

# THE KIND OF SORT OF BIG ONE

## What Employers Need To Know About ACA Reporting

by IRIS TILLEY of Barran Liebman LLP.

As an employee benefits attorney, I spend a lot of time talking with employers about their obligations under the Affordable Care Act (ACA), and I can say with certainty that the most daunting ACA requirement at this moment in time is employer reporting.

Penalties will have their time again in the months to come, but reporting is the monster looming in the corners of our offices this summer.

The reporting requirements are full of intricacies that cannot be summarized in a short column, but I have summarized the top 10 questions I receive from employers in hopes of bringing a little order to the seemingly-endless chaos that is ACA reporting.

### 1. What is the purpose of ACA reporting?

The IRS will use the information reported to assist in determining which employers owe shared-responsibility penalties and which individuals owe a penalty tax under the individual mandate portion of the ACA. The information will also be used to cross check whether individuals who claimed eligibility for health-insurance subsidies are in fact eligible.

### 2. Which employers have to report?

Employers with 50 or more full-time equivalent employees on business days in the year prior to the reporting year must report. This means that employers should



look to their employee count in 2014 in order to determine whether they are obligated to report for 2015.

Notably, the 50-employee threshold stands despite the transitional relief that allows many employees with fewer than 100 employees to avoid pay or play penalties for 2015.

### 3. Are there any special tricks to how I count my employees?

Yes, the important count here is full-time equivalent employees. To count these employees, follow these three steps:

1. Count number of employees working an average of 30 or more hours per week in a given month. Each of these employees counts as one.

2. Sum all hours worked by employees working fewer than 30 hours per week in a given month.

3. Divide the sum in Step 2 by 120.

4. Add the count from Step 1 to the quotient in Step 3. This is your full-time equivalent count for a given month.

5. Complete Steps 1-4 for each month in a calendar year.

6. Average the full-time equivalent counts for the entire calendar year to determine reporting obligations.

Unlike the applicable counts for some other employment laws, employees in separate states or employees that are separated by many miles are all placed in one pool. In addition, where an employer shares substantial ownership with another entity, employees of both entities are counted together. If you are unsure if this applies to you, speak

with your plan consultants and/or an employee-benefits attorney.

### 4. If I have an insured health plan, do I still have to report?

Yes, although, the information you will report is not as expansive as the information reported by self-insured employers. Employees participating in an insured plan, will get a form both from you and from the insurer. Their dependents will also get a form from the insurer. The insurer-provided forms show when a particular individual had health insurance to assist employees with indicating this information on their own taxes and assist the IRS with enforcing the individual mandate.

### 5. When are reports due to employees?

Reports are due to employees on January 31 of the year following the reporting year. For 2015 reports, this is January 31, 2016.

### 6. Do reports have to be filed with the IRS?

Yes, forms must be filed with the IRS.

### 7. When are reports due to the IRS?

Forms must be filed with the IRS, on or before February 28 (March 31, if filed electronically) in the year following the reporting year. For 2015, this means February 28, 2016 or March 31, 2016.

### 8. Are there any special rules that can help to simplify reporting?

Yes, there are several ways for employers making offers of coverage

to most of their employees to simplify the reporting process to some extent. Employers who think they may qualify should speak with their plan consultants or an employee benefits attorney about these options.

### 9. What happens if I don't report?

The IRS has stated that for 2015 it will not impose penalties where an employer makes a good faith effort to comply with the reporting requirements, but employers who do not make a good faith effort can face a penalty of \$100 per return, capped at \$1,500,000.

The penalty increases to \$200 per return (\$500 for intentional disregard) with a \$3,000,000 cap for reports filed for 2016. These reports will be due to employees and the IRS in 2017.

### 10. Where can I learn more?

The best sources for information at this point are plan consultants and employee-benefits attorneys because many of the more nuanced questions require interpretation of what limited guidance we do have available. The IRS has published a Question and Answer document with answers to many common employer questions. It can be found at: <http://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Reporting-of-Offers-of-Health-Insurance-Coverage-by-Employers-Section-6056>.

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