

Obamacare and You: How to Ensure Your Business Complies

By Maureen E. Carr, Esq.

Like it or not, the federal Patient Protection and Affordable Care Act of 2010 (more commonly known as “Obamacare”) is here to stay, and business should start preparing now to ensure compliance when Obamacare’s health coverage requirements go into effect next year.

Effective January 1, 2014, all employers with 50 or more full-time employees or full-time *equivalent* employees (total of employees working at least 30 hours per week, except for seasonal workers, plus a proportionate number of part-time employees¹) must “play or pay” – meaning that they must offer affordable healthcare plans to all full-time employees or pay a stiff penalty of \$2,000 per year for each full-time employee after the first 30.

The 50-employee threshold is met when an employer had an average of at least 50 full-time employees during the preceding calendar year (for current purposes, 2013), *unless* the workforce exceeded 50 for 120 days or less during that year *or* the workers in excess of 50 were seasonal. Accordingly, employers should take a hard look at their 2013 workforce numbers to evaluate whether “play or pay” will apply to them in 2014.

Employers should be wary of attempting to alter their business structures to avoid the “play or pay” mandate. Businesses with “parent-subsidiary” relationships (where one company owns at least 80% of another company) or “brother-sister” relationships (where five or fewer people control both companies), and “affiliated services groups” (i.e. where one business provides management services for another) may be treated as a single “employer” for Obamacare purposes, meaning that their employees are combined for “play or pay” purposes. These complex regulations draw from tax law and are intended to prevent employers from avoiding Obamacare by artificially dividing their business into “separate” entities.

To comply with Obamacare, employers must provide healthcare plans that are “affordable” (meaning the employer must pay at least 60% of the expenses and employees must not be required to pay more than 9.5% of their family income for coverage) and provide certain “essential health benefits” such as ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance abuse services; prescription drugs; rehabilitative/habilitative services/devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. Obamacare also prohibits pre-existing condition exclusions for children and lifetime/annual limits, and requires dependent care coverage up to age 26.

Employers with more than 200 employees must automatically enroll all employees into healthcare plans offered by the employer. Employees may then opt out of coverage.

¹ For example, if a company has 40 full-time employees who work an average of over 30 hours per week (120 hours per month) and 15 part-time employees who work an average of 24 hours per week (96 hours per month), the 15 part-time employees are *equivalent* to 12 full-time employees (calculation: $15 \times 96 / 120 = 12$), and the employer is considered to have 52 full-time employees for “play or pay” purposes.

Employers with fewer than 50 full-time employees may *elect* to comply with Obamacare's requirements, and complying businesses with 25 or fewer full-time employees who pay average annual wages of \$50,000 or less may be eligible for federal tax credits.

Because various government departments and agencies are in the process of implementing regulations and providing guidance to the public, businesses should carefully monitor the complex, ever-changing landscape that is Obamacare. It is advisable that businesses work closely with their accountants, lawyers, and healthcare insurance providers to ensure compliance with Obamacare.

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