



Re: Affordable Care Act – Employer Shared Responsibility Mandate for 2015 and Required Information Returns

Dear Client:

Under the Affordable Care Act, the federal government, state governments, insurers, employers, and individuals have been given shared responsibility to reform and improve the availability, quality, and affordability of health insurance coverage in the United States. As a result, all employers that are “applicable large employers,” including for-profit, non-profit, and government entity employers, are subject to the Employer Shared Responsibility provisions, also known as the “employer mandate.” Employers with 50 or more full-time and full-time-equivalent employees are generally considered to be “applicable large employers.”

Starting in 2015, if you are an applicable large employer that does not offer affordable health coverage that meets minimum value standards to your full-time employees (and their dependents), you may be subject to an Employer Shared Responsibility payment if at least one of your full-time employees receives a premium tax credit for purchasing individual coverage on one of the new Affordable Insurance Exchanges, also called a Health Insurance Marketplace (Marketplace). Also, effective in 2015, applicable large employers are required to file information returns with the IRS and provide statements to their full-time employees about the health insurance coverage they offered.

Full-Time Employee

In general, an employer identifies its full-time employees based on each employee’s hours of service. An employee is a full-time employee for a calendar month if he or she averages at least 30 hours of service per week. 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week. Part-time employees are calculated as full-time equivalents by taking the total hours worked by all part-time employees for the month and dividing by 120. For example, an employer that employs 40 full-time employees (that is, employees employed 30 or more hours per week on average) and 20 employees employed 15 hours per week on average has the equivalent of 50 full-time employees and therefore would be an applicable large employer.

Seasonal workers are taken into account in determining the number of full-time employees, with certain exceptions. Also, for purposes of determining whether an employer is an applicable large employer, all employees are counted (subject to a limited exception for certain seasonal workers), regardless of whether the employees are eligible for health coverage from another source, such as Medicare, Medicaid, or a spouse’s employer.

The employer determines each year, based on the current number of employees, whether it will be considered an applicable large employer for the next year. For example, if an employer has employed at least 50 full-time employees (including full-time equivalents) in 2014, it is considered an applicable large employer for 2015. Note that because employers will be performing this calculation for the first time to determine their status for 2015, there is a transition rule intended to make this first calculation easier.

Transition Relief of Employer Shared Responsibility Payment

For employers that employed on average at least 50 full-time employees but fewer than 100 full-time employees on business days during 2014, and that meet certain other conditions, no Employer Shared

Responsibility payment will apply for any calendar month during 2015. For employers with non-calendar-year health plans, this applies to any calendar month during the 2015 plan year, including months during the 2015 plan year that fall in 2016.

Note, however, that for periods on or after January 1, 2016, the transition relief for 2015 generally is not available.

Calculation of Employer Shared Responsibility Payment

If an applicable large employer does not offer coverage or offers coverage to fewer than 70 percent (95 percent in 2016 and beyond) of its full-time employees (and, after 2015, their dependents), it owes an Employer Shared Responsibility payment. The payment is equal to the number of full-time employees for the year (minus up to 80 in 2015, 30 in 2016) multiplied by \$2,000, as long as at least one full-time employee receives the premium tax credit. (For purposes of this calculation, a full-time employee does not include a full-time equivalent).

For an employer that offers coverage for some months but not others during the calendar year, the payment is computed separately for each month for which coverage was not offered. The amount of the payment for the month equals the number of full-time employees for that month (minus up to 80 in 2015) multiplied by 1/12 of \$2,000. If the employer is related to other employers, then the 80-employee exclusion is allocated among all the related employers in proportion to each employer's number of full-time employees.

In general, if an employer offers health coverage that is affordable and that meets minimum value standards to its full-time employees and offers health coverage to the dependents of those employees, it will not be subject to an Employer Shared Responsibility payment if some of its employees still choose to purchase health insurance through a Marketplace or if some of its employees enroll in Medicare or Medicaid.

Information Reporting for 2015

The Affordable Care Act also requires applicable large employers to file information returns with the IRS and provide statements to their full-time employees about the health insurance coverage the employer offered. The IRS will use the information provided on the information return to administer the employer shared responsibility provisions of the Affordable Care Act. The IRS and the employees of an applicable large employer will use the information provided as part of the determination of whether an employee is eligible for the premium tax credit.

Beginning in 2016, an applicable large employer must file information returns with the IRS and furnish statements to employees to report information about its offers of health coverage to its full-time employees for calendar year 2015. Regardless of the number of employees, if an employer sponsors a self-insured health plan, it must report to the IRS certain information about its health insurance coverage plan for each covered employee.

In general, each applicable large employer may satisfy the information reporting requirement by filing a Form 1094-C (transmittal) and, for each full-time employee, a Form 1095-C (employee statement) or other forms the IRS may designate. An applicable large employer that maintains a self-insured plan may also use a Form 1095-C to satisfy the combined reporting requirements. Alternative reporting methods for eligible applicable large employers are available.

Certain employer aggregation rules apply in determining whether an employer is an applicable large employer. Under those rules, all employers treated as a single employer (controlled group) under Internal Revenue Code Sections 414(b), (c), (m), or (o) are treated as one employer for purposes of determining applicable large employer status. The employers comprising this group are referred to as “applicable large employer” members.

The employer information reporting requirements are applied separately to each member comprising the applicable large employer. For example, each member is liable for its own information reporting requirements and is not liable for the information reporting requirements of any other entity in the controlled group.

An applicable large employer is required to report information about the health coverage, if any, offered to its full-time employees, including whether an offer of health coverage was (or was not) made. This requirement applies to all applicable large employers, regardless of whether they offered health coverage to all, none, or some of their full-time employees. Therefore, even if an applicable large employer does not offer coverage to any of its full-time employees, it must file returns with the IRS and furnish statements to each of its full-time employees to report information specifying that coverage was not offered. Publication 5196 released by the IRS provides a summary of the information that is required by employers to complete Form 1094-C and Form 1095-C. Form 1094-C and Form 1095-C are due to the IRS and employees by February 28, 2016, and January 31, 2016, respectively, for the 2015 calendar year.

In Conclusion

For applicable large employers, 2015 is a significant year in the implementation of the Affordable Care Act. However, more than 95 percent of employers are not applicable large employers and are not subject to these provisions because they employ fewer than 50 full-time and full-time-equivalent employees.

If you have additional questions related to identifying full-time employees, whether or not you are eligible under the transition rules, or the information reporting requirements for 2015, please contact our office. Additionally, the IRS has also provided numerous information resources, which are available on its website, www.irs.gov/aca.

Sincerely,

HEINOLD BANWART, LTD.