

Duff on Hospitality Law

So, What Do the Healthcare Changes Really Mean to Me as an Employer?

on 2.4.13 | Posted in Employment Law

Many companies have heard all the chatter about the changes to the healthcare system under the [Affordable Care Act](#), but really haven't had the time to figure out what the changes mean to them as an employer. After all, something entitled the "Affordable Care Act" should really just focus on dealing with the out of control costs of medicine and healthcare, right? Oh, if only it were that simple.

One of the biggest issues in healthcare is simply that many people can't afford the cost of insurance. Additionally, a number of employers do not provide insurance benefits as a part of employment. The ACA attempts to address this problem. Of course, this is not the only issue addressed under the ACA, but for employers, it is one of the major concerns.

The ACA obligations on employers are implemented in stages. The first obligation is already in effect. This requires employers who provide "applicable employer sponsored coverage" to report the aggregate cost of the employer sponsored coverage on an employee's Form W-2 for the 2012 year. This means the Form W-2 that is issued in January for the prior year, should reflect the cost of coverage under any group health plan made available to the employee by the employer, and which cost is excludable from the employee's gross income, or would be excludable if it were employer provided coverage. The reportable premium is not impacted by whether the employer or employee bears the cost of the premium. There is a special rule for self-insured plans. If you have a self-insured plan, you should seek guidance on the proper calculations of the applicable premiums. If an employer is required to file fewer than 250 Form W-2s, then they are not subject to this reporting requirement. More information on this requirement can be found in [IRS Notice 2012-9](#). (Specifically, starting on page 6.)

The next obligation that concerns employers is the imposition of the "Individual Mandate" and the "Employer Mandate." The "[Individual Mandate](#)" requires most Americans to maintain minimal essential health insurance coverage or pay a penalty to the IRS. The "[Employer Mandate](#)" imposes a tax on employers with at least 50 employees if an employee who qualifies for federal subsidies purchases insurance through an exchange, rather than use employer sponsored health insurance. Finally, the ACA also provides a mechanism for states to establish health care [exchanges](#) where qualified individuals and small businesses can purchase health insurance.

The employer mandate is also known as the “Pay or Play” provision. Beginning in 2014, large employers (employed an average of at least 50 full-time employees or full-time employee equivalents for the preceding year) that do not offer adequate coverage to full-time employees must, under certain circumstances, pay an assessment to the [IRS](#). Generally, the payment is required if the employer either fails to offer to the full-time employees (and their dependents) the opportunity to enroll in an eligible employer sponsored plan and the employee is certified to receive a premium tax-credit or cost-sharing reduction under the law, or the employer offers a plan, but the employee is certified to receive the premium tax credit or cost sharing reduction because the employer’s plan is either not affordable under the law or does not provide the minimum value. More information can be found [here](#). An employer’s plan is deemed to be “affordable” if the employee’s required contribution to the plan does not exceed 9.5% of the employee’s household income for the taxable year. For the purposes of the ACA, a full-time employee is anyone who works 30 or more hours per week. The calculations of the numbers for full-time and who qualifies are complicated. There are also some safe harbor provisions that are complicated enough that they could fill a post by themselves. Employers who think they may qualify are best served to get some advice on the various factors considered and calculations used to determine if an employer qualifies under the law.

The main take away for employers should be that the ACA could be expensive – but may not need to be. Employers should assess their current plans, as well as their workforce, to determine who is covered by the law and who is not. This is not a law where an employer wants to wait and deal with the implications and consequences when they get around to it. The problem is that specific guidance is still difficult because the law is still being challenged in courts and the associated regulations have not all been issued. All employers are encouraged to start looking at how the January 2014 changes could change their workplace now, rather than next December. Some early work could be very beneficial and result in a strategic plan that will minimize the risks and exposure for the fines and penalties. This blog post is a very preliminary look at the implications. Stay tuned for additional information and guidance.

Tags: Affordable Care Act, Employer Mandate, Individual Mandate, IRS