

Working With a Staffing Company Under the Affordable Care Act

What clients need to know about compliance



AFFORDABLE CARE ACT
RESOURCES *for* STAFFING

The Staffing Industry's Position on the ACA

- Members of the American Staffing Association, the industry's leading organization of staffing companies, are informed about the ACA and committed to compliance
 - [Insert your company name] will not participate in business practices that violate the intent of the law
 - The U.S. Internal Revenue Service will scrutinize arrangements primarily aimed at avoiding ACA requirements

Impact of the ACA on Staffing Firm Clients

- Client companies should not have ACA liability for staffing firm employees since the staffing firm is generally the employer
 - If, in a particular case, the staffing firm is not the employer, it can still satisfy the client's ACA obligations by offering benefits on behalf of the client
 - The ACA will result in higher staffing costs

Important Definitions Under the ACA

- **Full-Time Employee**

- An individual who averages at least 30 hours of service per week (130 hours per month)

- **Minimal Essential Coverage (MEC)**

- An employer group health plan that covers “medical care” (amounts paid for the “diagnosis, cure, mitigation, treatment, or prevention of disease...”)

Important Definitions Under the ACA

- **Minimum Value (MV)**

- A plan's share of the cost of benefits is at least 60% and covers, at minimum, physician and mid-level practitioner, hospital and emergency, pharmacy, laboratory, and imaging services

- **Affordable**

- An employee's share of the cost for a single-only plan is no more than 9.5% of the employee's income

Important Definitions Under the ACA

■ Variable-Hour Employee

- An employee whose full-time status cannot be reasonably determined at the start of employment or over a look-back period because the individual's employment is variable and uncertain
- For example, a staffing firm can reasonably expect that an employee will be considered variable-hour because he or she will be offered short-term assignments (generally less than 13 weeks) with different clients with gaps in between assignments

Important Definitions Under the ACA

■ Nonvariable-Hour Employee

- An employee is considered nonvariable-hour when the staffing firm can reasonably determine at the start of employment that the employee will work full-time on an ongoing basis
- Note that assignments exceeding 13 weeks may be considered full-time unless variable-hour factors are present
- Staffing firms must offer coverage to full-time employees within 90 days of employment or pay penalties

Key Provisions of the ACA

- The employer mandate takes effect Jan. 1, 2015
 - Employers with 100 or more full-time employees (or full-time equivalents) must offer MEC to their full-time employees (and their dependent children)
 - Those that do not are subject to penalties

Key Provisions of the ACA

- Individuals must maintain MEC for themselves and their dependents or pay penalties
- Individuals with household income at 100% to 400% of the federal poverty level may be eligible for government subsidies to buy insurance through a public exchange

The “Play or Pay” Options

- An employer opts to “play” when it offers MEC to 70% of its full-time employees and their dependent children under the age of 26 (excluding spouses)
- An employer opts to “pay” penalties when it decides not to offer such coverage

Potential Penalties Under the “Play” Option

- No tax to “play” unless the plan is “unaffordable” or does not provide MV. In such case, employers face a monthly tax of \$250 (up to \$3,000 annually) per employee
- Tax is assessed *only* on employees who receive a subsidy to buy coverage
- Medicaid and Medicare enrollees are not eligible for subsidies if the employer offers MFC

Penalties Under the “Pay” Option

- The employer pays a tax if it does *not* offer MEC to 70% of its full-time employees and their dependent children under age 26
- The monthly tax is \$167 (up to \$2,000 annually) per employee on all full-time employees, excluding the first 80
- Penalties are not tax-deductible

The Look-Back Rule

- The “look-back” is a measurement period during which an employee must work full-time (average of at least 30 hours per week) before the employer must play or pay
- Staffing companies may use a look-back period of up to 12 months to determine which of their full-time employees are eligible for benefits

How Staffing Firms May Apply the Look-Back

- Under the ACA, the look-back rule applies only to
 - Employees that are “ongoing” and who have worked for at least one year
 - New variable-hour employees
 - Seasonal employees
- The look-back rule does not apply to
 - Nonvariable-hour employees

Client Responsibilities Under the ACA

- Ensure your staffing firm is knowledgeable about the law and its provisions
 - [Insert your company name] has worked diligently to stay on top of the changing ACA provisions for employers
 - The ACA will result in increased staffing costs
- Consult your company's legal counsel