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What You Need to Know About the Affordable Care Act: Seven Key Provisions

First, did you know that some provisions of the Affordable Care Act (“ACA”) have already gone into effect and others will take effect later this year? For example, the law already requires that an employer’s health plan or policy that provides dependent coverage to continue to offer this coverage until the dependent turns age 26. Already various minimum standards for health insurance policies have taken effect and the prohibition against annual and lifetime coverage caps have started to phase in. A new 0.9% income tax and a 3.8% Medicare tax took effect in January 2013 and are designed to help pay the costs of ACA. Looking forward to later in 2013, covered employers must notify employees of their rights to obtain health care coverage through health care exchanges, instead of through employer-sponsored plans, and of the right to a health care credit under certain circumstances. The Department of Labor expects that the timing for DOL approval of employee notices will be late summer or fall 2013. The state and federal health care exchanges are scheduled to become operational on October 1, 2013 and at that time employees will be able to purchase health insurance on these exchanges on the Internet. The more significant changes introduced by ACA, including the employer mandate to offer coverage, the employer penalty tax, as well the penalties on individuals who do not purchase health coverage, will take effect in January 2014. The Act requires employers to report the value of health care (including major medical, EAP, wellness programs and on-site medical clinics) on employees’ W-2 forms but the IRS has issued transition relief to small employers with the effect that this requirement is being phased in first for larger employers.

Second, did you know that not all employers are covered by the ACA? Generally, under the proposed IRS rules, an employer will be covered by ACA on January 1, 2014 only if during the employer’s 2013 *measurement period* the employer employed full-time employees and full-time equivalent employees (including seasonal workers) who total at least 50. For employers that must provide ACA coverage on January 1, 2014, the employer’s 2013 measurement period (for determining if it is a covered employer on January 1, 2014) may be any consecutive three- to 12-month period prior to October 1, 2013. A *full-time employee* is any employee who works an average of at least 30 hours per week during the measurement period. A *full-time equivalent employee (“FTE”)* is any employee who averages fewer than 30 hours per week during the measurement period; the hours worked by all FTEs during a month are divided by 120 to determine how many FTEs the employer has.

Third, did you know that an employer that is covered by ACA must on January 1, 2014 either offer affordable health care coverage to at least 95% of its full-time employees and their dependents, or pay an ACA tax? This is what is known as the mandate. The health care exchanges will be available to employees on October 1, 2013. The employer has the option to offer employer-sponsored coverage or simply allow its employees or a portion of them to purchase coverage in the exchanges, but this comes with a penalty which is discussed below. If the employer plans to offer coverage to its employees effective January 1, 2014, then it must offer the coverage by no later than October 1, 2013.



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Coverage is deemed unaffordable if the employer does not cover at least 60% of the cost of the plan benefits, or the premium required to be paid by the employee exceeds 9.5% of the employee's household income. The tax imposed on an employer that offers unaffordable coverage is \$3,000 per year for each full-time employee who qualifies for and receives a premium tax credit or cost-sharing reduction from a state exchange.

Fourth, did you know that an employer that fails to offer at least 95% of its full-time employees affordable health care coverage by January 1, 2014 will be required to pay a tax to the IRS? What's more, the tax the employer will pay is calculated based on all of the employer's full-time employees, not only employees not offered coverage, minus 30. An employer's failure to provide a full-time employee with the opportunity to enroll in minimum essential coverage will trigger a penalty of \$2,000 per year per full-time employee. Therefore, an employer with 100 full-time employees or FTEs that fails to offer just one full-time employee minimum essential coverage will pay a tax of \$140,000 (100 minus 30 times \$2,000).

Fifth, did you know that employees who work fewer than 30 hours per week are counted in determining whether the employer is covered by ACA? It is necessary to make a clear distinction. Once the employer is determined to be covered by ACA, the employer is required to offer affordable coverage only to employees who work an average of 30 hours per week or more, but not to employees whose average hours are below 30 per week. However, in determining whether the employer is covered by ACA, the employer must calculate the hours worked by its FTEs each month, which produces the number of FTEs who are counted in determining whether the 50-employee threshold is met.

Sixth, did you know that the IRS will apply its single employer, common law employer, and controlled group employer rules to determine whether your business is covered by ACA? Determining whether an employer is covered by ACA is often complicated by the employer's corporate structure and indirect ownership issues. The IRS will disregard corporate structure and ownership formalities and inquire as to whether one business entity is controlled by another, and whether two or more entities should be treated as one because of overlapping management of the entities. Therefore, where there is doubt as to whether employees of multiple entities might be considered employees of a single entity and satisfy the 50-employee test for purposes of ACA coverage, legal advice is recommended.

Seventh, did you know that a small employer that is not subject to the ACA tax can qualify for a tax credit of up to 35% of its costs in providing health care coverage to its full-time employees? In 2013 an employer that employs a total of no more than 25 full-time employees plus FTEs is eligible to receive a tax credit if it covers at least 50% of the premium for a plan for its employees and its employees' wages average less than \$50,000 a year. The maximum credit is 35% for a for-profit employer and 25% for a small tax-exempt employer. On January 1, 2014 the maximum credit will increase to 50% and 35% of the cost of the coverage, respectively.



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If you have any questions or for more information about ACA and its impact on your organization or your employees' benefit plans, please contact [Patrick W. McGovern, Esq., pmcgovern@genovaburns.com](mailto:pmcgovern@genovaburns.com), [Gina M. Schneider, gmschneider@genovaburns.com](mailto:gmschneider@genovaburns.com), or [Phillip M. Rofsky, Esq., profsky@genovaburns.com](mailto:profsky@genovaburns.com), in the Firm's [Employee Benefits Practice Group](#).

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