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ACA Shared Large Employer Responsibility and Related Provisions

Employer Responsibility

Employers that are applicable large employers according to the shared responsibility rule are required to pay a penalty if they do not provide healthcare coverage that is affordable and meets minimum value as defined by ACA. Applicable large employers may be assessed under the Pay or Play penalty if they do not offer healthcare coverage that meets the above requirement to substantially all full-time employees and their children.

Applicable Large Employer

Only employers of a certain size – an **Applicable Large Employer** – may be subject to a Pay or Play penalty. An Applicable Large Employer is an employer who employed, on average, at least 50 full-time employees on business days during the *preceding* calendar year. Beginning January 1, 2014, employers will need to look back to the 2013 calendar year workforce and calculate the number of full-time employees and full-time equivalents to determine if the business meets this definition.

An employer must count both its full-time employees from the preceding calendar year and a full-time equivalent for employees who worked part-time in the preceding calendar year.

- **How to determine full-time employees**
  - A full-time employee for any month is an employee who averages at least 30 hours of service to the employer per week in the United States.
  - A total of 130 hours of service in a month is treated as the monthly equivalent of 30 hours of service per week.

- **Counting part-time and seasonal employees**
  - Part-time employees' hours are considered in determining whether a business is above or below the 50 full-time employee threshold. To calculate the number of full-time equivalent employees, aggregate all hours worked by part-time employees (including seasonal) in a month and divide by 120 to determine the number of full-time equivalents.
  - **If the only reason the employer has more than 50 employees is because the employer employed seasonal employees for no more than 120 days, those employees can be excluded from the count.**

Transitional Relief for Counting Employees

An employer may elect to determine its status as an Applicable Large Employer for 2014 by using a period of at least six consecutive months in 2013 rather than using the entire 2013 calendar year. This is extremely helpful from an administrative perspective, as it allows the employer to have time to prepare for the calculation, and also to implement the results of its determination.

The number of employees drives the applicability of Pay or Play penalties, and also the amount of the penalty that will be assessed. It is important to note that while part-time employees are used to determine whether an employer qualifies as a large employer, an employer will only be assessed penalties for full-time employees and only when at least one employee obtains subsidized health insurance on a public exchange. Large employers will not pay a penalty for part-time employees who obtain insurance through a state exchange and receive a subsidy.

Affordable Coverage

Coverage is "unaffordable" when the employee's share of the premium exceeds 9.5% of employee's household income. Since the passage of the Affordable Care Act, the Treasury has clarified this requirement.

- An employer can determine the affordability threshold based on self-only (individual) coverage.

- There are three safe harbors employers can use to determine affordability based on an individual's income.

Form W-2 Safe Harbor: Determine affordability of coverage based on W-2 wages of employees. Self-only coverage must provide minimum value during entire calendar year and not exceed 9.5% of employee's W-2 wages.
Rate of Pay Safe Harbor: Coverage is affordable for a calendar month if the employee's required contribution for the month for the lowest cost, self-only coverage that provides minimum value does not exceed 9.5% of a Rate of Pay Safe Harbor amount (which equals 130 hours multiplied by the employee's hourly rate of pay as of the first day of the coverage period).
Federal Poverty Line Safe Harbor: Coverage is affordable for a calendar month if employee's required contribution for lowest-cost self-only coverage that provides minimum value under the plan does not exceed 9.5% of a Federal Poverty Line Safe Harbor. (Take 9.5% of the latest federal poverty line for a single person and divide by 12 to arrive at monthly figure.)

Minimum Value
A benefit plan's minimum value will be measured by calculating the plan's share of the total allowed costs of benefits provided under the plan. This total must be at least 60% of such costs. The minimum value calculator and methodology was released the week of 2/18/13.

Pay or Play Penalties

Beginning in 2014, an applicable large employer is subject to the following penalties:

- **The Sledgehammer Penalty:** An employer who has more than 50 full-time (or full-time equivalent) employees and does not offer health benefits, will be assessed a penalty if just one employee obtains a subsidy and coverage on the Exchange. The penalty is $2,000 annually per full-time employee (excluding the first 30 employees).

  Example: For an employer of 100, exclude the first 30 workers, then multiply 70 times $2,000, for a $140,000 penalty.

- **The Tack-Hammer Penalty:** Even if an employer offers healthcare benefits, a penalty may be assessed if the health benefits offered do not meet the **affordability** threshold and do not meet the **minimum value** requirement. This penalty will be assessed if just one employee obtains a subsidy and coverage on the Exchange. The penalty is $3,000 annually per full-time employee who receives a subsidy, but is capped at the amount the employer would be penalized if the employer did not offer coverage.

  Example: For an employer of 100 who has 30 employees who receive a subsidy on the exchange, the penalty is $90,000.

Penalties are determined on a month-to-month basis, so an employer may owe a lesser amount if the penalty is assessed for a portion of the year (the penalty would be one-half of the above amounts if the employer failed to meet the requirements of the Pay or Play rules for only six months of the year).

Health Benefits Exchange (Public Exchange)

Beginning in 2014, individuals must maintain some level of minimum essential healthcare coverage or pay a penalty for not doing so. The concept of a health insurance consumer market evolves from this fundamental requirement of the Affordable Care Act. The Health Benefits Exchange is to provide a marketplace where individuals can shop and compare healthcare benefit plans, and where they can verify eligibility for a government subsidy to help them purchase coverage if they can't afford to pay the full cost of a premium.

- **Eligibility for premium subsidy**
  - Tax credits will be available to eligible individuals to purchase coverage on the new exchange. An individual is eligible if his or her income is less than 400% of the most recent federal poverty level (For 2013, income would be equal to or less than $45,960 for an individual or $94,200 for a family of four)

- If employed, an individual will have to demonstrate if he or she has access to employer-based coverage, that the coverage is unaffordable because the premiums exceed 9.5% of household income or the plan does not meet minimum value.

Other ACA Provisions to Note

Cost Sharing

For non-grandfathered plans, out-of-pocket limits on cost sharing anticipated for 2014 are:

- $6,400 for single coverage
- $12,800 for family coverage

These limits apply to all Essential Health Benefits offered by a group, and are tied to HSA high-deductible plan out-of-pocket limits.

Only cost sharing for in-network services will count toward the out-of-pocket limits.

- Large group plans are not required to cover Essential Health Benefits. However, for any they do cover, the out-of-pocket maximums shown above apply.

90-Day Waiting Period Limitation

Plans will no longer be allowed to impose waiting periods for eligibility longer than 90 days. An employee must be allowed to enter the plan by the 91st day after satisfying that eligibility requirement.