



THE “AFFORDABLE CARE ACT (ACA)” OVERVIEW

Last week, we sent out a FLEXNews on the various taxes under ACA that will ultimately affect everyone’s premiums down the road. In this newsletter, we are going to focus on the guts of the ACA and the main issues affecting each employer. Please keep in mind, that most of what is written below, is based on proposed regulations, which are changing frequently. Keep in mind that this information is based on our current understanding of the intent of those regulations.

OVERVIEW OF THE LAW

ACA requires that effective January 1, 2015 (moved back a year), employers with more than 50 employees must offer healthcare to all full-time employees. To determine the number of employees you have, you must include all full-time employees, which are employees that work over 30 hours. Plus you must add employees that are considered full-time equivalents. Full-time equivalents are determined by combining the hours of all part-time employees, as described below:

To determine full-time equivalents, you must look at all part-time employees total weekly hours worked (including paid time off – vacation, sick and holiday pay hours) combined. Then you will divide that weekly number by 30. Here is an example:

If you have 3 part-time employees (Joe, Suzie & Simon), and you determine that their weekly average work hours were as follows:

Joe – 18 hours

Suzie – 11 hours

Simon – 19 hours

Total = 48 hours

You then divide the total hours worked by 30 hours, which in this example would be 1.6 (48 hours/30 hours). Rounding up the 1.6 to 2, you would have to add 2 additional employees, to your current number of full-time employees. If that brings your total over the 50 employee mark, then you must offer all full-time employees health coverage.

If you have more than 50 employees you then have to decide if you want to play or pay. Play meaning; you will comply with all the laws and provide healthcare to all your full-time employees. Pay meaning; that you are willing to pay the fine for not providing coverage. To determine the fine, you take total number of eligible employees and subtract 30. You would

pay a fine of \$2,000 per employee, per year. So if you have 70 employees, you would pay a fine for 40 employees (70 – 30), which would be \$80,000.

IF YOU ARE PLAYING

1. You must offer coverage to 95% of your employees - If audited; you must be able to prove that you offered it to 95% of your employees. So if an employee declines the coverage, you must be able to prove it was offered. So it would be recommended that you get a declination from an employee who declines coverage.
2. It must be affordable - The cost to the employee cannot exceed 9.5% of house hold income. Because that is hard to determine, the IRS offers a safe harbor test, which allows you to just look at the employees W-2 wages. If the employees cost does not exceed 9.5% of the employees W-2 wages, then you pass the affordability test.
3. Minimum Essential Coverage – It must provide minimal prescribed coverage levels for the following 10 categories of benefits:
 - Ambulatory patient services
 - Emergency services
 - Hospitalization
 - Maternity and newborn care
 - Mental health and substance abuse disorder services
 - Prescription drugs
 - Rehabilitative and habilitative services and devices
 - Laboratory services
 - Preventive and wellness services and chronic disease management
 - Pediatric services, including oral and vision care
4. Must be cost effective – 60% of the cost of the policy, must be available to be paid out in benefits. This is really out of the employer’s hands. The insurer must provide a rebate to the consumer, if they do not comply with this requirement.

WHO YOU HAVE TO COVER

You must offer coverage to all full-time employees that work 30 or more hours a week. Here is where it gets tricky. If you have part-time employees, you must determine if they are working more, or less, than 30 hours per week. Because this is sometimes hard to determine, we are given another safe harbor test. Keep in mind that these are proposed regulations and change often. Here is how this test works, as we know it today:

The look back involves a measurement period that can last between 3 and 12 months. The employee must be working the full length of the look back period. In other words, if you were looking at teachers, you could not count the summer months that they are not working, you would have to look at their academic teaching months.

To facilitate this, we would recommend that you begin tracking all part-time employees January 1, 2014, so that you will have the data for 2015, when the determination must be made, and coverage must be offered.

If during the look back period that you choose, it is determined that the employee is averaging working 30 hours or more, then you must offer them coverage going forward, for the same period (stability period) as the look back period. So if your look back period was for 3 months, then you must offer coverage for 3 months, even if their hours dip below the 30-hour per week threshold during the coverage period. On the other hand, employees found to be working less than 30 hours during the measurement period, will be considered part-time and you are not required to offer them coverage, even if their hours increase past the 30 hour per week threshold, during the forward 3 months. The stability period would last the same length as the measurement period.

New Employees

Employees that you hire that are expected to work full-time for a limited duration, or whose hours cannot be determined in advance to be full-time or part-time, are considered variable hour employees. The proposed regulations allow for a 3 month administrative period, before that worker must be offered health insurance. That gives you time to determine their full or part-time status. This would apply to most staffing firm employees.

These regulations have a lot of effect on each of you and bring up all sorts of issues; Substitute teachers, student workers and other part-time workers. For instance, if you are a University that has student workers, and you want to avoid offering them healthcare, then you are going to have to set policy on the number of hours and the number of jobs you allow them to work. It will require that you develop a very thorough tracking process, so that you can determine and prove why coverage was not required, if audited. The fines are very steep if you fail to follow the regulations, so it will be imperative that you manage and monitor those employees carefully.

As we have mentioned in the past, it is always recommended that you seek legal advice to ensure that you are in compliance. This information is intended to help you better understand the issues and should not be considered legal advice.