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Putting ACA Considerations Back on Your Radar

ACA compliance it is not on the radar for most staffing firms. Well, it should be. That blinking blip on the screen might be a potential ACA penalty that could jeopardize your business. Following are significant changes to the ACA that you need to know.

ACA Affordability Test

The ACA "Affordability" test for health insurance can trigger the ACA's "b" penalty. The rate is sharply decreasing to 9.12% of pay which means the maximum an employer can charge an employee for "Single" health coverage is dropping significantly and therefore, employer costs are going up. What is the impact?

- More employees may qualify for a subsidy on the Exchange.
- The **penalty will be $4,320 annually in 2023** (prorated monthly based on the number of months an employee worked for the employer).
- Employers may want to **reconsider offering an "affordable" MVP plan** option as the Part B penalty may not be small.
- The number of people getting coverage on the Exchange has quietly **grown by 50% since 2020.**

Good Faith Transition Relief for ACA Reporting Errors

The IRS has ended its Good Faith Transition Relief for ACA reporting errors penalties. Most IRS penalties assessed for ACA fines are often misunderstanding reporting requirements and/or errors in reporting. As recently as 2021, the IRS accepted good faith effort to report correctly. And, when corrected reporting data was resubmitted, assessed no penalty. However, this opportunity to fix errors is no longer available. The following practices are common and may result in penalties:

Classifying groups of employees as variable hour employees.

There is a multi-part test that determines variable hour status and is specific to the position being filled. It does not allow employers to "blanket" assign variable hour status to their workforce.

Recommendation: Review third party, payroll and in-house tracking methods to ensure calculations are correct and do not classify all or classes of employees as variable hour.

Using the "lookback method" to determine full-time status.

The lookback method is extremely complex and often misunderstood and miscalculated. Employers using the lookback method may no longer claim relief if they submit errors. This can be a huge issue because it puts your firm at risk for the ACA's "a" penalty.

Recommendation: Use the monthly measurement method instead and if your ACA third party vendor or payroll system can't accommodate this method and insists they can only do the lookback method, or tells you to put everyone through a 60 day initial "lookback" to determine full-time status, get ACA compliance guidance elsewhere.

Ensuring best practice.

Incorrectly classifying an entire group of employees as variable hour OR using the lookback method can lead to potentially costly Part A penalties. Employers should carefully review practices are being followed, including:

- Examine your third-party payroll and/or ACA tracking vendors
- Do a pre-emptive internal audit with the aid of your employee benefits broker
- Be prepared to develop a financial recovery plan in order to protect the assets of the firm and its owner(s).

Example of the potential Part A penalty cost to your company.

1,000 x $2,880 = $2.88M

(# of full-time employees) (per employee per year) (potential penalty cost)

Effects of New Enhanced Exchange Subsidies

Congress passed legislation that enhances Exchange (Marketplace) subsidies making them more attractive to employees who want more affordable coverage for themselves and their families. Beginning in 2023, more will qualify for greater subsidies and the employee's costs will be significantly less than in prior years. As a result, more people will seek to purchase coverage on the Exchange (Marketplace). In fact, the number of people getting coverage on the Exchange increased by 25% from 2022 to 2023!

Recommendation: Those not offering an affordable MVP (Minimum Value Plan) should carefully evaluate their situation and consider significantly increasing budget for ACA "b" penalties.

How Can I Avoid Penalties?

Consider adopting an opt-out requirement for ACA compliant health benefits. This approach can be a way of assuring that regardless of other practices, you are in full ACA compliance thus providing protection against both the ACA "a" and "b" penalties. EmployerAdvantage is an exclusive option that employs the opt-out approach and combines it with proprietary technology that automates your ACA offers of coverage.

Reach out to your broker today to ensure you have a game plan for ACA Compliance in 2023.

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