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HR News Alert

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August 2014 Issue

2015 Pay or Play Calculators & Timeline for Compliance

Certain employers must comply with the Affordable Care Act's Employer Shared Responsibility provisions (also known as "Pay or Play") in less than 6 months. HR360's attorney-reviewed, downloadable Pay or Play Toolkit and Calculators can help prepare those subject to the law.

Three Calculators Available
The *Large Employer Status Calculator* can be used to calculate an employer's average number of full-time employees (including full-time equivalent employees or FTEs) to determine whether the employer is subject to Pay or Play for a calendar year.

There are two separate *Penalty Calculators* for 2015 that can be used to calculate the potential amount of a penalty--one for employers with **50 to 99 full-time employees** and one for employers with **100 or more full-time employees**.

Compliance Timeline

- **Employers with 50 to 99 full-time employees** (including FTEs) are subject to Pay or Play, but the requirements will not apply until 2016 for employers who certify that they meet certain eligibility criteria related to workforce size, maintenance of workforce and aggregate hours of service, and maintenance of previously offered health coverage.
- **Employers with 100 or more full-time employees** (including FTEs) are subject to the requirements for 2015 and must offer coverage to at least 70% of full-time employees (and their dependents, unless transition relief applies) to avoid a penalty for failing to offer health coverage, rather than 95% which will begin in 2016. An employer that offers coverage to at least 70% of full-time employees may nevertheless owe a penalty if any full-time employee receives a premium tax credit.

Visit our Pay or Play (Employer Shared Responsibility) section for more information, including an outline of the transition relief available for 2014 and 2015.

IRS Releases Draft Forms for New ACA Information Reporting Requirements

The Internal Revenue Service (IRS) recently released draft forms to help employers prepare for the new information reporting provisions under the Affordable Care Act. Because of transition relief provided for 2014, **reporting entities will not be subject to penalties if they first report beginning in 2016 for 2015**.

ACA Information Reporting
The Affordable Care Act requires insurers, self-insuring employers, and other parties that provide minimum essential health coverage (MEC) to report information on this coverage to the IRS and to covered individuals. Large employers (generally those with **50 or more full-time employees**, including full-time equivalents) are

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also required to report information to the IRS and to their employees about their compliance with the employer shared responsibility provisions ("pay or play") and the health care coverage they have offered. Final rules regarding MEC reporting and large employer reporting are currently available.

Draft Forms
As a general method, large employers will file Form 1094-C (a transmittal) and Form 1095-C (an employee statement). Entities reporting as health insurance issuers or sponsors of self-insured group health plans that are not reporting as large employers will generally report on Form 1094–B and Form 1095–B. The following forms are now available:

- Draft Form 1094-C (transmittal)
- Draft Form 1095-C
- Draft Form 1094-B (transmittal)
- Draft Form 1095-B

The applicable forms will be required to be **electronically filed** only if the reporting entity is required to file **at least 250 of the specific form**.

Draft instructions relating to the forms are expected to be posted to IRS.gov this month, and the IRS intends to finalize both the forms and instructions later this year. For more information on the reporting requirements, click here.

Be sure to check out our ACA by Year & Company Size section for updates on additional requirements related to Health Care Reform.

Updated EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues

The U.S. Equal Employment Opportunity Commission (EEOC) recently issued updated Enforcement Guidance on pregnancy discrimination and other related issues, along with a Q&A document about the guidance and a Fact Sheet for Small Businesses. This is the first comprehensive EEOC update on the subject of discrimination against pregnant workers since 1983.

In addition to addressing the requirements of the Pregnancy Discrimination Act (PDA), which prohibits sex discrimination on the basis of pregnancy, childbirth, or related medical conditions, the guidance discusses the application of the Americans with Disabilities Act (ADA) to individuals who have pregnancy-related disabilities. The updated guidance also discusses:

- The fact that the PDA covers not only current pregnancy, but discrimination based on past pregnancy and a woman's potential to become pregnant;
- The circumstances under which employers may have to provide light duty for pregnant workers;
- Issues related to leave for pregnancy and for medical conditions related to pregnancy;
- When employers may have to provide reasonable accommodations for workers with pregnancy-related impairments under the ADA and the types of accommodations that may be necessary; and
- Best practices for employers to avoid unlawful discrimination against pregnant workers.

Both the PDA and ADA generally apply to employers with **15 or more employees**. Additional protections may be provided under state and local nondiscrimination laws, which may apply to smaller employers.

Visit our section on Discrimination for more information regarding employer obligations under the PDA, ADA, and other federal nondiscrimination laws.

Longevity Annuities Are Now Accessible to 401(k)s and Other Retirement Plans

Final rules were recently issued by the Internal Revenue Service regarding the use of longevity annuity contracts in certain tax-qualified defined contribution plans, including 401(k) and 403(b) plans, individual retirement annuities and accounts (IRAs), and certain other plans. A longevity annuity is an income stream--a type of "deferred income annuity"--that begins at an advanced age and continues throughout an individual's life.

Key Highlights
The final rules expand the permitted longevity annuities in several respects, including by **making them accessible to 401(k)s and other employer-sponsored individual account plans and IRAs**. In addition, the rules:

- **Increase the maximum permitted investment.** Under the final rules, a 401(k) or similar plan, or IRA, may permit plan participants to **use up to 25% of their account balance or (if less) $125,000** to purchase a qualifying longevity annuity without concern about noncompliance with minimum distribution requirements. The dollar limit will be adjusted for cost-of-living increases.
- **Protect individuals against accidental payment of longevity annuity premiums exceeding the limits.** The final rules permit individuals who inadvertently exceed the 25% or $125,000 limits on premium payments to correct the excess without disqualifying the annuity purchase.

The regulations apply to contracts purchased **on or after July 2, 2014**. Click here to review the rules in their entirety.

Visit our section on Retirement Plans to learn more about an employer's responsibilities with respect to employer-sponsored retirement plans.

Supreme Court Ruling & Subsequent Guidance on ACA Contraceptive Mandate

Starting with plan years beginning on or after August 1, 2012, the Affordable Care Act generally requires non-grandfathered group health plans to cover additional women's preventive services, such as contraceptive coverage, without cost-sharing. The contraceptive mandate is subject to exemptions and accommodations for religious employers and certain other non-profit religious organizations.

Supreme Court Ruling
On June 30, 2014, the U.S. Supreme Court ruled that the ACA's requirement to provide certain contraceptive coverage without cost-sharing, as applied to closely held corporations, violates the Religious Freedom Restoration Act (RFRA). **As a result of the ruling, closely held for-profit corporations that object to this requirement based on sincerely held religious beliefs cannot be required to provide such coverage.** The decision did not address the RFRA's applicability to publicly traded corporations.

Subsequent Guidance
Guidance issued on July 17, 2014 from the U.S. Department of Labor states that closely held, for-profit corporations that intend to cease providing health coverage for some or all contraceptive services mid-plan year **will trigger notice requirements to plan participants and beneficiaries** if the plan is subject to the Employee Retirement Income Security Act (ERISA).

According to the guidance, if an ERISA plan excludes all or a subset of contraceptive services from coverage under its group health plan, the **plan's summary plan description (SPD) must describe the extent of the limitation or exclusion of coverage**.

For plans that reduce or eliminate coverage of contraceptive services after having provided such coverage, expedited disclosure requirements apply. The expedited disclosure requirements generally require disclosure **within 60 days** of adoption of a "material reduction in covered services or benefits." Other disclosure requirements may apply under state insurance laws.

To learn more about the requirement to cover recommended preventive services without cost-sharing, visit our section on Preventive Services.

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