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A look ahead at the Affordable Care Act

Last year turned out to be a busy one, not only for many employers getting into the groove of offering health insurance and preparing for reporting, but for the IRS as well. As usual, the IRS provided more guidance and changes to reporting requirements under the Affordable Care Act late in the game. That left some employers and human resources personnel once again confused and uncertain about how to comply with the law and what to expect in the coming year.

This is a good time to reflect on the year past and get a better handle on what to expect in the days to come in the world of the ACA. Here's the skinny:

When the ACA first came into existence, it added section 4980H to the Internal Revenue Code, requiring applicable large employers to either offer full-time employees ACA-compliant health coverage or face potential penalties. In 2015, we saw applicable large employers with 100 or more full-time equivalent employees on business days in the prior year first face the challenges of ensuring that employees the ACA defined as "full-time" had the opportunity to enroll in company-provided health coverage. These companies were required to comply with the ACA's "shared responsibility" mandate to offer minimum essential health coverage to at least 70 percent of full-time equivalent workers in order to avoid global penalties.

This past year, employers with 50 or more full-time equivalent employees began preparing for new 2016 reporting requirements. These call for employers with 50 or more full-time equivalent employees in the prior calendar year to report information about their offers of health coverage (and for self-insured plans, actual coverage) on Forms 1095-

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C. What this means is that employers with an average employee count of 50 or more full-time equivalent employees in 2014 have an obligation to report information about the health insurance they offered in 2015. These forms will go to employees and the IRS in 2016.

The IRS has acknowledged the steep learning curve in filling out the forms; as a result, it has previously stated that for 2015 it will not impose penalties in

cases where an employer makes a good faith effort to comply with the reporting requirements. However, employers that do not make a good faith effort could face a penalty of up to \$250 per return (with a \$3 million cap).

While these forms were initially due to the employees and the IRS on a W-2 schedule, late in December the IRS bought employers more time to furnish and file their ACA reporting forms by extending the 2016 deadlines. The deadline to furnish Forms 1095-B and 1095-C to individuals is now March 31, 2016, while the deadline to file Forms 1094-B, 1094-C, 1095-B and 1095-C with the IRS is now May 31, 2016 (electronic filers got an extension to June 30, 2016).

Starting this year, applicable large employers with 50 to 99 full-time equivalent employees face minimum essential health coverage and affordability requirements as their transition relief period for them has come to an end.

The IRS also in December released Notice 2015-87, providing guidance on various ACA compliance issues for employer-sponsored health plans. This notice is intended to address and bring clarity to issues pertaining to employers' health coverage affordability, as well as the application of the ACA's market reforms to Health Reimbursement Arrangements (HRAs), in 26 questions and answers.

Around the same time in December, the IRS and the Treasury Department released final regulations on the health

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insurance premium tax credit enacted by the ACA, affecting both individuals who have enrolled in qualified health plans through marketplaces claiming the premium tax credit and exchanges that make qualified health plans available to individuals and employers.

Finally, President Obama signed a spending and tax bill on Dec. 18, pushing back the start of the so-called Cadillac Tax from 2018 to 2020. Even though this has no immediate effect on some employers, collectively-bargained employers have been anxiously awaiting

further guidance, because a contract negotiated today could easily extend into 2018. When it does go into effect, the Cadillac Tax will impose a 40 percent excise tax on employers that offer premium health insurance plans exceeding specific high-cost limits. For many employers, this delay hopes to invite adjustments by Congress – or even better, kill the regulation altogether.

Starting this year, applicable large employers with 50 to 99 full-time equivalent employees face minimum essential health coverage and affordability

requirements as their transition relief period for them has come to an end. Additionally, companies with 100 or more full-time equivalent employees could face global penalties if they fail to offer coverage to 95 percent of their full-time employees starting this year and beyond. This is up from the 70 percent threshold in 2015.

With another year since the ACA's passage in the rear view, few big ACA regulations remain outstanding. While many smaller issues still need to be resolved, the only major concerns on the

horizon are the ever-looming regulations implementing nondiscrimination testing for insured health plans and more details (or a repeal of) the Cadillac Tax. But for now, all that employers can do is hunker down, prepare and submit their forms for accurate reporting, and keep their employee benefits experts and attorneys on speed dial.

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