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White Paper

Large Employers and the ACA: Staying Sane and Avoiding Fines

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Executive Summary

The IRS has not yet begun collecting fines from employers who fail to comply with Affordable Care Act (ACA) regulations, but they will. With $8 billion in potential fine revenue for tax year 2015 and nearly $140 billion between now and 2024, the IRS simply cannot afford not to collect.

And, while the 2016 election certainly cast a shadow of uncertainty over the future of ACA, most industry experts agree that even if sweeping legislative changes are made quickly, they cannot be implemented for some time.[i] This means that for now, ACA is the law of the land and if you don't abide by it, the financial consequences will be severe.

Your problem as your firm's ACA manager is two-fold: the legislation is some of the most complex and integrated the country has ever known and your management responsibilities are extensive. Determining eligibility, calculating affordability, estimating liability, and reporting your findings to your employees and the IRS are all your legal responsibility—and all must be undertaken in a fluid environment where employees come and go and schedules change from month to month. In short, compliance is a recipe for long, stressful days at best and painful fines at worst.

Background

Although the IRS is not yet assessing and collecting fines from employers for failing to comply ACA regulations, rest assured that they will. The Congressional Budget Office (CBO) estimates that employer shared responsibility penalties will produce $8 billion in revenue for the 2015 tax year. From 2016 through 2024, the CBO estimates that penalty payments will total $139 billion.[ii] Regardless of the administration in charge, this is revenue the IRS will not leave on the table.

***So** Much ACA Jargon*

***ALE** – Applicable Large Employee*
***Exchange** – Health Insurance Marketplace*
***Subsidy** – Advance premium tax credit*
***MEC** – Minimum Essential Credit*
***MV** – Minimum Value*

Further, while there has been significant speculation about how the results of the election will impact ACA, the regulations are still in place; making any significant changes before the extended March 2, 2017 deadline to furnish 1095-Cs to employees and enrolled individuals would therefore be a real challenge. Repealing ACA outright would require a very detailed replacement plan to ensure millions of Americans do not lose healthcare coverage through the Health Insurance Marketplace (also known as the Exchange).[iii] To date, no such plan has been outlined, and employers are still required to comply with the Employer Shared Responsibility and Information Reporting requirements. If they fail to comply, substantial penalties will be applied.

Challenges

The Affordable Care Act presents many unique and complex challenges for employers. The regulations are vast and can be extremely technical. Is your current ACA management solution equipped to deal with all the intricacies? Are you confident you are accounting for nuances in the IRS interpretations of ambiguous and seemingly contradictory language? Considering how much money is at stake, are you willing to take the risk? Below are a few examples of some major pain points you may experience without dedicated help.

Controlled Groups

The IRS provides that certain employers are so related that they should be treated as a single employer (a Controlled Group) in certain circumstances, such as determining whether an employer is an ALE subject to section 4980H responsibility as well as identifying full-time employees who work for multiple employers in the same Controlled Group. Are you prepared to handle the ongoing maintenance and mapping of Controlled Groups and FEINs as well as how they affect ACA employee categories?

Data Collection

So, you want to track eligibility for 2016 using the Lookback method. How much historical payroll data do you really need? Are you going back far enough in time to account for all the measurement periods, administration periods, and breaks in service that determine how employees must be treated for stability periods in 2016?

COBRA Coverage

The instructions for Forms 1094-C and 1095-C lay out very specific instructions for how to report offers of COBRA and similar continuation coverage, and these instructions can vastly differ from how to report ordinary offers of coverage. Also, the manner of reporting varies between ongoing employees, former employees, and individuals who were never employed during the tax year. Can your current solution keep track of all the differences and generate the appropriate indicator codes?

Are You Prepared?

- *Maintaining and mapping Controlled Groups and FEINs is confusing and time-consuming.*
- *Reporting COBRA offers is very different from regular offers.*
- *Three different methods for determining affordability are available, and their calculations can vary from month to month.*

Affordability

Calculating whether or not offers of coverage are affordable is hardly cut and dried. There are three different affordability safe harbors, and they can be used for different groups of employees based on bona fide business criteria. Further, each safe harbor has its own specific rules for determining whether an offer was affordable, and calculations may vary from month to month. Is your solution agile enough to properly assess whether or not an offer was affordable under each safe harbor? Can it then leverage that data and allow you to assign particular safe harbors to different groups of employees?

With all of these requirements for you to remain compliant, it's nearly inevitable that some crucial element will fall through the cracks. Until now, the IRS has been lenient regarding compliance, but moving forward, if any requirement goes unmet, the only possible result is a fine.

Penalties

ACA regulations require each Applicable Large Employer (ALE) to offer qualifying coverage to full-time employees and to report information about offers of coverage to employees, enrolled individuals, and the IRS. Failure to comply with these requirements can result in the assessment of fines.

Section 49080H Employer Shared Responsibility (Play or Pay) ***Every ALE must offer its full-time employees Mimimum Essential Coverage (MEC) that is affordable and provides Minimum Value (MV)***			
Section	**Requirement**	**Fine Description**	**Fine by the Numbers**
4980H(a)	Each ALE must offer MEC to at least 95% of its full-time employees	A penalty multipled by the entire full-time employee population	Per each non-compliant month: $180 X number of full-time employees – the employer's proportionate share of 30 If no full-time employees were offered MEC for the entire year, the employer owes **$2,160 X number of full-time employees** **Example**: For Company A with 50 eligible employees each month, the fine = **$108,000**
4980H(b)	Each ALE must offer MEC that is affordable and provides MV to 100% of its full-time employee	A penalty multipled by the number of full-time employees who did not receive such an offer AND received a subsidy from the Exchange	Per each non-compliant month: $270 X number of full-time employees who received a subsidy If no full-time employees were offered MEC for the entire year that provides MV and affordability, the employer could owe **$3,240 X number of full-time employees who received a subsidy** **Example**: For Company B with 50 eligible employees who received a subsidy for each month, the fine = as much as **$162,000**
The amounts of these fines are adjusted every year for inflation, and they will continue to increase! Penalties are assessed on a monthly basis.			

Section 6055 and 6056 (Requirements to Furnish and File) ***Every provider of MEC (6055) and every ALE (6056) must report coverage information for full-time employees as well as individuals who enroll in coverage. File information must be provided to enrollees and the IRS.***			
6721	File a correct information return	Amounts can be reduced if failures are corrected by a set time	Less than 30 days late = $50 ($532,000 max) 31 days late – 8/1 = $100 ($1,596,500 max) Not corrected by 8/1 = $260 ($3,193,000 max) Intentional disregard = $530 (no max)
6722	Furnish a correct payee statement	Amounts can be reduced if failures are corrected by a set time	
No cap applies when an employer intentionally disregards the requirements of sections 6055 and 6056. For 2016 statements (reported in 2017), the above penalty amounts apply to large businesses (those with gross receipts of more than $5 million and governmental entities).			

Now What?

With the new administration's healthcare policy very much an unknown, it is important to focus on what we do know before building (or maintaining) an ACA management strategy. What we know:

- ACA legislation is complicated.
- Managing your compliance efforts is time-consuming and fraught with room for error.
- Errors (and omissions) will cost your company a lot of money.

So, while pitfalls abound, there are definitely ways to mitigate your exposure or, if done right, eliminate your compliance risks–and resulting fines—altogether. Among other great tips, Rachel Stevens, Director of Benefits and Compensation at Staffmark suggests the following ways to make IRS filing (if not a breeze, at least) not a chore:[iv]

- Stay on top of compliance reviews year-round, not just during filing season.
- Make sure your data is clean and correct.
- Integrate your technology and your tools to maintain data, facilitate reviews, and furnish all required paperwork electronically.
- Automate wherever possible.

[i] Kapur, S. (December 29, 2016). "GOP Readies Swift Obamacare Repeal With No Replacement Ready." www.bloomberg.com
[ii] *The Budget and Economic Outlook: 2015*, p12, Congressional Budget Office
[iii] Bade, R. and Everett, B. (December 1, 2016). "GOP may delay Obamacare replacement for years." www.politico.com
[iv] Stevens, R. (July 13, 2016). "ACA Best Practices from a Happy Survivor." insight.equifax.com