

ACA Large Employer Compliance and Reporting

July 10, 2015

Special Report

HIGHLIGHTS

- Applicable Large Employers Must Decide Whether to Play or Pay
- Reporting Duties Start in Early 2016 for 2015
- Complex Look-Back and Simpler Monthly Compliance Methods Available
- Seasonal Worker Exception Available but Limited

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Employer Shared Responsibility Payments and Reporting under the Affordable Care Act

The Employer Shared Responsibility payment and reporting rules under the Affordable Care Act (ACA) apply to Applicable Large Employers beginning in 2015. Reporting begins in early 2016 for the 2015 calendar year. Employers subject to these rules must decide whether it is better to pay for health coverage, or pay the penalty.

The seasonal worker exception allows certain employers to avoid ALE status if their 50-plus FTE and full-time employee headcount is attributable to seasonal workers. The exception applies only if the employer exceeded 50 FTE and full-time employees (including seasonal employees) for no more than 120 days or four months during the prior year.

Employers Subject to Pay or Play Rules

Only Applicable Large Employers (ALEs) are subject to the Employer Shared Responsibility rules. An employer qualifies as an ALE for a calendar year if it averaged 50 or more full-time and full-time equivalent employees during the prior year. Sole-proprietors, partners, 2% plus S corporation shareholders, real estate agents, direct sellers, and independent contractors are not employees for these purposes.

A full-time employee averages at least 30 hours of service per week, or has 130 hours or more of service during the month. A full-time equivalent employee (FTE) is a combination of part-time employees. The FTE count is determined by adding the number of hours of service of employees who are not full-time employees (but not more than 120 hours per employee) for the month, and then dividing by 120.

COMMENT. *FTEs are used solely for determining ALE status, and are not used for determining shared responsibility payments.*

IMPACT. *Just because an employer relies on seasonal workers does not necessarily mean the employer can take advantage of the seasonal worker exception. For example, an agricultural employer that relies heavily on seasonal workers would not qualify for the exception if the employer's FTE head count exceeded 50 for more than 120 days during the year.*

ALE status is determined by aggregating controlled group employers. Individual employer members of the aggregated ALE group are known as Applicable Large Employer Members (ALEMs). Shared responsibility payment and reporting duties are applied to each ALEM separately. A single-employer ALE is treated as an ALEM for these purposes.

Assessable Shared Responsibility Payments

If an employer is an ALEM, and at least one of its full-time employees obtains subsidized coverage through an Exchange, one of two mutually exclusive employer shared responsibility payment regimes may apply.

One regime applies to ALEMs that fail to offer coverage to substantially all of their full-time employees. The other regime applies to ALEMs that do offer such coverage, but nevertheless have one or more full-time employee who obtains subsidized coverage through an Exchange because the employer coverage is not affordable or does not provide minimum value.

Payments for Not Offering Coverage

Under Code Sec. 4980H(a), if an ALEM fails to offer its full-time employees and (after 2015) their dependents the opportunity to enroll in minimum essential coverage for any calendar month, and it has at least one full-time employee that has obtained subsidized coverage through a Marketplace an Exchange for that period, a shared responsibility payment may be imposed based on the full-time employee count of the ALE of which the ALEM is a member.

The payment equals the product of the applicable payment amount, which is $\frac{1}{12}$ of \$2,000 for any month (i.e., \$166.67 per month), times the number of full-time employees for the month. The \$2,000 amount is adjusted for inflation after 2014. In computing the Shared Responsibility payment, the number of the employer's full-time employees is reduced by 30 (80 for 2015). For ALEs with multiple ALEMs, the head count reduction is allocated among its ALEMs based their pro rata share of the ALE's full-time employee count.

An ALEM is treated as offering coverage to its full-time employees (and their dependents) for a calendar month if it offers such coverage to all but 5% (or, if greater, five) of its full-time employees. As a result, an offer to 95% of an ALEM's full-time employees suffices to avoid the shared responsibility payment for failure to offer coverage. Under transition relief for 2015-only, employers may offer coverage to all but 30% of their full-time employees so that 70% coverage suffices.

Payments for Offering Coverage That Does Not Meet Affordability or Minimum Value Standards

The Shared Responsibility payment under Code Sec. 4980H(b) for offering coverage that does not meet affordability or minimum value standards is the product of: (a) the number of the full-time employees receiving a premium tax credit or cost-sharing subsidy certification for the purchase of health insurance through a state or federal health exchange for the month, times (b) an amount equal to $\frac{1}{12}$ of \$3,000 for any month (i.e., \$250 per month). After 2014, the \$3,000 amount is adjusted for inflation.

The payment under Code Sec. 4980H(b) is assessed only if the ALEM is not assessable under Code Sec. 4980H(a) for failing to offer coverage to its full-time employees. The payments under Code Sec. 4980H(b) are capped so they can never exceed what the ALEM would owe under Code Sec. 4980H(a).

IMPACT. *Typically, liability is less for offering minimum essential coverage that does not meet minimum value or affordability standards than for not offering minimum essential coverage at all.*

Play or Pay Decision

If an ALEM decides to “play” by offering coverage rather than pay Shared Responsibility assessments, there are two routes it can go. It can offer low-cost coverage to at least 95% (70% for 2015) of its full-time employees, which will mean no liability for failing to offer coverage, but some risk of shared responsibility liability for not offering affordable coverage or coverage providing minimum value to all of its full-time employees. Or it can pay more for insurance coverage, and offer coverage that meets affordability and minimum value standards to all of its full-time employees in which case it will be insulated from shared responsibility liability altogether.

IMPACT. *In either case, the coverage will have to meet minimum standards set out for all group health plans whether they are offered by ALEMs or non-ALEMs.*

PRACTICE TOOL. *There is a “Play or Pay” calculator on Intelliconnect that can help compare the projected cost of coverage options against potential shared responsibility liability.*

Identifying Full-Time Employees

The IRS has provided two methods for using hours of service to determine full-time status: the monthly measurement method, and the look-back safe harbor measurement method. These methods provide minimum standards for the identification of full-time employees. Employers may always treat additional employees as eligible for coverage, subject to compliance with any nondiscrimination or other applicable requirements

Under the monthly measurement method, an ALEM determines each employee's status as a full-time employee by counting the employee's hours of service for each calendar month. Special rules apply for offering coverage to an employee who qualifies for the first time for an offer of coverage, and for employees who return after a leave of absence.

The look-back method uses standard measurement periods to determine employee status, and associated stability periods during which the employees are treated in accordance with their status as so determined. Regulations provide separate rules for ongoing employees, new full-time employees who are not seasonal, and new employees who are variable hour, seasonal or part-time. Special rules apply for new variable, seasonal or part-time employees as they transition to ongoing employees. Special rules are also provided for employees rehired after termination or resuming service after an absence. The look-back method and the monthly method may be used concurrently for different categories of employees.

COMMENT. *The look-back method is relatively complex and inflexible compared to the monthly method, and it can result in the employer having to offer coverage to an employee for some time after the employee is no longer otherwise qualified for an offer of coverage under the plan. However, the look-back method provides stability and a degree of certainty. Employees that average near 30 hours per week will not simply be popping into and out of coverage eligibility. Also, employers may tailor their look-back rules for greater flexibility by using shorter periods, or lean towards stability with longer periods.*

Overview of Reporting Requirements

The individual and employer shared responsibility provisions of ACA work hand-in-hand with the reporting requirements for coverage providers (including sponsors of employer self-insured plans) under Code Sec. 6055, and for ALEMs under Code Sec. 6056.

The requirements under Code Sec. 6055 and 6056 are similar, but may apply independently of each other, depending mainly on the type of entity that is providing coverage and the kind of coverage that is being offered (i.e., fully-insured or self-insured). Code Sec. 6055 requires information reporting by anyone that provides “minimum essential coverage” (i.e., medical coverage) to an individual during a calendar year, primarily to determine whether the individual is subject to a penalty based on the individual shared responsibility provisions under ACA. Code Sec. 6055 is generally applicable to entities such as insurance carriers, but self-insured employers may also be responsible for filing Code Sec. 6055 reports.

Code Sec. 6056 requires information reporting by ALEMs on the health care coverage offered to its full-time employees.

This information is used to determine (1) whether an employee is eligible for a tax credit if they purchased their coverage on the Exchange, and (2) whether the ALEM is subject to a penalty under the employer shared responsibility provisions. Some employers may be subject to reporting under both Code Sec. 6055 and Code Sec. 6056. Those employers will report the information required by both sections on a single combined form.

COMMENT. *The format for this information reporting is similar to other information reporting that many employers are already familiar with, such as Forms W-2 and Form W-3. Each employee or covered individual is furnished with a form. A copy of each of those forms, along with a transmittal form, is filed with the IRS.*

Due Dates

Forms satisfying Code Secs. 6055 and 6056 must be filed with the IRS annually. The IRS encouraged reporting for the calendar year 2014, but did not require it. The first returns required to be filed are for the 2015 calendar year. These forms must be filed with the IRS no later than March 1, 2016 (February 28, 2016, being a Sunday), or March 31, 2016, if filed electronically. Electronic filing is required for any entity that files 250 or more employee or individual statements during the calendar.

Statements must be furnished to “responsible individuals” (the person who enrolls one or more individuals in minimum essential coverage) no later than February 1, 2016 (January 31, 2016, being a Sunday).

IMPACT. *Since these forms are extremely complicated and since they will be based on hours of service and medical coverage offered in 2015, employers ought to familiarize themselves with the process and information required as soon as possible.*

Penalties

One of two penalties may be assessed on applicable reporting entities that fail to file or furnish statements, with both penalties assessed separately from each other: 1) a “failure to file” penalty for entities that fail to file timely information returns, fail to include all the required information, or include incorrect information on the return; and 2) a “failure to furnish” penalty for entities that fail to furnish the statement to necessary individuals, fail to include all the required information, or include incorrect information on the statement.

In general, each penalty is \$100 for each return with respect to which such a failure occurs, but the total amount imposed on such person for all such failures during any calendar year cannot exceed \$1,500,000. The number of returns to which the penalty applies is capped at the greater of 1) ten, or 2) one-half of one percent of the total number of information returns required to be filed/or furnished by the person during the calendar year. Because the penalties apply separately from each other, the maximum liability an entity could face during the year for failure to file and failure to furnish could be up to \$3,000,000.

The IRS will not impose penalties under Code Sec. 6055 or Code Sec. 6056 for the first year of filing (i.e., returns and statements filed and furnished in 2016 to report offers of coverage in 2015) if reporting entities can show they have made good faith efforts to comply with the information reporting requirements.

COMMENT. *The IRS has specified that under this “good faith” standard, the entity would have to show that they filed and furnished the required returns and statements. This relief only applies to returns and statements where the information is incorrect or incomplete. In other words, it is far better for the entity to file on time and later correct or amend their return than not file at all.*

Health Coverage Provider Reporting on Forms 1094-B and 1095-B (Code Sec. 6055)

Code Sec. 6055 provides that every provider of “minimum essential coverage” must report coverage information by filing an information return with the IRS and furnishing a statement to individuals. Generally, providers are insurers, carriers, or government agencies providing coverage, but they can include any employer with a self-insured plan.

Health coverage provider reporting is done through two forms: Form 1094-B (a pure transmittal form, used to identify the reporting entity and transmit Forms 1095-B), and Form 1095-B (statements furnished to individuals with a copy sent to the IRS).

COMMENT. *Beginning on January 1, 2014, individuals are required to either maintain minimum essential coverage for every month in the calendar year, claim an exemption, or pay a penalty. The information on these forms is used by the IRS to confirm that the individual has satisfied the individual shared responsibility provisions of ACA.*

ALEMs will definitely be subject to Code Sec. 6056, but may also be subject to Code Sec. 6055. However, ALEMs will not file Forms 1094-B/1095-B. Entities subject only to Code Sec. 6055 who will report on 1094-B/1095-B are:

- Small employers not subject to the employer shared responsibility provisions sponsoring self-insured group health plans; and
- Health insurance issuers or carriers who provide individual market coverage, coverage for employees of small employers who obtain coverage through the SHOP, and coverage provided through fully-insured plans sponsored by employers.

COMMENT. *Providers of minimum essential coverage are required to furnish only one Form 1095-B for all individuals whose coverage is reported on that form to the responsible individual. The responsible individual is directed to provide a copy to other individuals covered under the policy if they request it.*

Applicable Large Employer Reporting on Forms 1094-C and 1095-C (Code Sec. 6055)

Code Sec. 6056 requires ALEs to file information returns with the IRS, and provide statements to their full-time employees about the health insurance coverage the employer offered. An ALE may be a single entity or may consist of a group of related entities (such as parent and subsidiary or other affiliated entities) treated as a single employer under Code Secs. 414(b), 414(c), 414(m), or 414(o). Each entity is known as an ALEM.

For each of its full-time employees, the ALEM is required to file a return with the IRS and furnish a statement to the employee reporting on whether an offer of health coverage was or was not made to the employee. If an offer was made, the ALEM must report the required information about the offer. Therefore, even if an ALEM does not offer coverage to any, or only some, of its full-time employees, it must file returns with the IRS and furnish statements to each of its full-time employees to report information specifying that coverage was or was not offered.

Each ALEM with full-time employees is the entity responsible for filing and furnishing statements with respect to its full-time employees under Code Sec. 6056. For example, if a corporation is made up of a controlled group of twelve ALEM subsidiaries, each ALEM would file separately from each other, and only for the full-time employees that work for that subsidiary. This is consistent

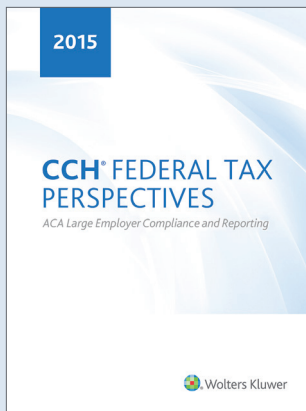
with the manner in which any potential assessable payments under Code Sec. 4980H will be calculated and administered.

Code Sec. 6056 reporting serves two purposes:

- **It forms the basis for the process leading to any assessment of the ALEM under Code Sec. 4980H.** Generally, a payment will be assessed under Code Sec. 4980H if the employer either does not offer minimum essential coverage to its full-time employees (and their dependents) or the coverage offered is not affordable or does not provide minimum value, and one or more the full-time employees receive a premium tax credit for purchase of coverage on the Exchange. By requiring employers to report the coverage that was offered to each employee, the IRS hopes to be able to verify whether the employer has satisfied their obligations under these provisions.
- **It allows the employees who receive the statements to determine if they are actually eligible for the premium tax credit under Code Sec. 36B.** The advanceable and refundable Code Sec. 36B premium tax credit helps individuals afford health insurance coverage purchased through an Exchange. An employee is not eligible for the premium tax credit if the employee is offered affordable minimum essential coverage under an employer-sponsored plan that provides minimum value, or if the employee enrolls in an employer-sponsored plan that provides minimum essential coverage.

IMPACT. *The amount of information that ALEMs must collect and organize throughout 2015 under Section 6056 is even greater than that required by Section 6055. While some employers may already have created a system in place to track this data in house, others may still need to establish a data collection method. This should be done immediately, so as to avoid issues in early 2016.*

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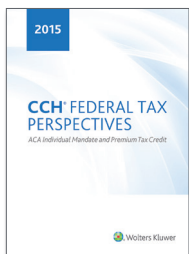


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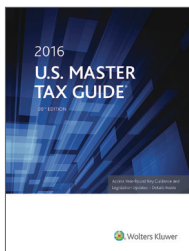
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