

Payroll and the **ACA**

What You Need to Know to Stay on Track, Avoid Tax Penalties

BY PETE ISBERG



This year is a pivotal year for the Affordable Care Act (ACA). Specifically, this is the first year that employers subject to the ACA must track detailed information about health care coverage—including offers of coverage and the full-time status of employees. However, as we approach 2016, the ACA's reporting requirements will require even more rigorous attention from HR, benefits, and payroll directors.

For each month starting in January 2015, Applicable Large Employers (ALEs) must attest on Form 1094-C that they have offered affordable coverage to at least 70% of full-time employees (i.e., those with an average of 30 or more hours of service per week or 130 or more hours of service per month). That threshold increases to 95% in 2016. An employer that fails to meet this threshold may be liable for a nondeductible assessment of \$2,080 for each full-time employee in excess of 30 (80 in 2015)—making the actions required for ACA compliance even more critical. Keep in mind that the assessment is determined separately for each month, but is reported and payable on an annual basis. Said another way, if you think you might owe a penalty for the early months of 2015, it's not too late to take corrective action now to avoid penalties for the later months of 2015.

What Is Payroll's Role in ACA Compliance, Exactly?

Payroll is the hub of information that companies need to be ACA compliant. For example, the payroll system often serves as the primary system of record for tracking hours of service. The payroll department also has access to ACA-critical employee pay information (i.e., Form W-2 Box 1, Hourly Rate of Pay, etc.) needed to determine whether the employer meets various ACA affordability safe harbors. Thus, it is up to the payroll department to help ensure that health benefits are offered to full-time employees based on ACA requirements.

To avoid being subject to the ACA's Employer Shared Responsibility penalty provisions, organizations need to correctly identify which employees are full-time based on paid and unpaid hours of service. Specifically, employees who work an average of 30 hours or more per week must be offered health coverage with a waiting period of no more than 90 days.

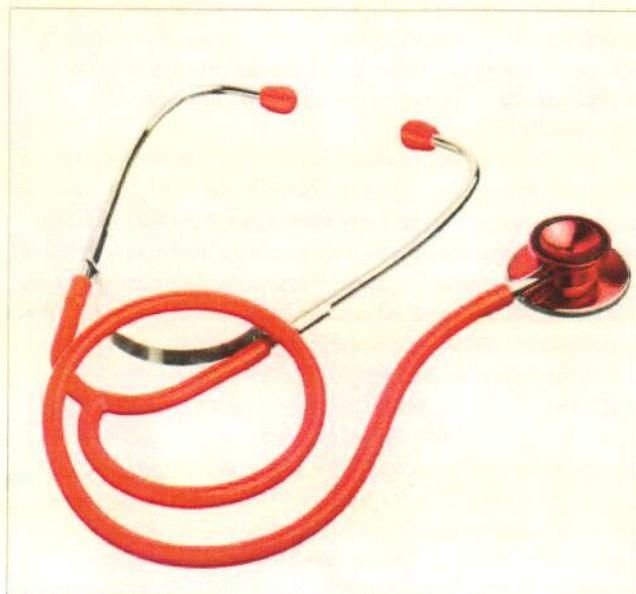
The challenge? Payroll and timekeeping are difficult to manage because the systems many employers have in place today may not track everything required by ACA mandates, such as:

- FMLA (Family and Medical Leave Act) leave
- Jury duty
- Federal military leave under USERRA (Uniformed Services Employment and Reemployment Rights Act)
- On-call hours, as spelled out in the Final 4980H regulations

Certain industries and occupations, such as teachers and airline pilots, have special attribution rules. There are also different rules for workers who are terminated and later rehired, and many other rules and exceptions for specific circumstances. In some cases, companies have historically tracked these elements using separate recordkeeping systems. Further, routine administrative adjustments can affect measurement period calculations and affordability and thus need to be captured within the ACA administrative systems. Employers—and payroll directors, specifically—need to track all of these elements for *every* employee, *each* month to accurately determine ACA full-time status.

Affordability and Employer Shared Responsibility

For employers to stay in compliance with the Employer Shared Responsibility provision and avoid tax penalties, coverage must be affordable. According to the IRS, coverage is considered affordable if an employee's share of the premium for self-only coverage would cost the employee less than 9.5% of the employee's annual household income. Because employers don't have household income



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(FIRE) system, generally used to file Forms 1099 and similar information returns with the IRS. However, the IRS has developed an entirely new electronic filing system—the Affordable Care Act Information Return (AIR) System—for ACA Information Returns.

Employers having difficulties meeting the IRS deadline will be able to request a 30-day extension by filing Form 8809. This form is being revised to include Forms 1095-C, so be sure to use the revised form. One additional 30-day extension may be requested by submitting a second Form 8809, but these requests are not automatically granted, and employers must explain any extenuating circumstances. Further, extensions of time to file do not affect the due date for furnishing statements to recipients. A separate extension must be requested in letter form for employee copies. In the meantime, employees may be asking for their forms as they seek to file their personal income tax returns.

The Importance of Accurate Recordkeeping

Employers may need to respond to information requests from both the Exchanges and the IRS. Government procedures are still being developed, so most employers have not yet received Exchange notices, but will need to know the following to be adequately prepared:

- Exchange notices advise the employer of any employee seeking subsidized health coverage through an Exchange
- They provide the employer an opportunity to respond to the notice if, for example, the employer actually offered affordable coverage.
- As with Unemployment Insurance, employers have a role in determining eligibility for Exchange coverage and tax credits.
- Similarly, there are tax implications for the employer in these eligibility determinations.

The IRS will likewise issue proposed Employer Shared Responsibility notices, and employers will be expected to respond with relevant details, including the full-time status of the employee(s) in question and whether coverage offered satisfied the affordability tests. It will be important for employers to respond to notices from both the Exchanges and the IRS. The first IRS notices are expected roughly in August 2016, and the assessments will relate to offers of coverage from 12 to 18 months earlier (i.e., January 2015). Additionally, keep in mind that ACA full-time status may have been determined by analyzing an even earlier time period (e.g., 2014), so employers may be reaching back to payroll, benefits, HR, and timekeeping records from more than two years prior to respond to IRS notices.

Conclusion

As employers continue to prepare for 2016, it is important to remember all of the key aspects of the ACA associated with reporting, including:

- Full-time employee status determinations
- Affordability of coverage
- Forms 1094-C and 1095-C
- Marketplace/Exchange Notices

You may have noticed a strong theme here, which is that payroll is a core participant in all of these ACA compliance activities.

By now, employers should have implemented many of the necessary ACA compliance systems and steps. These include complying with the ACA's Employer Shared Responsibility mandate and planning in advance for annual reporting and responding to any Exchange notices. But surprisingly, we've found that many employers are still unprepared to fully meet ACA compliance requirements.

While the role of payroll as a hub for essential employee data is clear, ACA compliance is a team effort, requiring a cross-functional team that includes payroll, HR, IT, and finance. As you navigate together toward ACA compliance, always keep in mind that your speed of preparation should be driven by a core compliance truth: The compliance clock is always ticking. ■

TIP: Do NOT inadvertently miss this threshold test—especially in 2016:

Some payroll directors may rely on general assurances that the employer offers coverage to "virtually all full-time employees." Keep in mind that the ACA definitions are probably broader than yours, potentially including temporary employees, student interns, seasonal workers, and others often overlooked.

If you inadvertently miss the mark, the penalty is \$2,080 annually times the total number of full-time employees across the entire company. If you don't want to be responsible for that particular mistake, be sure to test and verify that you have offered coverage to at least 95% of ACA full-time employees for 2016.