



— AFFORDABLE CARE ACT ALERT —

What Do Employers Need to Know Now?

The recent implementation of the Federal Patient Protection and Affordable Care Act (the Act) will mean changes, new obligations, increased costs and potential financial liability for certain employers relative to health plan coverage for their employees. The IRS has issued proposed regulations for the “Shared Responsibility for Employers” component of the Act and, while the date on which these regulations will be finalized is not yet known, two things are certain:

- As of January 1, 2014, affected employers will face significant compliance questions and challenges.
- By including a safe harbor for employers who rely on the regulations in good faith, the IRS is signaling employers to start planning now rather than waiting for the final regulations to be issued.

A multi-disciplinary team of Hancock Estabrook attorneys stands ready to help our clients assess their status and their options under the Act, and to prepare for the 2014 implementation date.

This Alert will provide an overview of the law and the proposed regulations and will highlight some of the issues employers should consider. It is intended as a springboard to spur further discussion, and to help with the development of an employer-specific implementation plan.

What does the Act Mean for Employers?

The Act imposes obligations on employers with respect to health benefit plans that they make available (or fail to make available) to their employees. As of January 1, 2014, certain “large employers” will be subject to financial penalties if they fail to offer full-time employees and their dependents an opportunity to enroll in a health benefit plan that meets “minimum essential coverage requirements,” or if the coverage offered is “unaffordable” or fails to provide “minimum value,” and one or more full-time employees secure coverage via another avenue and receive a premium tax credit or cost-sharing reduction as a result. Employers face a host of issues to analyze and options to consider as they attempt to comply and hopefully avoid, or at least minimize, their financial exposure.

What is a Large Employer?

A large employer is one employing at least 50 full-time employees or their equivalents.

What is a Full-time Employee?

A full-time employee is generally defined as one who works an average of 30 hours per week.

The rules are complicated when it comes to determining which employees qualify as full-time and for calculating the average number of employees. There are special rules for counting hours of certain employees, such as those who work outside the U.S., commission-based employees, transportation employees (i.e. company truck drivers), seasonal employees, etc.

How Is Affordability Determined?

The evaluation of affordability is specific to each employee. It involves a determination of what percentage of that employee's household income is required for purposes of a premium contribution. The proposed regulations offer three suggested means for undertaking the required calculation: IRS Form W-2 reported income, hourly pay rate times 130 hours, or the federal poverty line.

How Are Assessments Calculated?

Large employers who are found to have run afoul of the new rules by failing to provide coverage or by offering insufficient coverage will be subject to a penalty, the calculation of which is likewise complicated. The calculation begins with a \$3,000 annual assessment (increasing over time and pro-rated monthly), multiplied by the number of full-time employees who received a premium tax-credit or a cost-sharing reduction for securing coverage through another vehicle. One decision that will be faced by employers is to calculate their potential assessment liability and then determine whether to offer the required coverage or simply pay the penalty.

Hancock Estabrook's Affordable Care Act Team is available to provide sophisticated legal advice on these issues. Our attorneys will help you analyze your specific compliance issues and develop a work plan. Whether you are a large employer, a family-owned business or an emerging start-up with growth potential, we can help you assess your risks under the Act. If you are in a unionized setting, we can also assist in developing a strategy to meet your collective bargaining obligations.

We are a recognized leader on health law issues, representing major health care systems, nursing homes, ancillary providers and physician practices. Our experience in the regulation and operation of health care delivery and overall health care policy, both nationally and at the state level, is an invaluable asset to an employer concerned about complying with the Act. Our team can provide you with legal advice about how the federal rules interact with New York State rules and can offer information on how other employers are responding to the challenges presented by the Act.

If you have any questions about the information contained within this alert, please contact any of the following Hancock Estabrook Affordable Care Act Initiative Team members:

Michael A. Arcuri	marcuri@hancocklaw.com
Catherine A. Diviney	cdiviney@hancocklaw.com
Lindsey H. Hazelton	lhazelton@hancocklaw.com
Maureen E. Maney	mmaney@hancocklaw.com
Marguerite A. Massett	mmassett@hancocklaw.com
Robert D. Poyer	rpoyer@hancocklaw.com

Or visit our webpage at:

<http://www.hancocklaw.com/affordablecareact>

Hancock Estabrook does not share or sell any individual's contact information or unique identifiers to any advertiser or third party. You may unsubscribe by sending an email to cstrouse@hancocklaw.com. This communication is published periodically and is the sole property of Hancock Estabrook with all rights reserved. The content herein is for informational purposes only and is not intended as legal advice.