

# Get Ready to Pay or Play by January 1, 2015

*By Bill Enck, Senior Manager in BerryDunn's Employee Benefits Audit Group*

## What comes next under the Affordable Care Act?

A year ago at this time, most people in the country watched with curiosity as the federal and state health care exchanges (Marketplaces) prepared to open for the first time. As we now know, the exchanges opened but not without issues.

This year, some employers are waiting anxiously to see if the employer mandate provisions (the "pay or play" penalties) under the Affordable Care Act (ACA) will take effect January 1, 2015, or if they will be delayed once again. At this point, it seems that the January 1, 2015, effective date will remain. This means that certain employers need to be preparing now.

## Who must prepare—and when?

### Large employers

If your organization employs an average of 100 or more full-time (FT) and full-time equivalent (FTE) employees on average during 2014, you will be subject to the employer mandate rules as of January 1, 2015. Employers with fiscal year plans will be subject to the employer mandate on the first day of the plan year that begins in 2015 provided certain requirements are met.

### Mid-sized employers

If your organization employs between 50-99 FT/FTE employees on average during 2014 (i.e., a mid-sized employer), you may be exempt from the employer mandate provisions until at least January 1, 2016, provided certain requirements are met. A mid-sized employer may not knowingly reduce its workforce to meet the exception and it must certify that it meets all of the provisions of the exception.

One of the other requirements specifies that if a mid-sized employer makes any changes to its medical plan between February 9, 2014, and the end of the plan year that begins in 2015 (December 31, 2015, for calendar-year plans), then it may not qualify for the delayed effective date. For example, a mid-sized employer that elected to discontinue employer-sponsored health coverage on April 1, 2014, will be subject to the employer mandate penalties effective January 1, 2015.

## How to determine your company's size status

To determine large employer or mid-sized employer status for 2015, you may use any six-month or longer period in 2014. Thereafter, applicable large employer status will be determined based on the full 12 calendar months of the prior calendar year. The special six-month period that applies for 2014 can really help employers that have seasonal businesses. As an example, a ski resort could elect to determine the average number of FT/FTE employees over the period of

April 1, 2014 to September 30, 2014. For help determining your status, download our ACA decision tool at <http://www.berrydunn.com/resources-detail/aca-decision-tool>

### What must you do to prepare for 2015?

Employers who will be subject to the employer mandate beginning in 2015 must determine if they are offering an affordable medical plan (that also meets minimum value requirements) to employees who are considered full time under the ACA. Failing to offer affordable/minimum value coverage to full-time employees or failing to offer health benefits to enough full-time employees may require you to pay the employer mandate penalties.

Here are the top three areas for most employers to watch:

1. **Covering enough employees**

If you are a large employer, have you determined if you are offering health benefits to at least 70% of the employees who are considered full-time under the ACA standards (i.e., at least 30 hours per week)? NOTE! Beginning in 2016, the 70% threshold increases to 95%.

*Potential penalty:* Equal to \$2,000 per full-time employee

2. **Providing affordable coverage**

Have you determined if the employee cost for single coverage under your health plan is affordable (i.e., the employee pays no more than 9.5% of household income) for all your employees who are considered full time under the ACA standards?

*Potential penalties:* If the cost of single coverage is not considered affordable, then the employer may be subject to a penalty equal to \$3,000 for that employee. Even if an employer is meeting the 70% threshold mentioned above, it may be subject to the \$3,000 penalty for those employees who are not offered affordable health benefits but are considered full time under the ACA rules.

3. **Dealing with seasonal and part-time employees**

If you have a lot of seasonal or part-time employees (e.g., nursing homes, ski resorts), you may want to consider using the optional look-back measurement rules instead of following the normal monthly measurement rules. Under the look-back measurement rules, you can select a certain period of time, referred to as the “measurement period,” during which you will track the hours of your part-time employees (aka “variable-hour employees”) or seasonal employees to determine if they average at least 30 hours of work over the measurement period. The number of hours worked during the measurement period will determine if the employee is considered a full-time employee under the ACA rules, in which case they must be offered coverage during the upcoming “stability period.” The stability period is generally the plan year for the health benefits. An employer with a lot of turnover within its seasonal or variable-hour employee population may also want to consider the optional look-back measurement rules.

If you want to take advantage of the optional look-back measurement period, you must start tracking the hours worked by employees now. We worked with an employer a few months ago who thought his organization was meeting the

affordability standards but then realized they had a class of employees they had not considered while doing the full-time employee and affordability analysis. The optional look-back period may be used by this employer to help determine which seasonal/variable hour employees would be considered full time under the ACA rules. To learn more about how the look-back measurement rules can help mitigate ACA “pay or play” penalties, visit <http://www.berrydunn.com/news-detail/look-back-rules-mitigate-play-or-pay-penalties>

### January 1 is just around the corner

We continue to receive calls from employers that are trying to gain control of the ACA employer mandate rules. These are complicated tax rules that can have adverse tax consequences if you do not do the proper planning. Now is the time to determine if you are meeting the various rules under the ACA’s employer mandate. If you would like help, contact **Bill Enck** or **Roger Prince**.

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