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HR News Alert

Brought to you by: benefitsContinuum, Inc.

March 2014 Issue

Product Spotlight - ACA Counting Hours Compliance

Are You Ready? Healthcare Reform eligibility compliance begins 1/1/2015.

"Measurement periods. Administrative periods. Stability periods. Average weekly hours worked. At-risk non-fulltime employees.

Non-fulltime employees that became fulltime. Big penalties. Even bigger fines."

These terms may be intimidating to you, but to the ACA eligibility compliance eligibility experts at benefitsContinuum this is standard procedure. Outsourcing Counting Hours Administration frees-up staff to focus on more strategic activities and mitigates the risk of incurring material fines and penalties. Examples of Healthcare Reform eligibility compliance services include:

- ✓ Monitoring hours worked,
- ✓ Identifying "at-risk" variable hour employees,
- ✓ Performing 70% threshold testing
- ✓ Providing support for estimating fines and penalties

Since employers already have hours worked data in their time & attendance systems and employee data in their HR systems, employers simply need to send this data to benefitsContinuum on a pay period basis. There's no need to provide any new information. It's that easy. Once benefitsContinuum has the historical hours worked data, employers can be proactive and start to analyze various measurement periods to determine which measurement period works best to their advantage.

For employers that start now, management can better identify "at-risk" variable hour employees and take the necessary action to mitigate against any future financial and public relation risks. Given the power and affordability of the benefitsContinuum solution coupled with the complexity and ambiguity of Healthcare Reform, outsourcing this technical work is a "no-brainer." So, why take on the extra work and the big risks when an affordable solution is only a phone call away? There's a lot of work to do and there's an opportunity to get in front of the curve.

Will you be ready? Healthcare Reform will be here January 1, 2015. The time to start planning is now. Please contact Jim Durkin at benefitsContinuum (908) 879-6744 to learn how our solution can help you comply with Healthcare Reform.

In this Issue

5 Must-Know Facts About 'Pay or Play'

Recently issued final rules provide important guidance on the 'pay or play' provisions under Health Care Reform. These provisions require large employers--generally those with **at least 50 full-time employees**, including full-time equivalents--to offer affordable health insurance that provides a minimum level of coverage to full-time employees (and their dependents), or pay a penalty tax if any full-time employee receives a premium tax credit for purchasing individual coverage on a Health Insurance Marketplace.

Below are five things employers should know about the 'pay or play' rules:

1. The requirements are delayed for certain large employers.
Employers with **100 or more full-time employees** (including full-time equivalents) are subject to the 'pay or play' requirements starting in 2015. However, the rules will not apply until 2016 for employers with **50 to 99 full-time employees** (including full-time equivalents) who certify that they meet certain eligibility criteria related to workforce size and maintenance of workforce, hours of service, and previously offered health coverage.

2. Affiliated employers are generally combined to determine their workforce size.
Companies that have a common owner or are otherwise related generally are combined and treated as a single employer, and so would be combined for purposes of determining whether or not they collectively employ at least 50 full-time employees (including full-time equivalents). If the combined total meets the threshold, then each separate company is subject to the 'pay or play' provisions, even those companies that individually do not employ enough employees to meet the threshold.

3. There are two methods employers may use to determine whether an employee is full-time.
An employee is considered full-time for a calendar month if he or she averages at least 30 hours of service per week (or 130 hours of service in a calendar month). The final rules provide two methods for determining whether an employee has sufficient hours of service to be a full-time employee:

- One method is the monthly measurement method under which an employer determines each employee's status by counting the employee's hours of service for each month.
- The second method is the look-back measurement method, under which an employer may determine the status of an employee during a future 'stability period' based upon the hours of service of the employee in a prior 'measurement period.' (This method may be used only for purposes of determining and computing liability, and not for determining whether the employer is subject to the 'pay or play' requirements.)

The final rules describe approaches that can be used for various circumstances, such as for employees who work variable hour schedules, seasonal employees, and employees of educational organizations.

4. An employer may be liable for a penalty for 2015 under two circumstances.
For 2015 (and for employers with non-calendar-year plans, any calendar months during the 2015 plan year that fall in 2016), an employer that is subject to the 'pay or play' requirements may be liable for a penalty if:

- The employer does not offer health coverage or offers coverage to fewer than 70% of its full-time employees (and their dependents, unless transition relief applies), and at least one of the full-time employees receives a premium tax credit; or
- The employer offers health coverage to at least 70% of its full-time employees (and their dependents, unless transition relief applies), but at least one full-time employee receives a premium tax credit, which may occur because the employer did not offer coverage to that employee or because the coverage the employer offered that employee was either unaffordable to the employee or did not provide minimum value.

5. Transition relief may be available to certain employers subject to the rules for 2015.
The final rules extend to 2015 a package of limited transition rules that applied to 2014 under the proposed regulations, including:

- **Employers First Subject to Requirements:** Employers can determine whether they had at least 100 full-time or full-time equivalent employees in the previous year by reference to a period of at least six consecutive months, instead of a full year.
- **Non-Calendar Year Plans:** Employers with plan years that do not start on January 1 will be able to begin compliance at the start of their plan years in 2015 rather than on January 1, 2015, and the conditions for this relief are expanded to include more plan sponsors.
- **Dependent Coverage:** The policy that employers offer coverage to their full-time employees' dependents will generally not apply in 2015 to employers that are taking steps to arrange for such coverage to begin in 2016.
- **Look-Back Measurement Method:** On a one-time basis, in 2014 preparing for 2015, plans may use a measurement period of six months even with respect to a stability period of up to 12 months.

Our Employer Shared Responsibility section features additional information regarding 'pay or play.' Questions and Answers are also available from the Internal Revenue Service.

Final Rules on 90-Day Waiting Period Limitation for Group Health Plans

Final rules address the requirement in the Affordable Care Act that group health plans limit any waiting period to 90 days beginning with plan years starting on or after January 1, 2014. A waiting period is the period of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective.

Key Highlights of the Final Rules
Under the final rules, eligibility conditions that are based solely on the lapse of a time period are permissible for no more than 90 days. Other conditions for eligibility are generally permissible, such as:

- Meeting certain sales goals;
- Earning a certain level of commission; or
- Successfully completing a reasonable and bona fide employment-based orientation period.

A requirement that employees complete a certain number of cumulative hours of service before becoming eligible for coverage is also generally allowed, as long as the requirement does not exceed 1,200 hours. Other highlights of the final rules include:

- Employers are not required to offer coverage to any particular individual or class of individuals (including, for example, part-time employees).
- All calendar days are counted for purposes of the 90-day limit, including weekends and holidays, beginning on the individual's enrollment date.
- A former employee who is rehired may be treated as newly eligible for coverage upon rehire and, therefore, may be required to meet the plan's eligibility criteria and satisfy the waiting period anew, if reasonable under the circumstances.

For plan years beginning in 2014, plans may comply with **either** the previously proposed regulations or the final rules (effective for plan years beginning on or after January 1, 2015).

Be sure to review our Summary by Year for other key changes under the Affordable Care Act taking effect in 2014.

Certificates Showing Prior Health Coverage for Employees No Longer Required Beginning December 31, 2014

Federal law currently requires employer-sponsored group health plans to issue documents demonstrating an employee's prior health coverage (called "certificates of creditable coverage") that can be used to reduce the pre-existing condition exclusion period that a plan can apply to the individual. However, these certificates are becoming unnecessary as the Affordable Care Act prohibits pre-existing condition exclusions for plan years beginning on or after January 1, 2014.

As a result, **the requirement to issue certificates of creditable coverage will be eliminated as of December 31, 2014**. This effective date accounts for individuals needing to offset a pre-existing condition exclusion under plans beginning December 31, 2013, so that they will still have access to the certificate for proof of coverage through December 30, 2014.

Employers must continue to provide certificates of creditable coverage until December 31, 2014. (Note: A health insurance issuer, rather than the employer, may be responsible for providing certificates of creditable coverage if there is an agreement between the two that makes the issuer responsible.) A certificate must be issued automatically and free of charge when an individual:

- Loses coverage under a plan;
- Becomes entitled to elect COBRA continuation coverage;
- Loses COBRA continuation coverage; or
- Makes a request for a certificate while the individual has health coverage or within 24 months after coverage ends.

Check out our Benefits Notices Calendar for other notices required to be provided by employers and group health plans.

Number of Employment Discrimination Charges Declines

The U.S. Equal Employment Opportunity Commission (EEOC) received 93,727 private sector workplace discrimination charges during the past fiscal year, down 5.7% from the previous year.

Types of Charges Filed
Retaliation, race, and sex discrimination (including allegations of sexual harassment and pregnancy discrimination) were the most commonly filed charges. Termination was the most frequently-cited discriminatory action under all the laws the EEOC enforces, followed by "terms and conditions" of employment and then harassment.

Nondiscrimination Laws Enforced by EEOC
The laws enforced by the EEOC apply to employers who meet the threshold number of employees for coverage. For example:

- Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act apply to employers who have **at least 15 employees** in 20 or more weeks of the calendar year.
- The Age Discrimination in Employment Act applies to employers with **20 or more employees** in 20 or more weeks of the calendar year.
- The Equal Pay Act does not require a minimum number of employees for an employer to be covered.

More information about each of these laws is featured in our section on Discrimination.

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