New Employer Requirements under the Patient Protection and Affordable Care Act

By Jonathan P. Whiting, CPA, CVA

After this article went to press, the Obama Administration announced that it is postponing for a full year, until 2015, the Patient Protection and Affordable Care Act's mandatory employer and insurer reporting requirements. As a result of not obtaining this reporting information in 2014, the administration also announced that it will waive the imposition of any employer-shared responsibility penalty payments under Code Section 4980H for 2014. This effectively means that employers with more than 50 employees will not be required to provide health insurance to their employees or face a penalty until 2015.

The Patient Protection and Affordable Care Act of 2010 (ACA) requires each state to establish an American Health Benefit Exchange to facilitate the purchase of qualified health plans by qualified individuals beginning Jan. 1, 2014. Open enrollment in the exchange begins Oct. 1, 2013.

Section 1512 of the ACA requires employers to provide written notice to employees informing them 1) of the existence of the exchange and the services it provides, 2) that the employee may be eligible for a premium tax credit or a cost-sharing reduction if the employer's plan does not meet certain requirements, 3) that if the employee purchases coverage through the exchange, they may lose any employer contribution toward the cost of employer-provided coverage, and 4) that all or a portion of the employer contribution to employer-provided coverage may be excludable from income for federal income tax purposes.

Employers are required to provide the notice to each new employee at the time of hiring beginning Oct. 1, 2013, and are required to provide the notice to current employees no later than Oct. 1, 2013.

Technical Release 2013-02 issued by the Department of Labor provides guidance on the notice to employees of coverage options. The guidance and a sample notice may be found on the Department of Labor's website at *www.dol.gov/ebsa/healthreform*.

Beginning in 2014, the ACA subjects large employers to "shared responsibility" rules. Under these rules, an employer who does not offer minimum essential health coverage to its employees (and after 2014, to their dependents) must pay a fee based on the total number of full-time employees, and an employer who does offer minimum essential health coverage must pay a fee based on the number of its employees that have nevertheless enrolled in a health plan with a government subsidy because the employer coverage is unaffordable or does not provide minimum value.

An applicable large employer is defined in Code Section 4980H(c)(2) as an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year. An exemption is available to employers with a workforce that exceeds 50 full-time employees for 120 days or less and the employees in excess of 50 employed during such 120-day period were seasonal workers.

Under proposed regulation 54.4980H-2, an employer's status as an applicable large employer for a calendar year is determined by taking the sum of the total number of full-time employees (including any seasonal workers) for each calendar month in the preceding calendar year and the total number of full-time equivalents (FTEs) (including any seasonal workers) for each calendar month in the preceding calendar year, and dividing by 12. If not a whole number, the result is rounded down to the next lowest whole number. If the result of this calculation is 50 or more, the employer is an applicable large employer for the current calendar year, unless the seasonal worker exception applies.

Code Section 4980H(c)(4)(A) defines a full-time employee, with respect to any month, as an employee who is employed on average at least 30 hours of service per week. In addition, part-time employees must be included in the determination of a FTE. Code Section 4980H(c)(2)(E) and Proposed Regulation 54.4980H-2(c)(2) require that a FTE be determined for such month by dividing the aggregate number of hours of service of employees who are not full-time employees (but not more than 120 hours of service for any employee) for the month by 120.

Commonly controlled employers must be aggregated for purposes of determining whether an employer is an applicable large employer under Code Section 4980H(c)(2)(C)(i).

Under Code Section 4980H, applicable large employers must offer minimum essential health coverage to its employees or make a non-deductible "assessable payment" determined on a monthly basis. There are two tax regimes under these rules, each with different rates and different methods of counting employees:

1) The employer offers minimum essential health coverage to less than 95 percent of its full-time employees (and after 2014 their dependents) or does not offer it at all, in which case the assessable payment is $2,000/12 × (the number of full-time employees for that month minus 30); or

2) The employer offers minimum essential health coverage to at least 95 percent of its full-time employees

(and after 2014, their dependents), but at least one full-time employee receives a premium tax credit because he or she is not offered coverage, or because the coverage is unaffordable or does not provide minimum value, in which case the assessable payment is $3,000/12 × the number of full-time employees for that month certified as having enrolled in a qualified health plan for which a premium tax credit or cost-sharing reduction is paid or allowed.

Part-time employees counted as FTE for purposes of determining an applicable large employer do not count for purposes of determining the shared responsibility payments.

Beginning in 2014, Code Section 6056 requires applicable large employers to report their coverage information to the IRS and furnish a written statement to each full-time employee on or before Jan. 31 of the following year.

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