

Four Things You Should Know About the Affordable Care Act

By Patrick McGuiness, Esquire

The ACA is an extremely complex piece of legislation, and many of the administrative rules are still being drafted. The following is an overview of important facts about the ACA, and how it will generally function. Every business is unique and has their own set of circumstances, so it is important to seek qualified assistance in determining how the ACA will affect your business.

1. Businesses with 50 or more Full Time Equivalent Employees are Considered 'Large Employers' and Must Offer Health Care to Employees or Pay Penalties.

Generally speaking, large employers must provide health coverage to their employees. If a business has 50 or more FTE employees then coverage must be provided or penalties must be paid. Calculating if an employee is FTE requires a look back at their hours for the previous year. If the employee

averaged more than 30 hours per week, then they are considered FTE. Alternatively, if an employee averages more than 130 hours in a calendar month (even if it isn't 30+ hours per week), they will be considered a FTE.

In order to calculate how your part time employees factor into the FTE count, you must do the following equation. Add together all of the hours worked by part time employees in the past calendar year. Divide that number by 12 to get the average total number of part time hours per month. Then, take that average and divide it by 120. The result is the number of FTEs that your part time employees must be counted as. For example:

If you have 20 part time employees whose total hours in the last calendar year was 21,600 hours;

$21,600/12 = 1800$ total average hours per month

How About the

$1800/120 = 14.5$ FTE

Adding your part-time workers' FTE total to your regular FTE workers will get the total FTEs for determining whether your business is a large employer and must comply with the ACA.

If you have determined that your business is a large employer, what must you do?

Large employers must offer health care coverage to full time employees and their dependents. Once again, full time means any employee who averages more than 30 hours worked per week, or more than 130 hours each calendar month. Dependents are defined by the regulation to be the full time employees' children that have not reached the age of 26

What type of health coverage must be offered?

In short, the health plan offered by large employers must meet the ACA's minimum value standard.

This means that the employer's plan must pay for at least 60% of the total allowed costs of the plan. When looking at health care plans, this is a very low threshold and working with a good health care insurance agent can help you make sure your business is in compliance. It is also important to note that the large employer's health offers meet the affordability standards set by the ACA. To meet this standard, the cost of the employer's individual coverage plan cannot be more than 9.5% of the full time employee's total household income.

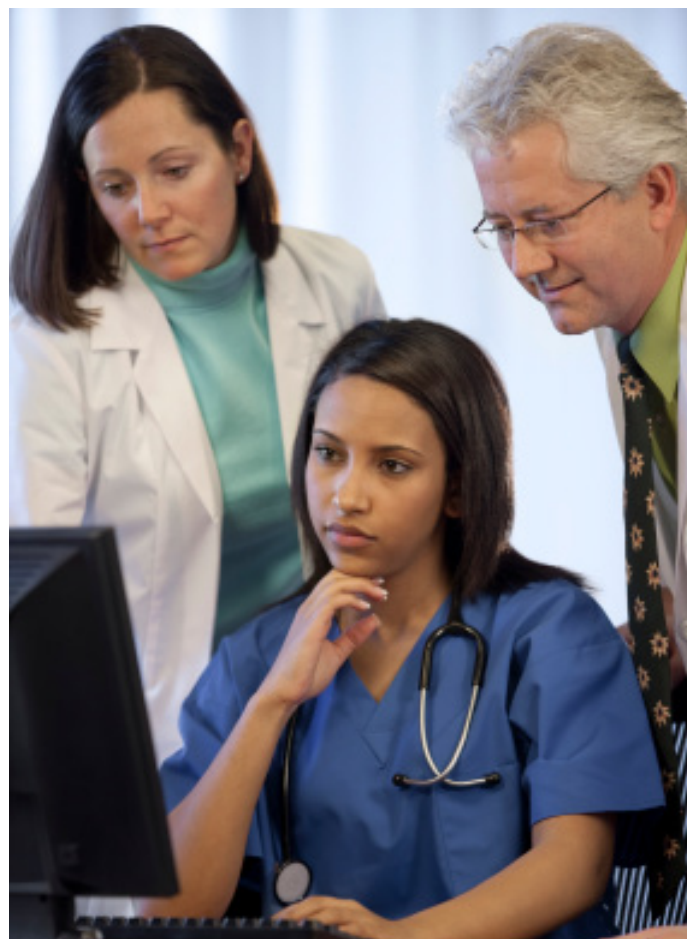
What if the business doesn't offer health coverage?

Once a business has determined that they are a large employer for ACA purposes, they must determine if they would rather provide coverage and meet compliance standards, or decide not to offer health coverage and pay the associated fines. There are many web-based calculators available to assist business owners with determining a course of action on this. It is best to speak with your accountant, attorney, and human resources person in making these types of decisions.

If you determine that you are a large employer, there are many other compliance issues which a business should take into consideration as the ACA goes into effect. Work closely with your business advisors to make sure your business is prepared for implementation and enforcement of the ACA.

2. There is an Exception for Seasonal Businesses – Figure Out if You Qualify.

If your business is seasonal in nature, and most green industry businesses are in one way or



another, then make sure you understand the exception which exists as a part of the ACA for seasonal businesses. As previously discussed, the number of FTEs a business has is the key to determining how the ACA applies to a business. Fortunately, congress created an exception of sorts for seasonal business to use when counting FTEs.

If a business that would otherwise be considered a large employer, exceeds 50 FTE employees for not more than 120 days or 4 calendar months, then the business may qualify for the seasonal worker exception. If your business has 40 full time employees for 8 months of the year, and 85 full time employees during 4 months of the busy season, then the business will not be required to offer health care to full time employees, even though the FTE calculation would otherwise result in more than 50 FTEs.

The term ‘seasonal employee’ has not been specifically defined by the Treasury Department for the purposes of the ACA, but they have stated that employers



can use a “reasonable, good-faith interpretation of the statutory definition” until further guidance is given.

Another important note with the seasonal worker exception is that the 4 months in which the business exceeds 50 FTEs do not have to be consecutive. It can be every other month or 8 months, or any combination as long as the business does not have more than 50 FTE employees for more than 4 months total in a calendar year.

3. Individuals Must Still Get Insurance Even if Their Employer Isn't Required to Cover Them.

If you have determined that your business is not a large employer, and is in no danger of being considered one even at the busiest times of year, then you may be wondering what your responsibilities are as a business owner and as an individual. As a business owner, even if your business is not required to offer a health plan, you still have regulatory responsibilities. As of October 1st, 2013 you are required to post a notice for employees which discusses the ACA and health care options available. A sample notice can be found on the Department of Labor's website or by conducting a simple web search.

Beginning in 2014, individuals will be required to obtain health insurance. This can be done a number of ways, including through enrollment in government programs such as Medicare, Tricare, or the Children's Health Insurance Program (CHIP). Individuals can also meet the requirement by purchasing insurance from their employer, or from their state's insurance marketplace (formerly called exchanges).



Failure to find the 'minimum essential coverage' will subject an individual to a penalty/tax. This will be enforced via tax filings, and for the first few years, the tax for not having insurance will be relatively small. There are also a number of exceptions to the requirement that

individuals purchase insurance such as the exemption for individuals who cannot afford coverage, and the exemption for taxpayers with income below the filing threshold. There are also exemptions for certain religious groups, and for small gaps in coverage. www.healthcare.gov is a good resource for finding out more about the exemptions and the ACA in general.

4. Use the Marketplace to Find Coverage.

Insurance marketplaces are one of the main features of the ACA, and are designed to make health insurance available to more people. The ACA required that each state set up a health insurance marketplace, or allow the federal government to set one up if the state was unwilling to do so. These marketplaces allow individuals to see what health insurance options are available to them, and at what cost.

The marketplaces offer insurance in 5 categories: Bronze, Silver, Gold, Platinum, and Catastrophic. Once the ACA has been fully phased in, the maximum penalty/tax for an individual who elects

Important Dates to Remember

There are quite a few dates to know as the ACA is implemented. Here are some of the most important dates to know.

2014:

January 1st: Individual mandate. Most individuals are required to obtain health insurance coverage through their employers, marketplaces, Medicare, or elsewhere. Failure to obtain insurance will result in a tax penalty. For 2014, the tax penalty is \$95 for an individual or 1 percent of gross income, whichever is higher. January 1st: Marketplace coverage begins. Marketplaces must be up and running and able to provide coverage in all states.

2015:

January 1st: Businesses deemed 'large employers' with 50 FTE or more are required to offer coverage to all FTE employees or face penalties. This date was originally January 1st, 2014 but was pushed back due to implementation challenges.

not to purchase health insurance will be equal to the cost of a bronze level marketplace plan. The marketplaces opened for shopping at the beginning of October, 2013. Coverage for insurance purchased through the marketplaces will begin as early as January 1st, 2014 with the open enrollment period ending on March 31st, 2014. Each state has a marketplace that is either state or federally run. www.healthcare.gov is a good resource to find out what your state is offering.

While there are a variety of options in the marketplace, the plans being offered are required to cover 'essential health benefits' to at least some degree. These benefits include: Ambulatory patient services, Emergency services, Hospitalization, Maternity and newborn care, Mental health and substance abuse care, Prescription drugs, Rehabilitative services and devices, Laboratory services, Preventative and wellness service and Pediatric services.

What it All Means:

The ACA is a complex law that will have an effect on you or

your business. Make sure you are following what changes you need to make and when you need to make them. There are many online resources available, and it is always a good idea to obtain outside assistance if you have any questions.

This article provides general information on employment law matters and should not be relied upon as legal advice. A qualified attorney must analyze all relevant facts and apply the applicable law to any matter before legal advice can be given.

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