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The Affordable Care Act's Employer Mandate

On January 1, 2014, the Indidivual Mandate and the Employer Mandate of the Patient Protection and Affordable Care Act (a.k.a. Obamacare) will go active. In plain English – on January 1, 2014, federal law will require most people in the United States to have health insurance, and will mandate that many of their employers help them pay for it.

If you work in human resources or benefits or you own or operate a business, the Employer Mandate could have drastic consequences for your business. This memorandum will (i) highlight the parameters of the individual mandate; (ii) provide a brief look at the insurance exchanges being set up at the state and federal level; and (iii) explain how the employer mandate affects companies large and small.

What is the Individual Mandate?

Beginning January 1, 2014 all U.S. residents will be required to maintain health insurance that provides "minimum essential coverage." This will not apply to:

- individuals with a religious conscience exemption;
- incarcerated individuals;
- undocumented aliens;
- individuals who cannot afford coverage (i.e. required contribution exceeds 8% of household income);
- individuals with a coverage gap of less than 3 months;
- individuals in a hardship situation (as defined by the Secretary of Dept. of Health & Human Services (HHS));
- individuals with income below the tax filing threshold; and
- members of Indian tribes.

Source: Affordable Care Act, §§1501 et seq..

The Internal Revenue Service ("IRS") has been tasked with enforcing the Affordable Care Act, and will do so by monitoring individual compliance through income-tax reporting mechanisms. Individuals whom the IRS identifies as non-compliant will be assessed penalties, which will be low in 2014 to accommodate the novelty of the scheme, but will increase dramatically into 2016.

What is an Affordable Insurance Exchange?

In order to facilitate the requirement that every individual have insurance, the Affordable Care Act has entrusted each state with the choice to either accept federal funding for purposes of creating an insurance exchange, or , or rely upon a federal insurance exchange to satisfy this requirement. As of March 8, 2013, 25 states have chosen to set up their own exchange, whereas the other 25 states have chosen not to (http://www.cbpp.org/files/CBPP-Analysis-on-the-Status-of-State-Exchange-Implementation.pdf). Exchanges will provide guaranteed available insurance policies for individuals or for small businesses to provide to their employees.

Critically, the exchanges will provide subsidies to help cover the cost of insurance for individuals and their dependents whose household income places them between 133% and 400% of the federal povery level. To determine what this subsidy will be, the Kaiser Family Foundation provides a great subsidy calculator: (http://healthreform.kff.org/SubsidyCalculator.aspx).

This coverage will come in four forms based strictly on actuarial value of the percentage of health care costs covered by the plan:

Bronze: 60 percent.
Silver: 70 percent.
Gold: 80 percent.
Platinum: 90 percent.

But all plans will be required to provide 100% coverage for certain mandatory items set forth by the Affordable Care Act (such as for preventive care procedures).

Understanding The Employer Mandate

The Employer Mandate, a.k.a. the Employer Shared Responsibility Requirement, requires large employers to provide minimum essential benefits or be penalized. The so-called “Pay or Play” requirement can be broken down into the following steps:.

Step 1: How many employees do you have?

Initially, employers will have to determine whether they are covered by the Affordable Care Act. This is a critical step, and one that is often misinterpreted. The Employer Mandate will only apply to large employers with ***50 or more*** full-time or “full time equivalent” employees. If a company has fewer than 25 employees, the Employer Mandate does not apply. But if that company chooses voluntarily to provide health insurance for its employees, the federal government will provide a Tax CREDIT to the company in the amount of 50% of the premiums paid by the company starting in 2014 (although that amount was reduced for 2013 by the recent sequester).

In order to detemine whether your company has the requisite number of employees, combine your Full Time Employees (FT) with your Full Time Equivalent Employees (FTE): FT + FTE = Employees.

Full Time Employees (FT): employees who work in excess of 30 hours per week or 130 hours per month.

Full Time Equivalent (FTE): <u>total hours worked by all part-time employees in a month, divided by 120.</u>

There are a variety of strategies that can be used to work your business under this formula, but the goal is always to focus on the 50 employee threshold. Remember: fewer than 50 employees means no Employer Mandate.

Step 2: If you are greater than 50, the Employer Mandate may apply

The first question you should ask yourself is - does my company have more than 30 full-time employees (FT)? The Affordable Care act provides a safe harbor for the first 30 full-time employees. So if you can limit your workforce to a maximum of 30 full-time employees (making the remainder part-time (employees who work fewed than 29 hours per week)), the Employer Mandate will not apply . You may have heard of employers changing their workforces to increase the number of part-time employees. Now you know why.

But if you have more than 30 full-time employees,The Employer Mandate applies, leaving just one more question:

Step 3: Play or Pay?

<u>Play:</u>

"Playing" refers to obtaining a group health plan and providing a health insurance option to your employees. But you cannot provide just any old insurance; coverage must be "affordable" and must cover "essential health benefits." The Affordable Care Act outlines 10 categories of "essential benefits" that must be included: outpatient treatments, emergency care, hospitalization, maternity and newborn care, mental health and substance abuse treatment, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventive and wellness services and chronic disease management, and pediatric care, including oral and vision care. This list will probably be expanded and refined by each state's legislature. California, for example, defines "essential benefits" as a combination of the federal requirements, plus the expanded coverage provided by a model Kaiser Permanente plan. To be "affordable" the plan has to be at least "bronze" level, and cannot require employee individual premium contributions in excess of 9.5% of an employee's total income, and this amount decreases depending on how close the employee may be to the federal poverty level. In other words, employers must to look at how much the employee is making for them, how much the employee would have to pay for a bronze package premium, and then cover any amount of the premium greater than 9.5% of the employee's income. This can be difficult, particularly where employee incomes shifts month to month or where employees are working for more than one employer.

Pay:

The other option, which has been gaining traction with increased evaluation, is to simply choose not offer insurance to your employees, or to offer insurance to them at a lower cost to the company that is not "affordable" under the definition set forth above. The Affordable Care Act has a notice requirement by which employers must inform employees of the existence of these insurance exchanges, therefore, under the "Pay" scenario it is likely that the individual employees will seek to achieve their individual mandate by getting insurance at the exchanges. Should they do so, *and receive a subsidy from the government,* the law will levy a tax penalty against the employer as a mechanism for defraying the cost of the subsidy to the government. Thus, there are only two scenarios:

1. No insurance.

   Employers that do not provide insurance will be assessed a tax penaltyequal to ($2000 x #of FT – 30). This amount will be calculated on a monthly basis, so it will actually be a bit more complicated in practice with the above amount being divided by 12 and then added to the total of all of the other months.

2. "Unaffordable" insurance.

   Employers that provide "unaffordable" insurance beneath the "bronze" level will be assessed a tax penalty equal to the *lesser of* the full amount paid above, *or* ($3000 x #FT who get the subsidy). Again this will be calculated on a monthly basis and added together. As you can see, the *lesser* standard is far less draconian.

What Should You Do Now?

This memorandum is intended to provide an overview of the Employer Mandate and how it will apply to different sized companies. There are, of course, details that go beyond the scope of this summary and various tools with which employers can tailor , reduce or eliminate tax penalties. If you have any questions or are interested in bringing in a skilled professional to streamline your company and reduce the burden of the Employer Mandate, please call or e-mail us anytime.

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