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HR Solutions Come Full Circle

ACA for 2016:
What You Need to Keep Your Eye On

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- HR Benefits
- HR Management
- HR Services

We're proud to offer a full-circle solution to your HR needs. BASIC offers collaboration, flexibility, stability, security, quality service and an experienced staff to meet your integrated HR, FMLA and Payroll needs.

HR Solutions Come Full Circle

HR solutions should be simple.
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The PACE Act

- The Protecting Affordable Coverage for Employees Act ("PACE Act") was enacted in October 2015
- The purpose of the PACE Act is to stop the mandatory expansion of "small group" to mid-size employers in the 50-99 range for purposes of the insurance market reforms

The PACE Act

- The PACE Act has **no** application to the pay or play penalty
- Mid-size employers in the 50-99 range will be subject to the pay or play penalty in 2016 **regardless** of the PACE Act

The PACE Act

- Certain insurance market reforms under the ACA only apply to insurance policies issued in the individual and small group markets
- Examples:
  - Essential health benefits – small plans must provide services and items in all 10 essential health benefit categories
  - Actuarial value – small plans must fit into 1 of the 4 actuarial value levels (bronze, silver, gold or platinum) under ACA

The PACE Act

- Rating requirements – small plans are not permitted to be experience-rated but must be underwritten on a member-by-member basis using adjusted community rating factors varying only by coverage tier, geographic area, age and tobacco use
- Guaranteed availability – small plans must accept for enrollment every eligible individual who applies when initially eligible

The PACE Act

- Initially the ACA defined a small group for insurance market reform purposes as an employer with up to 50 employees
- The definition was set to change as of January 1, 2016 to include employers with up to 100 employees
- The PACE Act removes this mandatory expansion of the small group market

The PACE Act

- However, the PACE Act provides individual states with the discretion to expand the small group market definition
- Each state has the option of extending the definition to include employers with up to 100 employees for purposes of the ACA insurance market reforms

The PACE Act

- While it appears that most states will not expand the small group market definition, several states have already passed laws to align their state law definition of small group market with the ACA's definition **before** the passage of the PACE Act

The PACE Act

- Examples:
  - Colorado, Connecticut, Maryland, Nevada, New York, Oregon, Vermont, Virginia, Washington and the District of Columbia
- These states will have to pass new legislation to prevent the expansion of the small group market

The PACE Act

- State-based exchanges that do not rely on the federal platform may allow resubmission of small group coverage rate filings in light of the PACE Act, including changes to the rates for the first quarter of 2016
- However, for federal exchange states and state exchanges using the federal platform, the rate filing changes cannot be implemented until the 2nd quarter of 2016

Bipartisan Budget Act of 2015

- The Bipartisan Budget Act of 2015 was enacted in October 2015
- One of the provisions is to repeal the automatic enrollment requirement added by the ACA for certain large employers

Bipartisan Budget Act of 2015

- The ACA required employers with more than 200 full-time employees to:
  - Automatically enroll new full-time employees in one of the employer's group health plans after the completion of any applicable waiting period; and
  - Continue the enrollment of current employees
- The ACA did not specify an effective date for the automatic enrollment requirement

Bipartisan Budget Act of 2015

- In 2012, the DOL issued guidance indicating that the automatic enrollment requirement would become effective at some point in the future after the DOL issued implementing regulations
- The DOL never issued regulations
- As a result of the Bipartisan Budget Act of 2015, the automatic enrollment provision will not take effect

Bipartisan Budget Act of 2015

- Repeal of the automatic enrollment provision does not restrict an employer who wants to voluntarily implement automatic enrollment provisions upon initial eligibility or during annual open enrollment periods
- However, in order to avoid penalties under the pay or play, a large employer must make an offer of coverage to its full-time employees

Bipartisan Budget Act of 2015

- A large employer with an automatic enrollment provision will not be treated as having made an offer of coverage for pay or play purposes for a plan year if the full-time employee does not have an effective opportunity to decline enrollment if the coverage offered:
  - Does not provide minimum value; or
  - Requires an employee contribution in excess of the federal poverty line safe harbor

Bipartisan Budget Act of 2015

- An effective opportunity to decline enrollment is based on all the relevant facts and circumstances including the adequacy of the notice and the period of time to consider

Bipartisan Budget Act of 2015

- Reporting deadlines extended –
  - 1095-Cs were required to be distributed to employees by February 1, 2016
  - IRS Notice 2016-4 extends the deadline to March 31, 2016
  - IRS Form 1094-C along with copies of the 1095-Cs were required to be filed with the IRS by February 29, 2016 (if mailed) or by March 31, 2016 (if filed electronically)
  - IRS Notice 2016-4 delays those deadlines to May 31, 2016 (if mailed) and June 30, 2016 (if filed electronically)

Update on 6055/6056 Reporting

- Reporting penalties –
- The penalty for failure to file an information return with the IRS generally is $250 per return up to an annual maximum of $3 million
- The penalty for failure to provide a correct employee statement is $250 per statement up to an annual maximum of $3 million
- Special rules increase the per statement and total penalties when there has been an intentional disregard of the requirement to furnish the employee statement

Update on 6055/6056 Reporting

- The IRS has announced that it will not impose penalties for incomplete or incorrect returns for the first year where the employer can show it made good faith efforts to comply
- The IRS has not extended this penalty relief to future years

Update on 6055/6056 Reporting

- The penalty relief does not extend to late filings, however, new guidance indicates the IRS may be willing to waive penalties for late filings upon a showing of reasonable cause

Update on Final Instructions to 6055/6056 Reporting

- In September 2015, the IRS issued final instructions for the forms used for 6055 and 6056 reporting purposes

Update on Final Instructions to 6055/6056 Reporting

- Highlights include:
  - HRAs – previous guidance suggested that if an employer maintained a fully-insured group health plan and a self-funded HRA the employer needed to report the HRA to enrollees under 6055
    - This was the case even though the insurer will be reporting the fully-insured plan under 6055

Update on Final Instructions to 6055/6056 Reporting

- On the other hand, if the employee enrolled in a self-funded group health plan and a self-funded HRA, the employer was only required to report once under 6055
- The final instructions now extend similar relief to employers with fully-insured group health plans
  - If the individual is eligible for the HRA because the individual is enrolled in the employer's fully-insured group health plan, no separate 6055 reporting is required regarding the HRA

Update on Final Instructions to 6055/6056 Reporting

- Other integrated HRAs may still trigger 6055 reporting
  - For example, an HRA which supplements group health coverage an employee has through a spouse's employer

Update on Final Instructions to 6055/6056 Reporting

- COBRA – previous instructions indicated that if an employee terminated employment and was offered COBRA, reporting in Part II of 1095-C should vary depending on whether COBRA is elected

Update on Final Instructions to 6055/6056 Reporting

- If the qualifying event occurred late in the year, the employer might not know until after the 1095-C is issued as to whether coverage was elected, potentially triggering the duty to file an amended return
- The final instructions now provide that the reporting should be the same regardless of whether COBRA is elected
  - Line 14 – no offer of coverage (1H)
  - Line 15 – leave blank
  - Line 16 – indicator code 2B in month of termination and 2A in the months thereafter

Update on Final Instructions to 6055/6056 Reporting

- If the employee is offered COBRA after a reduction in hours, reporting under Part II of 1095-C continues to vary depending on whether COBRA is elected and is reported in the same manner as an offer of coverage to other actively working employees

Update on Final Instructions to 6055/6056 Reporting

- Leave of Absence – An employee on a leave of absence is still reported as a full-time employee if the employee qualified as full-time under a lookback measurement period
  - A large employer cannot report an employee on a leave of absence as non-full-time until the employee terminates employment (or if the large employer uses a monthly measurement period)

Update on Final Instructions to 6055/6056 Reporting

- Leveling of contributions – In determining the employee's monthly premium for single coverage on Line 15 of 1095-C, the employer should take the total employee required contributions for the year and divide by 12
  - If the employer operates its plan on a non-calendar year basis, do this for each plan year and report appropriately for applicable months

IRS Notice 2015-87

- IRS Notice 2015-87 was issued in December 2015 and includes a “grab bag” of issues

IRS Notice 2015-87

- Employee contributions for group health coverage must be affordable in order for large employers to avoid the $3,000 pay or play penalty
- Employer contributions to an HRA for a plan year that can be used to pay for major medical coverage or other health expenses can be used to reduce employee contributions for affordability purposes

IRS Notice 2015-87

- Employer flex credits can be used to reduce the employee's cost of coverage for affordability purposes where the flex credits may only be used for medical expenses (not payable as additional compensation or for non-medical benefits)

IRS Notice 2015-87

- Transition relief allows employers to treat certain employer flex contributions not satisfying this requirement as reducing the employee's required contributions for plan years beginning before 2017 if certain requirements are satisfied

IRS Notice 2015-87

- If an employer pays additional compensation to an employee who waives employer group health coverage, the opt out payment must be included in measuring for affordability

IRS Notice 2015-87

- Example: Employer charges full-time employees $75 per month for single coverage under the cheapest medical plan option providing minimum value
- The employer also pays full-time employees an additional $100 per month for waiving single coverage
- The employer must consider $75 plus $100 ($175 total per month) as the cost of single employee health coverage for pay or play affordability purposes

IRS Notice 2015-87

- As long as the opt out was in place as of December 16, 2015, then it can be disregarded in measuring for affordability until a time period beginning after yet to be issued regulations are published
- If an employer conditions the opt out on the employee also providing proof of enrollment in other coverage such as through his or her spouse's employer, it is unclear whether this rule will apply

IRS Notice 2015-87

- In measuring for affordability for pay or play purposes, the employee's required contribution cannot exceed 9.5% of one of three affordability safe harbors (Box 1 W-2 pay, rate of pay or federal poverty line)
- While the 9.5% figure was adjusted annually for inflation when determining an employee's eligibility for a premium tax credit on the exchange, IRS regulations did not extend the inflation adjuster for affordability purposes

IRS Notice 2015-87

- The IRS Notice clarifies that the inflation adjuster is also intended to apply on the affordability side
- For plan years beginning in 2015 affordability is measured based on a 9.56% threshold, increasing to 9.66% for plan years beginning in 2016

IRS Notice 2015-87

- The $2,000 and $3,000 pay or play penalties are also adjusted for inflation
- For calendar year 2015, the $2,000 penalty is $2,080 and the $3,000 penalty is $3,120
- For calendar year 2016, the $2,000 penalty is $2,160 and the $3,000 penalty is $3,240

IRS Notice 2015-87

- When crediting an employee with hours of service for purposes of determining whether he or she is a full-time employee under the pay or play penalty, the employee's hours of service:
  - Do not include hours paid solely to comply with state workers' compensation or disability laws
  - Do include hours paid under an employer-provided short or long-term disability plan unless the benefit is solely paid with employee after-tax dollars

IRS Notice 2015-87

- If an employer offers a medical FSA carryover, the employer can impose certain restrictions

IRS Notice 2015-87

- For example, the employer can condition the availability of the carryover for a subsequent year on the employee making his or her own pre-tax contributions to the medical FSA for that year
  - This is true even if the employer imposes a minimum employee pre-tax contribution amount

IRS Notice 2015-87

- An employer can also indicate that any flex carryover is only available for up to one year

IRS Notice 2015-87

- In terms of COBRA, the COBRA premium in connection with the medical FSA cannot include a charge for unused carryover amounts from a prior year
- A COBRA qualified beneficiary must have access to his or her flex carryover in the same manner as an actively-working employee

Cadillac Tax

- The Cadillac tax was set to take effect in 2018
- The Budget Deal struck in December 2015 delays the effective date by two years (to 2020)
- The Budget Deal also makes the Cadillac tax deductible for employers (previously was not deductible)

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Questions

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