'AFFORDABLE'

Will "Obamacare" batter or bolster your bottom line?

Though the new health care law is a tough pill to swallow, small companies may benefit from some provisions.

BY **PHILLIP M. PERRY**

The question is an important one, given the impact of health insurance costs on the earnings of small business owners. While calculating the precise effect of the complicated Affordable Care Act (ACA) is difficult, you have a good chance of turning it to your advantage if you have fewer than 50 employees or "full-time equivalents" (FTEs).

"Smaller businesses stand to gain a number of benefits from the law," says Karl Ahlrichs, benefits consultant for Indianapolis-based insurance broker Gregory & Appel. Among the favorable provisions are competitive statewide insurance exchanges, premium reform and tax credits.

Employers are eager for some relief, given the rising costs of health insurance. Average annual premiums for employer-provided family coverage grew to just under $16,000 in 2012, a rate some 4 percent higher than 2011, according to a report from the Kaiser Family Foundation.

KEY POSITIVES

Here's a rundown of how small firms may benefit from some of the law's provisions.

Competitive exchanges. Competition is good. That's the theory behind the new statewide health insurance exchanges, designed to allow small businesses to shop for plans from competing carriers. These exchanges will be available for employers with fewer than 50 people in 2014. Most exchanges are expected to offer plans from only a single carrier for the first year. After that, plans from multiple carriers will be offered.

"To understand how the exchanges will work, imagine navigating to a travel website that aggregates airfares," says Ahlrichs. "You type in your parameters and the site sorts your options and

ILLUSTRATION: ISTOCK INTERNATIONAL INC.

CARE?

you pick what you want. That's what employees will be doing with the exchange sites."

Under the best of conditions the new exchanges also will help trim the human resources overhead by providing a host of robust administrative services. "Businesses that send employees to the health insurance exchanges will be getting out of the health insurance management business," notes Ahlrichs.

Premium reform. Small businesses have long been the targets of prohibitive premium hikes when one employee is hit with a costly illness. The new law levels the playing field. "Starting in 2014 insurance carriers will not be able to set premiums based on health status, sex or claim history," says Julie Stich, director of research at the International Foundation of Employee Benefit Plans (IFEBP), a research organization based in Brookfield, Wis. "That will help small group plans where one catastrophic claim can cause health costs to go up."

Penalty exemption. If you have fewer than 50 full-time employees, you'll be exempted from penalties for not providing health insurance. If you have 50 or more such employees and your employees purchase insurance from the new state exchanges, you will pay a fine of $2,000 per employee who does so, excluding the first 30 employees from the assessment (see sidebar at right).

Tax credit. The law provides for a tax credit for businesses with 25 or fewer employees if the company pays at least half of the employee premiums.

Downward pricing pressure. The law also may encourage more transparency in the area of fees for medical services, says Ahlrichs. In consumer-driven health plans people will be given a set amount of money with which they can shop for services. They will be able to go to a website, enter a service such as an "appendectomy" and get a list of physicians that perform that procedure, a quality rating and a cost. "Comparison shopping should put downward pressure on prices," notes Ahlrichs.

Transparency. Do you know how much your broker is being paid for arranging your insurance? Today such commissions are buried in your premiums. This may change under the new law as pressure mounts to reduce administrative costs. Brokers may start charging fees for their services, which may well dampen overall costs while promoting accountability and performance.

EMPLOYEE MOBILITY

There's another hidden benefit the new law may provide smaller businesses: access to higher quality personnel.

"Today at larger employers there are many high-quality mid-career professionals who are frustrated because they cannot be very entrepreneurial," says Ahlrichs. "They would love to join a smaller organization where they can try things out or they might want to band together and start something."

In the current system, says Ahlrichs, if such people quit their current positions they may be uninsurable. "They may have a daughter or wife who's a diabetic or cancer survivor," he says, "Or they themselves may have some chronic condition. As a result, they are handcuffed to their desks because of health care."

When the exchanges come online the handcuffs come off. "There will be

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Your take
Green Industry professionals' views on the ACA.

Kyle Narsavage
President
Green Sweep
Silver Spring, Md.

Number of employees: 46
Challenge: Maintaining fewer than 50 employees
Solution: "We're being very selective about which contracts we accept. For one, we want to make sure that it's a profitable job and also because at first a job may seem profitable but it could cause us to spend money to hire more employees, which is money we may not make back down the road."

EMPLOYER MANDATE **DELAYED**

In July the Obama administration delayed a key provision of the Affordable Care Act, the so-called "employer mandate," by a year. This provision, which requires employers with 50 or more full-time equivalent employees to provide health insurance for their workers or pay a $2,000 penalty, has been put off from Jan. 1, 2014, until 2015.

The delay is reportedly in response to complaints from the business community about reporting requirements for employers with 50 or more full-time workers.

WHAT LARGE EMPLOYERS MUST DO **NOW**

What steps should large firms take to get up to speed with the requirements of the Affordable Care Act (ACA)? "Employers need to take a look at their current health insurance plans and make the changes required to be in compliance," says Julie Stich, director of research at the International Foundation of Employee Benefit Plans, a research organization based in Brookfield, Wis. "Then communicate these changes to employees and revise the plan descriptions and handbooks." Here are some specific steps:

1 Determine full-time equivalencies.

"The big issue for many employers will be calculating the average hourly workweek in determining who is an equivalent full-time worker," says Karl Ahlrichs, benefits consultant for Indianapolis-based insurance broker Gregory & Appel. "It goes beyond the simple drawing of a line in the sand at 30 hours. The new system uses new terms and new ways of calculating things that, if ignored, can cost an employer significantly." Failing to accurately determine full-time equivalencies can result in costly fines. "The employers most at risk hire many part-time or seasonal workers."

In analyzing their workers, employers are required to apply a measurement or "look-back" period that can be anywhere from three to 12 months. If an employee averages 30 hours a week or 130 hours a month during that period, the employer must offer coverage equal to either six months or the length of the look-back period, whichever is longer.

This calculation will be especially difficult for those employers who have not been keeping careful track of their employees. "Employers who have a lot of variable-hour employees, and have not been keeping close watch, need to do the exercise now to see who falls into the full-time bucket and what measurement period will be best for them," says Joan Smyth, partner at the New York-based Mercer consulting firm.

2 Analyze labor costs.

Companies should analyze the income of their workforces, particularly if they include a large number of relatively low-wage employees. That's important because employers may be penalized not only for failing to provide any health insurance coverage, but also for providing coverage that fails to meet the standards of affordability as defined by the law and as determined by employees' family incomes (W2 wages can be used as a proxy for family income).

With these figures in hand, companies can perform the calculations to see the financial impact of three options: not offering any coverage, offering coverage which is not "affordable" under the definitions of the government or offering coverage that's affordable (that is, charges employees premiums that are 9.5 percent, or less, of family income.) In some cases it may be cheaper to not offer insurance than to offer insurance and pay a penalty.

ILLUSTRATION: ISTOCK INTERNATIONAL INC.

3 Update benefits plan language.

"Employers must update their benefits plan language to be in compliance with the ACA," says Ahlrichs. "Many plans must undergo a significant rewrite to reflect the new world."

He cautions that Department of Labor audits are rising in frequency and that they will be looking hard at this area. "One of the ways they will help fund the ACA is by penalizing organizations which are in violation," says Ahlrichs. "Expect 80 percent of DOL questions to revolve around how the ACA language is not in company documents and expect fines to be assessed."

4 Get the communications right.

"Employee communications will be huge," says Ahlrichs. "Employees will turn to their employers for answers. You can benefit significantly by having early and aggressive communication about what the changes mean and about your new wellness plan."

5 Draw up a five-year benefits plan.

"Draw up a five-year strategic benefits plan that's aligned with the one for your whole organization," says Ahlrichs. "This is not the time to patch last year's model. This is the time for a clean sheet of paper and a plan written with someone who understands the implications of the law.

"If your company has a strategic benefits plan and your competition does not it will help you and hurt them," says Ahlrichs. "Maybe not in the first three months, but certainly in the first couple of years. Over time if you get ahead of these issues and make the right decisions you will have a significant competitive advantage."

Your take Green Industry professionals' views on the ACA.

Evan Moffitt

Director of business development
KD Janni Landscaping
San Luis Obispo, Calif.

Number of employees: 42
Challenge: The costs that come with hiring more than 50 employees
Solution: "We're preparing for a strong push and growth. We want to grow to where we have 75 employees so that our numbers will be able to cover costs. We're trying to grow our business."

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a significant shift in high-performing talent out of the larger organizations and into smaller ones," says Ahlrichs. "This could be a huge benefit to small entrepreneurial organizations, which position themselves as places where talented people can exercise some freedom."

DECISION TIME

Many business owners are upset about the minimum level of benefits required by the new law. In some cases those levels are higher than what's currently being offered in the workplace. That means greater expense in the form of higher premiums.

Will employers, as a result, drop health insurance coverage completely and opt to pay the fine? Ahlrichs says some will be tempted. "A lot of CEOs may want to tell their employees, 'Go to the exchange and I'll pay the $2,000 fine.'"

Employers who decide not to offer the insurance should realize there are additional ramifications, points out Ahlrichs. The first problem is the $2,000 fine is not tax deductible. The second problem is the employees who go to the exchanges find out insurance is not free.

"Maybe the premium for a family is $8,000 annually," poses Ahlrichs. "Who pays it? If the employer wants to keep the employees, the employer may want to make them whole and give them the $8,000 needed to pay for their insurance."

The story doesn't end there, adds Ahlrichs. The premium payments are now taxable, so paychecks have to be grossed up to around $10,000, in the above example, so the employees can pay premiums out of after-tax dollars.

Put it all together and cessation of a health insurance program can backfire, concludes Ahlrichs.

Realistically, though, the decision to retain or drop health insurance might depend less on the costs of noncompliance than on what other businesses in the same employment market are doing. Many employers see health insurance plans as important tools for employee satisfaction, retention and recruitment. No one wants to lose top talent to businesses offering superior benefits.

As a result many businesses seem to be playing a waiting game, with many reluctant to drop coverage unless other employers take the lead. "Our surveys indicate the vast majority of businesses, probably 80 to 90 percent, will continue to offer coverage, primarily to recruit and retain talent and to keep people productive," says Larry Boress, president and CEO of the Midwest Business Group on Health, a Chicago-based consortium of over 115 employers.

ACT NOW

What steps should you take now? Start by determining whether you employ 50 or more FTE employees. If so, you're subject to the law's mandate to either offer health insurance or pay a penalty.

"The employer mandate is the 900-pound gorilla," says Adam Solander, an associate at the law firm of Epstein Becker Green in Washington. "It's issue No. 1 through 10 for our clients." In determining your own status, seek assistance from your accountant. Also see the sidebar, "Calculating your full-time equivalent employees," below.

What if you employ fewer than 50 FTEs and you still want to offer health insurance? Be aware of a caveat: "Coverage has to comply with the minimum standards mandated by the ACA," cautions Solander. "A lot of people have gotten tripped up on this." Employers, for example, can no longer offer the so-called "mini med" plans with their limited benefits and high deductibles. Failure to comply with the

Your take
Green Industry professionals' views on the ACA.

Ben Collinsworth

CEO
Native Land Design
Cedar Park, Texas

Number of employees: 180 at peak season
Challenge: Providing employees with health insurance without drastically increasing costs
Solution: "We're keeping our options open for any large policies that will help keep our prices in check. There are some outside labor resource companies that allow us to take employees and put them on a temporary outsourced payroll and the outsourced company pays insurance, but prices on that will probably go up."

CALCULATING YOUR **FULL-TIME EQUIVALENT EMPLOYEES**

The requirements of the federal Affordable Care Act (ACA) do not apply to businesses with fewer than 50 full-time equivalent employees (FTEs). Does your own business qualify for this exemption?

Generally speaking, the ACA defines as full time any employee who works at least 30 hours per week averaged over a month's time. Included in the calculation are hours paid for but not worked, including vacation time and jury duty.

Additionally, a portion of the hours worked by part-time employees will be included in calculating a business' number of full-time equivalent workers.

Consult your accountant to determine your own liability.

ACA's market reform provisions can be expensive. "The penalty is pretty severe," says Solander. "It comes to $100 per day per incident."

As you tackle the vagaries of the ACA, keep in mind the legislation is very much a work in progress. "There's a lot of uncertainty about the law," says Solander. "Everyone is doing their best to comply, but understanding the complicated provisions takes a lot of effort and hard work." The federal government will continue to issue regulations that interpret the law for real world operations.

In untangling the confusions, your insurance broker may be one of your best sources of assistance. "There's no need for you to give up your current broker, but make sure that the person knows what's going on with the new law," says Boress. "Given the more competitive marketplace, you might want to use a broker who's independent of any one insurance carrier."

Your broker can help you understand the opportunities to purchase insurance from your own state's exchange. By getting a handle on how the marketplace is changing, and on what other employers in your region are doing in terms of benefits, you can design a health insurance program that maximizes employee satisfaction while minimizing cost. "The devil is in the details," says Solander. "As an employer you have to figure out what really works for your business." LM

Perry is a freelance writer based in New York. Additional reporting by Molly Bealin.

Your take
Green Industry professionals' views on the ACA.

Jon Parry
President
Bemus Landscape
San Clemente, Calif.

Number of employees: Almost 500
Challenge: Regulating costs
Solution: "It's a pay or play regulation, there's no gray area or gaming the system. We are going to play. We're going to offer some type of benefit package to our employees. There is still some confusion about what packages are available but we should know in the next 60 days."

» WEB EXTRA

Visit **LandscapeManagement.net** for information about the tax credit, a list of websites related to the ACA that are worth exploring, plus a look at the insurance carriers' perspective.