Employee Benefits Report

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Will You "Pay or Play"?

The shared responsibility provisions of the Affordable Care Act (ACA) go into effect in 2014. Otherwise known as "pay or play," they will require "large employers" to offer their employees "affordable" health insurance or pay a tax. What exactly do these terms mean?

Is my organization a "large employer" subject to the provisions?

The ACA exempts employers with fewer than 50 full-time employees from the shared responsibility requirements. All other employers — including nonprofit and government entities — are considered "large employers" and subject to shared responsibility.

Employers with both full- and part-time workers will need to calculate whether the total work hours of all employees equal the hours of 50 or more "full-time equivalent" (FTE) employees. The law considers employees who work on average 30 or more hours per week full-time; employees who work an average of 15 hours per week would therefore count as half a full-time employee.

Companies with a common owner will combine employee counts to determine whether shared responsibility applies. If the combined total meets the 50+ threshold, then each company is subject to the provisions, even those that employ

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This Just In…

The American Taxpayer Relief Act of 2012, the budget deal averting the so-called fiscal cliff, contained a provision easing rules on Roth 401(k) rollovers. The provision will allow participants in 401(k) and similar plans to immediately roll their funds into a Roth account, if their employer offers this option.

Before this provision, plan participants had to wait for a "qualifying event," such as retirement, reaching age 59 1/2 or changing jobs, to roll funds from a traditional 401(k) into a Roth plan.

With a Roth plan, participants make contributions with after-tax dollars. While participants don't get a tax deduction on funds contributed, the account

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fewer than 50 FTE employees.

When will we make calculations? Employers will determine each year whether they will be considered a large employer for the next year. If you have at least 50 FTE employees for 2013, you will be considered a large employer for 2014.

How do we calculate employees' hours? For hourly employees, use the employee's actual hours of service and hours for which payment is made or due for vacation, holiday, illness, incapacity, etc.

For non-hourly employees, the employer can use one of these three calculation methods: (1) counting actual hours of service and hours for which payment is made or due for vacation, holiday, illness, incapacity, etc.; (2) using a days-worked equivalency method, crediting the employee with eight hours of service for each day for which the employee would be required to be credited with at least one hour of service; or (3) using a weeks-worked equivalency of 40 hours of service per week for each week for which the employee would be required to be credited with at least one hour of service.

The employer can use different methods to calculate hours for different classifications of non-hourly employees, if reasonable and consistently applied. An employer may change the method of calculating non-hourly employees' service hours each calendar year.

Because of the high administrative costs of doing calculations for each worker each month, the Department of Treasury is proposing a "look back period" of three to 12 months for the purposes of determining whether employees are full-time.

How do temporary and seasonal employees affect employee count? Employers generally must include all full-time workers, even those hired on a temporary basis, in their employee count.

"Seasonal workers" who provide labor or services on a seasonal basis, including retail workers employed exclusively during holiday seasons, do not count if they work 120 days or fewer during a calendar year. However, the law specifically states that educational institutions cannot in good faith interpret the term "seasonal employee" to include those who work only during the active portions of the academic year. An employee who works for an educational institution full-time only during the academic year would be considered a full-time worker.

grows tax-free and withdrawals aren't subject to income tax if the account holder is at least age 59 1/2 and has held the account for five years or more.

Roth conversions can help higher-income individuals or those who expect their tax rate to increase when they retire. The catch? Participants will have to pay taxes immediately on funds rolled over. The government expects to collect $12.1 billion in taxes over the next 10 years on conversions.

What about employees who work abroad either full-time or some of the time? Employers should only count time spent working in the U.S.

If my organization is a "large employer," when will we "pay"?

Starting in 2014, individuals whose employers don't offer insurance will be able to buy insurance in an exchange. People whose income is less than about $88,000 for a family of four may qualify for tax credits.

The shared responsibility provisions require large employers to offer "affordable" health insurance coverage to at least 95 percent of their full-time employees. If you fail to do so and at least one full-time employee receives the premium tax credit, you will owe an "employer shared responsibility payment" equal to the number of full-time employees you employed for the year (minus 30) multiplied by $2,000. An employer that offers coverage for some months but not others during the calendar year will owe a payment computed separately for each month for which coverage was not offered.

If you offer coverage to at least 95 percent of full-time employees in 2014, but one or more full-time employees receive a premium tax credit, your payment will be computed separately for each month. The amount of the payment for the month equals the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of $3,000.

The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made.

What coverage qualifies?

Qualifying health plans must provide at least a certain "minimum value" and be "affordable" to employees.

A minimum value plan must cover "at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan," according to the IRS. The IRS and the Department of Health and Human Services (HHS) will offer a calculator that employers can use to determine whether their plan provides minimum value.

An "affordable" plan means the employee pays no more than 9.5 percent of annual household income for his/her share of premium. If an employer offers multiple healthcare options, the affordability test applies to the lowest-cost option that meets the minimum value requirement.

Because employers generally will not know their employees' household incomes, the IRS has proposed several affordability "safe harbors." Two are design-based and one would allow an employer to use wages it pays the employee as reported on Form W-2 to determine affordability.

After 2014, affected employers must also offer coverage to the dependents of full-time employees. In a recent notice, the IRS defined dependents as children up to age 26, but did not include spouses.

Note: As this newsletter went to press, many of the rules implementing the ACA were proposals and not yet finalized. Information was current as of mid-January. For details, please see http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act.

Add Value at No Cost with Voluntary Benefits

Voluntary benefits can fill gaps in employer-provided plans, including in high-deductible health plans. Experts expect more employers to offer voluntary benefits in 2013, and more employees to take advantage of these plans.

Voluntary benefits allow employers to maintain a benefit program even if the economy forces them to trim benefit costs. Under a voluntary benefits program, the employer offers employees a menu of benefits; employees select only those they want. Unlike traditional group benefits, voluntary programs require no employer contributions. Employees pay all of the premiums, sometimes on a pre-tax basis (for qualified benefit plans only), through payroll deduction.

While traditional group benefits demand high levels of participation, typically 75 percent, voluntary programs require only 20 percent participation (for most health plans); other voluntary benefits may have no participation requirements.

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Voluntary benefits include:

- Dental insurance.
- Vision insurance.
- Long-term care insurance.
- Short- and long-term disability insurance.
- Accidental death and dismemberment insurance.
- Life insurance. Options include term life insurance, variable life and dependent life coverages.
- Supplemental health coverages, including cancer/specified disease insurance, critical care insurance and hospital indemnity plans.
- Group auto and homeowners insurance.
- Nontraditional benefits, such as prepaid legal services, pet insurance, payroll deduction purchasing of computers and appliances, and more.

Some voluntary benefits, such as most health coverages, dental insurance, vision insurance and group term life, qualify for tax-preferred treatment. Employees can use pretax dollars to pay premiums, and receive benefits tax-free. The IRS considers other benefits "nonqualified," so employees must pay for them with after-tax dollars.

For employees, voluntary benefits can offer cost savings through group buying, convenient payroll deduction and portability. For employers, they offer the following advantages: no cost, no administrative burdens, more attractive benefit programs.

While voluntary benefits have advantages, they can pose some challenges for employers. Here are some things to consider:

- Does the voluntary benefit provide real value? Employees often view a voluntary program as employer-sanctioned. If it provides little real value, it could create a negative impression of the rest of your benefits.
- Does the voluntary program enhance existing offerings? If you provide group life to employees that pays one or two times salary, voluntary life insurance with a higher benefit could provide real value to employees who need a higher benefit but who might not qualify for individual coverage.
- Are you offering too many choices? Too many choices can confuse employees and depress participation rates, which increases per-unit costs.
- Will the plan create any fiduciary responsibilities under ERISA? ERISA, the federal law governing employee benefits, applies to most group life and health programs unless they meet certain conditions. To avoid ERISA liability, follow all of these guidelines: 1) Make no contributions. 2) Keep the program completely voluntary, and communicate this fact to employees. 3) Do not endorse the program. This includes using company logos on informational material, encouraging employees to sign up or even negotiating with the insurer for better terms for your employees.

For more information on voluntary benefits, please contact us. ■

Safe Harbor 401(k)s

In 2012, American's confidence in their ability to retire comfortably dropped to its lowest level in more than 20 years, according to the Employee Benefit Research Institute. Despite the fact that workers are getting more serious about saving for retirement, retirement benefits were available to only 50 percent of workers in small establishments (<100 employees).

Although small employers (and their employees) like the idea of a 401(k) plan, many hesitate to implement a plan. When asked why, most smaller employers would likely cite the cost, regulatory burdens, fiduciary responsibilities, and a general lack of employer education about the requirements and processes of setting up and sponsoring a plan. A safe harbor 401(k) can mitigate some of these concerns.

Like all 401(k)s, a safe harbor 401(k) plan allows eligible employees to contribute a portion of their own salary to a retirement plan. Employers contribute either matching or non-elective amounts to the plan on behalf of eligible employees. Employer contributions are tax-deductible and employee contributions are excluded from income for federal income tax purposes.

A safe harbor 401(k) also allows highly compensated employees (HCEs) to maximize

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their 401(k) contributions while automatically satisfying actual deferral percentage (ADP) and actual contribution percentage (ACP) nondiscrimination testing rules, as long as the plan meets certain requirements.

Safe harbors help satisfy nondiscrimination rules

To satisfy the ADP and ACP testing requirements with a safe harbor 401(k), your organization must: 1) make contributions for your employees and 2) eliminate all vesting requirements placed on those contributions. The employer contribution requirement allows two options. Under the first, you must make a matching contribution for each non-highly compensated employee (NHCE) who elects to contribute to the plan. The basic matching formula is 100 percent for at least the first three percent of employee compensation and 50 percent on the employee's own contributions above three percent, but not to exceed five percent of compensation. Such matching contributions automatically satisfy the ACP test.

Alternatively, you can design an enhanced matching formula as long as the rate is non-increasing and the aggregate amount of the match at least equals the basic matching formula (e.g., 100 percent match on deferrals up to four percent of compensation). If you

choose the second option, you must make a flat, non-elective contribution for each NHCE who is eligible to participate in the plan, even if the employee opts not to contribute. The non-elective contribution must equal three percent of the employee's compensation for the year. In either employer contribution option, you can make similar contributions for highly compensated employees, as long as the match percent for any HCE is no greater than the match percent for any NHCE at the same rate of deferral.

A safe harbor 401(k) plan also requires that any employer contribution, either matching or non-elective, is fully vested to the employee. For many employers, this equals a major drawback of the safe harbor; your plan loses its power as an employee retention incentive.

We can help you evaluate safe harbor and other retirement plan types for your organization. For more information, please contact us.

Affordable Care Act and Dental Benefits

The National Association of Dental Plans (NADP) estimates that almost all (98 percent) of dental benefit plans are "standalone" plans—or plans sold separately from medical coverage. Although dental plans are "excepted health plans" exempt from Affordable Care Act (ACA) reforms, a provision in the ACA could require the purchase of dental coverage.

According to an NADP analysis, the ACA will not directly affect dental coverage for the large group market (more than 100 employees) sold outside the exchanges. However, the ACA requires all health plans offered in the individual and small group markets, both inside and outside of the "affordable insurance exchanges," to offer a comprehensive package of items and services known as essential health benefits (EHB).

Plans sold on the exchange need not cover oral care or dental benefits for adults, but the law includes "pediatric services, including oral and vision care" as an "essential benefit." Therefore, health policies sold inside the exchanges to small groups and individuals must include coverage for dental and vision services for children. This would duplicate coverage already available under family dental policies.

The American Dental Association cautions that the "individual mandate" does not require the purchase of standalone dental benefits. This means individuals (and small employers) buying coverage on the exchange might not purchase the "essential" pediatric dental coverage when buying health coverage on the exchange and could be subject to penalties. The ADA advocates designing the exchange web portal so any consumer buying dependent coverage could not "…finalize that purchase unless the plan(s) include the pediatric oral benefit."

A rule proposed by the Department of Health and Human Services defines EHB based on a state-specific benchmark plan. We can help you review your existing dental and medical coverage to see whether it might meet the state's benchmarks for EHB. For more information, please contact us.

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