

Legal Alert

December 15, 2012

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Patient Protection and Affordable Health Care Act

QUESTION: WHAT SHOULD MY BUSINESS DO IN 2013 TO PREPARE FOR THE HEALTH INSURANCE MANDATE OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT THAT BECOMES EFFECTIVE IN 2014?

ANSWER: YOU MUST EVALUATE AND ADJUST YOUR WORKFORCE AND CAREFULLY CHOOSE THE STRATEGIES THAT WILL MINIMIZE THE ECONOMIC IMPACT ON YOUR BUSINESS.

Can You Raise Prices Enough To Cover The Cost Of Health Insurance For All Of Your Employees Or To Pay For The Tax Penalties Of Not Providing That Coverage?

"Applicable Large Employers" will face taxes of \$2,000 for each full-time employee for failure to provide minimum essential health insurance coverage. If such employers fail to provide "affordable coverage," they could be charged \$3,000 in taxes for each of the employers' full-time employees obtaining a tax credit or subsidy through an Insurance Exchange.

Does The Healthcare Insurance Mandate Even Apply To My Business?

"Applicable Large Employers" must provide health insurance to employees beginning in 2014. So, what is an Applicable Large Employer? Your business is an Applicable Large Employer if you employed an average of 50 or more "full-time equivalent" ("FTE") employees per month in the prior year. (See, why we said you need to start planning in 2013!)

But, how do you determine whether you employed an average of 50 or more full-time equivalent employees? A "full-time employee" is defined as a worker that averages at least 30 hours of work per week or at least 130 hours of work per calendar month. Determining the number of "full-time equivalent" employees is trickier, however. Full-time equivalent employees in your workforce are determined by adding the number of full-time employees and the results of a calculation based on the number of part-time employees. To find the number to add to the equation for your part-time employees, you add together all of the hours of part-time employees in a month and divide the total by 120.

Let's say that your company has 60 part-time employees working 20 hours per week over four weeks. $60 \text{ employees} \times 20 \text{ hours} \times 4 \text{ weeks} = 4,800 \text{ hours per month}$. 4,800 hours per month divided by 120 hours in a month=40 full-time equivalent employees. Add that number to the number of full-time employees to determine how many full-time equivalent employees your company had for the month in question.

Then, you need to do the same calculation for each month of 2013 and add up all of your full-time employees and full-time equivalent employees for all 12 months divided by 12 months, to determine your average full-time equivalent employees per month for 2013. If you average 50 or larger, you are an "Applicable Large Employer" and you have to provide health care coverage to your full-time employees in 2014 or be taxed. (By the way, there are also special calculations with regard to determining the impact of "seasonal workers" on full-time equivalent employee statistics.)

If My Company Needs To Provide Health Insurance Coverage, What Does That Require?

The Affordable Care Act requires Applicable Large Employers to provide full-time employees with health care insurance that is "affordable" and meets "minimum essential coverage" standards. You can probably assume that "minimum essential coverage" will mean major medical coverage.

"Affordable" health care insurance coverage is defined more precisely. The "affordable" plan has to cover at least 60% of the cost of health-care benefits provided. Moreover, the "affordable" coverage cannot cost the employee more than 9.5% of the employee's household income or 9.5% of the employee's W-2 income.

One likely strategy for many large employers of lower income workers will be to offer "affordable" "minimum essential coverage." Many lower income workers will not want to give up 9.5% of their income. That may not seem like a good deal to only obtain coverage for 60% of the cost of medical care. Employers must offer the employees "minimum essential coverage" that is "affordable," but employers can't force employees to take that coverage.

Should I Make Most Of My Employees "Part-Time" Or "Seasonal" To Avoid The Health Care Mandate?

Even if your company is an "Applicable Large Employer," you do not need to provide health care insurance coverage for part-time workers. A "full-time" employee works on average at least 30 hours per week or 130 hours per month. A "part-time" employee is generally 29 hours of work per week or less. Nor do you have to insure "seasonal" workers. The government has not yet defined "seasonal worker" for all situations, however. Making sure employees meet the criteria for either "part-time" or "seasonal" status will require careful planning and meticulous record-keeping. Make sure the change actually makes economic sense for your business model, then proceed carefully!

Get Advice!

All of these rules are complicated. Get professional help! Getting "affordable care" compliance wrong is unhealthy for your business.

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