

Are you ready for Obamacare?

By Ken Hodges

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Many saw the 2012 Presidential election as a referendum on the Affordable Care Act, often referred to as Obamacare. The re-election of President Obama makes it unlikely that the act will be repealed, and businesses must be prepared to comply with the ACA. The Supreme Court has upheld the constitutionality of the act, though considerable uncertainty remains for businesses seeking to comply with the law's new requirements.

Most companies have already completed, or are in the process of completing, the open-enrollment period for the health plan offered to their employees for 2013. Some of the major ACA provisions do not go into effect until 2014, and most companies have another year to prepare for compliance.

The same cannot be said for some retailers, however. Because the holiday season is the busiest time of the year, several retail employers have later enrollment periods, with plan years that begin in February and extend through January of the following year. These employers face the daunting task of preparing to comply with the act in February 2013, even though the formal regulations have not been completed.

Under the act, employers of a certain size must either provide minimal essential coverage to full-time employees or pay a penalty. This is generally known as the "play or pay" provision of the act. Employers with 50 or more full-time employees are required to offer coverage as of Jan. 1, 2014.

The not-yet-finalized regulations will clarify what constitutes a "full-time" employee. While the act indicates that full-time means someone employed for at least 30 hours per week over a period of several months, different regulatory tests have been proposed, rejected and replaced with alternative tests, causing understandable anxiety and consternation among business leaders. Any company close to the 50 full-time employee threshold may want to seek the advice of counsel to help determine its obligations. The act contains many additional requirements, and not all requirements are applicable to every employer.

What are the penalties for non-compliance? For the play or pay provision, if an employer is required but fails to offer coverage to eligible full-time employees and at least one of these employees winds up receiving a federal tax credit for participating in an insurance exchange set up either by a state or the federal government, then the business can be fined \$2,000-\$3,000 for each eligible full-time employee. For any plan with an open enrollment period beginning on or after Sept. 23, 2012, employers must provide employees with additional plan description information, and each failure (meaning each employee who should receive the information) can result in a \$1,000 penalty. Starting in 2013, employers will also have to report the aggregate cost of providing health coverage on an employee's W-2.

Some businesses may seek to avoid the coverage requirements by utilizing a greater number of temporary employees or independent contractors. This is a risky proposition. Federal agencies, such as the Department of Labor and Internal Revenue Service, already have stepped up their investigations regarding the classification of workers. Enforcement of the ACA will only magnify this attention, and dealing with investigations and litigation in this area can be enormously expensive.

Employers should consult with their legal counsel to determine where they fall under the new act. Different provisions and exemptions are applicable depending on the size of the work force. These consultations can help employers devise a strategy for complying with the act and avoiding interruptions to the operation of their businesses.

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