WILL YOU ‘PLAY’ OR ‘PAY?’

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The employer-sponsored health coverage mandate provision in the health care reform legislation has been looming on the horizon for a couple of years. As employers we have been giving it a wary eye as we waited for the courts and IRS to determine if this is something that will come to pass. The verdict is now in and that storm is heading our way. In August the Internal Revenue Service (IRS) issued the much anticipated guidance regarding the application of the coverage mandate rules. While the mandate itself does not apply until 2014, the time is now to determine as an employer if you are going to ‘pay’ or ‘play.’

The Play or Pay Rules (generally)
The employer-sponsored mandate requires organizations with 50 or more employees to either provide employees with adequate and affordable health coverage or pay certain penalties for their failure to do so. In theory, these penalties are to offset the costs government incurs while provide health care for the uninsured. Specifically, penalties are triggered if:

1) An employer fails to offer all full time employees the opportunity to enroll in an employer-sponsored health plan, with ‘full time employee’ defined as an employee working an average of at least 30 hours a week; or
2) The employer-sponsored health plan offered is unaffordable or fails to provide a minimum value; AND
3) Any employee impacted by either failure purchases individual health insurance coverage through a State-based for Federally-facilitated Exchange and qualifies for a subsidy.

The Penalties

1) Employers who fail to provide coverage to all their full time employees are subject to a penalty of $2,000 per year multiplied by their total full time employee count.
2) Employers who offer coverage that is either too expensive or deemed inadequate are subject to a $3,000 penalty only if full time employees are receiving subsidized health coverage through an exchange.

Term Definitions are Important
Just as the government’s definition of ‘full time’ may vary from the way you define ‘full time’ for benefit purposes, their definition of what is ‘affordable’ and ‘adequate’ are important for determining your response to this mandate. ‘Affordable’ coverage has an ‘employee only’ premium option provided by the employer that is less than 9.5 percent of an employee’s W-2 income. Definitive guidance on how to determine if an employer-
sponsored plan is ‘adequate’ has not yet been issued. The government has suggested that certain safe-harbor checklists will be issued to allow employers to confirm the adequacy of their plan without performing any calculations.

Preparing for 2014
Avoiding penalties is not as simple as just offering coverage. It is prudent to use 2013 as a year of thoughtful consideration and scenario review:

- Evaluate which employees are eligible for coverage under the 30-hour definition for full-time employees. The IRS rules provide additional guidance for employers with high turnover and/or employees that work variable hours. You’ll want to check these out if they apply to you.
- Monitor the income of your lowest paid full time employees in relationship to plan premiums.
- Confirm that your coverage is ‘adequate’ once further guidance in this area is provided.

Choosing to Discontinue Employer-Sponsored Health Coverage
In addition to understanding how to comply with this mandate and the related costs, there is also value in evaluating the costs, both dollar costs and philosophical ones, in choosing not to comply and discontinuing your employer-sponsored health coverage. Such evaluation should include:

- The plan costs saved by discontinuing health coverage
- The loss of related company tax benefits
- The cost of IRS penalties for failure to comply with the employer mandate
- The cost of wage increases necessary for employees to replace this needed benefit on an individual basis
- The reputational ‘cost’ with employees, vendors, shareholders, the community, etc. of your decision

Help!
This is a large issue with broad impact and solutions that are unique to each business. The gift is that there’s a lot of help available. Your health care consultant (broker, agent) and industry associations are great starting places to help guide you through this decision. There are many online resources that provide deeper insight into the issue. You can learn more about the economics of ‘pay or play’ mandates at the National Bureau of Economic Research (www.nber.org) and specifics about the IRS guidance at www.irs.gov.