



PPACA GUIDE FOR LARGE EMPLOYER COMPLIANCE

Abstract

The Patient Protection and Affordable Care Act added a variety of requirements that have a direct impact on the operation of a large business. This guide outlines the key PPACA provisions for large employers to use with other compliance efforts.

THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

LARGE EMPLOYER COMPLIANCE GUIDE

The Patient Protection and Affordable Care Act (PPACA) made substantial changes to the healthcare industry. This 2010 law has slowly been implemented and impacts every American in some capacity. For large employers, the PPACA added a variety of requirements that have a direct impact on the operation of a business. Failure to comply with these requirements may result in unnecessary costs, highlighting the need for proper compliance measures. This guide outlines the key provisions in the PPACA for large employers and should be used in conjunction with other compliance efforts. This guide is not intended to cover all aspects of the PPACA or provide specifics on how to comply with the law, but should be used as a guide for determining whether there is a potential deficiency in your company's compliance efforts.

CONTACT US:

If this guide highlights potential deficiencies in your compliance efforts, please contact HVW lawyers for assistance in determining whether there is a deficiency and how to fully comply with the law. HVW lawyers may be contacted at 402-344-4000 or by e-mail at info@hvwlawyers.com.

TABLE OF CONTENTS:

Key Definitions	4
Applicable Large Employer Calculation and Control Groups.....	6
PPACA Requirements for Applicable Large Employers	6
Safe Harbors (Affordable Health Coverage)	8
Communication between Employer and Employee	9
Executive Benefits.....	9
Conclusion	10

I. Key Definitions

a. Applicable Large Employer

The federal government applies specific regulations to an “Applicable Large Employer,” but the first step is determining whether the company is an applicable large employer. Under the regulations, an applicable large employer is any employer that employed an average of 50 or more full time employees during the calendar year. This determination is based upon the definition of “Full Time Employee,” “Employee,” and “Full Time Employee Equivalent.” These definitions are discussed below.

b. Employee

Determining whether an individual is an employee or independent contractor under the PPACA requires a “common law” approach. The definition relies upon, more or less, a test using the totality of the circumstances. Facts that could be weighed is how much direction and control the company maintains over an individual, whether they use their own “tools” or are they provided by the company, and whether they are paid by the job, task, or by salary. Although not one single fact will be outcome determinative of whether an individual is an employee or independent contractor, a combination of factors will be used in the evaluation. Determining whether an individual is an employee or independent contractor directly relates to whether an individual must be counted towards the PPACA standards and be provided health coverage.

c. Full Time Employee

The PPACA only includes full time employees or full time equivalent employees in determining whether an employer is an applicable large employer and subject to the specific laws. A full time employee is any employee that works an average of 30 hours per week or more, or works 130 hours per month. An employer is required to count all the hours an employee is entitled to receive pay, including vacation time taken during the month, in the calculation of hours. When the employee is hourly, the actual hours worked is an acceptable method for calculating whether the employee is full time. For non-hourly employees, using an actual hours worked or a days-worked equivalency method are acceptable. The 30 hour requirement for determining full time employee status is notably different than, and should not be confused with, other mandates within the PPACA.

d. Full Time Employee “Equivalent”

When an employer has non-full time employees, the employer must take additional steps to determine whether these individuals count towards the applicable large employer number. This calculation requires the employer add together all the non-full time employee hours worked for the month and divide that total number by 120. The resulting number is the total number of full time equivalent employees that must be added to the full time employee number to determine whether the employer is an applicable large employer. If, for example, an employer had 4 employees not considered full time, working a combined 260 hours in the previous month, the employer would be required to add 2 full time equivalent employees to the total number of full time employees. (260 divided by 120, rounding down to next whole number). The combined number of full time employees and full time equivalent employees will be used for determining whether the employer is an applicable large employer.

II. Applicable Large Employer Calculation and Control Groups

The calculation for determining whether an employer is an applicable large employer is based upon the preceding calendar year. The employer should determine the number of full time employees and the number full time equivalent employees for each month in the preceding year. Once the employer has the total number for each month of the preceding year, the employer should add those numbers together and divide by 12. If that number is 50 or greater, the PPACA considers the employer an applicable large employer and subject to the various mandates. This determining calculation occurs annually, for each calendar year. If the calculation results in an employer having 50 or more employees, on average, for the prior calendar year, the employer is subject to the applicable large employer mandates.

A company should also be aware of potential aggregation for making the applicable large employer determination. In specific ownership situations, as outlined in Internal Revenue Code (IRC) § 414, the employer will be considered part of a control group or affiliated service group and the two companies will be aggregated to determine whether the employer is an applicable large employer. These requirements are subject to specific and nuanced regulations. Should this be a potential issue, please contact HVW lawyers for further assistance.

III. PPACA Requirements for Applicable Large Employers

a. Pay or Play: Employer Shared Responsibility Provision

The employer shared responsibility provision, otherwise known as the “pay or play” mandate, generally requires the applicable larger employer to offer healthcare coverage to the full time employees or risk a substantial tax penalty under the provisions of IRC §4980H. The large employer must offer minimum essential coverage to at least 95% of the full time employees, otherwise the employer is

subject to the tax penalty. This tax penalty is assessed on a monthly basis and will be due for every month that the employer fails to meet the required standards. This same penalty may be initiated even if the employer offers healthcare coverage when the coverage is either unaffordable or fails to meet minimum essential coverage standards.

b. Minimum Essential Coverage and Minimum Value

“Minimum Value” health plan, as defined in the PPACA, requires a large employer to offer full time employees a plan that meets the 60% actuarial value test. Although extremely simplified, this means, in essence, that the plan must cover 60% of medical expenses for a “standard” population. It is possible for a plan to fail minimum value standards, but meet minimum essential coverage. Minimum essential coverage is a group health plan offered by a large or small employer. In actual application, if the employer fits within the applicable large employer definition and offers health insurance, it is probable that it meets minimum essential coverage, but it may not meet minimum value requirements. The large employer reports the minimum essential coverage and minimum value on the federal income tax return and is subject to a penalty if the plan fails to meet the specified requirements.

c. Affordable Health Coverage

An applicable large employer must offer the full time employees health care coverage that meets the minimum essential coverage, as well as being affordable and provide minimum value, otherwise be subject to penalty under the provisions of IRC § 4980H(b). Affordable coverage that offers minimum value occurs when the health plan offered to the employee, as sponsored by the employer, requires the employee contribute less than 9.5% of household income for a taxable year. This rule has variations based upon whether the employee has an individual plan or family health plan. Due to pay variability and the potential for pay discrepancies through a year, the tax code provides for three safe harbors to avoid potential inadvertent compliance issues. Those safe harbors are discussed in section IV.

Another potential problem for large employers is if an employee applies for a health insurance plan on a state or federal healthcare exchange and receives a premium tax credit. When this happens, the IRS notifies the employer and the employer is subject to a variety of consequences. Most importantly, if this occurs, the employer is treated as offering an unaffordable health plan, but has an opportunity to respond prior to being subject to the applicable penalty.

IV. Safe Harbors (Affordable Health Coverage)

The PPACA offers several safe harbors because of the variations in what could be considered an affordable health plan under the regulations. The following summarize the three safe harbors.

a. W-2 Safe Harbor

The W-2 Safe Harbor allows an employer to use box 1 of the employee's W-2 to calculate whether the health plan is affordable. To qualify, the employer must offer the plan to at least 95% of their full time employees and the employee contribution, as required by the employer, towards the lowest cost available coverage cannot be above 9.5% of the employee's wages, as reported on the W-2. Although the calculation and formula could vary due to job, pay, and employment changes, the principal purpose of the safe harbor remains pertinent.

b. Federal Poverty Line Safe Harbor

Using this safe harbor means that the employer-provided coverage offers a health plan to the employee and the employee's expense for the plan is less than 9.5% of the federal poverty line for a single individual. This safe harbor plan recognizes that some hourly employees will have income low enough to qualify for Medicaid.

c. Rate of Pay Safe Harbor

This safe harbor uses the rate of pay for hourly employees at the beginning of the health plan year, multiplied by 130 hours per month, and determines whether the plan is affordable based upon that calculation. If the monthly cost of the health plan is more than 9.5% of the hourly rate of pay, times 130 hours, than the health plan does not meet the safe harbor. For employers with a large volume of hourly workers, all with similar rates, this could be an attractive option to ensure compliance with PPACA.

V. Communication between Employer and Employee

The employer has communication requirements under the PPACA, as to ensure employees are apprised of their rights and options. Besides the summary of benefits and coverage, the large employer is required to report information about the healthcare plan to the IRS and the IRS will subsequently use that information for determining premium tax credits and administering the employer shared responsibility provisions. This same information must be provided to the employees, which will allow them the opportunity to determine whether they qualify for a premium tax credit or are eligible for group healthcare coverage. The totality of information that must be provided to an employee can be found in Treasury Regulation Section 301.6056-1(f). Should this become an issue, help of counsel will ensure full compliance with the law.

VI. Executive Benefits

a. “Cadillac” Tax

For large employers with executives receiving special benefit packages, the PPACA excise tax for “Cadillac” plans should be considered. This applies to plans that provide excess benefit to individuals, creating unnecessary demand in the

healthcare system. In essence, plans that cost above a certain dollar limit, adjusted annually, will be subject to the 40% excise tax for the amount above the dollar limit threshold. This tax will be implemented for the 2018 year, but should be recognized as a pending regulation.

VII. Conclusion

The PPACA continues to evolve and new regulations are still being issued for applicable large employers. If concern has arisen as a result of this guide, you should contact counsel for specific help, as the regulations per each section of this guide can be dense and numerous. This guide is not intended to be a conclusive or exhaustive list of the issues that could arise under the PPACA for applicable large employers, but it does highlight that key provisions that a large employer should address.

CONTACT US

If this guide highlighted potential deficiencies in your compliance efforts, please contact HVW lawyers for assistance in determining whether there is a deficiency and how to fully comply with the law. HVW lawyers may be contacted at 402.344.4000 or by e-mail at info@hvwlawyers.com.