EMPLOYEE BENEFITS

REFRESHER COURSE ON AFFORDABLE CARE ACT INDIVIDUAL AND EMPLOYER PENALTIES FOR NOT HAVING HEALTH INSURANCE

by Roberta P. Granadier

Even though penalties for failure to comply with Affordable Care Act (ACA) coverage requirements have been in force since January 1, 2014 for employers with 100 or more full-time equivalent employees and January 1, 2015 for employers with 50-99 full-time equivalent employees, there is still a good deal of confusion surrounding the employer and the individual mandates.

Employer Coverage Requirements

Employers with 50 or more full-time equivalent employees, referred to as Applicable Large Employers (ALEs), are required to offer full-time employees and their dependents a minimum level of health insurance coverage at an affordable price. ACA contains special definitions of full-time and full-time equivalent employees, as well as what satisfies minimum value coverage and how much an employee can be charged for coverage under the affordability test. Qualifying coverage under ACA rules is called Minimum Essential Coverage.

What happens if an Applicable Large Employer does not meet ACA coverage and affordability requirements?

ALEs face two penalties for failing to meet coverage and affordability requirements:

1. If an employer does not offer Minimum Essential Coverage to at least 95 percent of its full-time employees, the penalty is $2,000 ($2,160 in 2016) per full-time employee. All full-time employees of the ALE are included in calculating the penalty.

2. If an employer offers coverage which is either not affordable or does not provide minimum value, the penalty is $3,000 ($3,240 in 2016) for each full-time employee:

   (a) who is not offered ACA-compliant coverage from the employer;

   (b) who purchases a qualified health plan on the Marketplace, and

   (c) who receives a premium tax credit (e.g., receives Health Insurance Marketplace coverage at a reduced cost). Premium subsidies are calculated based on individual household income under federal poverty guidelines which are updated each year.

Although the rules seem straightforward, their application continues to cause confusion. For example, even if an employer offers Minimum Essential Coverage to 95 percent of its full-time employees, so that it is exempt from the $2,000 per full-time employee penalty, the employer still has exposure to the $3,000 penalty if one or more of the remaining 5 percent of its full-time workforce receives a premium tax credit for purchasing health insurance on the Marketplace. Some employers may assume this risk depending on the number, age and salary level of full-time employees who are not offered ACA-compliant coverage. In addition, a full-time employee who does not receive an offer of Minimum Essential Coverage must receive IRS Form 1095C, which is also filed with the IRS. IRS Form 1095C will indicate that the employee was full-time but did not receive an offer of ACA-compliant coverage. Employees who do receive an offer of ACA-compliant coverage are not eligible for a premium tax credit on the Health Insurance Marketplace.

Individual Coverage Requirements

ACA also requires individuals to maintain qualifying health insurance coverage throughout the year or pay a fee.

"Qualifying health insurance coverage" means ACA-compliant coverage provided by an employer, government-sponsored coverage, coverage purchased on Marketplace or Minimum Essential Coverage purchased directly from an insurance company. Qualifying coverage does not include insurance with limited benefits such as dental, vision or specified disease insurance (e.g., cancer treatment expenses only).

Policies that do not comply with ACA rules are gaining popularity because they cost a fraction of the cost of more comprehensive policies. These policies are usually short-term policies and exclude pre-existing conditions, a restriction which is prohibited by ACA. The less expensive, short-term policies were initially marketed to provide gap coverage but many individuals, especially the young and healthy, are buying these policies instead of purchasing employer-provided coverage or coverage on the Health Insurance Marketplace. However, what many people do not understand is that unless they have qualifying coverage under ACA, they will owe a fee, known as the Individual Shared Responsibility Payment, unless an exemption applies.

The Individual Shared Responsibility Payment is either a flat payment or a percentage of the individual's income, whichever is greater. The fee for not having ACA coverage in 2016 is the greater of:

1. 2.5 percent of household income; or
   2016 Maximum Amount: Yearly premium for national average price of Bronze plan on the Health Insurance Marketplace

2. $695 per adult plus
   $347.50 per child under age 18;
   2016 Maximum Amount: $2,085

Certain exemptions from the Individual Shared Responsibility Fee apply for hardships, some life events and certain short-term gaps in coverage (less than three consecutive months). Individuals who have no affordable coverage options because the minimum cost for annual premiums exceeds 8 percent of their household income are also exempt from the Individual Shared Responsibility Payment.

If an employer offers non-ACA compliant health insurance to employees <u>who are not</u> full-time employees, the employer is not subject to ACA penalties, but the employee may still owe a penalty for not having Minimum Essential Coverage unless an exemption applies. Employers should make sure any policies or communications contain appropriate disclaimers that such coverage does not satisfy ACA requirements and that employees understand what coverage they are purchasing and receiving.

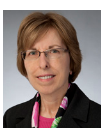
Please contact the author of this Alert or any member of the Dickinson Wright employee benefits practice team if you have any questions about the Affordable Care Act.

This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of employee benefits law. The foregoing content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions relating to any of the topics covered.

FOR MORE INFORMATION CONTACT:

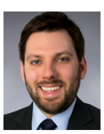
Roberta P. Granadier is Of Counsel in Dickinson Wright's Troy office. She can be reached at 248.433.7552 or rgranadier@dickinsonwright.com.

Cynthia A. Moore is a member and practice department manager in Dickinson Wright's Troy office. She can be reached at 248.433.7295 or cmoore@dickinsonwright.com.



Deborah L. Grace is a member in Dickinson Wright's Troy office. She can be reached at 248.433.7217 or dgrace@dickinsonwright.com.

Jordan Schreier is a member in Dickinson Wright's Ann Arbor office. He can be reached at 734.623.1945 or jschreier@dickinsonwright.com.



Eric W. Gregory is an associate in Dickinson Wright's Troy office. He can be reached at 248.433.7669 or egregory@dickinsonwright.com.