SHARED RESPONSIBILITY:
What It Means for Your Business

The provisions of the Affordable Care Act (ACA) apply to nearly all companies in the United States. The ways they apply, however, can be different for each organization, making it difficult to know what you need to do to be in compliance, and when you need to do it.

One of these provisions is called Shared Responsibility. It incorporates both employer and individual mandates — the requirements for employers to offer medical coverage to employees and for individuals to purchase medical coverage.

To understand Shared Responsibility, it helps to understand how employees become eligible to participate in health benefit exchanges and receive subsidies for coverage (as well as the penalties for employers and when they're triggered).

THE INDIVIDUAL MANDATE

Beginning in 2014, individuals will be required to maintain "minimum essential coverage" through one of these sources:

- Employer-sponsored plans
- Certain government-sponsored plans, such as health benefits coverage that is recognized by the Department of Health and Human Services, which includes Medicare, Medicaid, Children's Health Insurance Program (CHIP), the veterans' health program and TRICARE (coverage for service members, retirees and dependents)
- Plans in the individual market through health benefit exchanges

An individual may be eligible to receive a subsidy to offset the cost of medical coverage through an exchange if his or her employer doesn't offer coverage or if the cost of employer-offered coverage is more than a certain percentage of the individual's household income (HHI). People who fail to get acceptable medical coverage may have to pay federal and state penalties.

Individuals who either have a religious exemption, are not lawfully present in the United States or are incarcerated are exempt from the minimum-essential-coverage requirement.

Who Can Buy Coverage Through an Exchange?

A health benefit exchange is a virtual marketplace of health care plans, with multiple plan options offered by different insurance carriers.

Although all individuals and families will be able to purchase coverage through the individual market via an exchange, not everyone will be eligible for subsidies to help them purchase coverage. Initially, only small employers will be eligible to offer group coverage through the exchange.

Requirements for subsidy eligibility

Individuals who don't have access to employer-sponsored coverage that meets the government's ***minimum value requirements*** or ***affordability requirements***

AND

whose HHI is 100 percent to 400 percent of the federal poverty-level amount

THE EMPLOYER MANDATE

The employer mandate requires that "applicable large employers" provide minimum essential coverage to their full-time employees (and their dependents) or potentially pay a nondeductible **assessable payment**. An applicable large employer is one that employed an average of at least 50 full-time and full-time-equivalent employees during the previous calendar year.

While any individual can purchase coverage through an exchange, the employer-assessable payment is triggered when:

1. **A full-time employee of an applicable large employer receives a tax subsidy to pay for coverage he or she purchases through a health benefit exchange because coverage is not offered by the employer; or**

2. **The coverage that is offered to the employee does not provide minimum value or is deemed unaffordable.**

Understanding ACA Terms

Full-time and full-time equivalent (FTE) employees: A full-time employee is one who is credited with at least 30 hours a week or 130 hours in a calendar month. A company's number of **FTEs** is calculated by adding the number of full-time employees to the number of "full-time-equivalent" employees. The number of full-time-equivalent employees is calculated by totaling the hours worked by all part-time employees (up to 120 hours each) during the month and dividing that by 120. Adjustments may be made in certain cases for seasonal workers.

Minimum value requirement: An employer-sponsored plan must pay at least 60 percent of the total covered health care expenses.

Employer-Assessable Payments

While the employer-assessable payment is often discussed as one amount, there are actually two payments. An employer may have to pay one or the other, but not both. The payments are assessed monthly.

1. **If an employer subject to Shared Responsibility *does not* offer coverage to substantially all (at least 95 percent) of its full-time employees (and their dependents),** and at least one *full-time employee* obtains subsidized coverage through an exchange, the employer must pay an annual amount of $2,000 for each of the company's full-time employees (minus the employer's first 30 employees). That's $166.67 per month per employee.

2. **If an employer subject to Shared Responsibility *does* provide coverage to substantially all of its full-time employees (and their dependents),** but the coverage provided either (1) doesn't meet the minimum value requirement or the affordability test, or (2) one or more full-time employees are excluded from receiving coverage and obtains subsidized coverage through an exchange, the employer must pay an annual amount of $3,000, or $250 per month, per *full-time employee* who receives subsidized coverage. There's a cap on this payment: It can't be more than $2,000 times the number of full-time employees minus 30 employees.

Affordability Requirement and Safe Harbors

Employer-sponsored coverage is considered unaffordable if the employee's required contribution for employee-only coverage exceeds 9.5 percent of his or her HHI. Under proposed regulations issued by the Department of Treasury and the Internal Revenue Service on January 2, 2013, there are three safe-harbor alternatives for determining if coverage is affordable. The safe harbors described below do not affect an employee's eligibility to receive a subsidy through an exchange (which will continue to be based upon his or her HHI). As a result, an employer might not be subject to a penalty because the offer of coverage being considered is affordable under a safe harbor.

If an employer subject to Shared Responsibility offers substantially all of its full-time employees (and their dependents) the opportunity to enroll in coverage that meets the minimum value requirement, coverage affordability may be determined under one of the following safe harbors:

1. **Form W-2. Coverage will be considered affordable if an employee's calendar-year contribution for the lowest-cost employee-only option offered by the employer that meets the minimum value requirement is no more than 9.5 percent of the employee's Form W-2 wages for the calendar year. (This is determined after the end of the year.) To qualify, the employee's contribution — either dollar amount or percentage of pay — must be consistent during the calendar year or, for fiscal-year plans, within the portion of each plan year during the calendar year.**

2. **Rate of pay. Coverage will be considered affordable if an employee's monthly contribution for the lowest-cost employee-only option offered by the employer that meets the minimum value requirement is no more than 9.5 percent of either:**
    - *The employee's monthly salary, when the employee is a salaried employee; or*
    - *The employee's hourly rate of pay as of the first day of the plan year multiplied by 130 hours, when the employee is paid hourly. A company can't use this safe harbor if it has reduced employee wages during the year.*

3. **Federal poverty line. Coverage will be considered affordable if an employee's monthly contribution for the lowest-cost employee-only coverage offered by the employer that meets the minimum value requirement is no more than 9.5 percent of 1/12 of that year's federal poverty-line amount for a single individual in the state in which he or she is employed.**

These safe harbors are optional. An employer may choose to use one or more of them for all of its employees or any reasonable category of employees, provided it does so on a uniform, consistent basis for those employees.

Proposed Regulations

The January 2, 2013 proposed regulations are very broad and contain several new rules and clarifications. Some of them are based on earlier IRS guidelines about certain key issues, including:

- **Determining a company's status as an applicable large employer for single employers and those that are part of a controlled group**
- **Determining full-time-employee status using hours of service or an optional safe harbor for employees with varying hours or work schedules**
- **Determining which dependents of full-time employees must be offered coverage**
- **Determining if an employer is subject to an assessable payment, and how to determine the assessable payment for single employers and those that are part of a controlled group**
- **Evaluating affordability and minimum value of coverage, as well as the administration and the amount of the Shared Responsibility assessable payment**

Penalties and Reporting Delayed Until 2015

The U.S. Department of Treasury announced Tuesday, July 2, 2013, that it will delay until 2015 the penalties and reporting requirements of the Employer Shared Responsibility provisions. The Administration considered comments from interested parties concerned with the complexity of the proposed regulations amid looming implementation deadlines in deciding to act. Accordingly, both the employer and insurer reporting requirements and any penalties under the employer mandate have been delayed until 2015.

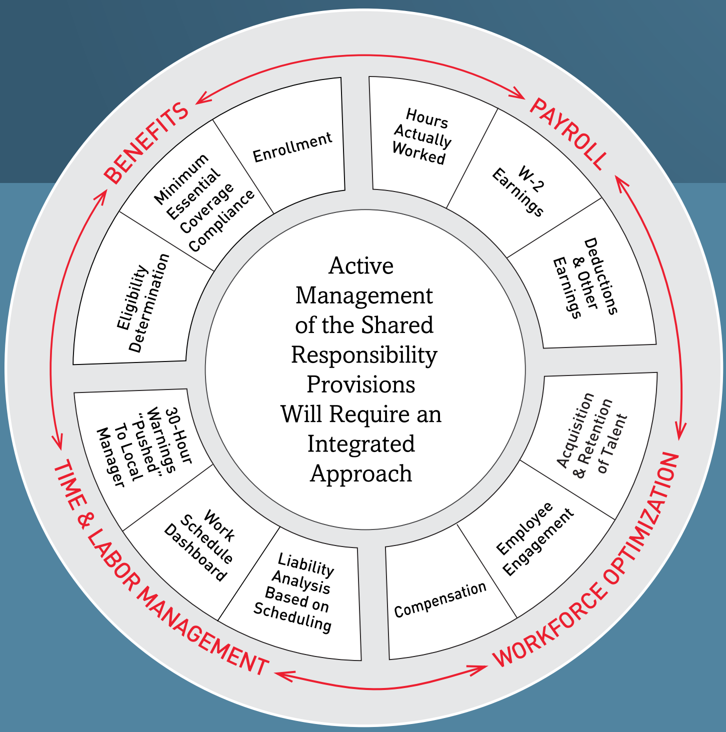
During the transition period in 2014, the Administration encourages employers to voluntarily extend coverage to employees in accordance with the Employer Shared Responsibility mandate in preparation for 2015. The delay is limited to the Employer Shared Responsibility requirement only. Premium tax credits for individuals through an insurance marketplace will continue to be available, although it is unclear until further guidance is issued how eligibility will be verified without the informational reporting under Sections 6055 and 6056. The individual mandate continues to be effective in 2014, although recent guidance was issued that provides transitional relief to individuals who are eligible for non-calendar year coverage through their employer or spouse's employer. The transitional relief indicates that these individuals are permitted to wait to obtain coverage until the first day of the plan year that begins in 2014 without becoming subject to a penalty.

Employers should continue to evaluate their options under the ACA concerning their overall healthcare and workforce strategies for the coming year. Although penalties associated with the employer mandate have been delayed, we encourage you to leverage the expertise of ADP TotalSource in preparing for 2015.

Where Do You Stand?

Your business may be exempt from Shared Responsibility. It applies only if you employ 50 or more combined full-time employees and FTEs. ADP TotalSource® can help you evaluate your position by providing:

- **Tools, including a Web-based Shared Responsibility calculator, to gauge your status as a large employer based on the number of full-timers and FTEs you have**
- **Guidance about how your medical plan meets, doesn't meet or exceeds the minimum–value requirements**
- **Analysis to determine if all full-time employees are offered coverage and if it's affordable**
- **Recommendations on benefits thresholds relative to wages to mitigate the risk of penalties for not meeting affordability safe-harbor provisions**
- **Assistance in determining benefits eligibility for a variable workforce**



Active Management of the Shared Responsibility Provision

Your ADP TotalSource Human Resource Business Partner (HRBP) can work with you to review your options and evaluate your readiness to comply with the ACA provisions that will affect you.

We invite you to meet with ADP to assess your compliance readiness via the ACA Compliance Checkup – a web-based tool that provides you with a customized snapshot and report of potential issues related to certain elements of the Employer Shared Responsibility based on your existing processes. Call today to register for a complimentary ACA Compliance Checkup Report at (800) 447-3237. ■