Health care reform countdown is on

Sizable employers have only one more year to prepare for federal mandate that was delayed previously

COMPLIANCE CORNER

Iris Tilley

As you toast the New Year, health care reform will probably be the last thing on your mind. But for many employers, the start of 2014 signals the start of new compliance obligations as well as the first real health care reform countdown – to 2015.

In 2015, the previously delayed employer mandate and reporting requirements take effect, triggering the possibility of penalties for some employers. Here is a look at the issues that employers should follow in this final calm before the storm.

Employee count

Employers have always had to watch their employee count, but it will take on new meaning in 2015. Large employers – those with 50 full-time equivalent employees or more – will be subject to reporting requirements. In addition, penalty payments may accrue if at least one employee of a large employer obtains coverage through the exchanges with coverage assistance because the employer either failed to offer coverage or offered coverage that was insufficient or unaffordable.

The relevant period for determining an employer's employee count is total business days during the previous calendar year, so the number of employees an employer maintains in 2014 will affect its large employer status in 2015.

Employers that enter the year close to the 50-employee mark may wish to track employee count throughout the year in preparation for requirements taking effect in 2015.

Compliance

Plan years beginning on or after Jan. 1, 2014 are subject to a small host of new insurance requirements. For employers with insured plans, many of these changes will take place behind the scenes; however, there are two compliance updates that may require employer action or are likely to trigger employee questions.

The first of these requirements is waiting periods. They are limited to no more than 90 days as of an employer's first plan year beginning after Jan. 1, 2014. The tricky part is that the regulations implementing this rule take a hard approach to counting days and mandate that employers make coverage available to employees on their 91st day of employment.

Some insurers allow for mid-month enrollment, and for these insurers, a 90-day waiting period remains feasible. However, most employers enroll employees on the first of the month following satisfaction of the waiting period. For these employers, the maximum waiting period is only 60 days because coverage does not become available until the first day of the next month following the 60th day of employment. Handbooks often reference a plan's waiting period, so check internal policies to ensure they are consistent with the law.

A second issue garnering a fair amount of attention is out-of-pocket maximums (aka cost sharing). While new requirements take effect in 2014 that limit a plan's total cost sharing – the amount individuals pay in deductibles, co-payments, co-insurance and similar charges – most employers have found that the cost sharing in their plans increased this year. These increases are primarily driven by the continually increasing regulatory requirements of health care reform, but each employer that made every attempt to continue its current plan in its existing form should be sure to communicate those efforts to employees so they do not come away from benefit meetings with the impression that coverage is being reduced purposefully.

New and final regulations

While the framework for health care reform has taken shape slowly over the past few years, we are still waiting for many final and proposed regulations. In particular, we do not yet have final regulations addressing the mechanism through which employers will comply with reporting requirements or calculate measurement and stability periods. At this point, consultants and attorneys are working from proposed regulations, but employers should remain aware that systems changes may be necessary when final regulations are released.

On a related issue, proposed regulations are still outstanding on automatic enrollment and nondiscrimination testing. Employers need not worry about compliance until regulations come out, but employers with 200 employees or more should watch for automatic enrollment regulations.

In addition, any employer with a non-grandfathered insured plan (most employers with a health plan today) may be affected by nondiscrimination regulations, which will require plan testing to determine if the plan discriminates in favor of employees compensated more highly.

Measurement and stability periods

For employers with 50 employees or more, questions about which employees qualify for coverage will become paramount in 2015. That is because employees who qualify for coverage, but do not receive an offer put the employer at risk for a penalty.

A full discussion of measurement and stability periods is beyond the scope of this column, but the key lesson for employers is that employers may measure hours worked by variable hour employees or seasonal employees on a monthly basis to determine eligibility. Or they may look at hours over a longer period of between three and 12 months.

For some employers, averaging an employee's hours over a longer period of time will be advantageous because it will allow the employer to smooth out slower and busier periods. Measurement periods are followed by stability periods of between six and 12 months during which the employee maintains the eligibility status that he or she established during the measurement period.

Employers with variable hour or seasonal employees should speak with their benefits attorney or broker to get more information about measurement and stability periods.

Iris Tilley, a partner at Barran Liebman LLP, specializes in employee benefits. Contact her at 503-276-2115 or itilley@barran.com.