Agenda
What’s new
Pitfalls and how they affect:
  - Play or pay
  - Employee types
  - Employment status
  - Reporting requirements

A cafeteria plan may allow an election revocation (except a health FSA election) in two new situations

Employee enrollment in the Exchange
  • Must enroll during Exchange open enrollment period or a special enrollment period
  • Must enroll in an Exchange plan immediately following the revocation

Reduction in hours of service
  • Employee must change from full-time (FT) to part-time (PT) status and be reasonably expected to remain PT
  • Must enroll in another plan no later than the first day of the second full month following evocation
When an employee objected to the employer’s HRA requirements, the EEOC sued alleging that employer retaliated by firing her

– Employee required to complete a Health Risk Assessment
– Fully paid coverage for employees completing the HRA
– Those who refused pay 100% of premium
– At issue: did the penalty render the HRA requirement involuntary
– DOL permits these types of practices; the EEOC tends to consider mandatory HRAs as an ADA violation

What’s new

• Track all compensable time toward the 30 hour (120 hours for FTE) FT definition
• Common law vs. 1099 and what you don’t label right can hurt you
• Exempt vs. Non-exempt and what hours you don’t capture can affect your total FTE count
• How job descriptions can increase costs by not defining expected hours worked for both employee and supervisor
• How poorly written job descriptions can increase the number of Variable Hour Employees
• Is your waiting period compliant?
• Are you using an orientation period and is it compliant?
• What data must be tracked for determining Applicable Large Employer status?
• What data must be tracked for determining FT status and eligibility for group health plan?
• What data must be tracked for determining affordability based upon wages or safe harbor methods?
• What data must be tracked for employers with 50+ employees beginning January 1, 2015, and reported in 2016?
• Applicable Large Employer reporting requirements
The Best Payroll is

- Legally compliant
- Efficient
- Cost-effective
- Adaptable
- Scalable
- Accessible reporting
- Procedurally documented

Payroll Compliance Involves

- Federal Fair Labor Standards Act (FLSA)
- Internal Revenue Code
- State laws
- Overtime and exemptions
- Minimum wage
Payroll Compliance Involves

• Child labor
• Paycheck frequency
• Vacation paycheck deadlines
• Wage statements in certain states

Payroll Compliance Involves

• Meal and rest breaks
• Deductions
• Workers’ compensation
• Unemployment compensation
• State disability income
• State and local income tax withholding
Other Employment Laws

- FMLA
- USERRA
- Title VII
- ADA
- SOX
- HIPAA
- NLRA
- COBRA
- ADEA
- OWBPA
- ACA
- GINA

Independent Contractor vs. Common Law Employee

- Services integral to business
- Permanency, duration of relationship
- Extent of individual investment
- Degree of profit-loss opportunity
- Degree of control exercised
- Skill, initiative, judgment required
- “Economically dependent”? 
IRS Common Law Test

- Behavioral control
- Financial control
- Relationship of parties

Play or pay applies to applicable large employers (ALEs)
- An ALE employs 50 or more full-time equivalents (FTEs) in preceding year
- To determine ALE status for 2015, use any consecutive six month period in 2014
- Effective January 1, 2015
  - Delayed implementation for 50–99 FTE
  - Transition relief for fiscal year plans
No employer offered insurance

Penalty assessed monthly on EIN basis

Employee types

Employer offered insurance not affordable

Penalty assessed monthly on EIN basis

Employee types
FT employee

Upon start date, employee is reasonably expected to work an average of at least 30 hours of service per week with an employer

(130 hours of service per month is equivalent)

PT employee

Upon start date, employee is reasonably expected to work an average less than 30 hours of service per week with an employer

(Facts and circumstances test)
• Variable hour determined at time of hire
• A new employee is variable hour ONLY if it cannot be determined whether the employee is reasonably expected to work on average at least 30 hours per week during the initial measurement period because
• To determine FT status, may measure over a period of time

Employee types

No exception to the play or pay mandate for temporary employee
- Employee is either FT, PT, variable hour or seasonal
- May not considered that employee may quit before the end of the initial measurement period
- Employees who do not remain employed beyond the last day of the third full calendar month of employment are in a limited non-assessment period and will not trigger a penalty or be counted as a FT for penalty purposes
• An employee in a position for which the customary annual employment is six months or less
  – Customary means employee typically works for a period of six months or less around the same time each year
  – Seasonal employees are treated as variable hour
  – Employer can average hours over a 12-month period
  – Most seasonal employees will not be FT
• The 120-day/4 month rule applies for seasonal employee exception from ALE determination

Employee types

The employer counts hours of service each calendar month
  – Employee is considered FT and offered coverage for that month if has 130 hours or more
  – Employer has until the end of the third full calendar month following the change to FT to offer coverage (non-assessment period, applies once per period of employment)
  – Or employer could count on a weekly basis
    • Count a week that includes the first day of the calendar month as long as the week that includes the last day of the calendar month is not counted
• Use for salaried employees
• Difficult for hourly employee
• Look-back period: 3-12 month employer selected period to determine which employees average at least 30 hours per week
  - Employee treated as FT or not FT during the period following the look-back period, regardless of hours worked (stability period)
  - Stability period is the longer of six months or the measurement period

• Should be used for hourly employees
Employers may be likely to use

- **Look-back method for hourly employees**
  - If FT employee hours are <30, it will not change treatment as a FT employee for the remainder of the stability period if remains employed

- **Monthly method for salaried employees**
  - If employee hours reduce to <30, coverage may be terminated and COBRA offered
### Reporting requirements

<table>
<thead>
<tr>
<th>Section 6055</th>
<th>Section 6056</th>
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</thead>
<tbody>
<tr>
<td>Required by insurers and self-funded plans</td>
<td>Required by ALEs</td>
</tr>
<tr>
<td>Forms 1094/1095 B</td>
<td>Forms 1094/1095 C</td>
</tr>
<tr>
<td>Purpose is to enforce Individual Mandate</td>
<td>Purpose is to enforce Employer Mandate</td>
</tr>
<tr>
<td>Must identify all Covered E, S &amp; D</td>
<td>Must identify all (ACA Full-Time defined) E, S &amp; D offered coverage</td>
</tr>
<tr>
<td>If covered one day of month (M), shows as covered entire M</td>
<td>Must be eligible every day of M to be considered offered for entire M</td>
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**Code 6056 – qualifying offers (QO)**

- A QO is one of minimum value coverage to employee that costs no more than 9.5% of the FPL ($1,100 in 2014) for single coverage
  - Offer must include MEC to dependents
- For employees who receive QO, employer only needs to report names, addresses and tax IDs
Employer calendar year reporting simplified when employees receive QO

• Form 1094-C – employer level data
• Form 1095-C – indicator code to show QO was made
• Form 1095-C or a statement informing the employee that the family is ineligible for a premium credit that year
• Full reporting is required for employees not covered by a QO for entire calendar year
  • For 2015, employers making a QO to 95% of their FT employees may use the simplified reporting method for all employees, even those who didn’t receive a QO for the entire year
  • Code on forms will indicate an employee did not receive a QO or received no offer, and may be entitled to the premium tax credit

Reporting requirements

Code 6056 – option to report without separate certification of FT

• When affordable, minimum value coverage is offered to at least 98% of employees, employers may certify the offering without identifying employees who are full time
• Useful if the employer does not want to determine and report FT each month
The Final Regulations removed 6056 reporting requirements for:

- Length of any permissible waiting period
  - But there is an indicator code for months where coverage was not offered because of a permissible waiting period
- Employer’s share of the cost of benefits
  - But there is an indicator code for minimum value.
- The monthly premium amount in each enrollment category (family, self & spouse, self-only)
  - But premium for lowest-cost single only plan is required.
- Months during which dependents were covered
  - Dependent coverage per month will be reported under Section 6055 (by insurer)

Despite commenter’s requests, the IRS will not require reporting of:

- Cost of coverage for spouses and dependents
• ALEs that fail to comply with the reporting requirements may be subject to penalties under:
  – Section 6721 (failure to file correct information returns); and
  – Section 6722 (failure to furnish correct payee statement).
• Failure to file correct return penalty is $100 for each return (with a $1,500,000 yearly cap).
• Failure to furnish correct payee statement penalty is $100 for each return (with a $1,500,000 yearly cap).
• Penalty can be increased for intentionally disregarding requirements.

Reporting Penalties Transition Relief

• 2016 Penalty Transition Relief:
  • IRS will not impose reporting penalties on ALEs in 2016 when there is a good faith efforts to comply with the information reporting requirements.
  • This relief generally allows additional time to develop appropriate procedures for collection of data and compliance with these new reporting requirements
• Transition Relief Does Not Apply to:
  • (1) the failure to timely file or
  • (2) instances where there is no good faith effort to comply
    – However, the failure to timely file, could be excused if the IRS finds reasonable cause for the failure to timely file.
Action Plan

• Locate and review all plan documents
• Locate and review all job descriptions
• Locate and review all 1099 documentation
• Review all time keeping procedures to ensure proper tracking of compensable time
• Locate and review all ACA related notices
• Monitor changes frequently. Sign up for alerts
• Determine if Applicable Large Employer
• Work with legal to determine common ownership, if unknown

Action Plan

• Determine Measurement Periods, if any
• Determine if you’ll report from your time solution or payroll and be consistent
• Determine if you’ll use the monthly vs. Measurement Period method of evaluating FT status
• Determine if you’ll use a different Measurement Period for permitted business classifications
• Identify ACA classification for current employees at the end of monthly or multi-month Measurement Periods
Action Plan

• Try all three and determine best affordability calculation for your company
• Determine which 6055 and 6056 reporting requirements apply to you
• Identify self funded plans
• Identify Minimum Essential Coverage (MEC)
• Identify plans that meet Minimum Value (MV)
• Prepare HR, Payroll and Benefits Administration systems to enable easy data capture
• Review Report Writer capabilities with current technology partners

Action Plan

• Capture both offers and waived coverage for employees, spouses and eligible dependents for easier reporting
• Determine if electronic reporting to employees will be best method, then
• Gain authorization from employees if electronic reporting to individuals is permitted (must be separate from electronic W-2 authorization)
• Designate responsible party for ALE reporting
Resources

- www.irs.gov
- www.healthcare.gov
- Infinisource Newsroom at http://newsroom.infinisource.com/

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