

Health Care Reform Checklist:

Are Your Clients Ready?

Employers that may be considered “applicable large employers”—those with 50 or more full-time workers, including full-time equivalent employees (see following definitions)—should be taking steps to determine whether they fall within requirements of the Employer Shared Responsibility (ESR) provisions under the Patient Protection and Affordable Care Act (ACA, or “Obamacare”).

The provisions, effective Jan. 1, 2015, require look-back periods (measurement, stability and administrative) that require planning well ahead of the effective date in order to avoid potential penalties.

Some employee benefits and payroll specialists are taking the lead on assisting employers with ACA provisions, but CPAs are also affected by the law’s tax provisions. One of the IRS websites on the provisions (<http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions>) lists more than 30 topics associated with the new law. The proposed regulations under IRC Sec. 4980H, *Shared Responsibility for Employers Regarding health Coverage*, include 44 definitions.

The ACA has also created a long list of new or amended tax provisions, many of which are cited in an article by Annette Nellen, Esq., CPA, tax professor at San Jose State University, found online at: <http://bit.ly/KfXIPn>.

The following list includes only general descriptions of just a few highlights of the ACA; it is by no means comprehensive. Employers and individuals may be affected by the law and its modifications in different ways, depending on their own particular situations and circumstances. Employers may need to consult with health care, payroll and tax specialists in order to address the new requirements.

Applicable large employers are entities with 50 or more full-time workers, including full-time equivalent (FTE) employees on business days during the preceding calendar year; such entities are subject to ESR provisions.

Full-time employees are defined as working an average of 30 hours per week, or 130 hours per calendar month, including vacation time, holidays, sick time, disability, jury duty, military leave, and leaves of absence.

Full-time equivalents (FTE) can be calculated three ways: 1) actual hours of service worked, 2) days worked equivalency, and 3) weeks worked equivalency. All hours of service worked by part-time employees are considered, including paid and unpaid hours, such as vacation, sick time, disability, jury duty, military leave, and leaves of absence, capped at 120 hours per month per employee, divided by 120. That number is added to the number of full-time employees to determine whether an employee is an applicable large employer subject to ESR.

An employer is required to offer coverage only to full-time employees (working at least 30 hours per week). The FTE calculation helps determine whether an employer must offer coverage to full-time employees.

Controlled group rules are taken into account when determining applicable large employers; Internal Revenue Code Sec. 414(b), (c), (m), and (o). Entities within the same controlled group may be considered one employer.

Franchise calculations will depend on the structure of the business in question; employers should consult with their tax and legal advisers for clarifications.

A look-back period needs to be established, broken down into three parts: a measurement period, stability period, and administrative period. If the Department of Labor performs an audit, it will require documentation of each employee's hours. For employers unfamiliar with the process of testing employee populations for eligibility, a payroll provider may be a viable option for the documentation.

Minimum essential coverage (MEC)*: Employer health coverage that covers less than 60 percent of the cost of medical expense is not considered to be providing minimum essential coverage. Four benefit categories of plans, plus a separate catastrophic plan, are offered through state-based exchanges, including a Small Business Health Options Program (SHOP), and through individual and small group markets:

Bronze plan – provides the essential health benefits, covers 60% of the benefit costs of the plan, with an out-of-pocket limit equal to the Health Savings Account (HSA) current law limit;

Silver plan – provides the essential health benefits, covers 70% of the benefit costs of the plan, with the HSA out-of-pocket limits;

Gold plan – provides the essential health benefits, covers 80% of the benefit costs of the plan, with the HSA out-of-pocket limits;

Platinum plan – provides the essential health benefits, covers 90% of the benefit costs of the plan, with the HSA out-of-pocket limits.

A lower benefit catastrophic plan will be offered to individuals under age 30 and to others who are exempt from the individual responsibility requirement. The exemption includes individuals whose substandard insurance plans were canceled, per the decision made by the Health and Human Services department on Dec. 19, 2013.

Affordability, quality, penalties*:

The affordability/quality standard is the employee's premium contribution not exceeding 9.5 percent of the employee's modified adjusted gross household income for self-only coverage in the lowest cost (Bronze) plan that meets MEC standards.

Employers may use one of three methods to help them determine whether the coverage they are providing is affordable:

- 1) Form W-2 Safe Harbor: Use employee's Form W-2 wages shown in Box 1.

- 2) Rate of Pay Safe Harbor: Multiply an employee's hourly rate by 130 to determine monthly wages, or use a salaried employee's monthly pay.
- 3) Federal Poverty Line Safe Harbor: Use the federal poverty line for a single individual.

An applicable large employer that offers coverage but has at least one full-time employee receiving a premium tax credit may be subject to a potential penalty of the lesser of \$3,000 per employee receiving a premium tax credit, or \$2,000 per full-time employee, excluding the first 30 employees. The penalty for offering coverage will not exceed the penalty for not offering coverage.

An applicable large employer that does not offer coverage (to 95 percent of its employees) and has at least one full-time employee who receives a premium tax credit may be subject to an annual penalty of \$2,000 per full-time employee, excluding the first 30 employees.

Some employee benefits specialists use a "pay or play" calculator to help employers evaluate and compare their options, including the costs of:

- continuing to offer coverage as is,
- offering coverage that just hits the minimum requirements necessary to avoid a penalty, or
- a penalty for not offering coverage.

Other employers:

Employers with more than 200 employees are required to automatically enroll employees into health insurance plans offered by the employer; employees may opt out of coverage. Small employers with no more than 25 employees and average annual wages of less than \$50,000 may be eligible for a tax credit if they purchase health insurance for employees. Deductibles in the small group market cannot exceed \$2,000 for an individual and \$4,000 for a family.

Individual Mandate: If an individual does not obtain coverage through an employer plan, the options are to:

- 1) obtain an individual market plan through the Individual Market Exchange (where the individual may be eligible for a subsidy),
- 2) obtain an individual market plan through an off-exchange market, or
- 3) pay a penalty, unless qualifying for an individual exemption. The penalty for not having minimum essential coverage in 2014 is the greater of \$95 or 1 percent of taxable income for adults and 50 percent for children under 18. The penalties go up to \$325 in 2015 (or 2% of taxable income), \$695 in 2016 (or 2.5% of taxable income), and are indexed thereafter by a cost-of-living (COL) adjustment.

Again, many other exemptions, incentives and penalties not mentioned in this checklist are included in the law and regulations. More modifications may also be made. More information on the ACA can be found at these websites:

<http://www.aicpa.org/Research/HCR/Pages/Health-Care-Reform.aspx>

<https://www.healthcare.gov/>

<http://www.hhs.gov/healthcare/facts/timeline/index.html>

<http://www.sba.gov/healthcare#>

<http://business.usa.gov/healthcare>

<http://kff.org/health-reform/>

*Certain conditions must apply. For more information refer to IRC Sec. 4980H, *Shared Responsibility for Employers Regarding Health Coverage Proposed Rule*, and other applicable IRC sections.