

ACA EMPLOYER MANDATE / REPORTING AND TRACKING HOURS

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As if compliance with the ACA's market reforms and complex plan design rules (including an assessment of affordability and minimum value), hasn't caused enough headaches – now you have to prepare to track and report detailed information about your compliant offers of coverage? Unfortunately, the answer is “yes”. Time spent now tracking information and making decisions about how an employer plans to report in early 2016 (for the 2015 plan year) will make completion of those yet-to-be-released forms more feasible in the future.

To track or not to track, that is the question....

ACA reporting may not be required until the first quarter of 2016, but employers need to get prepared now to comply with those requirements due to the detailed information required. While tracking hours may be inevitable for certain employers (by use of hour tracking software or internal systems) either for assessing who must be offered coverage and/or affordability of coverage, even those employers who are comfortable with their plan designs and cost structures for these purposes may still need to track hours in order to report the information mandated by applicable large employers under Code Section 6056.

What reporting is required that could cause employers to need to track hours?

The annual reports that must be filed with the IRS pursuant to Code Section 6056 (on yet to be released IRS Forms in the 1095 series) are intended to assist the IRS in administering and enforcing the Employer Mandate (also called the Play or Pay) rule. Under the rules finalized by the IRS earlier this year, the general method for reporting requires an employer to list the number of full-time employees for each month during the calendar year and the name, address and other information for each full-time employee during the year. Use of this method would, therefore, requires an employer to specifically know who was considered full-time in order to accurately complete the report. This means that tracking hours may be required....

There has to be a better way...

The IRS has set forth an alternative reporting method that an employer may use in lieu of the standard report, that does not require separate identification of full-time employees. There's a catch – In order to use this alternative method, the employer must certify that it offered coverage that provides minimum value and is affordable to at least 98 percent of the employees *who it lists on its report*. It need not certify that coverage is affordable for part-time employees. Thus, this alternative method may be useful for the employer who offers coverage to all or almost all of its common law employees and who has a fairly good idea of who works at least 30 hours per week.

When deciding whether to track hours and/or use the alternative reporting method, an employer will need to closely scrutinize its level of comfort that 98% of all reported employees (which generally should be full-time employees) have been offered ACA-compliant coverage. Remember, collectively bargained employees and leased employees present special issues that should be carefully vetted.

But what if I don't track and a part-time employee gets subsidized coverage on the exchange?

If the decision is made not to track hours and, the filing of the Form 1095 report required by Code Section 6056 triggers assessment of a Code Section 4980H(b) penalty (i.e., \$3,000 per employee who receives subsidized exchange coverage) because coverage was not affordable for a certain employee, the employer is left to defend against a penalty by proving that the employee in question was not "full-time". In that case, the employer will need to retroactively "recreate" the records and track hours for that employee in order to refute a claim that he/she was "full-time."

Plan designs and corresponding systems should be put in place soon to facilitate compliance with these rules in 2015 and the Q1 2016 reporting cycle.