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## **AFFORDABLE CARE ACT**

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On June 28th the Supreme Court upheld the constitutionality of the Affordable Care Act (“ACA”) in its entirety. The Court concluded that the controversial individual mandate was justified as a legitimate use of Congress’s taxing power, rather than a regulation of interstate commerce. Although there are still many uncertainties as to how specific provisions of the ACA will be implemented, it is important for employers to begin thinking about some of the provisions that have already taken effect, as well as some of the major changes that will happen in 2014. The following is a brief guide to those provisions of the ACA, which will likely impact employers the most.

### **Employer Shared Responsibility**

The ACA imposes new penalties on large employers who do not offer affordable health insurance coverage. Large employers are those with 50 or more *full-time equivalent* (FTE) employees during the preceding calendar year. The number of FTE employees is calculated as follows:

- A full-time employee is one who works 30 hours or more per week, and a part-time employee is one who works less than 30 hours per week
- Part-time employees are aggregated to equal full-time employees by taking the total number of hours worked by all part-time employees in one month and dividing the number by 120
- The number of aggregated part-time employees plus the number of actual full-time employees equals an employer’s number of FTE employees

Beginning January 1, 2014, large employers who do not offer any health insurance coverage and have at least one full-time employee who receives a premium tax credit to purchase coverage through the new insurance exchanges will be assessed a \$2000 penalty for each FTE employee, excluding the first 30 employees. Large employers who offer some coverage may also be assessed a penalty if the coverage offered is deemed unaffordable and thus entitles

employees to receive premium tax credits to purchase coverage through the exchanges. A plan is deemed unaffordable if the premiums consume more than 9.8% of family income. If one or more employees receives a tax credit under these circumstances, the employer will pay the lesser of \$3,000 for each employee receiving a premium credit or \$2,000 for each full-time employee, excluding the first 30 employees. Notably, employers will not pay penalties for part-time employees receiving tax credits. In sum, if an employer:

- Offers no coverage and has at least 1 employee receiving a premium tax credit
  - Must pay \$2000 penalty for each FTE employee, minus the first 30 employees
- Offers “unaffordable” coverage and has at least 1 employee receiving a premium tax credit
  - Must pay lesser of \$3000 penalty for each employee receiving tax credit or \$2000 for each full-time employee, minus the first 30 employees

Small employers with less than 50 FTE employees are not subject to the penalties. Additionally, some small employers may qualify for a tax credit that will help offset the costs of providing coverage.

### **Small Business Health Care Tax Credit**

The Small Business Health Care Tax Credit is currently available to employers with fewer than 25 full-time equivalent employees who pay an average wage of less than \$50,000 a year and who pay at least half of the cost of employee health insurance premiums. The amount of credit is based on a sliding scale – the smaller the business, the bigger the credit – with the maximum credit equaling 35% (or 25% for non-profit employers) of the employer’s share of the employee’s premium. In 2014 the maximum credit increases to 50% of the employer’s share of premiums, however the credit is limited to employers who purchase coverage through the exchanges. The credit expires after two (2) consecutive years.

### **Coverage Options for Small Businesses: The SHOP Exchanges**

The state insurance exchanges will begin operating Small Business Health Options Programs or “SHOP exchanges” in 2014. The SHOP exchanges will enable small businesses to offer employees a choice of benefit plans from several insurers. They are intended to reduce small businesses’ costs of enrolling employees in small group plans, while also giving small business employees the cost and choice advantages enjoyed by their counterparts who work for large companies. Employers with less than 100 employees will be eligible to purchase plans through the SHOP exchanges, however States can limit participation to employers with up to 50 employees through 2016. Beginning in 2017, States will have the option of allowing large groups to use the SHOP exchanges.

### **New Reporting Requirements**

The ACA requires employers to report the cost of coverage under an employer-sponsored group health plan on employees’ W-2 forms. This requirement was optional in 2011, and

“transitional relief” for many employers is available for tax-year 2012 and beyond, until the IRS issues final guidance for the reporting requirement. Importantly, the reporting is for informational purposes only – employer contributions to health coverage continue to be excludible from employee income and not taxable.

### **New Fees for Sponsors of Group Health Plans**

Beginning in 2012, issuers and employers sponsoring certain group health plans will be required to pay a fee for each covered life under the plan. The ACA specifies that the “plan sponsor” responsible for the fee is:

- Plans established or maintained by a single employer: the employer
- Plans established or maintained by an employee organization: the employee organization
- Plans established or maintained by 2+ employers or jointly by employers/employee organizations: the association, committee, joint board of trustees or other similar group of representatives of the parties who establish or maintain the plan
- Plans established or maintained by a cooperative or association: the cooperative or association

The fee is equal to the average number of covered lives for the policy year times the applicable dollar amount:

- For policy years ending on or after Oct. 1, 2012, and before Oct. 1, 2013 - the applicable dollar amount is \$1.
- For policy years ending on or after Oct. 1, 2013, and before Oct. 1, 2014 - the applicable dollar amount is \$2.
- For policy years ending in any fiscal year beginning on or after Oct. 1, 2014 - the applicable dollar amount is the prior fiscal year’s dollar amount plus an adjustment for medical inflation.

The IRS has proposed several different methods for determining the number of “covered lives” under a plan, and for the first year (plans beginning before July 11, 2012 and ending October 1, 2012) a sponsor may use any reasonable method for calculating this number. Under the IRS’s latest proposed rule, issuers and plan sponsors must annually file a federal excise tax return reporting liability for the fee and remitting payment by July 31 of the calendar year immediately following the last day of the plan year.