

Healthcare Reform Compliance: Next Steps

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It is impossible to ignore. Healthcare reform is on the minds, agendas and budgets of all employers, and now is the time for employers to review their health programs to address compliance with additional requirements that will become effective in 2014. Below is a list of questions for employers to consider as we prepare for 2014 and beyond.

1. **Are you a large employer?** The so-called “play or pay” penalty applies only to large employers, a term that applies to employers who, on average, employed at least 50 full-time employees and “full-time equivalents” during the preceding calendar year. If your workforce is comprised of seasonal employees, special rules apply.
2. **If you are a large employer, will you offer your full-time employees medical coverage that constitutes “minimum essential coverage” that is both “affordable” and provides “minimum value”?** If the coverage fails to satisfy these conditions, you may be subject to the “play or pay” penalty. Note, effective for plan years beginning in 2015, the employer must also offer minimum essential coverage to the dependent children of its full-time employees (although that coverage need not be affordable nor provide minimum value).
3. **How do you currently classify your part-time employees and how will you determine who is a full-time employee for purposes of the coverage mandate?** For purposes of healthcare reform, a full-time employee is an individual who works at least 30 hours per week, regardless of how the employer classifies its employees for other purposes. Employers who are unable to determine whether an employee will satisfy this threshold can determine the employee’s status based on a lookback period, provided certain conditions are satisfied.
4. **Would any of your full-time employees be eligible to receive a premium credit or cost-sharing reduction if they purchased coverage on a public insurance exchange?** Even if you are a large employer and you fail to offer minimum essential coverage that satisfies the requirements of the law, no penalty is assessed unless you have a full-time employee who purchases insurance on a public exchange and receives a premium tax credit or other cost-sharing reduction.
5. **Have you updated your medical coverage to ensure compliance with the following mandates:**
 - For grandfathered group health plans, the plan may no longer impose an annual limit on essential health benefits;
 - For small insured health plans (insured plans covering fewer than 100 employees), the plan may not have a deductible that exceeds \$2,000 for self-only coverage or \$4,000 for family coverage. Note, for high deductible health plans paired with a health savings account, this requirement is different from, and applies in addition to, the minimum deductible requirement for such plans; and
 - For all group health plans, the plan may not:
 - Impose a waiting period that is longer than 90 days,
 - Apply a pre-existing condition exclusion provision against any enrollee, regardless of age, or
 - Impose an out-of-pocket limit on essential health benefits that exceeds the limit that is in effect for 2014 for high-deductible health plans paired with a health savings account.

Failure to implement these mandates can result in a **\$100/per day excise tax** with respect to each participant affected. Note, also, that these mandates will need to be reflected in the summary plan description for the applicable medical plan.

6. **Do you have a team assigned, processes in place and technology to support your compliance needs?** In addition to ongoing determinations of eligibility and timely enrollment under the medical plan, new reporting requirements will be in effect commencing with the 2014 plan year, which will increase the disclosures employers are required to make to employees and government agencies.

7. **Have you calculated the cost of the reinsurance contributions that will be assessed with respect to your major medical coverage?** The contribution rate for 2014 is \$63 per person receiving major medical coverage and will be

assessed in late 2014.

8. If you offer a wellness program in connection with your medical coverage, have you considered increasing the applicable “reward” provided to your employees? Employers may now apply a discount or impose a surcharge of up to 30% (or 50% with respect to tobacco cessation programs) on the cost of medical coverage if certain conditions are met. Each employer will need to make a thorough assessment of its healthcare programs in light of these pending changes. The process is very detailed and should be addressed by the employer with the advice of legal counsel and with the involvement of the plan’s service providers, such as insurers, brokers and third party administrators.

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