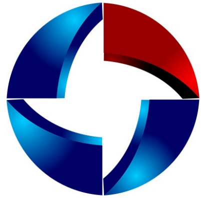

WOB Insider
clarity.strategies.solutions
January 2015

Affordable Care Act

The provisions of the Affordable Care Act apply to Large Employers (companies with 50 or more full-time, or full-time equivalent employees). For 2015, Employers with 50-99 employees will not face the penalties, but must still comply with the reporting requirements. Call WOB for more information related to determining Larger Employer status.

Affordable Care Act Basics

"A" Penalty *(penalties are not deductible)*

- Plan must provide Minimal Essential Coverage (can't just be accident or critical illness) **AND**
- Employers must offer coverage to 95% (70% in 2015) of their full-time (based on 30 hours) employees and dependent children up to age 26 (doesn't need to be offered to spouses)
- Penalty applies if at least one full-time employee goes to the exchange and receives a premium credit.

Penalty is $2,084 per full-time employee over 30 (80 in 2015) (penalty is 1/12th per month not offered).

Note—If an employer offers coverage to 95% of their full-time employees, they will be deemed to offer coverage. If covering less than 95% - they will face the "A" penalty for 100% of their full time employees over 30 (or 80), even those covered. For 2015 only, the coverage must be offered to 70% of the employees.

Note—Offering coverage means the employee has an effective opportunity to accept or decline coverage at least annually (cannot force them to be in the plan). Once they accept or decline, that decision can carry forward to future years, so long as they are given the opportunity (via a handbook policy) to go in or out.

"B" Penalty *(penalties are not deductible)*

- Plan must satisfy Minimum Value (pays 60% of the total benefits costs) **AND**
- Plan must be affordable to employees (can't cost the employee more than 9.5% wages)
- Penalty applies if at least one full-time employee goes to the exchange and receives a premium credit.

Penalty is $3,126 per full-time employee receiving a premium tax credit. Total "B" penalty not to exceed the "A" penalty computation.

Reporting Requirements

- Insurance Carriers Report Covered Individuals on a **1095-B (with 1094-B Transmittal)**
  Name and SS number of covered individuals...employee, spouse, all dependents
  Coverage by month.
  The coverage is reported by month on the annual form. IRS gets a copy, Employee gets a copy by Jan 31.

- Employers Report Offer and Coverage information on a **1095-C (with 1094-C Transmittal)**
  Type of coverage offered—specific codes based on what's offered
  Employee's share of the lowest cost monthly premium for self-only minimum coverage
  Safe Harbor Code, if applicable (will almost always be applicable)
  # FT employees, and Total employees, by month (either first or last day of the month)
  The information is reported by month on the annual form. IRS gets a copy, Employee gets a copy by Jan 31.

- Self-Insured plans—Employers will report all of the above on a **1095C**. No **1095-B** required.

Must be electronically filed with the IRS if over 250 returns.

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Safe Harbors and Limited Penalty Relief

Safe Harbor Codes Reported By Month—1095-C; Line 16 “2” Codes

A. Employee not employed for any day during the month.
B. Employee was not full-time, and did not enroll in coverage, if offered.
C. Employee enrolled in Coverage.
D. Limited Non-Assessment Period (see below)
E. Multiemployer Interim Rule Relief—applies to employers who offer coverage through a multi-employer plan (union)
F. Form W-2 Safe Harbor—employee premiums do not exceed 9.5% of W-2 Box 1 federal wages.
G. Federal Poverty Line Safe Harbor—employee premiums do not exceed 9.5% of single poverty levels (about $1,100 for 2015).
H. Rate of Pay Safe Harbor—employee premiums do not exceed 9.5% of hourly rate times 130 hours.
I. Non-Calendar Year Transition Relief (see below)

Limited Non-Assessment Period

Penalties can be avoided if coverage is not during the following periods

- **First Calendar Month of Employment** - if other than the first day of the month.

The following only count if by the end of the period, Coverage is offered to the Employee

- **First Year as ALE** - January - March of the first calendar year in which an employer is an ALE..but only for employees who were not offered coverage during any point in the prior year.
- **Monthly Measurement Method** - First 3 full calendar months the employee would be otherwise eligible (but for completing the waiting period).
- **Look-Back Measurement Method - New EE w/ Full Time Expectation** - Start date plus 3 full calendar months.
- **Look-Back Measurement Method - New EE w/ Part Time Expectation -** Initial Measurement Period and Associated Administrative Period
- **Look-Back Measurement Method - New EE w/ Part Time Expectation, but during Initial Measurement Period, the job changes and the EE has Full Time Expectation** - Change date plus 3 full calendar months.

Non-Calendar Year Transition Relief

"A" Penalty - applies for periods in 2015 before the beginning of the 2015 plan year - employee treated as being offered MEC, even if not actually offered….but the must be offered coverage no later than the first day of the 2015 plan year.

"B" Penalty - applies for periods in 2015 before the beginning of the 2015 plan year - employee treated as being offered coverage that is affordable and provided minimum value, even if not actually the case. (Line 16 Code 2I)

Additional Miscellaneous 2015 Transition Relief

50-99 Transition Relief - for ALE groups with fewer than 100 FT/FTE in 2014 - no penalty applies for 2015, and, if the employer has a non-calendar year plan, for the portion of the 2015 plan year that falls in 2016.

100 or More Transition Relief - the ALE groups with 100 or more FT/FTE in 2014 - the penalty is calculated by reducing the # of FT employees by 80(rather than 30)

Dependent Coverage Transition Relief - if not offered dependent coverage for 2013 or 2014 plan years, but takes steps during 2014 and 2015 plan years to extend coverage to dependents. (Not eligible for Qualifying offer method for the calendar year.)

January 2015 Transition Relief - if offered no later than the first pay of January - treat as offered for the entire month

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Next Steps: Gain Understanding and Define Policies

•Categorize Employees

Full Time—Those working (or if new, expecting to work) consistently 30 or more hours per week. Generally speaking, if an employee is expected to work at least 30 hours a week on average, they are considered full-time from date of hire, and must be offered coverage.

Part Time—Those working (or if new, expecting to work) consistently less than 30 hours a week...no expectation of being close to 30 hours.

Variable Hour—these are the employees we can't tell if they will be working 30 hours a week on average. The employees will be evaluated based on a *Measurement Period.*

Define Administratvie Period

An *Administrative Period* is the amount of time an otherwise eligible employee must wait before being offered medical benefits.

Example—Full-time employees would be eligible for coverage upon hire, and the *Administrative Period* is the #-day wait before they can sign up. This is sometimes referred to as being effective for coverage.

Administrative Periods can be
1—Immediate, no further waiting for medical eligibility
2—A period between 1 and 90 days.
Additionally, you can choose for medical coverage to be effective on the first of the month following the end of the *Administrative Period*.

Define Measurement Periods

Measurement Periods are important when you have employees with variable hours that go above and below 30 hours per week.

First, employers must define a period of time to track the variable hour employee's eligibility for benefits. *Measurement Periods* fall between 3 and 12 months.

Once an employee has averaged at least 30 hours in the measurement period chosen, they would be eligible for medial benefits. Once eligible, the *Administrative Period* begins.

If applicable, the *Measurement Period* plus the *Administrative Period* cannot be longer than 13 months in total.

Define Stability Period

Once a variable hour employee is eligible and effective for coverage, they are subject to a *Stability Period* that the employee will be guaranteed to be covered on the medical plan regardless of any fluctuations to their weekly hours, including dropping below 30 hours per week.

The *Stability Period* must be as long as the *Measurement Period*, but not less than 6 months.

Separate Health Insurance Deductions

If an employee elects individual and family coverage, those deductions should be tracked separately, so we can track the costs to the employee.

Understand Pay Codes

Hour Tracking now becomes very important for those who are part-time or have variable hours. Salaried individuals are automatically given 40 hours each week. We must be careful that we do not play lump sums to part-timers for vacation, illness. Also, those with unpaid leave under the FMLA would also counted as hours worked.

Document Employee Decling Coverage

Employers should have employees document the offering and declining of coverage. Language should include the policy for the employee deciding to opt back in at a later date. These will roll forward to future years.

Confirm Who is Filing Form 1095-B

Insurance carriers are required to file these forms. However, ultimately, it is the responsibility of the employer if the carrier fails to file.

For self-insured plans, the 1095-B is not required, and the employer will report spouse and dependent coverage information on the 1095-C. This means the self-insured employers need to be gathering Names and SS Numbers for everyone covered under the plan.

Identify Penalty Exposure Areas

- Coverage not affordable, not MEC, no Minimum Value
- Coverage does not include dependent children
- Variable Hour Employees
- Missing deadlines for offering coverage
- Documenting the offering when coverage is declined

Understand Safe Harbor Codes

Forms require safe harbor codes to be reported by-month for each employee. Some codes indicate compliance with the regs, while others provide exemption from penalties.

It is important to understand these codes and accumulate the data that will be needed in January 2016 when the forms are due.

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Employer Reimbursement for Individual Health Policies

Employers may be tempted to reimburse employees for purchasing their own individual health insurance policies as an alternative to offering an employer plan. **This is not permitted! Employers could face fines of $100/day/employee.** Even providing the payment or reimbursement on an after-tax basis does not cure the problem.

The only option available to the employer who does not want to offer health plans to employees, but wants to help them instead purchase individual coverage, is to simply increase employee wages. However, the receipt of wages cannot be contingent on the purchase of a policy. The additional income must have "no strings attached."

The employer should cautiously implement this sort of plan based on facts and circumstance. Should the employee go to the exchange for coverage and receive a premium credit, the employer could be subject to "B" penalties if the appropriate safe-harbors are not met.

Court Cases Related to the Employer Mandate

The employer mandate uses the threat of penalties to induce large employers to provide their full-time employees with health insurance. The penalties apply when uncovered employees enroll in plans with which tax credits are available. Therefore, the employer's mandate penalties hinge on the availability of those credits.

There are questions as to whether the credits are available for insurance purchased through the Federal Exchanges. The code section includes language that references credits available to taxpayers who enroll in qualified health plans on state-established (as opposed to federally established) Exchanges. The health care legislation originally did not contemplate a federal Exchange. The federal Exchange came about when certain states refused to establish a state Exchange.

If credits were unavailable in states without state exchanges, employers in those states would face no penalties for failing to offer coverage. Ohio is one of these states.

There have been two circuit court cases involving individuals or employers in states that had not established a state-run Exchange and were facing penalties as a result of failing to buy or offer comprehensive health insurance. The Supreme Court is currently reviewing one of the cases.

Miscellaneous Issues

Seasonal Workers

If the workforce exceeds 50 full-time employees for 120 days or fewer during the prior calendar year, and the excess workers were seasonal (holiday retail), the employer would not be treated as a Large employer, and would not be subject to these regulations

Aggregated Large Employer Group

Companies with common ownership will be grouped together as a Large-Employer Group.

- Group counts determine large employer status.
- 30 FT employee reduction is split between members
- Penalties are determined member-by-member

Employees Rehired after Termination

If the period of absence is at least 13 consecutive weeks, and employer may treat and employee who has an hour of service after that period as a new-hire.

If the weeks off exceed the weeks previously worked is at least 4 weeks long, and is longer than the period the employee previously worked, the employer can choose to apply a "rule of parity" for periods less than 13 weeks.

If the employee is treated as a continuing employee, the measurement and stability periods that would have applied without the absence would continue to apply.

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