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Demystifying Health Care Reform

for Clubs with Seasonal Workers

Overview The Affordable Care Act (ACA) is a complex piece of legislation and represents one of the biggest concerns of club managers today. Insperity, one of the nation's largest providers of HR solutions, can help you make sense of it.

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Executive Summary

Complying with the Affordable Care Act (ACA) is one of the biggest concerns of club managers today. The legislation is complex and has been amended several times. Many club managers are struggling to determine whether the ACA applies to their club and, if so, how – and whether – to comply.

This paper helps clarify the ACA by explaining:

- The factors that determine whether your club qualifies as an "applicable large employer"
- How seasonal employees factor into the "applicable large employer" calculation
- The health care benefits applicable large employers must offer to avoid penalties
- The penalties for non-compliance
- What you should know about the individual mandate

As a club manager, you want to focus on building a great member experience. Any time spent struggling with government compliance issues is time that could be better spent elsewhere.

Health care reform, anyone?

Since it was passed in 2010, the ACA has generated more than 20,000 pages of complicated rules and regulations. To make matters worse, just when you think you understand the rules, they change.

Now that health care reform has shifted from a political issue to a practical one, club managers nationwide are being forced to examine how to comply with the ACA.

So how will the ACA impact your club in 2014 and beyond?

Determining Whether Your Club is an "Applicable Large Employer"

You may have heard the term "Play or Pay" in conjunction with health care reform. It refers to the choice an applicable large employer must make to either provide full-time employees with access to health benefits or risk paying a tax penalty.

But how do you know if your club is an applicable large employer? This requires an employee count, with some twists.

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Health care reform requires that businesses with 50 or more full-time employees (including full-time equivalent employees) must offer qualified coverage beginning in 2015 or face a potential penalty. However, businesses with 50-99 full-time employees in 2014 may not have to comply until 2016 if they meet the three criteria for transition relief provided by the final play or pay regulations, issued in February 2014:

1. Have 50-99 full-time employees in 2014 after considering the "seasonal worker exception" (see below)

2. Maintain employee count and total labor hours from Feb. 9, 2014 through Dec. 31, 2014 – unless necessary for legitimate business reasons

3. Maintain approximate health coverage and employer contribution levels from Feb. 9, 2014 through Dec. 31, 2014

If your club has fewer than 50 full-time employees, it's tempting to conclude you're not an applicable large employer. But here's the catch: If, like most clubs, you employ a mix of full-time, part-time and seasonal workers, the calculation is more complicated.

Let's walk through an example. Suppose your club employs 49 full-time employees, and you have four part-time employees who each work 40 hours per month.

Those part-timers count as one full-time equivalent employee (40 hours x 4 employees/120 hours = 1.33, rounded down to 1).

Your club would be considered to have reached the 50 full-time employee threshold (49 FTEs +1 FTEQ = 50 FTEs).

Calculating the Number of Full-Time Employees

If part-time or seasonal employees work enough hours, they are considered full-time employees under the ACA. Even if your regular full-time employee count doesn't exceed 50, the number of part-time and seasonal workers can push your club over the 50 full-time employee threshold. The calculation of how many full-time employees you have is based on hours worked over the prior calendar year, but under a special rule that applies to 2014 hours only you can use the period Jul. 1 – Dec. 31, 2014.

For ACA compliance purposes, you'll need to become familiar with four definitions:

- **Full-time employee (FTE)** – Works 30 hours or more per week on average
- **Part-time employee (PTE)** – Works fewer than 30 hours per week on average
- **Seasonal employee (SE)** – Works fewer than six months a year during a specific season on either a part- or full-time basis
- **Full-time equivalent employee (FTEQ):** A combination of employees, each of whom individually is not treated as full-time but who, in combination, worked at least 120 hours per month and is counted as a full-time employee.

To calculate the number of FTEs working at your club, you must first determine how many hours your part-time and seasonal employees worked in the prior calendar year (or in the last six months of the year, if using the special rule for 2014).

Seasonal worker exception: Importantly, there is a seasonal worker exception that could relieve your club from play or pay compliance once you determine your FTE results. Two conditions must be met:

1. Your workforce must have exceeded 50 FTEs (including FTEQs) for 120 or fewer days during the previous calendar year, and

2. The employees in excess of 50 during that 120-day period were seasonal employees.

If these two conditions are met, you can exclude seasonal employees from your applicable large employer calculation.

Measurement, Administration and Stability Periods

In addition to calculating how many FTEs you have for the applicable large employer determination, you also need to know which employees are FTEs so they can be offered coverage. This is done by looking at hours worked by the employee over a defined period of time, referred to as a "measurement period."

A **measurement period** is a continuous period of no less than three, and no more than 12 consecutive months used to calculate an employee's work hours for benefits eligibility purposes. So if the measurement period is 12 months, it'll start on the same day every year. There is an "initial measurement period" for new hires that can't reasonably be classified as full-time based on their expected work pattern, and an "ongoing measurement period" for employees no longer in their initial measurement period. These periods do not have to be the same length.

You may also calculate benefits eligibility on a current-month basis, but that approach is generally not preferred. The administrative burden of monthly calculations and re-administration of benefits can be quite high, not to mention that this method gives you no time to recover from a potential penalty if you miss an employee's health benefits eligibility date.

The **administration period** is an optional period of no more than 90 days that can be used to make these calculations and offer benefits.

Immediately following the administration period (or measurement period if no administration period exists) is the **stability period**. This period lasts at least six months or the length of the measurement period, whichever is longer. During this time, the club must continue coverage for enrolled FTEs, even if the FTE's hours drop below an average of 30 hours per week.

Here's an example of how these periods work: Your club could have an ongoing measurement period of 12 months beginning Nov. 1, an administration period of two months (i.e., the months of Nov. and Dec.), and a stability period of 12 months running from Jan. 1 to Dec. 31. The purpose of this design is to avoid a gap in benefits coverage if an employee re-qualifies as full-time at the end of the next measurement period.

Seasonal Employees Explained

Seasonal workers add an additional layer of complexity in applying measurement and stability periods.

The regulations issued in February 2014 clarified the definition of a seasonal employee. According to the regulations, a seasonal employee is one whose customary annual employment is six months or less. However, there are two important caveats:

1. The "season" must be an industry standard and fall within the same timeframe each calendar year. For example, a golf resort in Florida may experience heavy business year-round. However, the club could not claim seasonal employees for April through September as one "season" and then claim October through March as a subsequent "season."

2. The "season" can exceed six months if there's a bona fide reason for it to do so. For instance, if a ski resort experiences a longer-than-normal snow season, it will not be penalized for keeping a seasonal ski instructor employed for seven months instead of six.

As with regular full- or part-time employees, you'll need to track hours worked by seasonal employees. If you rehire many of the same employees season after season, it's important to know when the clock starts and stops ticking.

If the gap in a seasonal employee's employment is less than 13 weeks, the employee should be treated as a "rehire" and you can pick up tracking hours worked where you left off. If the gap in employment is more than 13 weeks, when the seasonal employee returns he is treated as a "new hire" and you start tracking hours from scratch.

The Benefits You Must Offer

If you determine that the ACA applies to your club because you'll have at least 100 FTEs in 2014 (for 2015 compliance) or expect to have 50 FTEs in 2015 (for 2016 compliance), you must offer all of your FTEs a qualified health care plan or face a potential penalty.

Under health care reform, health plans are now rated on a scale of bronze, silver, gold or platinum to describe the richness of a plan for ease of comparison. You may offer any range of plans, but in order to avoid paying the penalty, you must offer at least **one plan** that meets the following two requirements:

First, it must have a minimum 60 percent actuarial value – meaning at least 60 percent of the essential health benefit costs are covered by the plan. (This would be considered a "bronze" plan on the ACA's scale.)

Remember: Part-time and seasonal workers do not need to be offered health benefits even though they are factored into the FTE calculation unless they work more than 30 hours a week during the established measurement period.

Second, the cost to the employee for insurance premiums must be no more than 9.5 percent of his household income. Most employers will not know their employee's household income, so the following affordability safe harbors were established:

- **The employee's Form W-2 wages for the calendar year.** The employee's annual contribution for the lowest cost self-only coverage option cannot be more than 9.5 percent of the employee's W-2 wages for the calendar year. Some employers dislike this option because it does not account for pre-tax earnings that are put into flexible spending accounts and retirement plans.

- **The employee's rate of pay.** The employee's monthly contribution for the lowest cost self-only coverage option cannot be more than 9.5 percent of (a) for hourly employees, 130 hours multiplied by the lower of the employee's hourly rate of pay as of the first day of the coverage period or the lowest hourly rate of pay during the calendar month, or (b) for non-hourly employees, the employee's monthly salary as of the first day of the coverage period.

- **The current federal poverty line divided by 12.** The employee's monthly contribution for the lowest cost self-only coverage option cannot be more than 9.5 percent of the federal poverty line divided by 12. For 2014, that would equate to a contribution of no more than $92.38 a month for employee-only coverage for the least expensive plan offered.

Penalties for Noncompliance

If your club is subject to play or pay, it will face a penalty only if an FTE goes to a state or federal health care marketplace, purchases coverage **and** receives a subsidy.

If that happens, your club may be assessed one of the following penalties:

- If you offer **no health benefits** during the 2015 plan year, you will be penalized $2,000 per FTE minus the first 80. For example, if you have 120 FTEs, the penalty would be (120 – 80) x 2,000 = $80,000. In 2016 (when the play or pay rules apply to businesses with 50 or more FTEs), the modifier drops to the first 30, which would make the penalty (120 – 30) x 2,000 = $180,000.

- If you **do** offer health coverage, but the plan fails to meet the 60 percent minimum actuarial value threshold or exceeds the maximum 9.5 percent of household income cost requirement, you'll pay a $3,000 fine **only** for those FTEs who received a subsidy for marketplace coverage.

It's not illegal for an applicable large employer to fail to comply with the play or pay rules. As a club manager, you need to weigh the penalties for noncompliance with the costs of offering coverage, as well as the potential effects on employee recruitment, morale and retention.

You should also be prepared to defend your club against false penalties – that is, if the club has done everything correct, but an FTE goes to the marketplace, states that you do not offer qualified coverage and receives a subsidy. If that happens, you may receive a penalty determination notice. You'll need to respond to the notice with the steps that you took to offer qualified coverage.

How the Individual Mandate Affects Your Club

Health care reform requires all individuals (with limited exceptions) to purchase health insurance through their employer or elsewhere. As such, it's important to realize that your staff may come to you with questions, even if you are not offering them coverage. This is especially true because health care reform requires employers to provide employees with a written notice within 14 days of their start date explaining the ability to elect coverage from a state or federal marketplace, and the impact that decision will have on an election of employer coverage.

Here are a few facts about the individual mandate:

1. The penalty for failure to have coverage is the higher of:
    - $95 per adult or 1 percent of household income in 2014
    - $325 per adult or 2 percent of household income in 2015
    - $695 per adult or 2.5 percent of household income in 2016

2. Individuals can stay on their parents' plan until the end of the month in which they turn 26.

3. Individuals may be able to qualify for subsidized coverage through the marketplace if their household income is below 400 percent of the federal poverty line.

Get Health Care Reform Relief from a Trusted HR Advisor

We trust this guide gave you a solid overview of the health care reform compliance landscape. Unfortunately, we only scratched the surface on some of the complexities, such as how to track employee hours and what reports the government requires employers to file.

The truth is, managing all of these details is time-consuming and requires familiarity and expertise with a set of laws that continually change. If you're like most club managers, you'd rather spend your time focusing on your members' experience, not health care reform. Insperity can help.

When you team up with Insperity, the complexity of ACA compliance is alleviated. Insperity tracks all employee hours that you report through payroll and uses that information to:

- Help you determine whether your club had the requisite number of FTEs in the prior calendar year to be subject to the play or pay rules
- Find out which employees have worked the required number of hours to be considered "full-time, benefits-eligible"
- Alert you when certain employees are approaching full-time status

Insperity will also provide you with the information you need to prepare and file the new ACA-mandated reports with the IRS, if applicable. Best of all, Insperity's in-house health care reform experts can address any remaining questions you have.

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