February 14, 2014

On Monday, February 10, 2014, the IRS released final regulations regarding the employer shared responsibility requirements. Within the 277 pages of regulations, they announced transitional relief for some employers in 2015 as well as important clarification on a number of outstanding issues.

2015 Employer Shared Responsibility Requirements (Employer Penalty)

While the definition of a "large employer" subject to the Employer Shared Responsibility payment is defined as an employer with 50 or more full-time employees, the final guidance exempts employers with 50 to 99 employees from being subject to an employer penalty until 2016. In order to receive this exemption, the employer must 1) continue to offer an employer contribution for employee only coverage, 2) ensure the amount they pay is at least 95% of the dollar amount they paid on February 9, 2014 OR at least the same percentage of the cost they paid and 3) if a change in benefits occur, ensure it does not reduce the eligibility requirements and continues to provide the minimum actuarial value (60%) after the change.

For 2015 only, employers with 100 or more employees need only to offer coverage to 70% of their full-time employees in order to avoid the $2,000 penalty. In 2016, employers will be required to offer coverage to 95% of their full-time employees in order to be considered as offering health coverage. Employers over 100 employees are still subject to the $3,000 per employee annual penalty if they don't offer the employee affordable and qualifying health plan AND the employee receives a premium tax credit when enrolling in a state/federal exchange.

Dependent Coverage

Final regulations exclude both stepchildren and foster children from the dependent definition. Further, an employer penalty will not apply to an employer who does not cover dependents until 2016 if they are taking steps toward making coverage available during 2015. Beginning in 2016, dependents must be offered coverage or an Employer Penalty will be assessed.

Transitional Relief Applied for Non-Calendar Year Plans

It was unclear until this guidance as to whether or not an Employer Penalty for non-calendar year plans would begin January 1, 2015 or the first day of their ERISA plan year. The final regulations clarified that an Employer Penalty will not be applicable until the first day of their plan year as long as the plan year has not been modified since December 27, 2012.

One-Time Six Month Measurement Period

Employers can use a six-month measurement period to determine if they are subject to the Employer Shared Responsibility payment (100 or more full-time employees in 2015 and 50 or more full-time employees in 2016)

Clarification of a Full-Time Employee

The final regulations clarified definitions that will assist in determining which employees must be considered full-time.
Seasonal: The final regulations defined a seasonal employee to be an employee whose annual customary employment is six month or less. "Customary" is defined to mean the period in which the employee works each year to be relatively the same time frame, such as spring or winter.
Student Work-Study Programs: If an employer has interns, they must count their hours to determine whether or not they meet the definition of a full-time employee.
Volunteers: Hours contributed by bona fide volunteers for a government or tax-exempt entity will not cause them to be considered full-time employees.
Educational Employees: Teachers and other educational employees will not be treated as part-time for the year simply because their school is closed or operating on a limited schedule during the summer.
Adjunct Faculty: Until further guidance is issued, employers of adjunct faculty may credit an adjunct faculty member with 2 ¼ hours of service per week for each hour of teaching or classroom time.
Workers Hired Through Staffing Agencies: Under a special rule, if certain requirements are met, employers can take credit for coverage offered on their behalf under a plan established or maintained by the staffing firm, but only if the employer will incur an additional fee if the employee enrolls in such coverage (over and above the normal fee the employer would pay to the staffing company if the employee does not enroll). This special rule only applies if the worker is the employer's common law employee, not the common law employee of the PEO or staffing company.
Independent Contractors: The final regulations did not provide safe harbor relief in this category. Employers need to determine who their employees are based on common law standard.

Methods For Determining a Full-Time Employee
In addition, the final regulations provided two methods for determining whether an employee has met the 30 hours requirement. The employer can only use one of these two methods and must generally use the same method for all employees. The employer, however, can use a different method when evaluating the following types of employees:

- Each group of union employees covered by a separate union contract
- Union versus non-union employees
- Salaried versus Hourly employees
- Employees whose primary place of employment is in a different state

Monthly Measurement Method: Under this method, the employer counts each hour of service in each month.
Look-Back Measurement Method: As in the proposed regulations, this method, which would regularly be used for variable hour employees, utilizes a look-back measurement period, combined with an administrative period and subsequent stability period.
While the above is a high level summary, the IRS did provide a detailed questions and answers on this mandate which we are including for your convenience. As always, your Account Management team will be discussing any applicable impact of the final regulations with you.