

Q&A from Assurex Global Webinar
"The ACA "Notice of Exchange"

January 24 & 29, 2013

Question	Answer
<p>Q: Our organization pays ½ the employees portion of the medical and dental insurance. If the employee purchases individual health insurance through the exchange, they will lose this option. What are the tax implications?</p> <p>Q: Also, if we give them an amount to help offset costs, how would that be handled. What are the tax implications to this money?</p>	<p>A: The employer cannot directly fund an employees purchase of individual health insurance through the exchange on a tax free basis. Consequently the employee would be paying for the individual health insurance policy with their own after-tax dollars. The employer could provide taxable compensation which employees could then use to purchase individual health insurance. In this case, the compensation would be treated the same as any other compensation for tax purposes.</p>
<p>Q: Are States that have chosen to let the Federal government operate the exchange able to change their mind and implement a state based exchange in the future?</p>	<p>A: Yes states will be able to implement a state based exchange in the future. They will need to have their exchange plan approved by the Department of Health and Human Services.</p>
<p>Q: What is the definition of "small group"?</p> <p>Q: Can you speak at all to groups that fall in between 50 and 100 employees? We are typically at that 95-103 employees. Where do we fall??</p>	<p>A: For purposes of employer's purchasing small group plans through a public exchange, the definition of small employer will depend on the state. For states where the Federal government will operate the exchange small group is defined as no more than 100 full time employees (FTE). States which operate a state based exchange have the option to define small employer as no more than 50 employees for 2014 & 2015. Beginning in 2016 small group will be defined as 100 FTE in all states.</p>
<p>Q: How is contract labor treated in relation to the count of FTEs?</p> <p>Q: How do 1099 employees fall into all of this. Work for a company but at the same time are independent contractors?</p>	<p>A: Properly classified independent contractors are not considered employees, and are not included in the calculation of the number of FTEs for ACA employer shared responsibility purposes.</p> <p>Important Note: employers should take great care in the proper classification of individuals as employees vs. independent contractors. The IRS and DOL have launched an aggressive campaign to indentify employers who misclassify individuals as independent contractors when based on the relationships they should be treated as employees.</p>
<p>Q: Can an employer be penalized if a part time employee goes to the exchange and purchases coverage?</p>	<p>A: The ACA does not require employers to offer coverage to employees who average less than 30 hours of service per week. Consequently, no employer penalty will apply if a part time employee (as defined by the ACA) purchases subsidized coverage through a public exchange.</p>
<p>Q: Did you say the subsidies were based on the Silver or Bronze level. I have heard both.</p>	<p>A: The premium tax credit is based on the cost for the second lowest cost silver plan offered on an exchange. An individual receiving the credit who chooses to purchase a higher cost plan will have to pay the "retail" difference in the price of that plan and the benchmark plan.</p>

Q: Do non-profits have same rules on reinsurance and exchange?	A: In general not-for-profit organizations are subject to the same rules regarding purchasing coverage through a public exchange as any other employer. Health plans sponsored by not-for-profit organizations are also subject to the reinsurance fee.
Q: How are seasonal employees treated when determining an individuals full time status? Q: Employees come and go....some are hired to work 25 hrs, then 40 hours then 25 hours....what is the look back to figure out if they qualify?	A: The IRS has introduced an optional method employers are allowed to use to determine an employee's full-time status for the purpose of the ACA employer shared responsibility rules. This method uses an employer chosen measurement period of 3-12 months. Employees who do not average 30 hours per week during the chosen measurement period will not generally be treated as full time. As a result many seasonal and variable hour employees, who work over 30 hours per week for part of the year, may not ever "earn" full time status under this methodology. The application of the measurement period is complicated and employers should work with a qualified advisor to make sure it is implemented properly.
Q: Does the employer safe harbor of 9.5% apply to family insurance or individual insurance that is offered to your employee?	A: The employer safe harbor considers only the employees required contribution for employee-only coverage. The employees required contribution for family coverage is not considered in determining if an employer plan is "affordable" for employer safe-harbor purposes.
Q: Does the employer have to pay any of the premium for the employee or do they just have to offer qualified coverage for employees?	A: There is not a specific amount that the ACA requires an employer to pay toward an employee's coverage. However, if the employer contribution is too low, and consequently the required contribution for an employee to enroll in employee only coverage is "unaffordable", the employer could be liable for penalties under the shared responsibility rules.
Q: When calculating the hours worked do you need to include vacation or sick time?	A: IRS regulations include paid time such as vacation or paid sick leave in the definition of "hours of service". These hours would be included in calculating if an employee must be considered full time for purposes of the ACA shared responsibility rules.
Q: How does a large employer handle exchanges when they operate in multiple states?	A: First of all only small employers (see Q. 5 above) will be allowed to purchase group insurance policies through a public exchange. Small employers will generally purchase a group from the exchange where the employer is located and all employees will be covered by that plan regardless of where the employee lives. As an option, the exchange rules permit a small employer with locations in multiple states to purchase separate group plans from the exchanges operating in those states. Individuals purchasing their own individual health insurance through a public exchange will access policies offered by the exchange operating in the state in which they live.

Q: Please confirm that self-funded employer plans do not have to comply with essential health benefits requirements.	A: This is correct. The ACA requirements that a plan must offer the essential health benefit set applies only to small employer fully insured plans.
Q: If I have collectively bargained group, and I now have some 30 hr ee's that could now qualify for that benefit, can I just add minimum value , affordable, plan and not need approval from the union to do so?	A: While we cannot speak to the specific terms of any particular collective bargaining agreement (CBA), generally the employer will be required to negotiate with the union regarding any significant changes in benefits offered to employees covered by the CBA.
Q: If a large employer has interns, when do they have to provide health insurance or do they not count? Q: Regarding full time employees - are you talking about regular full time employees or temporary full time employees too?	A: Interns that are paid to work at an average of 30 hours per week will need to be considered employees and may need to be offered coverage to avoid possible employer penalties under the shared responsibility rules. However, as of the date of this publication the IRS is still taking comments on how the measurement period approach to defining full time employees applies to temporary employees such as interns. Further guidance is expected from the IRS soon regarding this issue.
Q: If an employer has employees in multiple states do we need to notify employees in each state about the specific state exchange for where they live or would the exchange information only apply for the state in which the employer is domiciled?	A: No guidance has yet been released regarding the specific exchange information that will need to be included in the "Notice of Exchange". However, we expect that the notice will need to include state specific exchange contact information in some form.
Q: If the employer covers part of the plan deductible thru and HRA, how does this effect minimum value of the plan?	A: An employer provided health reimbursement arrangement (HRA) which is integrated with a major medical plan is included in the calculation of the minimum value of the plan.
Q: If the employer offers coverage and the employee declines that coverage, then goes to the exchange to purchase individual coverage with the subsidy will the employer still be charged a penalty?	A: The employer is only required to offer affordable minimum value coverage. If an employee is eligible for such coverage they will not qualify for subsidized individual health insurance through a public exchange and the employer would not be liable for any penalty under the employer shared responsibility rules.
Q: If a state elects not to operate a state run exchange, what is the employer's obligation regarding the Notice of Exchange?	A: Employers in states which choose not to operate a state exchange must still provide a "Notice of Exchange" to employees. Remember there will be a federally operated exchange in those states.
Q: If we are under 50 Full Time Equivalent employees, and are not subject to the ACA, are we also exempt from notifying our employees of the exchange?	A: No - small employers are not exempt from the "Notice of Exchange" requirement.
Q: If you use a TPA for your health insurance, would they be responsible to send the exchange notice for you?	A: Not unless that particular service is included in the ASO agreement with the TPA.

<p>Q: Do you have to offer health insurance to an employee on Medicare?</p> <p>Q: Do the same rules apply to an employee that is full time, has insurance and is also on Medicare?</p>	<p>A: The Medicare Secondary Payer (MSP) rules require employers with at least 20 employees to treat an active employee who is eligible for Medicare the same as any other employee. Employers cannot refuse to provide benefits to an employee who would otherwise be eligible simply because the employee is eligible for Medicare. Employers cannot even provide an incentive to an employee to encourage them to drop the employer's plan in favor of Medicare coverage.</p>
<p>Q: Why would a large employer continue to sponsor a plan when the penalty is approx 50% of annual premiums now paid by employer</p>	<p>A: There are many complex factors to considering making this decision. One of the most common reasons given is that most employers would need to factor in the cost of additional compensation they would need to provide to employees if the employer were to stop offering health benefits. When considering the penalty cost plus the extra compensation and payroll tax costs, most employers are concluding that continuing to offer tax free health benefits is still their best option.</p>
<p>Q: My employer pays a benefit stipend to employees so they can buy their own insurance. My employer does not offer an insurance plan. Do I understand correctly that my employer would be required to pay a penalty if this practice continues?</p>	<p>A: An applicable large employer that simply provides compensation that employees use to purchase their own health insurance would be subject to potential penalties under the shared responsibility rules. This approach does not meet the requirement of offering affordable minimum value coverage to full time employees.</p>
<p>Q: We use a number of overseas contractors. Are they factored into the EE headcount totals?</p>	<p>A: Employees working outside the U.S. are generally not counted in determining if an employer is an "applicable large employer" for ACA purposes.</p>
<p>Q: Does the allowable smoker rate spread of 1.5 to 1 apply only to individual policies, not small group plans, correct?</p>	<p>A: No - the ACA small group rules allow small employer plans to charge smokers up to 50% more than non-smokers.</p>
<p>Q: So in 2016, the state cannot define a large employer as >50 employees?</p>	<p>A: Beginning in 2016 small employee will be defined as no more than 100 FTEs in all states.</p>

Q: Understand full-time is 30 or more hours per week but what about workers whose hours vary through out the year such as substitute teachers? Must their hours be averaged in some way?	<p>Recently released regulations directly address how educational institutions must treat employees who have a significant period (such as a summer break) where they are not actively working. The education institution has two options for counting hours of service</p> <ul style="list-style-type: none"> • Determine the average hours of service per week for the employee during the measurement period excluding the employment break period, and use that average as the average for the entire measurement period. or • Treat employees as credited with hours of service for the employment break period at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not part of an employment break period. <p>However, the educational organization is not required to credit an employee in any calendar year with more than 501 hours of service for any employment break period (although this 501-hour limit does not apply to, or take into account, hours of service required to be credited for special unpaid leave).</p>
Q: We are a <50 employer who offers coverage. Can our employees go to the exchanges to purchase individual coverage so they can get a subsidy?	A: If a small employer offers affordable, minimum value coverage, the employee and their family members who are eligible for the plan will not be eligible for subsidies if they purchase individual health insurance through a public exchange.
Q: We offer insurance for all employees and dependents and do not charge a contribution. Now we have some that take state of Medicaid coverage because it is cheaper out of pocket for them. How will that effect us with employer penalty?	A: Employers are not liable for any penalty under the shared responsibility rules for employees who qualify for Medicaid coverage.
Q: What about the Health Insurance waiting period for new hires?	A: The ACA prohibits a waiting period for new employees in excess of 90 days. The only exception is that an employer is allowed to apply an "initial measurement period" of up to 12 months for seasonal and variable hour employees only.
Q: What if an individual is unemployed? Does the Federal Gov't pay 100% of the premium for insurance on the exchange?	A: No - the subsidies available to any individual purchasing individual health insurance are based on a formula tied to household income. At no point will the subsidy formula result in an individual paying \$0.00 for health insurance purchased through a public exchange.
Q: What if you have a plan that is considered affordable, but doesn't meet the minimum value.	A: If the only plan available to an employee is affordable, but does not provide minimum value, that employee could qualify for subsidized individual health insurance purchased through a public exchange, and the employer could be liable for a penalty under the shared responsibility rules.

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