

A New Year, New Obligations for Employers

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The New Year brought new obligations for employers under the Affordable Care Act (ACA). The most significant is the employer mandate, requiring large employers to provide ACA-compliant insurance coverage to fulltime employees or be subject to penalties under section 4980H of the Internal Revenue Code (IRC). As a result, large employers must offer ACA-compliant health coverage, or potentially pay a penalty to the Internal Revenue Service (IRS). In addition, employers must timely file certain reports with the IRS relating to health insurance coverage.

Although the ACA defines a large employer as an employer with 50 or more full-time employees, the employer mandate is being implemented in phases. It became effective on January 1, 2015, for employers with 100 or more fulltime employees and will apply to employers with 50-99 fulltime employees beginning January 1, 2016.

Specifically, under the ACA, an applicable large employer must offer health coverage to its fulltime employees and certain of their dependents. The coverage must: (1) provide “minimum essential coverage”; (2) be “affordable”; and (3) satisfy a minimum value requirement. The requirements to establish “affordable” coverage that provides “minimal essential coverage” and “minimum value” are outlined in federal regulations in detail. Employers must ensure employer provided health insurance coverage complies with these requirements under the ACA. If employers have questions or concerns regarding these requirements, they should speak with counsel knowledgeable of the ACA.

If a large employer does not offer “minimum essential coverage” to at least 70 percent of its fulltime employees in 2015, and a fulltime employee receives subsidized coverage through a public marketplace, then the employer will owe a penalty of \$2,000 per year, indexed to inflation, for each fulltime employee in excess of 80 employees (note that 80 will be reduced to 30 in 2016). Additionally, if a large employer does not offer “affordable, minimum value coverage” to its fulltime employees, the employer will owe a penalty of the lesser of \$2,000 for each fulltime employee in excess of 80 (30 after 2015) or \$3,000 per year for each fulltime employee who receives subsidized coverage.

For the 2015 tax year, employers and/or health insurance issuers are now required to report to the IRS information about employer-sponsored health coverage.

Section 6055 of the IRC, requires any entity, including self-insured employers, that provides minimum essential coverage to an individual during a calendar year to file an information return (Form 1095-B) and transmittal (Form 1094-B) with the IRS and a statement to the insured person. Based on this, the IRS will determine which months, if any, individuals were covered by minimum essential coverage.

Section 6056 requires applicable large employers to file an information return (Form 1095-C) and transmittal (Form 1094-C) with the IRS and a statement to the insured person regarding employer-offered health care coverage. To streamline the reporting process, self-insured employers that are also subject to section 6056 may use the Form 1095-C to satisfy the return and transmittal requirements. The IRS will use the information reported by employers pursuant to section 6056 to administer the section 4980H penalties and the premium tax credit program.

The first returns will be due to the IRS by February 28, 2016 (or March 31, if filed electronically). Written statements are due to employees by January 31 for the prior year.

The ACA remains subject to both judicial and legislative challenges. The U.S. Supreme Court will review the Fourth Circuit's decision in *King v. Burwell*, 759 F. 3d 358 (4th Circuit 2014), upholding an IRS regulation permitting the government to

subsidize health insurance on both federal and state created exchanges. If the Supreme Court were to decide to restrict the subsidies to only those individuals who purchased on the state exchanges, this would have a major impact on employers. Employers without a state exchange would not be subject to penalties for noncompliance as the trigger for penalties is one or more employees purchasing subsidized health insurance. With oral arguments set for March 4, 2015, the Supreme Court's decision is expected in the summer and could have far reaching impacts for employers and the ACA.

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