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PREPARING FOR PPACA - A READINESS CHECKLIST

All employers should be taking steps now to be sure they are prepared for the PPACA requirements that take effect later this year and in 2014. While some requirements vary based on employer size, other requirements apply to all employers. The most significant requirements and options for an employer include:

1) All plans that ended between Oct. 1, 2012 and Dec. 31, 2012 must pay the PCORI fee by July 31, 2013

a) Self-funded plans (including HRAs) will report and pay this fee on IRS Form 720. Employers need to complete the introduction, Part II and the signature portion of the form, which can be accessed here: http://www.irs.gov/pub/irs-pdf/f720.pdf. Information on how to complete the form is on pages 8 and 9 of these Instructions: http://www.irs.gov/pub/irs-pdf/i720.pdf.

b) Insurers will report and pay this fee for insured plans (and probably pass the cost back to the plan).

c) Plans with plan years ending Jan. 1 through Sept. 30 will first owe the fee in July 2014.

2) All employers covered by the Fair Labor Standards Act (FLSA) must provide a notice about the new health insurance marketplace (also called the affordable care exchange) by Oct. 1, 2013.

a) Employers must provide this notice even if they do not offer group health benefits.

b) Employers are covered by the FLSA if:

i) They are a governmental entity (state, local, or federal), hospital, long term care facility or educational institution, regardless of size

ii) They are engaged in, or produce goods for, interstate commerce and have at least $500,000 in business volume

c) Employees hired after Oct. 1, 2013 must be given the notice within 14 days after they are hired.

d) The notice can be provided by first class mail. It can be given electronically if the employee routinely uses a computer as part of his job and the notice is either emailed to him or posted on the employer's intranet with an emailed or written notice to the employee that the notice has been posted, its significance, and that a paper copy is available at no cost, with information on how to request the paper copy.

e) The Department of Labor has issued two model notices, one for use by employers who offer coverage to at least some of their employees and one for those who do not offer coverage. The model notices are here:
http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf (for employers that offer coverage)
http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf (for employers that do not offer coverage

Note that for employers that offer coverage, completing page three of the notice is optional.

3) If coverage is offered, regardless of the employer's size and grandfathered status, as of the start of

the 2014 plan year the plan must be updated so that:

a) Pre-existing condition limitations are eliminated

b) Annual dollar limits are eliminated

c) Waiting periods are not longer than 90 days from the date the person meets the plan's eligibility requirements

d) The out-of-pocket maximum for in-network benefits is not more than $6,350 for single coverage and $12,700 for family coverage. Out-of-pocket maximums include deductibles, coinsurance and copays, but not premiums.

In addition, small employers (generally those with fewer than 50 employees) with insured plans will be required to offer coverage for a variety of medical treatments (called the essential health benefits), at a minimum value of 60%, and with premiums that are "community rated."

4) Determine whether employer shared responsibility ("play or pay") requirements apply for 2014.

a) Employers who have 50 or more full-time or full-time equivalent employees must offer coverage or pay penalties. These are considered "large" employers.

b) Whether an employer is "large" is based on its average number of full-time and full-time equivalent employees over the prior calendar year. For most years the full calendar year will be considered, but employers may determine their average employee count over any 6 or more consecutive months in 2013 to determine if the employer is "large" in 2014. This means that employers that are unsure if they are over the 50-employee threshold need to begin counting employees not later than July 1, 2013.

c) An employee is "full-time" if he or she averages 30 or more hours per week. Part time employees' hours are added together for the month and divided by 120 to get the number of "full-time equivalent employees."

d) If an employer is part of a family of companies (a "controlled group") the employees in the entire family are added together to see if the group is "large."

e) Each hour for which an employee is paid (including vacation, holiday pay, etc.) is considered an hour worked.

5) If the employer is large enough for employer shared responsibility requirements to apply, the employer needs to decide how it will determine which of its employees are "full-time" under PPACA.

a) An employer may simply look at the hours an employee works each month, and either offer coverage or pay a penalty for all employees who worked an average of 30 or more hours per week during that month.

b) To make planning easier, an employer may use a lookback method, under which hours worked during a "measurement period" determines whether the employee will be considered full-time during the following "stability period."

i) The measurement period is chosen by the employer. It must be between 3 and 12 months.

ii) The stability period also is chosen by the employer. In most cases, it must be the same length as the measurement period. However, a special shorter measurement period of as few as six months will be allowed for 2014 for calendar year plans and plans with early 2014 plan years that choose to use a 12 month stability period. Employers with calendar year plans that choose to use this lookback method generally will need to begin counting employees' hours not later than July 1, 2013 (and in many instances will want to begin counting before that date. Retroactive counting is allowed.).

iii) The employer may elect an administrative period to give it time to determine which employees should be offered coverage and get them enrolled. The administrative period cannot be more than 90 days.

Note: Employers may find it simplest to use a stability period that is the same as their coverage period and a measurement period that ends shortly before their open enrollment period. So, for instance, a calendar year plan may want to use a measurement period of Oct. 15 - Oct. 14, an administrative period of Oct. 15 - Dec. 31 and a stability period of Jan. 1 - Dec. 31.

6) If the employer is large enough for employer shared responsibility requirements to apply, the employer needs to decide whether it will offer coverage to its full-time employees, or pay penalties instead. (An employee is considered "full-time" if he works an average of 30 hours per week.)

a) If a large employer does not offer "minimum essential" (basic medical) coverage to at least 95% of its full-time employees and their dependent children, the employer will owe a penalty of $166.67 per month ($2,000 per year) on all of its full-time employees.

b) If a large employer does not offer "affordable," "minimum value" coverage to its full-time employees, the employer will owe a penalty of $250 per month ($3,000 per year) for each full-time employee who receives subsidized coverage through a public exchange.

i) Coverage is "affordable" if the employee's cost for single coverage is less than 9.5% of his W-2 (Box 1) income, his rate of pay (hourly rate times an assumed 130 hours per month), or Federal Poverty Level ($11,490 for a single person in most states). The employer may choose which method(s) of determining affordability it prefers.

ii) Coverage is "minimum value" if the actuarial value of the benefit is at least 60%. (Most employer-provided plans already meet this threshold.)

7) If the plan is not a calendar year plan, the employer should decide whether it will allow employees to make mid-year election changes to move from the plan to the exchange/marketplace, and/or to allow employees who declined coverage to enroll as of Jan. 1, 2014 since individuals must have coverage by that date or pay penalties.

a) Making either - or both - of these changes is entirely optional.

b) If the employer decides to allow either or both of these changes, the Section 125 plan must be amended by Dec. 31, 2014. The health plan also will probably need to be amended. An employer considering a mid-year enrollment option may want to get the approval of its insurer or reinsurer before offering this opportunity.

The employer shared responsibility requirements are complicated, and this article simply provides a summary of the main requirements. For additional information, see our FAQ ("The Play or Pay Penalties and Counting Employees Under PPACA").

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