐ Monitor IRS information on the certification process.

Transition relief – Non-calendar plans Pre-2015 Eligible Employees

- Transition relief applies for employees who would be eligible for coverage as of the first day of the 2015 plan year under eligibility terms effective 2/9/14:
  - ALE maintained a non-calendar plan as of 12/27/12 and plan year has not been modified since then to begin at a later date.
  - Employees are offered coverage that meets affordability and minimum value requirements no later than the first day of the 2015 plan year.
  - Employees would not have been eligible for coverage under any calendar group health plan.

Transition relief – Non-calendar plans Significant Percentage (All Employees)

- Transition relief applies when employers have a significant percentage of their employees eligible for or covered under a non-calendar plan that have the same plan year as of 12/27/12:
  - Employer did not change the plan year after 12/27/12 to a later date.
  - Employer had:
    - At least ¼ of employees covered under those non-calendar plans, or
    - Offered coverage under those plans to 1/3 or more of its employees during open enrollment period that ended most recently before 2/9/14.

Transition relief – Non-calendar plans Significant Percentage – Full-time EE

- Transition relief applies when employers have a significant percentage of their full-time employees eligible for or covered under a non-calendar plan that have the same plan year as of 12/27/12:
  - Employer did not change the plan year after 12/27/12 to a later date.
  - Employer had:
    - At least 1/3 of full-time employees covered under those non-calendar plans, or
    - Offered coverage under those plans to 1/2 or more of its employees during open enrollment period that ended most recently before 2/9/14.

Penalties for Noncompliance

- 26 USC §4980H: **The "(a) penalty"**
  - Applicable Large Employer (ALE) is subject to an assessable payment if the ALE:
    1) Fails to offer its full-time employees and their dependents the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan, *AND*
    2) Any full-time employee is certified to the employer as having received an applicable premium tax credit or cost sharing reduction ("premium assistance") to assist with the purchase of health insurance.
  - The "(a) penalty" is a monthly payment equal to the product of the "applicable payment amount" (currently 1/12 of $2000) and the number of full time employees (excluding the first 30) employed by employer during the applicable month.

4980H(a) Penalty

- Full-time employees (and their dependents) must have an opportunity to elect to enroll in coverage at least once per plan year.
- ALE will avoid tax if:
  - ALE does not offer coverage to all but 5% (or if greater, five) of its full time employees (and their dependents) for years after 2015.
  - For 2015 (transitional relief), the ALE does not offer coverage to all but 30% of its full-time employees (and their dependents).

Transition Relief for Dependent Coverage

- ALEs who for the 2015 plan year have plans that do not offer dependent coverage, offer dependent coverage that is not minimum essential coverage, or offer some dependent coverage, but not to all, may qualify for transitional relief.
- Applies only if coverage was not offered in both 2013 and 2014.
- Employer must take steps during 2015 to extend dependent coverage.

Penalties for Noncompliance

- 26 USC §4980H: **The "(b) penalty"**
  - Applicable Large Employer (ALE) is subject to an assessable payment if the ALE:
    1) Offers full-time employees and their dependents the opportunity to enroll in minimum essential coverage (MEC), *AND*
    2) 1 or more full-time employee is certified as having received premium assistance because the ALE's coverage is unaffordable, or does not provide minimum value.
  - The "(b) penalty" is a monthly payment equal to the lesser of: (i) the product of the number of full-time employees receiving an applicable premium tax credit or cost sharing reduction ("premium assistance") and an amount equal to 1/12 of $3,000; and (ii) the amount of the "(a) penalty" outlined above.

Status of Full-time Employee

- Full time employee is someone who is employed on average at least 30 hours of service per week.
- 130 hours of service in a calendar month is the monthly equivalent of 30 hours of service per week.
- Two methods for determining full-time employee status – monthly measurement method and look-back method.

Monthly Measurement Method

- Month-to-month analysis where full-time employees are identified based on their hours of service for each month.
- Method not based on averaging hours of service over a prior measurement period.
- Practical difficulties for employers, particularly with varying hours and schedules, resulting with employees moving in and out of coverage on a monthly basis.

Look-Back Measurement Period

- If deemed full-time during look-back measurement period, employee is deemed full-time during the stability period, regardless of hours worked during stability period.
- If deemed part-time during look-back measurement period, employee is deemed part-time during the stability period, regardless of hours worked during stability period.
- Purpose is to give employers certainty and determine in advance who must be offered minimum essential coverage to avoid penalty.

Look-Back Method: Ongoing Employees

- Look-back Period: No less than 3 months, no more than 12 months.
- Stability Period: No less than 6 months and no less than Look-back Period.
- Administrative Period: No more than 90 days.
- Same time periods for all employees in the same category with a few exceptions, including collectively versus non-collectively bargained and salaried versus non-salaried.

Look-back Method: Example

Employer W is a large employer and uses the look-back method.

- Measurement Period: Oct. 15 – Oct. 14
- Administrative Period: Oct. 15 – Dec. 31
- Stability Period: Jan. 1 – Dec. 31
- Adam: Average of 30 hrs/wk during 10/15/15-10/14/16 and all prior measurement periods.
- Betty: Average of less than 30 hrs/wk during 10/15/15-10/14/16, but average of more than 30 hrs/wk in all prior measurement periods.

Look-back Method: New hires

- At time of hire reasonably expected to be a full-time employee, must be offered minimum essential coverage by end of initial 3 month period of employment.
- At time of hire reasonably expected to be a variable hour or seasonal employee, employer can delay or avoid providing coverage by establishing an initial measurement period of 3-12 months.
- "Variable hour" – cannot be expected to average at least 30 hours of service per week during the length of the initial measurement period. Will encompass part-time.

✓ Status of a Full Time Employee

- ☐Records must be maintained for each look-back period and stability period.
- ☐Initial hires tested for initial period, then switch to ongoing testing.
- ☐Ongoing employees must be tested annually.
- ☐Periods chosen determine records to capture and maintain.

Affordability of Coverage

- 3 safe harbors to determine if coverage is affordable and less than 9.5% of an amount deemed to be the employee's household income.
  - Employee's W-2 wages at the end of the year
  - Rate of pay safe harbor (which multiples the base pay rate by 130 hours)
  - Federal poverty level.

W-2 Safe Harbor

- No penalty if required employee contribution for health insurance premium for the year (for the lowest cost self-only coverage offered by the employer that offers minimum value) if the premiums are less than 9.5% of the employees' W-2 wages from the employer for that calendar year.
- Employee's contribution must remain constant through year.
- Proration allowed for partial year coverage.
- Coverage for one day in a month counts as an entire month of coverage.

Rate of Pay Safe Harbor

- Can be tested prospectively.
- Hourly employee: Safe harbor satisfied if monthly premium is less than 9.5% of (hourly rate x 130).
- Salaried employee: Safe harbor satisfied if employee's required monthly premium toward self-only coverage is less than 9.5% off the employee's monthly salary calculated as of the first day of the coverage period.

Federal Poverty Line Safe Harbor

- Safe harbor applies if the employee's required contribution is less than 9.5% of the monthly amount of the federal poverty line for a single individual for the applicable year.
- Safe harbor can be used prospectively.

Reporting of Coverage

- All ALEs with full-time employees, even those qualifying for one-year delay from the rules must report under Section 6056 for 2015.
- Every insurer, sponsor of self-insured plan, government agency and any other agency that provides minimum essential coverage (MEC) must file an annual return reoprting information for each individual offered (MEC). Statements must be provided to individuals.

✓ Reporting of Coverage

- ☐ Determine which reporting requirements apply to your company.
- ☐ Returns must be filed by Feb. 28 (or March 31, if filed electronically) of the year after the calendar year to which the returns relate.
- ☐ Written statements must be provided to employees no later than Jan. 31 of the year following the calendar year for which coverage is provided.

Questions?

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