

2014 ACA Updates for Large Employer Groups

South Dakota Association of School Business Officials
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Small or Large Employer?

Benefit Plan and Underwriting

- Mandates **WHAT** you offer
- Based on the number of total employees (State Definition)

Pay-Or-Play Mandate for Large Employers

- Mandates **WHO** you offer to and **HOW MUCH** it costs
- Based on current employees (FT's and FTE's – Federal Definition)

Group Size Matters

WHAT to offer?

SANFORD
HEALTH PLAN

Before we begin...let's talk “GF” and “NGF” Plans

- Grandfathered status is determined by cumulative “material” changes made to copays, deductibles, out-of-pocket maximums or employer contribution since the ACA became effective in March 2010
- Generally Grandfathered groups do not need to implement many aspects of the ACA

Large Grandfathered Employer

State Definition: 50+ Total Employees

- Large Grandfathered groups can renew with current benefits or other grandfathered benefits
- Large Grandfathered Groups need to offer “affordable coverage” under the Play-Or-Pay Mandate

Large Non-Grandfathered Employer

State Definition: 50+ Total Employees

- Upon renewal on or after 10/1/2014, Large NGF Plans must incorporate the following into their benefit design(s):
 - 100% coverage of Preventive Care Benefits
 - Limits on maximum-out-of-pocket cost-sharing
(\$6,350 Individual, \$12,700 Family)
 - Copays will apply to the in-network out-of-pocket maximums
 - Non-Discrimination Requirements (will apply once rules issued)
- Large Grandfathered Groups need to offer “affordable coverage” under the Play-Or-Pay Mandate

Impact on Large Employers

- Large employers do not have to offer essential health benefits
- Large employers do not have to offer metal level plans
- Large employers do not have to follow rating reform rules (i.e. per member rating)
- Large employers are able to continue to experience variety and flexibility of plans offered today
- However, in 2015 and 2016 you must offer “affordable” coverage to all full-time employees

Determining whether you're a Large
Employer or Small Employer for the
purpose of the Play-or-Pay Mandate
(Postponed until 2015 and 2016)

Large or Small Employer Status

First, convert FTEs to FT:

The approach for converting part-time employees to full-time equivalents includes two steps:

Step 1: Calculate the aggregate hours of service in a month for employees who are not full-time employees (include seasonal employees) for that month. Do not include more than 120 hours of service for any employee.

Step 2: Divide the total hours of service from Step 1 by 120

- The result is the number of full-time equivalent employees for the month.

Large or Small Employer Status

Second, add FTs and FTEs to calculate status:

Step 3: Calculate the number of full-time employees (including seasonal employees) for each calendar month in the preceding calendar year.

Step 4: Calculate the number of full-time equivalents (including seasonal employees) for each calendar month in the preceding calendar year

Step 5: Add the number of full-time employees and full-time equivalents obtained in Steps 3 and 4 for each month of the preceding calendar year.

Step 6: Add up the 12 monthly numbers from Step 5 and divide the sum by 12. This is the average number of full-time employees for the preceding calendar year.

If the number obtained in Step 6 is 50+, then the employer is an Applicable Large Employer.

Large or Small Employer Status

- Employers must determine each year, based on current number of employees (FTs+FTEs) whether they will be considered a large group for the next year
 - If employer has at least 50 full-time employees (including full-time equivalents) in 2014, it will be considered a large group in 2015.
 - Employers average their number of employees across months in the year to see if they meet the threshold

Employer Responsibility Rules

Small Employer – Under 50 (FTEs):

- Don't have to offer coverage, but if they do:
 - Grandfathered plans can remain in place until they voluntarily move to ACA-compliant plan or until they make a change that causes them to lose Grandfathered status
 - Non-grandfathered plans are required to offer all the “Essential Health Benefit Designs” and Per-Member rating by Oct. 1, 2017 (transitional policies)
- As a small employer you are not subject to the “play or pay” penalties

Mid-Size Employer – 50-99 (FTEs):

- Subject to “play or pay” penalties in 2016
- Plans offered need to be both affordable and meet minimum essential coverage

Large Employer - 100 + (FTEs):

- Subject to “play or pay” penalties in 2015
- Plans offered need to be both affordable and meet minimum essential coverage



Employer Responsibility Rules

Mid-Size Employers (50-99) must offer “affordable coverage” to all full-time employees in **2016** or pay a penalty

Large Employers (100+) must offer “affordable coverage” to **70%** of full-time employees or pay a penalty in **2015** or pay a penalty.
Increases to 95% of full-time employees in 2016.

What is considered “affordable” coverage?

The employee’s cost for self-only coverage under the lowest cost option plan does not exceed 9.5% of the individual’s income as reported on their W-2, Box 1 (safe harbor) or based on their rate of pay

Large or Small Employer Status

Who is a full-time employee?

- Anyone working, on average, 30 hours/week or 130 hours in a month (includes seasonal workers)
- Excludes leased employees, sole proprietors, partner in partnership, or 2% S-corp shareholder
- For hourly employees – count actual hours worked
- For salaried employees – pick 1 of 3 counting methods
 - Do not pick a method that results in underestimating an employees hours of services
 - You can use different counting methods for different job classifications as long as they are consistently applied

Large or Small Employer Status

For salaried employees – pick 1 of 3 counting methods

1. Count actual hours for which an employee is paid, or entitled to payment, worked and non-worked (i.e. travel time, vacation, illness, disability, layoff, jury duty, military duty, FMLA); or
2. Use a “days-worked” equivalency method – i.e. 8 hours or 10 hours of services for each day employee is entitled to pay; or
3. Use a “weeks-worked” equivalency method – i.e. 40 hours of services for each week employee is entitled to pay.

Large or Small Employer Status

- If an employer exceeded 50 employees for 120 days or less during a year, and if the excess employees during that 120 days were seasonal workers, the employer will not be considered large
- Employers may apply a reasonable, good faith interpretation of “seasonal worker.”

Large or Small Employer Status

- Employers who were small employers in one year and become a large employer the next year will not be penalized if they fail to offer coverage for the first three months of the year that they become large employers if they offer coverage by the fourth month.

You must identify who you must offer coverage to
by counting hours...

Large Employer Status – Counting Hours

Definitions: For shared-responsibility purposes...

- **Full-time employee** is anyone who works on average at least 30 hours per week OR 130 hours per month on average
- **Variable hour employee** means it cannot be determined that the employee is reasonably expected to work an average of 30 hours a week when hired:
 - **Seasonal employee includes** employees who work for 120 days or less during a calendar year.
 - **Part time employees** who work less than 30 hours per week on average

Large Employer Status – Counting Hours

Definitions: For shared-responsibility purposes...

Defined time periods. The safe harbors allow employers to use these time periods to predict whether an employee will qualify as full-time for shared-responsibility purposes:

- **Measurement period.** Employers select a fixed 3- to 12-month measurement period for determining whether an employee has averaged at least 30 hours of service per week.
 - Must begin by at least July 1, 2014.
 - You can use different measurement periods for: union vs. non; different union contracts; salaried vs. hours, in-state vs. out-of-state employees
 - You won't get penalized if one of your employees gets coverage on exchange during the initial measurement period.

Large Employer Status – Counting Hours

Definitions: For shared-responsibility purposes...

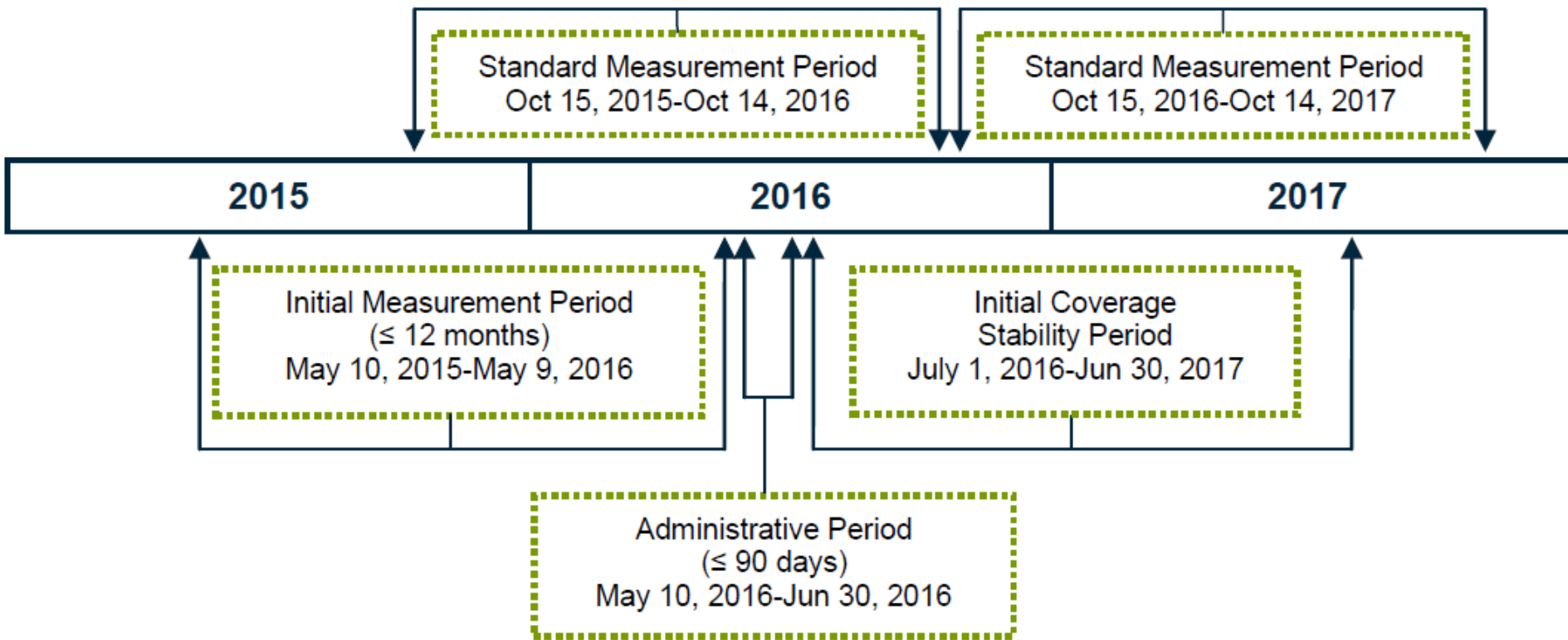
- **Stability period.** After meeting the minimum-hours threshold during the measurement period, employees must be treated as full-time – regardless of actual hours worked – during a subsequent “stability period,” provided they remain employed.
 - Stability period cannot be longer than measurement period plus 1 month
 - Stability period must be the same length for new and ongoing employees AND be the longer of:
 - 6 months; or
 - The length of the initial measurement period.
- Longer measurement period = more certainty, but it also commits you to offer insurance for a longer period of time to those employees identified as full-time.

Large Employer Status – Counting Hours

Measurement Periods:

- **Optional administrative period.** Employers may need time after the measurement period ends to decide which employees must be offered coverage during the ensuing stability period.
- The safe harbor allows an optional “administrative period” between the measurement and stability periods so employers can notify employees qualifying for coverage and handle enrollment tasks.
- The administrative period can’t exceed 90 days or be applied in a way that imposes a gap in employees’ coverage.

Large Employer Status – Counting Hours



Large Employer Status – Counting Hours

Measurement Periods:

- Employees who fail to meet the minimum-hours threshold during the *measurement period* do not have full-time status during the *stability period* and hence do not have to be offered health insurance during this time, and they will not trigger shared-responsibility penalties if they get insurance on the exchange.
- The stability period can't be shorter in duration (number of months) than its associated prior measurement period.
- If an employee meets the minimum-hours threshold during the measurement period, then the ensuing stability period for coverage availability must last at least six full, consecutive calendar months.
- If the employee did not meet the minimum-hours threshold, the stability period cannot be longer than the measurement period.

Large Employer Status – Counting Hours

Special rules for educational employers

- Employees returning from breaks. Educational employers could use one of two averaging methods for employees treated as continuously employed (rather than terminated and rehired) after an “employment break period.”
- An employment break period is a period of at least four consecutive weeks (disregarding unpaid FMLA, military service or jury duty leave) during which an employee has no hours of service.

Large Employer Status – Counting Hours

Special rules for educational employers

An educational employer may either:

1. Determine the employee's average hours of service per week during the measurement period after excluding the employment break period, and use that average for the entire measurement period
2. Credit employees with hours of service for the employment break period at a rate equal to the employee's average weekly rate during the weeks that weren't part of an employment break period.

Should you Play-or-Pay?

(Postponed until 2015 and 2016)

Should you Play-or-Pay?

Large Employer Penalties

- No Offer (Sledgehammer)-\$2,000 per full-time employee annually

This penalty is triggered if you do not offer coverage of any kind to your full-time employees and their dependents.

** The first 30 employees are not subject to this penalty*

- Under Offer (Tack Hammer)-\$3,000 per full-time employee who receives a subsidy on the exchange

This penalty is triggered if you do offer coverage but the coverage offered does not provide either "affordable" or "minimum essential coverage"

Should you Play-or-Pay?

Calculating No Offer (Sledgehammer) Penalty

Penalty Amount: \$2,000 annually per full-time employee

Penalty Trigger: At least 1 full-time employee enrolls in a qualified health plan through an exchange qualifying for a premium tax credit or cost sharing reduction the employer is then penalized for **all** full-time employees.

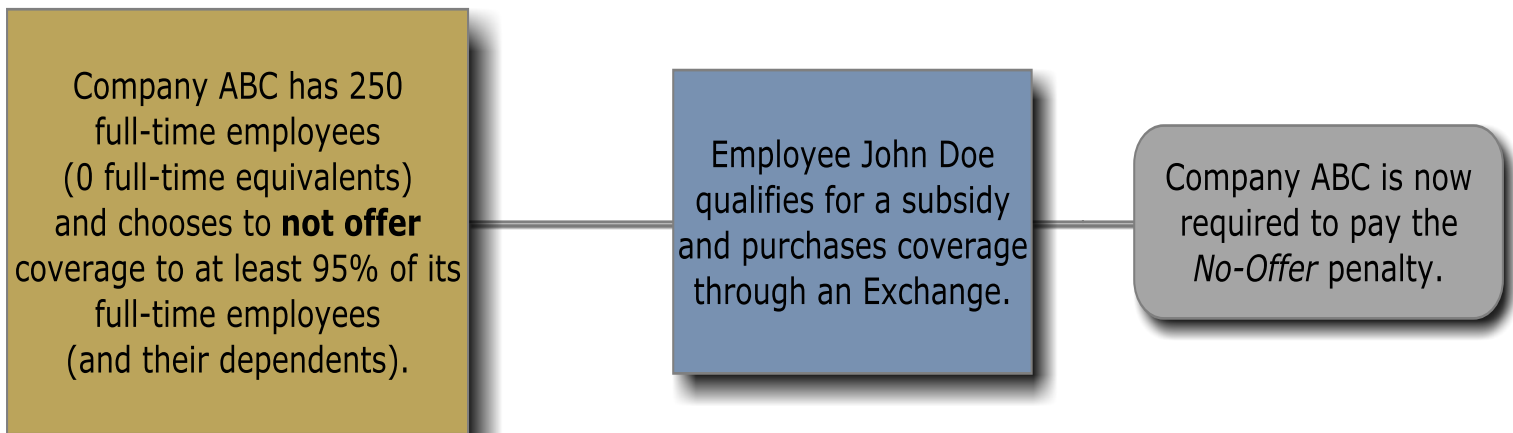
Penalty Calculation:

Number of Full-Time Employees (-) 30 Free = Total Number of Employees (x) \$2,000

Note: Full-time (FT) employees are those working 30 hours or more per week. Full-time equivalents (FTEs) are determined by totaling the hours for all non-full-time employees for the month and dividing by the total look-back-period and then by 120.

Should you Play-or-Pay?

No Offer (Sledgehammer) Penalty Example



Company ABC will have:

An annual penalty of \$440,000 (250 full-time employees – 30 “free” = 220 x \$2,000)

Should you Play-or-Pay?

Calculating Under Offer (Tack Hammer) Penalty

Penalty Amount: \$3,000 annually per full-time employee receiving a premium tax credit or cost sharing reduction

Penalty Trigger: Coverage offered is either “unaffordable” or “minimum essential coverage” is not provided the employer is penalized for **each** employee that enrolls in a qualified health plan through the exchange and qualifies for a premium tax credit or cost sharing reduction

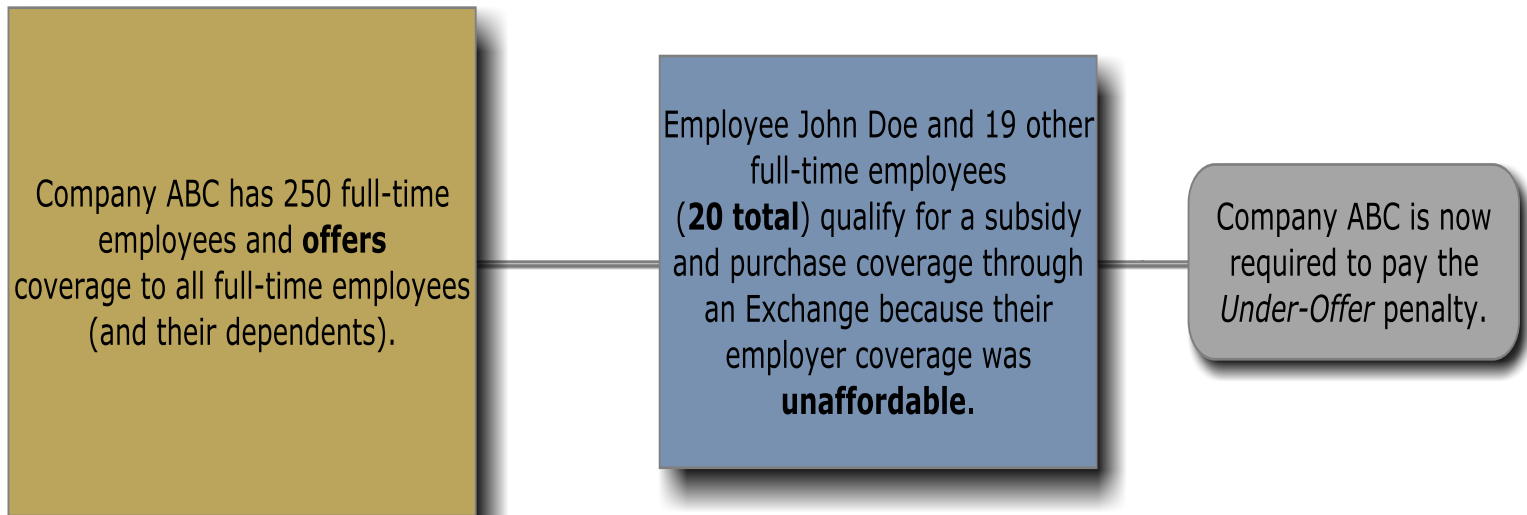
Penalty Calculation:

Number of Full-Time Employees who enrolled on the exchange and received either a premium tax credit or cost sharing reduction (x) **\$3,000**

Note: Full-time (FT) employees are those working 30 hours or more per week. Full-time equivalents (FTEs) are determined by totaling the hours for all non-full-time employees for the month and dividing by the total look-back-period and then by 120.

Should you Play-or-Pay?

Under Offer (Tack Hammer) Penalty Example



Company ABC will have:

An annual penalty of \$60,000 (20 full-time employees x \$3,000)

Should you Play-or-Pay?

Large Employer Penalty Quick Facts:

- Full-Time Equivalents (FTEs) are not incorporated into the employer's penalty calculation. They are only used for determination of your employer status.
- The total employer penalty cannot exceed the No Offer of total full-time employees (-) 30 Free (x) \$2,000

Large Employer Status

- Employers must determine each year, based on current number of employees (FTs+FTEs) whether they will be considered a large group for the next year
 - If employer has at least 50 full-time employees (including full-time equivalents) in 2014, it will be considered a large group in 2015
- Employers average their number of employees across months in the year to see if they meet the threshold

Should you Play-or-Pay?

How to avoid Large Employer Penalties

Offer coverage that is “affordable” and meets “minimum essential coverage” to at least 70% (in 2015, 95% in 2016) to full-time employees and their dependents (excludes spouses)

What is considered “affordable” coverage?

The employee’s cost for self-only coverage under the lowest cost option plan does not exceed 9.5% of the individual’s income as reported on their W-2, Box 1 (safe harbor) or rate of pay

What is considered “minimum essential coverage”?

If it is designed to pay at least 60% of the costs incurred under the group health plan.

Should you Play-or-Pay?

How to avoid Large Employer Penalties

- What full-time employees now pay more than 9.5% of their base pay on healthcare premiums?
 - These are the employees that might drop employer coverage to purchase on the insurance exchange
 - Are these employees less than 30% of your full-time employees?
 - If more than 30%, these are the employees that might trigger a penalty
- Answer these questions now to help make plan changes for 2015
 - Should you offer more affordable plan options?
 - Should you change your contribution levels?

Next Steps

- Identifying your full-time employees and writing policies and procedures on how you measure and count your employees' time
- Identifying your low-wage employees
- Comparing your contribution levels to your employee wages
- What employees put you at risk for triggering the pay-or-pay penalty?
- What employees may drop off your plan and qualify for subsidies inside the exchange?
 - How might this affect your experience for next year's renewal?

Internal Revenue Code Sections 6055 and 6056 reporting requirements related to the Affordable Care Act

6055/6056 Reporting Requirements

Internal Revenue Code Sections 6055 and 6056 reporting requirements related to the Affordable Care Act (ACA)

Why is this new reporting necessary?

- As of Jan. 1, 2014, most U.S. citizens and lawfully present individuals are required to have “minimum essential coverage” or pay a tax penalty.
- Insurers and employers must report to the IRS who had insurance and who didn't so the IRS can appropriately penalize those without insurance.

When is this reporting required?

- Effective Jan. 1, 2015, to be reported in 2016.

6055/6056 Reporting Requirements

Who does this reporting apply to?

- **6055** applies to any size employer that provides “minimum essential coverage” to an individual. Minimum essential coverage includes any employer-sponsored group health plan (except for dental or vision benefits)
 - i.e. coverage with 60% actuarial value
- **6056** applies to large employers (i.e. those with 50 or more full-time employees (including full-time equivalents))
 - Used to identify large employers who may be subject to the pay-or-plan penalty

6055 Reporting Requirements

6055 Reporting Requirements

Who will file the 6055?

- If you're a fully-insured plan, your insurance company will file your 6055 for you.
- If you're self-funded, you must file it yourself or designate your TPA.

Who is the 6055 filed to?

- To the IRS for 2015 (due in early 2016); and
- To the employees, so they can report their coverage when filing their personal federal taxes.

Is the deadline for employee reporting the same as the IRS reporting deadline?

- No. The statement to employees must be furnished on or before January 31 of the year following the calendar year in which you provide them with coverage, regardless of your plan year. The IRS return is due on or before February 28th of each year.

6055 Reporting Requirements

What information must reported to the IRS?

- Health Plan or TPA company name, address and Employer Identification Number (EIN) of the reporting entity required to file the return
- Name, address and TIN/SSN (or date of birth if a TIN/SSN is not available), of the covered employee and all their covered dependents
- Don't need to report individuals who waived coverage

What information must reported to the employee?

- Health Plan or TPA company name, address and Employer Identification Number (EIN) of the reporting entity required to file the return
- Name, address and TIN/SSN (or date of birth if a TIN/SSN is not available), of the covered employee and all their covered dependents
- The phone number for a person designated as the reporting entity's contact person and policy number

6056 Reporting Requirements

6056 Reporting Requirements

Who will file the 6056?

- The large employer must file the 6056 (not the insurer or your TPA)
- The IRS will use this information to determine if the employer has to pay any penalties for failing to offer coverage or failing to offer coverage that meets minimum value and is affordable.

Who is the 6056 filed to?

- To the IRS for 2015 (due in early 2016); and
- To the employees, so they can determine if they are eligible for a premium tax credit for health insurance through the Marketplace

Is the deadline for employee reporting the same as the IRS reporting deadline?

- Yes, the reporting to both employees and the IRS for 2015 is due in early 2016.

6056 Reporting Requirements

What information required to reported to full-time employees?

- Name, address and EIN of the large employer
- Employer location and contact information, employee address and TIN/SSN, and information about the employer's health care coverage.
- Information as to whether the coverage offered to full-time employees and their dependents provides minimum value and whether the employee had the opportunity to enroll his or her spouse in the coverage.
- The total number of employees, by calendar month.
- Whether an employee's effective date of coverage was affected by a permissible waiting period.

6056 Reporting Requirements

What information is required to be reported to the IRS?

- Employer's name, the date, and the employer's EIN
- The name and telephone number of the employer's contact person
- The calendar year for which the information is reported
- A certification as to whether you offered your full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under your plan by calendar month
- The months during the calendar year for which coverage under your plan was available
- Each full-time employee's share of the lowest cost monthly premium for self-only coverage for coverage providing minimum value offered to that full-time employee under your plan, by calendar month
- The number of full-time employees for each month during the calendar year
- The name, address, and taxpayer ID number (TIN) of each full-time employee during the calendar year and the months, if any, during which the employee was covered under the plan.

6056 Reporting Requirements

What forms must employers we use to file the § 6056 return?

- Similar to a W-2, the filing may be made on IRS Form 1095-C for every full-time employee. The return will be filed with a single transmittal form, Form 1094-C (similar to the W-3). These forms are being created by the IRS for the new § 6056 return and will be released once finalized.

What is the deadline for filing the § 6056 return with the IRS?

- The return must be filed with the IRS on or before February 28th of the year following the calendar year in which you provided minimum essential coverage regardless of your plan year. The return can be filed electronically and high-volume filers (those that file 250 or more returns of any type (e.g. W-2s, 1099s, income, employment or excise tax returns) during the calendar year) must file electronically.

6056 Reporting Requirements

Do large employers have to file a § 6056 return for full-time employees that are offered our coverage but waive it?

Yes.

Do large employers have to file a § 6056 return for full-time employees that are not offered our coverage?

Yes.

The Individual Mandate and the Marketplace



Individual Mandate

If you don't have insurance in 2014, you will pay a tax penalty (that increases over time)

- 2014 - greater of \$95 per adult or 1% of taxable income
- 2015 - greater of \$325 per adult or 2% of taxable income
- 2016 - greater of \$695 per adult or 2.5% of taxable income
- After 2016, the tax penalty increases annually based on a cost-of-living adjustment

Individual Marketplace

Yes, you'll be forced to have health insurance, but the government will help you pay for it and make it accessible either through...

- The State's insurance exchange; or
- By making large employers offer coverage to all full-time employees, i.e. pay-or-play mandate – **NOTE: this has been delayed until 2015**

The Federal Marketplace

- Annual Open Enrollment Period for Individuals
 - Nov. 15, 2014 – Feb. 15, 2015
 - Outside the open enrollment period only qualified events will allow an individual to make changes to their plan
- Individuals who don't have affordable, employer group coverage can shop for plans at www.healthcare.gov
- Individuals can continue to shop outside of the Marketplace. Why would you do that?
 - Individuals not eligible for financial assistance
 - Plans are the same inside and outside the Marketplace
 - Premiums are the same inside and outside the Marketplace

What should you be doing now?

- Understand how the individual insurance exchange works
- If you're a large employer, compare your contribution levels to your employee wages – do any of your employees pay more than 9.5% of their wage to purchase your insurance?
- These are the employees that may drop off your group health plan

Non-Discrimination against highly compensated employees

Health Care Reform Act Non-Discrimination Rules

- Internal Revenue Code (IRC) § 105(h):
 - Rules likely to be similar to the current rules contained in IRC § 105(h)(3) – for self-funded plans
- “Highly Compensated Individual” (HCIs) Defined in IRC § 105(h)(5)
- “Highly Compensated Individuals” (HCIs), include the highest paid 25% of all employees

Health Care Reform Act Non-Discrimination Rules

Penalties for Plans that Fail to Comply

- Excise tax for non-compliance
 - \$100 per day per each non-highly compensated individual
- The excise tax does ***not*** apply to school districts. However, schools are subject to civil penalties imposed by governmental agencies.
 - Civil penalties are at the discretion of the enforcing agency up to an amount of the excise tax.
- Districts can be subject to civil actions (lawsuits) brought against the district by employees.

Health Care Reform Act Non-Discrimination Rules

- Compliance will not be required until *after* regulations have been issued. And, employers will be provided with a grace period to implement the regulations once issued. (IRS Notice 2011-1)
- Additional guidance and regulations were expected in 2013.

Health Care Reform Act Non-Discrimination Rules

Current Non-Discrimination Rules

- General Requirements
 - The plan does not discriminate in favor of highly compensated as to eligibility;
- Benefit plans do not discriminate in favor of highly compensated in regard to benefits
- All Group Health plans must comply
 - Governmental Plans
 - Church Plans
- Some Employees can be Excluded from Testing
 - Not completed three years of service
 - Under the age of 25

Health Care Reform Act Non-Discrimination Rules

Eligibility Test

- Code § 105(h)(3) provides three ways to pass the Eligibility Test
 1. The 70% Test
 2. The 70% / 80% Test
 3. The Classification Test

Health Care Reform Act Non-Discrimination Rules

Eligibility Test

- The 70% Test
 - Does the plan benefit 70% or more of all non-excludable employees?
- The 70%/80% Test
 - Are 70% or more of all non-excludable employees eligible to benefit from the plan?
 - Do 80% or more of all non-excludable employees who are eligible participate in the plan?

Health Care Reform Act Non-Discrimination Rules

Eligibility - Classification Test

- The plan does not discriminate in favor of HCIs under classifications set up by the employer
 - Code § 105(h) is unclear on the applicable regulations for the Classification Test
 - Reasonable methods include:
 - Post-Tax Reform Act of 1986 (TRA) Nondiscriminatory Classification Test in Code § 410(b) (includes a safe harbor and unsafe harbor test which are mathematical ratio tests), or
 - Fair Cross Section Test Pre-TRA (subjective test)

Health Care Reform Act Non-Discrimination Rules

The Benefits Test

- The Benefits Test determines if non-HCIs are discriminated against in terms of being offered the same benefits, conditions, options and waiting periods
- Unlike the Eligibility Test, the Benefits Test is not mathematical – it is subjective in its approach
- Looks at discrimination on the face of the plan and in the operation of the plan

Health Care Reform Act Non-Discrimination Rules

The Benefits Test

- Review all Plan Components
- Contributions must be identical for each benefit level
 - Specifically prohibited is contribution levels based on a participant's age, compensation or years of service
- Same types of benefits must be available to HCIs and non-HCIs
- Cannot impose disparate waiting periods
- No discrimination in the operation of the plan

Health Care Reform Act Non-Discrimination Rules

- Contact your legal advisor, or an attorney for guidance
- Most likely need to provide a census for analysis
- Prepare a compliance plan

Sanford Health Plan is committed to providing information to help you understand the many layers of Health Care Reform and how it may impact your business. We appreciate your time today and please contact our team at any time or visit the Health Care Reform section of our website at sanfordhealthplan.com

Questions? Thank you...