

AFFORDABLE CARE ACT COMPLIANCE: A TRAP FOR THE UNWARY BUSINESS OWNER

Overview of Unexpected Challenges

The purpose of this News Alert is to urge you – if you have not already done so – to implement Affordable Care Act (ACA) reporting procedures for your business now. Given the complexity of the forms, waiting until year-end could expose your business to severe fines from the IRS.

Applicable large employers (ALEs) (defined as those that have at least 50 full-time employees, including full-time equivalents) have extensive reporting burdens under the general rules of the ACA. Although small businesses (defined as those that have fewer than 50 full-time employees, including full-time equivalent employees) are exempt from the ACA's general rules, the IRS can and will penalize them if they fail to comply with the rules for self-insured plans.

General Rules of the ACA

ALEs must show that they provide minimum essential coverage to every individual covered for all 12 months in the year. ALEs report this information on annual returns (Forms 1094 and 1095).

Making this process even more complicated is the fact that employers must use their employee count from the prior year to determine if they have at least 50 employees. For 2015 only, employers may take advantage of a transition rule which allows them to use any period of 6 consecutive months in 2014 to generate their applicable employee count. Without the transition rule, employers must use the full 12 months of a prior year to determine their employee count. Thus, if employers have a 6 month period with fewer than 50 employees in 2015, then they may consider applying that 6 month period to avoid the ACA's costly compliance.

Because ALEs must provide forms to employees by January 31, 2016 and to the IRS by February 29, 2016 (March 31, 2016 if filed electronically), now is the time to develop a process to complete these forms.

Self-Insured Plans

Self-insured employers, regardless of size, are all subject to the minimum essential coverage reporting requirements. This news is often a surprise to owners of small businesses who have operated on the belief that the ACA does not apply to them. Unfortunately, they must change course quickly or the IRS will hit them with draconian penalties.

As with applicable large employers, reporting requirements for self-insured plans require listing the coverage provided to every individual (employee as well as individuals receiving coverage through an employee) for every month. Also similar to applicable large employers, all employers

with self-insured plans must provide returns to employees by January 31, 2016 and to the IRS by February 29, 2016 (March 31, 2016 if filed electronically).

For this reason, employers with self-insured plans cannot wait until year-end to begin the tracking and documenting this information. The time and attention involved is simply too demanding to procrastinate.

Penalties for Failure to Report Minimum Essential Coverage

Although the forms for employers (both applicable large employers and all employers with self-insured plans) to report minimum essential coverage were optional in 2014, they are now mandatory. To enforce compliance, the IRS will impose harsh penalties for failing to complete the forms. The fines in 2016 are as follows:

- The penalty for failing to file an information return will be \$250 for each return in 2016, with a calendar year maximum of \$3.0 million;
- The penalty for failure to provide a correct payee statement will also be \$250 for each return in 2016, with a calendar year maximum of \$3.0 million; and
- Special rules apply that increase per-statement and total penalties if an employer intentionally disregards the requirement to furnish a payee statement.

Now is the Time to Act

These penalties are not going away so implementing a good system of reporting now will be a worthy investment that will continue to pay off down the road. If you do not currently have a plan to gather the required employee data and complete Forms 1094 and 1095, we highly recommend that you formulate one now. If you use a payroll service provider, ensure that they are collecting all necessary data and will be able to assist you with these forms. Should you have any additional questions, don't hesitate to contact a professional at UHY LLP for assistance.

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