The Effects of the Patient Protection and Affordable Care Act ("Obamacare")

A WHITE PAPER PROVIDED BY ULTIMATE STAFFING SERVICES

More and more companies are realizing the impacts the Patient Protection and Affordable Care Act ("PPACA," "ACA," or "Obamacare"[1]) will have on every element of business including hiring, profits, and taxes. In fact, many employers are already reaching out to contingent staffing partners to completely bypass some of the confusion resulting from the ACA and to lessen the inherent administrative and recruiting hassles.

According to a staffing industry survey,[2] 28% of temporary staffing users claimed that they are already planning to increase temporary and contract staffing usage in response to the ACA. 75% of staffing firms surveyed claimed that they were currently discussing or planning to discuss the effects of healthcare reform with their clients–a sign that the ACA may expand and improve partnerships between businesses and staffing firms in the near future.

This white paper examines what businesses should expect and prepare for when ACA legislation goes into effect. In case you haven't quite learned about healthcare reform, this white paper also offers an easy-to-follow explanation of what a business must do to ensure compliance with state and federal laws.

New Responsibilities

According to the Obama administration, the main purpose of the ACA is to reduce health care costs, guarantee health insurance to all Americans regardless of preexisting medical conditions, and ensure that all Americans opt into health insurance plans (or pay the government for refusing coverage). The ACA also hopes to save federal and state governments future expenses for Medicare and healthcare costs (by drastically reducing the costs associated with supporting numerous uninsured Americans).

The ACA imposes obligations on individuals to maintain health coverage for themselves and their dependents and also imposes obligations on "large" employers to offer affordable health coverage to their employees and dependents.

Beginning in January 2014, companies with at least 50 full-time employees or "full-time equivalent" employees ("large" employers) will be responsible for offering affordable government-approved health insurance to all full-time workers and their dependents. The insurance must offer "minimum essential coverage" and be "affordable." The government considers an employee insurance plan "affordable" if the employee contributes less than 9.5% of his or her household income.[3] Employers who do not offer a healthcare plan with minimum essential coverage to "substantially all" "full-time" employees (and their children) face steep non-compliance taxes (the so-called "pay" penalty)–$2,000 multiplied by the number of full-time employees minus 30–if employees are not offered an acceptable healthcare plan.

"Large" employers who choose the so-called "play" option by offering group healthcare coverage also face potential taxes even if they offer health benefits but at least one employee receives premium

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credits (government subsidies) because the healthcare plan is unaffordable (i.e., if the employee's household income is less than 400% of the Federal Poverty Level and the employee must pay healthcare premiums of more than 9.5% of his or her household income). In this case, the employer may need to pay the following penalties: $3,000 multiplied by the number of subsidized employees or $2,000 multiplied by the number of employees minus 30—whichever sum is lowest.

And these penalties may be even steeper in the future as health insurance premiums increase.

Furthermore, insurance companies and self-funded employers are required to pay a reinsurance assessment beginning in 2014 to help stabilize the cost of insurance premiums. The first year assessment is $63 for each insured employee or dependent and the annual cost will decrease until becoming phased out in 2017. These costs are sure to be passed down to employers offering insurance to their employees.

Another significant element of ACA legislation, the "individual mandate," requires individuals to have medical insurance or face an annual penalty for non-compliance. The individual penalty will begin at $95 per person in 2014, will increase to $325 in 2015, and will be $695 in 2016. These penalties are per person, per family. For instance, if a family of three does not have health insurance in 2014, their penalty would be $285 in 2014 and climb to $2,085 in 2016. After 2016 the penalty amount is indexed to the inflation rate. There is also a limit on the maximum amount that one family can be penalized each year.

UPDATE AS OF JULY 2013: The U.S. Department of the Treasury announced that the "employer mandate tax" will not take effect until 2015. Essentially, employers will not need to provide affordable, accessible healthcare plans to employees until 2015, not 2014. These changes will not affect some state-based exchanges (discussed later in this white paper).

In addition, the House of Representatives has passed a bill delaying the implementation of the individual mandate until 2015. However, the future of this legislation being enacted is unknown at this time.

Classifying Employees May be Complicated

To determine if an employer is a "large employer," (with 50 or more full time and full-time equivalent employees), the IRS considers a full-time employee anyone who works at least 30 hours per week or 120 hours per month. Employers are also required to add all the hours for their part-time employees for each month (with a maximum of 120 hours per employee) and divide the total by 120 to determine how many "full-time equivalent" employees they have. The total number of employees can be determined by adding the number of full-time employees plus full-time equivalent employees for each month and dividing by 12. The concept of "full-time equivalent" employees applies only to establishing "large" employer status; there are no coverage requirements or penalties for non-full-time employees.

For coverage and penalty purposes, employers must certify who their full-time employees are. A full-time employee is anyone who works a monthly average of at least 30 service hours per week or 120 hours per month. Hours of service include each hour for which an employee is paid or entitled to payment for either work or time off (e.g., vacation holiday, sick leave). If an employee is reasonably expected to work full-time at the date of hire, he/she is considered a full-time employee to whom the employer must offer coverage (although the employer may require a 90-day waiting period).

For "variable hour" or seasonal employees, the IRS has implemented a "look-back safe harbor" rule, where employers can determine an employee's full-time or part-time status based upon an analysis of the employee's working history. Employers may use a look-back period between three and 12 consecutive months to determine the average number of hours worked per week and label an employee full-time if he/she worked more than an average of 30 hours per week. Then, that employee would be considered a full-time employee for the next few months (the same amount of time as the look-back period, but no less than six months) regardless of how many hours the employee works during that period.

Correctly classifying employees is essential because most employer responsibilities center on the number of full-time and full-time equivalent workers employed.

Exploring Health Insurance Exchanges

Each state will have its own health insurance exchange (either state-based or through the federal government) that provides a variety of government-approved policies for employers and individuals to choose from. Employers can continue to seek coverage through existing marketplaces or explore private exchanges run by health insurers, but government exchanges offer federal subsidies and may be more cost-efficient and transparent (though there is no way to know for sure until the exchanges are fully established). In addition, the health insurance provided in these exchanges will be guaranteed issue, which means that providers cannot reject applicants due to health status or pre-existing conditions.

Businesses with no more than 100 employees can utilize the Small Business Health Options Program (SHOP) exchanges and customize coverage levels and employer contribution. One benefit: the Small Business Healthcare Tax Credit, which can compensate employers for up to 50% of their contribution to low- and moderate-wage workers' health plans, according to the U.S. Department of Health & Human Services.

However, states have the right to exclude companies with less than 51 employees from the exchanges until 2016. Businesses with more than 100 employees cannot take advantage of the

health insurance exchanges until 2017. Whether or not companies participate in state exchanges in 2014 or 2015, all are required to inform their employees about the exchanges and the benefits and risks involved by October 1, 2013.

UPDATE AS OF JULY 2013: Although the U.S. Department of the Treasury has declared that the "employer mandate" will not take effect until 2015, the federal exchanges still plan to take effect in 2014. However, the administration is delaying the employee choice option in federal-run exchanges; therefore, the exchanges may not be able to offer multiple options as previously planned. Instead, there may only be one option for consumers (the one that their employer chooses for them), which might raise prices.

Yet, a few of the 18 state-based exchanges, including California and Connecticut, have declared that they still plan to offer an employee option in 2014 although it is no longer mandated by the federal government, according to *The New York Times.* Their decisions are subject to change in the near future.

According to the Centers for Medicare & Medicaid Services, these are the states that are planning to implement state-based exchanges in 2014 or 2015 (as of May 2013):[4]

- California
- Colorado
- Connecticut
- District of Columbia
- Hawaii
- Idaho
- Kentucky
- Maryland
- Massachusetts
- Minnesota
- Nevada
- New Mexico
- New York
- Oregon
- Rhode Island
- Utah[5]
- Vermont
- Washington

Grandfathering Current Group Health Plans

Some companies were able to have specific provisions of their health insurance policies retained or "grandfathered in" prior to ACA requirements taking effect. The grandfathering period reviewed the cost and coverages in effect on March 23, 2010 and the current policy term. If there were not significant changes and the existing policy provided similar or expanded coverage, the health insurance would be required to provide some of the requirements of the ACA. This means that some of the requirements of the ACA will not apply to older grandfathered health insurance plans because they were established before the ACA was enacted. Nevertheless, there are still a few things to be aware of.

Plans must offer a variety of required features, including:

- maternity and newborn benefits
- preventative care
- essential health benefits
- no lifetime limits on coverage for all plans
- no pre-existing condition exclusions for children
- no rescissions of coverage when a person falls ill (even if the person made an unintended mistake on his or her application)
- extension of coverage for minors up to age 26

Companies cannot grandfather their plans if they choose to severely limit existing benefits, require the employees to contribute significantly more, or significantly decrease employer contributions. According to the Department of Health and Human Services, a "significant" alteration is a change of more than 5%, such as increasing employee contribution from 20% to 27% to cover additional costs.

Advantages and Benefits for Small Businesses

Companies with less than 50 employees are not required to provide health insurance to employees. However, many small businesses may choose to provide health insurance due to lower premiums and more plan variety, especially because there are small business incentives for voluntarily offering insurance.

Businesses with less than 25 employees and average wages of less than $50,000 per year can receive a tax credit if they decide to provide health insurance. The government currently applies a 35% tax credit toward an employer's contribution to a group health insurance plan and will provide a 50% tax credit in 2014.

Small businesses also have the option of recommending that their employees explore individual health insurance plans through exchanges, especially if they employ low-income workers who can take advantage of government subsidies.

UPDATE AS OF JULY 2013: The U.S. Department of the Treasury was careful to point out that although the Obama administration is delaying the "employer mandate" until 2015, this delay "will not affect employees' access to the premium tax credits available under the ACA (nor any other provision of the ACA)."

Responding to ACA Legislation

Many employers have already begun making contingency plans for the ACA–'contingency' as in contingent workforce. Countless companies with more than 50 employees do not want to face penalties and extra costs, can't afford to offer the required health insurance, or simply want to avoid trying to understand all the tricky components and getting caught in a loophole. These businesses are capping hiring at 49 workers, cutting workers' hours to below 30 hours per week, turning to contingent staffing providers to fill the void, or having these workers "payrolled" through a staffing company (where the staffing company takes own-

ership of the employees and processes their payroll).

It is unclear whether the healthcare reform guidelines apply to a company's temporary workers. A staffing firm and client could both be considered common law employers under a "concurrent employer" theory, but court decisions and IRS rulings generally resolve employer status issues in terms of one employer, not two, in benefits cases. Staffing firms should generally satisfy the common law employer test since they are the employers of record for payment of wages and benefits and withholding of payroll taxes, and, significantly, are responsible for recruiting, screening, hiring, establishing policies for their temporaries, and have the right to reassign or terminate their employees.

As long as both clients and their staffing firms are careful to comply with the anti-abuse provisions of the ACA, it is probable that temporary firms will be deemed by the government to be responsible for providing healthcare options to their temporary workforce. In addition, staffing firms will be responsible for the administrative work—ensuring that workers' W-2 forms are filled out and filed correctly, reporting health insurance benefits and financial information to the government, supplying temporary workers with a summary of benefits, and exploring exchanges.

Staffing partnerships potentially provide a feasible option to employers searching to defray the costs of some of the ACA's employer mandates (or possibly avoid being subject to the mandate) while remaining productive in business. The ACA may be the future of healthcare in the United States, but the new legislation does not have to be a death sentence for the nation's businesses. With the right strategies and partners, employers can smoothly transition from the pre-ACA era into the post-ACA age.

[1] We will refer to the legislation as "ACA" or "healthcare reform" throughout this white paper.

[2] Completed by R.A. Cohen Consulting

[3] The government concedes that it would be virtually impossible for an employer to determine an employee's household income and has allowed a safe harbor calculation based on the employee's W-2 earnings.

[4] Mississippi's application to run a state-based exchange was denied in February 2013; therefore, the state's exchange is currently considered to be under the management of the federal government. Accordingly, Mississippi cannot be included on the list of state-based exchanges and the total of state-based exchanges remains at 18 instead of 19.

[5] As of May 2013, Utah plans to run a federally-based individual exchange and the state will operate the Small Business Health Options Program (SHOP) exchange.

***Sources:** U.S. Department of Labor, U.S. Department of Health and Human Services, U.S. Department of the Treasury, Centers for Medicare & Medicaid Services, The New York Times, The Washington Post, The Associated Press, Entrepreneur, Forbes, Bloomberg BusinessWeek, CFO|Daily News, R.A. Cohen Consulting.*

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