Three Healthcare Questions For Construction Industry Employers

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The Obama administration?s one-year delay in the employer health insurance mandate was welcome relief for many employers. But, time is still running short. Employers need to plan for compliance now.

Beginning January 1, 2015, employers that do not offer adequate health coverage to full time employees may face penalties under the Patient Protection and Affordable Care Act (the ?ACA?). ?Applicable large employers? that do not offer health coverage will owe a monthly penalty of $167 for each of their full-time employees in excess of 30 if one full-time employee purchases federally subsidized coverage through an ?Exchange.? If an applicable large employer offers coverage, but the coverage does not provide ?minimum value? or is ?unaffordable,? the employer will owe a monthly penalty of $250 for each full-time employee who purchases federally subsidized coverage through an Exchange. Although the mandate is not effective until 2015, whether an employer must comply and which employees must be offered coverage will be determined by 2014 payroll.

As the implementation date for the so-called ?play or pay? rules approaches, construction industry employers face three fundamental questions:

- Is the employer an ?applicable large employer? subject to the play or pay rules?
- Does the employer?s plan comply with the ACA?
- Which employees must be offered coverage?

Is The Employer an Applicable Large Employer?

The play or pay rules apply to ?applicable large employers?: employers that employed on average at least 50 full time employees (including full-time equivalent employees) in the previous calendar year. This means that the number of employees employed in 2014 will determine whether an employer is an ?applicable large employer? in 2015.

To determine ?applicable large employer? status, an employer calculates the number of full-time employees and full-time equivalent employees for each month in the preceding calendar year, adds the totals for each month, and divides the sum by twelve. If the result is 50 or more, the employer is an ?applicable large employer.?

A full-time employee under the ACA is an employee who works at least 30 hours per week. The full-time equivalent employee number for a month is determined by aggregating all of the hours worked by non-full-time employees (up to 120 hours per employee) and dividing by 120.

If, as is often the case in the construction industry, the number of full time employees spikes above 50 only during a portion of the year, the employer may avoid ?applicable large employer? status. An employer will not be subject to the play or pay rules if the only reason the employer?s average number of full-time employees exceeds 50 is the employment of seasonal workers for no more than four months.

For example, suppose a construction company employed 40 full-time employees every month of the year and employed an additional 80 seasonal employees in June, July, August, and September. The company?s average number of full-time employees for the year would be 66.5 (40 full-time employees for eight months and 120 full-time employees for four months). Disregarding the seasonal workers, however, the company?s average number of full-time employees would be 40. Because the company exceeded 50 employees per month for only four months and the company?s average number of full-time employees for the year exceeded 50 solely due to seasonal workers, the company would not be an ?applicable large employer? subject to the play or pay rules.

Again, because ?applicable large employer? status is determined by looking back to the prior calendar year, *next year?s payroll* will determine whether employers are subject to the play or pay rules in 2015.

Does the Employer?s Plan Comply with the ACA?

To avoid penalties, an applicable large employer must offer affordable, minimum value health coverage to at least 95 percent of its full-time employees.

Coverage is ?affordable? for an employee if the premium charged to the employee does not exceed 9.5 percent of the employee?s household income. Proposed regulations allow employers to use several safe harbors to determine affordability. Affordability may be measured based on wages reported on Form W-2, on the employee?s hourly rate of pay as of the beginning of the plan year, or on the federal poverty line.

For example, suppose an employee?s Box 1 wages on Form W-2 for 2014 are $24,000 and the employee was required to pay $100 per month to purchase health insurance. The health coverage would be ?affordable? because $1,200 ($100 x 12 months) is only 5% of $24,000.

A plan meets the minimum value test if it covers, on an aggregate basis, at least 60 percent of benefit costs. The Department of Health and Human Services has created a calculator for determining minimum value. The minimum value calculator is available online at http://cciio.cms.gov/resources/regulations/

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Which Employees Must be Offered Coverage?

Beginning in 2014, ?applicable large employers? are required to provide coverage to full-time employees every month or face potential penalties. Accordingly, an employer must identify which employees are full-time employees who must be offered coverage. There are two options for doing this: (1) month by month; and (2) look-back measurement method safe harbor.

Month-By-Month Method. Under the month-by-month method, every month the employer would need to determine whether any employees are anticipated to move from part-time to full-time status in the next month and offer coverage to any new full-time employees.

Look-Back Measurement Method Safe Harbor. Another approach is the look-back measurement method safe harbor. Recognizing that employers will likely have difficulty identifying full-time employees on a month-by-month basis, especially where employees work variable hours, the Internal Revenue Service provided the look-back measurement safe harbor. Under this method, an employer uses a look-back period of 3 to 12 months to identify which employees worked 30 hours per week on average. Those employees are then locked in as full-time or non-full-time during the related going-forward stability period of up to 12 months. An employee identified as non-full time during the look back period may then be treated as non-full time during the entire stability period even if he or she actually works more than 29 hours per week during the stability period. Similarly, an employee identified as full-time during the look-back measurement period must be treated as a full-time employee and offered coverage during the entire stability period even if his or her hours drop below 30 per week. The look-back method provides certainty and eliminates the need to do a month-by-month determination.

The play or pay rules are fast approaching. Next year?s payroll will have a significant impact on 2015 compliance obligations. Construction industry employers need to develop a plan for dealing with the play or pay requirements now.

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