

March 24, 2016

ACA & Benefits Compliance Update

Presented by Benefit Comply

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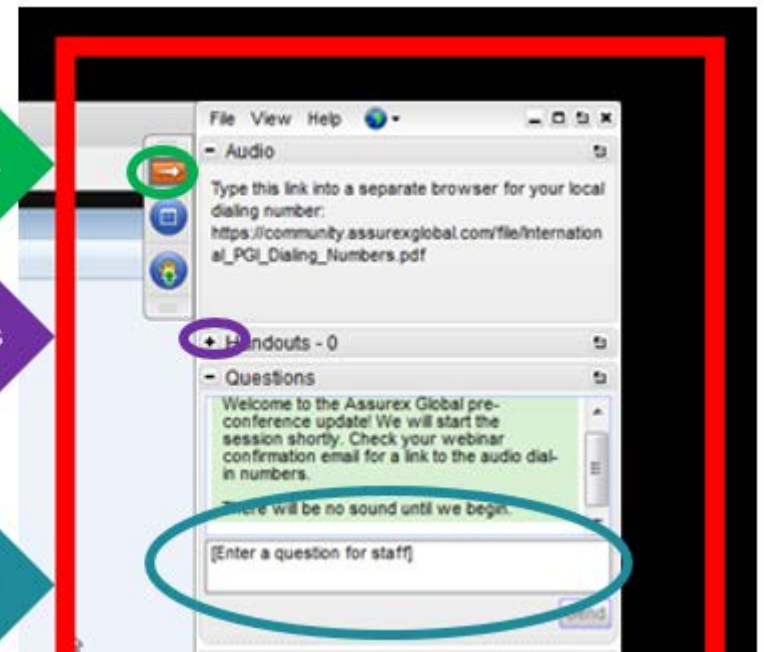
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Agenda

- Recent Developments
- End of Year IRS Guidance
- Last Minute Thoughts: ACA Employer Reporting

Recent Developments

- **Repeal of ACA Automatic Enrollment Requirement**
 - ACA originally required employers with 200 or more employees to develop an automatic enrollment system similar to 401(k) plans
 - Requirement was delayed in 2010 by the DOL
 - Requirement was repealed in Nov. as part of the “Bipartisan Budget Act of 2015” – employers will no longer be required to develop an automatic enrollment system

Recent Developments

- Cadillac Tax Delay
 - Beginning ~~2018~~ 2020, 40% excise tax on health coverage cost that exceeds “threshold amounts”
 - Threshold amounts
 - \$10,200/yr. for self-only coverage
 - \$27,500/yr. for coverage other than self-only
 - The tax applies on a “per covered employee” basis
 - Employers with multiple plans will pay tax based only on the employees covered in the plan that exceeds the threshold amount
 - Adjustments may be made (increasing the threshold amounts)
 - Health cost adjustment percentage for 2018 based on medical cost trends and thereafter an annual cost-of-living adjustment
 - Group age and gender demographic adjustment applied on an employer-by-employer basis

Recent Developments

- Cadillac Tax Delay
 - Defining Applicable Coverage
 - Group health coverage including medical and Rx
 - Health Flexible Spending Accounts (FSAs)
 - Health Savings Accounts (HSAs)
 - Not sure if employee pre-tax contributions will be included yet
 - On-site medical clinics
 - Health Reimbursement Accounts (HRAs)
 - Employee Assistance Plans (EAPs) with counseling benefits
 - Wellness programs?
 - President Obama's budget contains an area cost adjustment

Recent Developments

- Updated SBC Template and Uniform Glossary
 - DOL FAQs indicate the effective date will be the first day of the first open enrollment period that begins on or after April 1, 2017
 - No real changes to delivery timing or method
 - Notable modifications:
 - Shorter template
 - An overall effort to make the template more consumer-friendly
 - Revisions/additions to “important questions” and coverage examples
 - Revisions in regard to how minimum essential coverage (MEC) and minimum value coverage is described
 - Additional detail in regard to grievance and appeal rights
 - Details for describing various plan coverage details such as deductibles and cost-sharing, coverage tiers, exclusions/limitations, etc.

End of Year IRS Guidance

Recent IRS Guidance

- In mid-Dec., the IRS released Notice 2015-87, which includes guidance on a variety of ACA provisions
- §4980H Background
 - Applicable Large Employers (ALEs) - 50 or more full-time equivalents (FTEs) - must offer coverage to full-time employees and their dependent children to avoid penalties
 - § 4980H(a) Penalty/Payment
 - If ALE does not offer minimum essential coverage (MEC) to at least 95% (70% in 2015 only) of full-time employees & at least one full-time employee purchases subsidized individual coverage through a public Marketplace
 - § 4980H(b) Penalty/Payment
 - Applies if ALE offers coverage to full-time employees but coverage is “unaffordable” or not “minimum value”

Recent IRS Guidance

- §4980H Penalties/Shared Responsibility Assessments
 - §4980H(a)
 - For 2015, amount is \$2080 (\$173.33/month) multiplied by the full-time employee count (minus the applicable waiver)
 - For 2016, amount is \$2160 (\$180/month)
 - §4980H(b)
 - For 2015, amount is \$3120 (\$260/month) multiplied by each full-time employee who purchases individual insurance enrolls through a public Marketplace and qualifies for a tax subsidy
 - For 2016, amount is \$3240 (\$270/month)

Recent IRS Guidance

- Hours of Service

- Employers must consider “hours of service” when determining if employee is full-time for ACA purposes
 - Each hour for which an employee is entitled to payment, for the performance of duties, and each hour for which an employee is entitled to payment (for a period of time during which no duties are performed) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence
 - Does not include payment under workers’ compensation, unemployment, disability insurance laws, or payment made solely to reimburse employee for medical expenses
 - DOES include periods when employee is receiving payments due to short or long-term disability coverage as long as the employee remains employed
 - Unless the payments are made from an arrangement to which the employer did not contribute

Recent IRS Guidance

- ACA “Affordability” Background
 - There are two different types of affordable
 - For an individual’s subsidy eligibility, coverage is “affordable” if the employee’s contribution for single coverage does not exceed 9.56% (in 2015) of individual’s household modified adjusted gross income
 - For the employer safe harbors, coverage is affordable if the employee’s required contribution for single coverage is less than 9.5% (not 9.56%) of one of the three employer safe harbors
 - Form W-2 Safe Harbor, Rate of Pay Safe Harbor, Federal Poverty Level Safe Harbor
 - Affordable and Not Affordable at the Same Time!
 - An individual can qualify for a subsidy because the employee contribution is deemed unaffordable using household income, but if the coverage is affordable using one of the safe harbor methods the employer will not be liable for a §4980H(b) payment

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Recent IRS Guidance

- ACA “Affordability” Example
 - Employee’s lowest hourly rate of pay is \$10 per hour
 - Using the rate of pay safe harbor, the employer decides to set employee contribution for single coverage at \$123.00
 - $130 \text{ hours} \times \$10/\text{hr.} = \$1300$, then $\$1300 \times .095 = \123.50
 - One full-time employee earns \$1300/mo. but has a \$300/mo. alimony payment
 - Alimony payments are an “above the line” deduction that reduces an individual’s AGI
 - This individual's monthly AGI = \$1000 & the contribution for single coverage (\$123.50) equals 12.35% of household income
 - This employee would qualify for a subsidy when purchasing individual health insurance through a public marketplace, but the employer would face no §4980H(b) liability due to meeting the rate of pay safe harbor

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Recent IRS Guidance

- **Affordability % Adjustments**
 - For purposes of an individual's subsidy eligibility
 - Coverage is "affordable" in 2016 if the employee's contribution for employee-only (single) coverage does not exceed 9.66% of the employee's household income
 - For purposes of the employer safe harbors
 - Coverage is currently affordable if the employee's required contribution for single coverage is less than 9.5% of one of the three employer safe harbors
 - The IRS intends to issue amended regulations changing the employer affordability safe harbor percentage (currently 9.5%) to adjust in accordance with the percentage used to determine affordability for individual subsidy eligibility (i.e. 9.66% for 2016)

Recent IRS Guidance

- Other Affordability Issues

- When calculating the employee contribution amount, the employer may need to consider more than just the employee portion of the medical insurance premium
- HRAs
 - Amounts made available under an HRA that an employee may use to pay premiums for an eligible employer-sponsored plan (or if amount can be used for premiums and for cost-sharing), will reduce the employee's contribution amount so long as the HRA is integrated with a group health plan
 - NOTE – HRA amounts that can be used only for cost-sharing or other health benefits not covered by the plan (and not for premiums) do not count toward affordability

Recent IRS Guidance

- Other Affordability Issues
 - Flex Credits (Section 125 Plan)
 - Under a Section 125 plan, some employers provide flex credits that may be used toward a variety of different benefit options
 - Flex credits may be counted toward the employee's required contribution if they meet all of the following; Non-cashable, May be used to purchase minimum essential coverage (MEC) and are limited to payment of medical care as defined under §213(d)
 - Transition relief
 - For §4980H(b) penalties for plan years beginning prior to 1/1/2017, flex contributions (even those that do meet the definition of a health flex contribution) will reduce the amount of an employee's required contribution
 - Unless the arrangement is adopted after Dec. 16, 2015 or the amount of the flex contribution is substantially increased after Dec. 16, 2015

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Recent IRS Guidance

- Other Affordability Issues
 - Opt-Out Payments
 - Previous guidance indicated that cash opt-outs should be used when determining affordability for purposes of the individual mandate
 - IRS stated in Notice 2015-87 that upcoming regulations will require some opt-out payments to be considered for §4980H(b)
 - Unconditional opt-outs will be considered for plan affordability
 - For example, when the employee cost for health coverage is \$125/mo. but there is an unconditional opt-out payment of \$75/mo. if coverage is waived, the employee contribution for affordability purposes is \$200 (\$125 + \$75)
 - IRS indicated conditions on opt-out, such as proof of other group health coverage, may allow the opt-out not to be considered
 - Until further guidance is provided, employers are not required to increase the amount of an employee's required contribution by the amount of an opt-out payment

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COBRA

- COBRA & Health Flexible Spending Accounts (HFSA)
 - Background
 - HFSA's are a health care benefit subject to COBRA continuation
 - HFSA COBRA premiums are based on the annual benefit available to the participant
 - Example – employee elects \$2400 payroll reduction to fund HFSA
 - COBRA premium would be \$204 per month (\$200 + 2%)
 - Special HFSA COBRA offer rule
 - COBRA only required if benefit available exceeds amount individual would have to pay for remainder of plan year

EXAMPLE:

1/1/15	Employee elects HFSA deductions of \$2400	
2/1/15	Employee submits \$400 claim	
6/30/16	Employee quits – benefit still available (\$2400 - \$400)	\$2000
	Premium for remainder of plan year (6 months x \$204)	\$1224
	Plan must offer COBRA	

COBRA

- COBRA & Health Flexible Spending Accounts (HFSA)
 - \$500 roll-over option
 - HFSA allowed to make available a \$500 roll-over of unused funds to next plan year
 - To take advantage of the roll-over, a plan can require participation in HFSA with a minimum employee payroll contribution in year 2
 - COBRA premiums for HFSA with roll-over provision
 - Roll-over not considered in setting COBRA premium
 - Example – employee elects \$2400 payroll reduction to fund HFSA and also has rolled over \$500 from previous year for total benefit available of \$2900
 - COBRA premium would still be \$204 per month (\$200 + 2%)

COBRA

- COBRA & Health Flexible Spending Accounts (HFSA)
 - \$500 roll-over option (cont'd.)
 - Special HFSA COBRA offer rule in HFSA with roll-over
 - COBRA only required if benefit available exceeds amount individual would have to pay for remainder of plan year
 - Roll-over is included in “amount available”

EXAMPLE:

1/1/15	Employee elects HFSA deductions of \$2400 Employee has \$500 roll-over available from previous year	
2/1/15	Employee submits \$400 claim	
6/30/16	Employee quits – benefit still available (\$2900 - \$400)	\$2500
	Premium for remainder of plan year (6 months x \$204)	\$1224
	Plan must offer COBRA	

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Employer Reporting Last Minute Update

Employer Reporting

- Employer Reporting of Plan and Coverage Information will Provide the IRS with the Information Necessary to Administer and Regulate:
 - Individual compliance with the requirement to have minimum essential coverage (“individual mandate”)
 - Individual eligibility for a premium tax credit/subsidy for coverage through a public marketplace
 - Employer compliance with the requirement to offer coverage to full-time employees and their dependent children under the Employer Shared Responsibility Rules (Section 4980H)

Employer Reporting

- All “Applicable Large Employers” (ALE = 50 or more FTEs)
 - Must report plan and offer of coverage information (§6056)
 - Employers with 50-99 FTEs satisfying the transition relief to delay 4980H compliance until 2016 must still report for 2015
- Employers offering self-funded plans (large and small)
 - Must report participant coverage information for any individual covered by the self-funded plan (§6055)
- Electronic Reporting
 - Employers who file 250 or more Form 1095s must file electronically

Employer Reporting

- First required in 2016 for the 2015 calendar year
 - Reporting is based on data from the previous calendar year regardless of the employer's plan year
- Annual timeframes for reporting (same as for W-2s)
 - Form 1095s (employee statements) must be provided annually to employees by Jan. 31
 - For 2015 Reporting ONLY - 1095 to employees deadline delayed to March 31, 2016
 - Form 1094 and all Form 1095s must be filed with the IRS by Feb. 28 (March 31, if filed electronically)
 - For 2015 Reporting ONLY - Reporting to IRS delayed to:
 - May 31, 2016 if the employer is not filing electronically
 - June 30, 2016 if filing electronically

Which Forms?

ALE Fully-Insured Plan

Form 1094-C (all parts)

Form 1095-C

- **Part I** - Employee & Employer Info
- **Part II** - Offer of Coverage (eligibility) Info

*Insurance carrier will provide coverage information on fully-insured plan via Form 1094/1095-B

ALE Self-Funded Plan

Form 1094-C (all parts)

Form 1095-C

- **Part I** - Employee & Employer Info
- **Part II** - Offer of Coverage (eligibility) Info
- **Part III** - Info on Covered Individuals

*Form 1094/1095-B may be used instead for non-employees covered under the plan

Small Employer Fully-Insured Plan

No reporting required by the employer

*Insurance carrier will provide coverage information via Form 1094/1095-B

Small Employer Self-Funded Plan

Form 1094-B and 1095-B
Info on Covered Individuals

Reporting - Penalties & Market Developments

- Employee Questions about 1095s
 - Employees do not need a copy of the 1095 to file their taxes
 - The 1095s are documentation for the employee to keep, to verify answers provided on tax forms if audited
 - IRS has stated that if an individual receives a 1095 after filing their taxes which shows information that differs from what they provided to the IRS, they do not need to file an amended return
 - Note – this does not protect the individual from tax liability on audit if there is a mistake in their return

Reporting - Penalties & Market Developments

- **Employer Reporting Penalties**
 - Penalty for failing to provide 1095 to applicable individuals by March 31, or for providing incorrect forms
 - \$250 for each such form, capped at \$3 million per calendar year
 - Reduced to \$50 per return and are capped at \$500,000 if failures are corrected within 30 days
 - Reduced to \$100 per return and are capped at \$1.5 million if failures are corrected by Oct. 1, 2016
- **IRS Penalty Relief**
 - IRS has promised broad relief from penalties related to administrative and coding errors as long as employer is making a good faith effort to report
 - ...(The IRS) will not impose penalties under sections 6721 and 6722 on (employers) who can show that they have made good faith efforts to comply with the information reporting requirements”
 - Relief from penalties for providing forms late will not be as broadly available
 - Must meet IRS “reasonable cause” standard

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Reporting - Penalties & Market Developments

- Vendor and Timing Issues

- We are receiving many reports of major vendors providing incorrect 1095s and refusing to correct them prior to deadline
 - One of the largest payroll firms in the country is using Code 1H on Line 14 and Code 2I on Line 16 for all months prior to renewal regardless of whether the employer qualifies for non-calendar year transition relief or whether coverage was actually offered or not
- What is an employer to do?
 - Manually correct?
 - Provide a form known to be incorrect before deadline and try to correct later?
 - Correct forms and provide to employees late?

§4980H Reconciliation

- How will the IRS Administer the Shared Responsibility Rules and Apply Penalties?
 - Shared responsibility reconciliation - Just because an employee received a subsidy does not mean the employer is actually liable for a shared responsibility payment
 - Employee may have incorrectly reported employer plan information when applying for individual health insurance
 - Employers may be able to take advantage of IRS employer safe harbor rules and not be liable for a shared responsibility payment even for a full-time employee who qualifies for a subsidy

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Thank you.

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