

Update on the Affordable Care Act (“ACA”) Employer Mandate

The IRS and U.S. Department of the Treasury recently published final regulations concerning the employer mandate of the ACA. These regulations provide some additional guidance on the impact the ACA will have on employers.

Businesses of 50 to 99 full-time employees will not be subject to penalties until 2016 for failing to offer their employees affordable health coverage that satisfies the ACA. Businesses of 100 or more full-time employees must comply with the ACA by 2015, but they will not be subject to penalties if at least 70% of their full-time employees are offered affordable health coverage that satisfies the ACA; in 2016, this percentage must be 95% in order to avoid a penalty. Also, transition rules regarding the time frame employers may use to determine their status as an “applicable large employer,” non-calendar year plans, dependent coverage, and the measurement period used for determining full-time employee status have been extended to 2015.

Employers are able to determine whether a newly hired employee is reasonably expected to be hired as a full-time employee by analyzing whether the employee is replacing an employee who was not a full-time employee, the extent to which employees in the same or comparable positions are or are not full-time employees, and whether the job was advertised, or otherwise communicated or documented to the new hire as full-time.

Employers must count hours to determine whether they are considered an “applicable large employer” and whether an employee is a full-time employee that must be offered affordable coverage. Employers may use a “reasonable method” for crediting hours of service. The regulations also state that an employee is a “seasonal employee” if it is customary for the employee’s annual employment to be six months or less and the period of time will start at approximately the same time each year.

Employers may avoid the shared responsibility provisions of the ACA if their workforce exceeds 50 full-time employees for 120 days or less and the employees that exceed the 50 threshold during such 120-day term are “seasonal workers.”

Employers are required to offer health coverage to the dependents of eligible full-time employees or pay a penalty. Dependents include biological children and adopted children until they reach age 26. Dependents do not include an employee’s spouse, stepchildren, or foster children.