WINSTON & STRAWN LLP

BLOG

Don’t Let PPACA Excise Taxes Blindside You

FEBRUARY 13, 2014

Yesterday, we blasted about final employer “pay or play” regulations. Many employers are aware that a failure to comply with pay or play rules will result in significant penalties beginning in 2015. In general, if a large employer fails to offer minimum essential coverage to a sufficient number of its full-time employees, that employer can be subject to a $2,000 per year penalty (adjusted for inflation) for each full-time employee. This penalty applies with respect to all full-time employees if even just one full-time employee receives subsidized coverage from a health care exchange.

However, many employers are not aware of PPACA excise taxes now in effect that are potentially more significant than pay or play penalties. PPACA imposes an excise tax of $100 per day per affected individual for certain violations. Calculated annually, the total potential excise tax with respect to a single individual for a continuous violation of a single requirement could be $36,500—which dwarfs the annual pay or play penalty. The excise tax applies to a multitude of health care reform requirements. Some of these were discussed in our January 24, 2014 blast and include:

- No preexisting condition exclusions
- No discrimination against individual participants and beneficiaries based on health status
- No discrimination in health care providers
- Cost-sharing limitations on essential health benefits
- No waiting periods in excess of 90 days
- Coverage for individuals participating in approved clinical trials
- No lifetime or annual limits on essential health benefits
- No rescissions of coverage
- Coverage of preventive health services
- Extension of dependent coverage until age 26
- Periodic disclosures required in summary of benefits and coverage

- Health plan reporting requirements
- No discrimination in favor of highly compensated individuals (see our blast on this subject)
- Health plan claim and appeals protections
- Patient protections, including the selection of primary care provider, coverage of emergency services, and access to pediatric, obstetrical and gynecological care providers

The excise tax applies for each day a failure to comply with one of the above requirements occurs and ends on the date such failure is corrected. A failure is treated as corrected if the failure is undone to the extent possible and each individual to whom the failure relates is put into a financial position which is as good as such individual would be in had the failure not occurred. Importantly, the excise tax will not be assessed if an employer can demonstrate that it did not know, and exercising reasonable diligence would not have known, of a violation. Further, the excise tax will not be assessed if the failure is due to reasonable cause and not willful neglect and it is corrected within the 30-day period beginning on the first date an employer knows, or exercising reasonable diligence would have known, that the failure existed. This limited correction window makes identifying and promptly correcting any potential errors of utmost importance.

Importantly, employers are required to self-report and pay the excise tax for violations of any of the above mandates using Form 8928. This form must be filed on or before the due date for the employer's federal income tax return. A failure to timely file this form can result in the assessment of additional penalties and interest.

2 Min Read

Related Locations

Chicago

Related Topics

PPACA

Health and Welfare Benefits

Related Capabilities

Employee Benefits & Executive Compensation

Health Care

Related Professionals

Erin Haldorson Weber

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.