Is Your Company an Applicable Large Employer?

Examine this ACA requirement and how it applies to your offerings

BY ROBERT S. SHEEN

You have a pretty good idea of the number of people you employ, right? So, what is all the fuss about the Affordable Care Act's requirement that you keep track of how many full-time and "full-time-equivalent" workers are on your payroll?

There are good reasons for you to maintain precise records on your employee headcount and to understand what those numbers mean in terms of your obligations under the ACA. If you have enough workers to be classified as an "Applicable Large Employer," you have specific responsibilities about offering health care coverage to your employees. You also have to comply with reporting obligations that companies with fewer employees simply do not have. The ACA requires an Applicable Large Employer (ALE) to offer health care coverage to its full-time employees as detailed in federal regulations on "Shared Responsibility for Employers Regarding Health Coverage." This coverage must meet the standards outlined in the health care law. If your company fails to do so, it will face significant financial penalties. The law includes requirements for your company to submit certain reports to the IRS and for you to provide specific information to each of your employees about the insurance plans you make available to them. In general, an ALE is a business owner who employed an average of at least 50 full-time employees on business days during the preceding year.

ALE DETERMINATION

Determine whether you are an ALE requires an understanding of certain "employer aggregation rules," as well as what "full time" means for ALE purposes. IRS rules on employer aggregation can determine whether an employer is a member of an ALE. Two or more employers that have parent-subsidiary or brother-sister relationships may be considered a "controlled group" for purposes of determining whether each employer is member of an ALE. Even companies that are not a controlled group may need to be grouped together as "affiliated service groups" by virtue of being part of a "service organization" or part of a "management group."

You must also understand the definition of "full time" for ALE purposes. An ALE is determined by the number of "full-time" and "full-time-equivalent" employees. For ALE purposes, a full-time (FT) employee is someone who is employed an average of at least 30 hours of service per week.

You must also consider what the IRS calls your company's full-time-equivalent (FTE) employees. A company's number of FTE employees is determined in any given month by totaling the number of hours worked by part-time employees and dividing that total by 120.

Another important consideration in determining the ALE status is whether you are correctly classifying workers as independent contractors (1099 recipients rather than W-2 employees). The

An ALE is a business owner who employed an average of at least 50 full-time employees on business days during the preceding year.

ACA requirements pertain to employees—not to independent contractors.

Therefore, for a company to be compliant with the ACA, 1099 workers must be correctly classified as independent contractors. If it is determined that you have misclassified an employee as an independent contractor, this may impact your company's status as an ALE.

Once an employer has identified all of the other entities that make it subject to the employer aggregation rules, and has calculated the number of FTs and FTEs for purposes of the ALE analysis, the employer can then assess the extent of its employer shared responsibility and reporting obligations.

The employer "shared responsibility" requirement obliges an ALE to offer "minimum essential coverage" that is "affordable" and provides "minimum value" to at least 70 percent of employees this year and 95 percent of employees in 2016.

The ACA specifies what constitutes the "minimum essential coverage" that a health insurance plan must offer, meaning the health services covered by the plan, while "minimum value" refers to the portion of health care expenses the plan covers. Whether a plan is "affordable" depends on the employee's income. Minimum value means the health care plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of the costs. Affordability means the cost of the plan borne by the employee is no more than 9.56 percent of the employee's household income.

If an ALE offers health insurance that meets all three criteria, the employer is compliant with the ACA. Failure to meet these criteria can result in penalties.

ALE PENALTIES

There are two types of penalties under the employer shared responsibility obligations. The first, commonly called the "A" penalty, is for failing to offer health care coverage to the employer's FT employees and their dependents. This "A" penalty is calculated based on the total number of FT employees at an annualized rate of $2,080 per employee if at least one such employee obtains a subsidy through a health care exchange. This penalty excludes the first 30 FT employees. The second penalty, the "B" penalty, is for failing to offer coverage that satisfies "minimum value" and/or is not "affordable." The "B" penalty is calculated as $3,120 for each FT employee who is not offered coverage that satisfies minimum value and affordability requirements and who obtains a subsidy through a health care exchange.

Once an employer determines that it is an ALE and determines the number of full-time employees to which coverage must be offered, the employer can then

An employer who chooses to offer insurance must carefully document the offers of coverage it makes to its employees.

calculate the cost for offering such coverage and compare that with the cost of failing to do so. This analysis is commonly referred to as the "pay or play" analysis.

An employer who chooses to offer insurance must carefully document the offers of coverage it makes to employees. The IRS has not issued formal guidance on how to adequately document the offers of coverage. In the absence of formal guidance, the employer should consider what would be reasonable under the circumstances. If the employer has a Section 125 or "cafeteria" plan in place, which would be necessary if pre-tax dollars are used to pay for employee's share of the health care premiums, the employer should coordinate its documentation efforts of its offers of coverage with the benefits elections and declination processes under its Section 125 plan.

To access a worksheet to assist you in determining whether your business qualifies as an Applicable Large Employer, visit the ACA Owner's Manual homepage at constructionbusinessowner.com/aca. CBO

This article is the second in a five-part series in which Robert Sheen provides essential information about the Affordable Care Act and what it means for your company's business operations.

Robert S. Sheen is founder and president of First Capitol Consulting Inc., which advises employers nationwide on issues related to the Affordable Care Act. He is also editor-in-chief of The ACA Times *(acatimes.com), an online news and information journal about the law.*