
Can You Pass the Affordable Care Act Pop Quiz?

September 29, 2015

The Patient Protection and Affordable Care Act ("ACA") became the law on March 23, 2010. Despite the five years that have passed since it was enacted, there remains much confusion and uncertainty surrounding the ACA and what businesses must do to comply with it. This is a cause for concern because many businesses have failed to realize that they are subject to the ACA.

Certain employers, called "Applicable Large Employers," are subject to the Employer Shared Responsibility provisions (also known as the "Employer Mandate") under Section 4980 of the Internal Revenue Code. Below is list of 10 straightforward questions all "Applicable Large Employers" should be able to answer without hesitation. If you or your business is an Applicable Large Employer, and you cannot answer the following questions, you should contact a legal or tax professional to ensure you are ready for your ACA obligations.

1. The Employer Mandate applies to "Applicable Large Employers." What is an Applicable Large Employer?

As defined in the ACA, an "Applicable Large Employer" is an employer that employed 50 or more full-time employees, including full-time equivalent employees, during the prior year.

2. What is the definition of a full-time employee?

For purposes of the Employer Mandate, a full-time employee is one who works at least 30 hours per week in a calendar month.

3. True or False: The Employer Mandate was delayed until 2016.

This is a trick question—the answer is: It depends. Applicable Large Employers with 100 or more full-time employees, including full-time equivalent employees, are not eligible for a delay, and the Employer Mandate went into effect on January 1, 2015.

Applicable Large Employers with 50-99 full-time employees may be eligible for transition relief through January 2016. In order to qualify for transition relief, the Applicable Large Employer must certify that it:

- Employed, on average, at least 50 full-time employees, including full-time equivalents, but fewer than 100 during 2014;
- Did not reduce the size of the workforce in order to qualify for transition relief; and,
- Will maintain, and not reduce, the health coverage offered to its employees, if any, as of February 9, 2014.

4. Does the definition of "dependent" include a spouse?

No, a dependent in terms of the Employer Mandate does not include a spouse. The Employer Mandate states that Applicable Large Employers must offer affordable health coverage that meets minimum value to all full-time employees and their dependents (not including a spouse), or otherwise be subject

to a penalty.

5. True or False: An employer with a "grandfathered" health plan does not have to comply with the Employer Mandate.

False. In general, a "grandfathered" health plan is one that was purchased on or before March 23, 2010 and that has remained substantially unchanged in terms of benefits and consumer costs. An Applicable Large Employer with a grandfathered group plan must still comply with the Employer Mandate.

6. Are non-profits and government entities exempt from the Employer Mandate?

No. All Applicable Large Employers are subject to the Employer Mandate, including non-profit and government entities.

7. May an employer reimburse an employee's individual health insurance premiums in lieu of providing a group health plan?

Generally, no. An employer that does not establish a health plan for its employees, but instead reimburses its employees for premiums that the employees pay for their own individual health plan coverage has created, in ACA terminology, an "employer payment plan." As further detailed in Internal Revenue Service ("IRS") Notice 2013-54, employer payment plans are subject to the ACA, and any such employer payment plan that fails to meet certain ACA requirements may be subject to a \$100 per day tax for each employee receiving the reimbursement.

8. True or False: Small businesses are not subject to the Employer Mandate.

True. Only Applicable Large Employers are subject to the Employer Mandate.

9. What are the Applicable Large Employer reporting requirements?

Beginning with tax year 2015, Applicable Large Employers are required to:

- Report to the IRS the type of health coverage offered to full-time employees; and,
- Provide a similar statement to employees.

An applicable Large Employer must familiarize itself with IRS Form 1094-C and 1095-C to ensure it is accurately gathering all the information that must be reported to the IRS.

10. Should an employer with a health plan be concerned with provisions of the ACA other than those involving the Employer Mandate?

Yes! The Employer Mandate is only a portion of the ACA. Employers of all sizes must comply with market reform regulations, HIPAA obligations, ERISA compliance, and other employee benefit laws and regulations when implementing a health plan.

Conclusion

While it is likely not practical for all Applicable Large Employers to score 100% on this quick test, Applicable Large Employers (or someone advising the Applicable Large Employer) should answer most of these questions with ease. If you have difficulty answering some or most of these questions, you should consult your legal or tax professional to ensure your ACA compliance.

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