Compliance

The Affordable Care Act has brought a sharp increase in legislative changes impacting businesses of all sizes, presenting a significant challenge to business owners, HR personnel and their employees. Failure to comply with these changes could result in substantial fines and penalties that no business wants to incur.

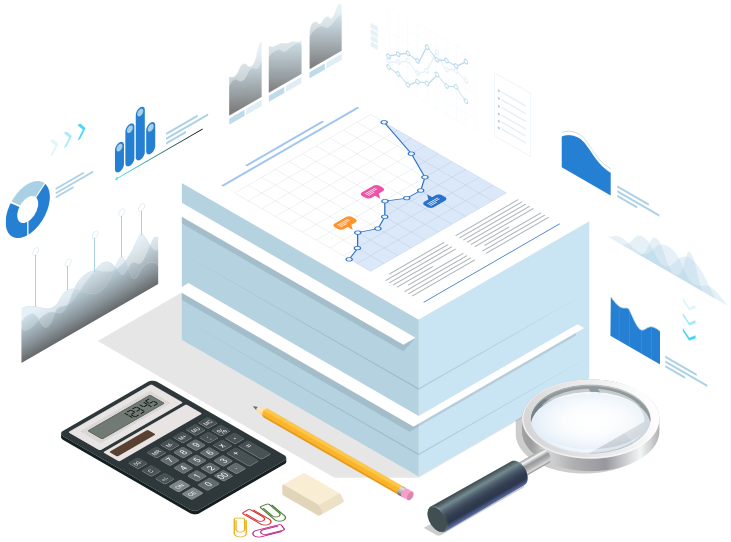
MY BENEFIT ADVISOR

As the **Affordable Care Act** continues to unfold and evolve and local governments continue to role out changes affecting organizations of all sizes, employers are turning to **My Benefit Advisor** for guidance on interpreting the legislation and understanding the impact to their business.

Our benefits counsel actively monitors pending legislation and interprets regulations to help ensure our staff and clients are educated and prepared to make informed decisions.

Perspective

The Patient Protection and Affordable Care Act, also referred to as the Affordable Care Act (ACA) is a federal statute signed into law in 2010. The ACA has attempted to lower federal government spending on health care by expanding health coverage for all American citizens, controlling health care costs and improving the country's health care delivery system. Additionally, several key provisions in the Act emphasize prevention and wellness, an increase in consumer protections and an expansion of the health workforce.



Unfortunately, along with these comprehensive health care reforms, the ACA has, together with its mandates, restrictions and penalties, created a monumental compliance challenge for businesses of all sizes. The provisions that apply to a particular business are dependent on the size and structure of the employer's workforce.

The purpose of this paper is to provide a brief summary of the ACA compliance responsibilities that employers sponsoring both small and large groups need to be aware of.

ACA Compliance: A Brief Overview

According to the ACA, businesses are essentially divided into two groups:

Small Employers

Generally those with fewer than 50 full-time employees.

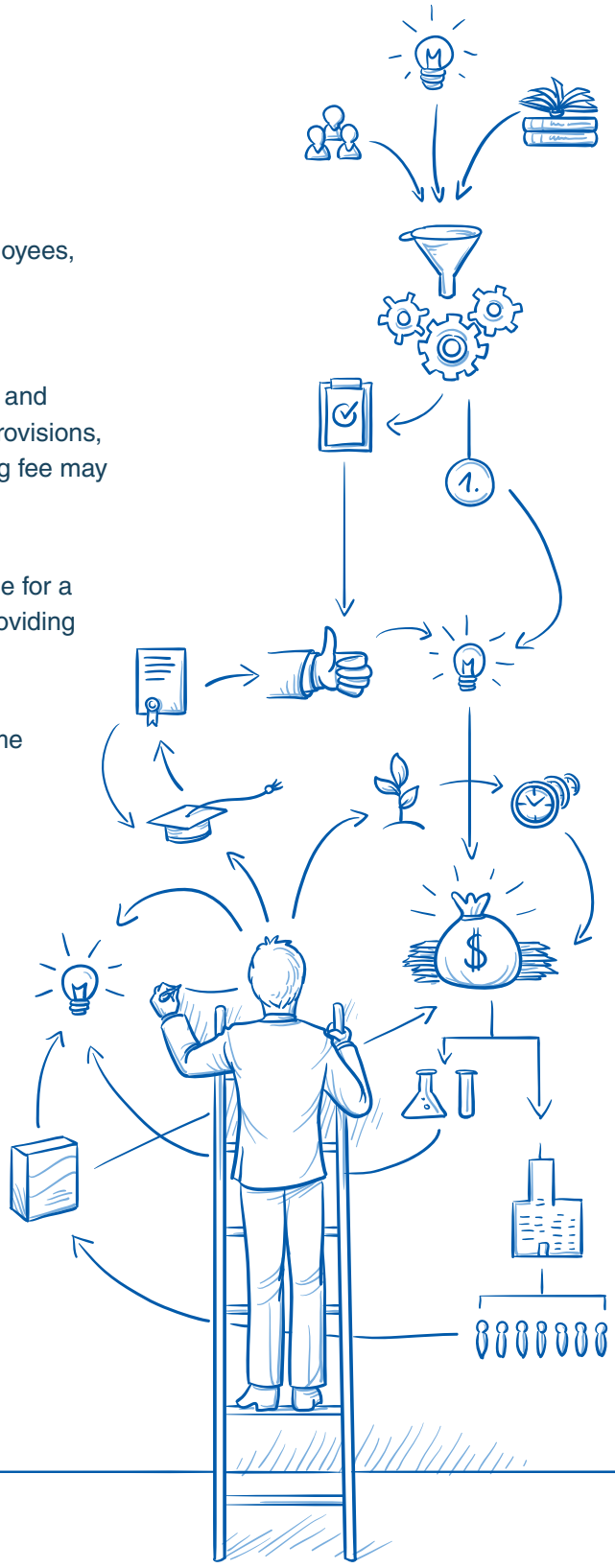
Applicable Large Employers

Generally those employers with 50 or more full-time employees, including full-time equivalents (see below).

Employers without any employees are not bound by the provisions and responsibilities under either of these categories. However, other provisions, such as the insurance provider fee or the branded prescription drug fee may apply to them.

Small groups with fewer than 25 full-time employees may be eligible for a Small Business Health Care Tax Credit to help cover the cost of providing health insurance coverage.

For the purpose of this paper, we've broken our review into the same two categories, Small Employers and Large Employers.



Do Self-Employed Sole Proprietors Need To Comply?

If you are self-employed with no employees, you are not considered an employer according to the ACA.

As a result, the small group provisions mentioned in this paper do not apply to you, however you may need to comply with the Individual Mandate (not discussed herein).

ACA Compliance Concerns: For Small Employers

Most small employers don't need to be concerned about the extensive reporting requirements that the ACA imposes on larger employers. Perhaps most importantly, they are not bound by the Employer Shared Responsibility Penalty because they are not required to offer health insurance to their employees.

VERIFICATION OF EXEMPTION FROM ALE REQUIREMENTS

If an employer has less than 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is not considered an Applicable Large Employer (ALE) for the current calendar year and, as a result, is not subject to the Employer Shared Responsibility Provisions and the Employer Information Reporting Provisions. Whether or not an employer is considered an ALE is determined each calendar year.

SMALL BUSINESS HEALTH OPTIONS PROGRAM (SHOP)

The Affordable Care Act (ACA) established a Small Business Health Options Program (SHOP) for small employers (generally those with 1-50 full-time and full-time equivalent employees) who want to provide health insurance coverage to their employees. Employers can enroll in SHOP programs through private insurance companies or with the help of a SHOP-registered agent or broker.

In addition to these SHOP programs, there are other parts of the the health care law that impact small employers.

90 DAY MAXIMUM WAITING PERIOD

If an employer offers health insurance to its employees, it must offer such insurance to all eligible employees when they become eligible for health coverage, but not later than 90 days after their date of employment. For most groups, this means coverage begins on the first of the month following 60 days of employment.

FULL-TIME EMPLOYEE STATUS

A full-time employee under ACA rules is any employee working at least 30 hours per week.

DEPENDENT CHILD COVERAGE

The Affordable Care Act requires all plans and issuers that offer dependent child coverage to make the coverage available until the adult child reaches the age of 26.

SUMMARY OF BENEFITS AND COVERAGE (SBC)

Employers must provide employees with a standard “Summary of Benefits and Coverage” (SBC) form that explains what their health plan covers and its cost. The purpose of the SBC is to help employees understand their health insurance options. Non-compliance could result in penalties to the employer.

REPORTING REQUIREMENTS

There are several reporting requirements small businesses must comply with if they offer health benefits:

- Employers must withhold and report an additional 0.9 percent on employee wages or compensation that exceeds $200,000.
- If offering a group health insurance policy, employers must report the value of the health insurance coverage provided to each employee on his or her Form W-2, box 12 using code FF. All taxable reimbursements made through a Qualified Small Employer Health Reimbursment Arrangement must also be reported as other compensation in box 1, Wages, tips and other compensation.
- Employers are also required to pay a fee to contribute towards the Patient-Centered Outcomes Research Trust Fund and report it using Form 720.

MINIMUM ESSENTIAL COVERAGE

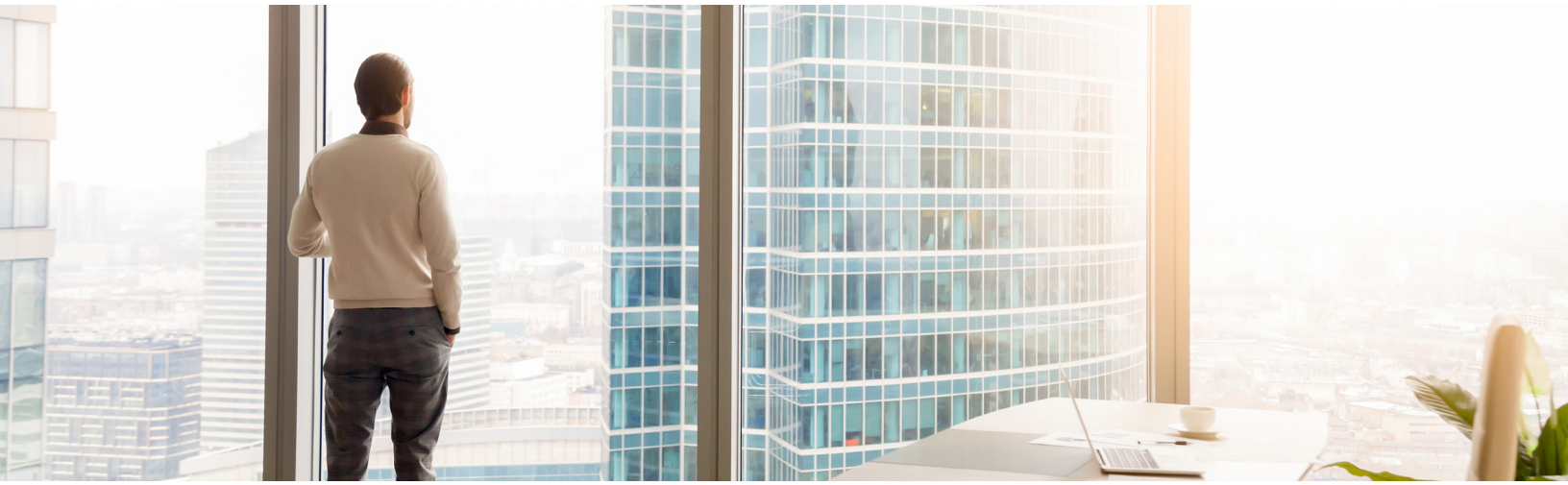
Any employer offering health insurance benefits must assure that their health plan provides essential benefits as required by the ACA. For example, this provision requires that all health plans provide coverage for preventive care without cost-sharing and not place an annual or lifetime limit on essential health benefits. Policies are also bound by community rating, guarantee issue and cannot exclude pre-existing conditions.

The new ACA compliant plans have four levels of benefits, ranging from Bronze (the lowest priced with the highest out-of-pocket levels) to Platinum (least out-of-pocket but highest cost).

Who's Responsible For Workplace Compliance?

At most firms, either the business owner, CEO or the Head of Human Resources has the ultimate responsibility to make strategic decisions to assure the company's compliance with the provisions of the Affordable Care Act. In many larger groups however, the day to day workload of carrying out the many responsibilities required to remain in compliance is spread around many departments, involving many people playing different, but essential roles.

ACA Compliance Concerns:
For Large Employers



The Affordable Care Act distinguishes large employers from small employers and may assign a different set of responsibilities to each group. Two provisions of the ACA apply only to large employers:

- The Employer Shared Responsibility Provisions; and
- The Employer Information Reporting Provisions for offers of Minimum Essential Coverage (MEC)

APPLICABLE LARGE EMPLOYER (ALE)

If an employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is considered an Applicable Large Employer (ALE) for the current calendar year and is, as a result, subject to the Employer Shared Responsibility Provisions and the Employer Information Reporting Provisions.

Whether or not an employer is considered an ALE is determined each calendar year.

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If an employer offers health insurance to its employees, it must offer such insurance to all eligible employees when they become eligible for health coverage, but not later than 90 days after their date of employment. For most groups, this means coverage begins on the first of the month following 60 days of employment.

FULL-TIME EMPLOYEES

A full-time employee for any calendar month is an employee who has on average at least 30 hours of service per week during the calendar month, or at least 130 hours of service during the calendar month.

FULL-TIME EQUIVALENT EMPLOYEES

A full-time equivalent employee is a combination of employees, each of whom individually is not a full-time employee, but who, in combination, are equivalent to a full-time employee. An employer determinies its number of full-time equivalent employees for a month as follows:

1. Combine the number of hours of service of all non-full-time employees for the month but do not include more than 120 hours of service per employee, and;

2. Divide the total by 120.

An employer's number of full-time equivalent employees (or part-time employees) is only relevant in determining whether an employer is an ALE. An ALE need not offer minmum essential coverage to its part-time employees to avoid an employer shared responsibility payment.

DEPENDENT CHILD COVERAGE

The Affordable Care Act requires all plans and issuers that offer dependent child coverage to make the coverage available until the adult child reaches the age of 26.

EMPLOYER AGGREGATION RULES

Employers with a common owner or that are otherwise related under certain rules section 414 of the Internal Revenue Code are generally combined and treated as a single employer for determining ALE status. If the combined number of full-time employees and full-time equivalent employees for the group is large enough to meet the definition of an ALE, then each employer in the group (called an ALE member) will be considered part of an ALE and is subject to the Employer Shared Responsibility provisions, even if separately the employer would not be an ALE.

The following may be considered a general process when performing an analysis to determine whether or not employer aggregation applies:

- Ascertain all of the legal entities that could possibly be related through either ownership or a working relationship
- Review the business structure and date each entity was formed
- Analyze ownership information for each entity
- Examine the working relationship, if any, among each entity, to see if perhaps one provides any services to another

EMPLOYER SHARED RESPONSIBILITY PROVISIONS (ESR)

Also referred to as the “Employer Mandate” or “Play or Pay”, this provision requires that all Applicable Large Employers (ALE) either offer minimum essential health coverage to full-time workers (and their dependents), or potentially make an employer shared responsibility payment to the IRS.

Depending on its decisions about offering minimum essential coverage to its full-time employees and their dependents, an ALE may be subject to one of two potential employer shared responsibility payments:

- An ALE member will owe the first type of employer shared responsibility payment if it does not offer minimum essential coverage to at least 95% of its full-time employees (and their dependents), and at least one full-time employee receives the premium tax credit for purchasing coverage through the Health Insurance Marketplace.

- Even if an ALE offers minimum essential coverage to at least 95% of its full-time employees (and their dependents), it may owe the second type of employer shared responsibility payment for each full-time employee who receives the premium tax credit for purchasing coverage through the Marketplace if the coverage is unaffordable or doesn’t provide a minimum value.

An ALE may be subject to one of the two employer shared responsibility payments, but not both.

SUMMARY OF BENEFITS AND COVERAGE (SBC)

Employers must provide employees with a standard “Summary of Benefits and Coverage” (SBC) form that explains what their health plan covers and its cost. The purpose of the SBC is to help employees understand their health insurance options. Non-compliance could result in penalties to the employer.

REPORTING REQUIREMENTS

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- Employers are also required to pay a fee to contribute towards the Patient-Centered Outcomes Research Trust Fund and report it using Form 720.

1094/1095 REPORTING

Applicable large employers (ALEs), those with, on average, 50 or more full-time employees or part-time equivalents during the preceding calendar year, must show proof of compliance with the ACA’s employer shared responsibility mandate.

The ALE must file Form 1095-C (Employer-Provided Health Insurance Offer and Coverage) and Form 1094-C (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns) with the IRS annually no later than February 28 (March 31 if filed electronically) of the year immediately following the calendar year to which the return relates. The purpose of filing these forms is to report whether the ALE offered eligible employees affordable health coverage that provides minimum essential coverage (MEC) and meets the minimum value threshold.

Also, ALE members are required to furnish a statement to each full-time employee that shows the same information provided to the IRS, by January 31 of the calendar year following the calendar year for which the information relates.

Case Study:
Compliance Concerns

The Issue

Upon the completion of a compliance review for a newly acquired client who grew from approximately 75 employees to just over 150 employees in the past 3 years, we discovered that the required 5500 forms had not been completed for two of those past three years.

According to federal law under ERISA, health and welfare plan sponsors with 100 or more participants at the beginning of a plan year are generally required to file an annual report with the Department of Labor/IRS. This "Form 5500" contains information about the plan and includes disclosure of all commissions and fees received by those who provide services to insured plans. Failure to file these forms by the required deadlines could result in an IRS penalty of $25 per day, up to a maximum of $15,000. The DOL penalty for late filing can run up to $1,100 per day with no maximum.

Our Solution

Since their growth in the initial year began with less than 100 employees they were exempt from filing for that year. However, we advised the client that they were, in fact, delinquent for the second two years and were facing the potential of substantial penalties.

After collecting the necessary plan data from each year, we assisted the client in completing and filing an electronic 5500 form for both years and then prepared a special filing under the "Delinquent Filer Voluntary Correction Program" (DFVCP) offered by the IRS and Department of Labor. Under the DFVCP program, the client's liability for financial penalties dropped from hundreds of thousands of dollars to the limit of $2,000 for each annual report, not to exceed $4,000 per plan. If the Department of Labor were to have conducted an audit before the DFVCP was filed and discovered the delinquency, the plan sponsor would have been prohibited from using the DFVCP and would have been responsible for the significantly higher penalties.

Impact/Result

Plan compliance today is complex and spans a multitude of areas and required processes, from 5500 filings to "Pay or Play" to COBRA and FMLA, just to name a few. Requirements vary by number of employees, and process deadlines are scattered throughout the year. With our guidance and suggested compliance audits we can help clients resolve potential problems before they become expensive mistakes.

MY BENEFIT ADVISOR

About My Benefit Advisor

My Benefit Advisor (MBA) is an employee benefits platform designed to guide employers through the complexity of planning, communicating and managing a successful employee benefits program.

To learn more about My Benefit Advisor, visit us online at

www.mybenefitadvisor.com