

Affordable Care Act Compliance Checklist for Employers

NOTICES AND DISCLOSURES

W-2 Reporting. Employers must report the cost of healthcare coverage under employer-sponsored group health plans on IRS Form W-2, *Wage and Tax Statement*. In general, the amount reported should include both the portion paid by the employer and the portion paid by the employee. Employers who filed fewer than 250 Forms W-2 the previous year do not need to comply.

IRS Information Returns. Applicable large employers (ALEs), generally those with 50 or more full-time equivalent employees, must report information about the healthcare coverage they offer to full-time employees using IRS Forms 1094-C and 1095-C. The forms are filed with the IRS and Form 1095-C is provided to full-time employees. See below, under Employer Mandate, for aggregation rules.

Marketplace Notices. Employers may receive notices from the Health Insurance Marketplace if one of their employees received subsidized healthcare coverage at the Marketplace. Employers will need to evaluate the notices and determine the appropriate response, if any. Should they so choose, employers have 90 days to appeal the Marketplace's decision. An employer, particularly one who offers affordable, minimum value coverage, is well-served in taking action on these Marketplace notices to avoid downstream correspondence with the IRS.

FLSA Notices. Although there are no penalties for failure to comply, employers covered by the Fair Labor Standards Act (FLSA) should provide written notice to its employees about the Health Insurance Marketplace.

Group Health Plans. Employers offering a group health plan should ensure that the Summary of Benefits and Coverage (SBC), a document designed to plainly inform individuals of their healthcare choices, is being distributed at the prescribed times and format. Modifications to the plan not reflected in the SBC may require 60 days advance notice to participating individuals. Employers should also review and update the summary plan descriptions (SPD) for their group health plan to ensure that they reflect Affordable Care Act (ACA) compliance.

Notice of Grandfathered Status. Employers sponsoring "grandfathered" group health plans, which are exempt from some ACA requirements, must include a Notice of Grandfathered Status in certain plan materials distributed to participants and beneficiaries.

COMPLIANCE AREAS

Group Health Plans. Employers offering group health plans should ensure that the plans are in compliance with various provisions added by the ACA. This includes extending dependent coverage until age 26, the prohibition of preexisting condition exclusions, a prohibition on waiting periods of more than 90 days, and a ban on lifetime and annual limits on coverage for most benefits. There also may be additional requirements such as providing certain preventative services without cost sharing. Employers

should ensure that there is a written plan document or a "wrap" plan document containing terms of the plan and reflecting compliance with the ACA.

Employer Mandate. ALEs may owe a tax if they fail to offer affordable healthcare coverage that provides minimum value to at least 95 percent of their full-time employees and their dependents. For purposes of the IRS information returns and the employer mandate, when determining whether an employer is an ALE, consideration needs to be given to whether the employer must be aggregated with another company to establish the total number of full-time employees as 50 or more. Companies with a common owner or that are otherwise related (e.g., brother-sister group) are generally combined and treated as a single employer for determining status as an ALE. Small employers with a workforce close to the 50-employee threshold, with a substantial number of part-time employees and/or those recently involved in a corporate transaction should closely monitor their status as a non-ALE.

Health Flexible Spending Account (FSA). Employers must limit their employees' pre-tax salary reductions for 2016 to \$2,550. Section 125 plans, or cafeteria plans, including FSAs, also must meet several conditions – for example, they must be established under a written plan instrument and pass nondiscrimination tests to ensure they do not discriminate in favor of certain employees.

Employer payment plans, cash in lieu of group health plans, and health reimbursement arrangements (HRAs). Careful consideration is required when implementing such programs, as there is heightened scrutiny surrounding such arrangements.

Grandfathered Plans. Employers sponsoring "grandfathered" group health plans must determine on an annual basis whether they are still entitled to this exemption. Certain changes in the plan's design and/or pricing can cause the plan to lose its "grandfathered" status.

SELF-INSURED EMPLOYERS

PCORI. All employers that have a self-insured group health plan are required to pay an annual Patient-Centered Outcomes Research Institute (PCORI) fee that is reported on IRS Form 720. This fee is not tax deductible for employers. Insurance companies are responsible for reporting and paying the fee for fully insured group health plans.

IRS Information Returns. All employers who have self-insured healthcare, regardless of how many individuals they employ, must report information about the individuals they covered using IRS Forms 1094-B and 1095-B. The forms are filed with the IRS and Form 1095-B is provided to covered individuals. (Note: When the employer is an applicable large employer, described above, employers should use 1094-C and 1095-C.)

This compliance checklist is not intended to be exhaustive and it should not be considered legal advice.