The Most Common ACA Compliance Mistakes

08.29.2016

Given the complexity of the Affordable Care Act (ACA), it should come as no surprise that many employers occasionally stumble in their compliance efforts. The best way to avoid an IRS audit and potential penalties is by taking a proactive rather than reactive approach.

Formalize your approach

Among the most heralded best practices in ACA compliance is the creation and adoption of formal policies to guide decision making. Among other topics, important matters to address include:

- Procedures for classifying employees as full time, part time, seasonal or variable-hour to determine their coverage eligibility (such as your “look-back” measurement process)
- How you determine whether your plan satisfies the ACA’s affordability requirements — including whether you use safe harbor rules and, if so, which ones and for which category of employees
- Your method for determining whether an employee who has been rehired after an absence will be counted as a continuing or a new employee
- What health coverage is available to employees out on unpaid leave, and for what period of time

As when dealing with the IRS on any benefits issue, being able to demonstrate that your organization has established rules and procedures will go a long way toward keeping you in the agency’s good graces in the event of an audit.

Follow your policies
Although it may sound obvious, it doesn’t always happen: Once you have established your policies, be sure to follow them. Failure to do so is about as problematic as lacking necessary compliance policies in the first place.

Take, for example, the matter of employee classification based on the look-back measurement method. Inadvertent employee misclassification crops up regularly. Such errors can lead to penalties under Section 4980H — more commonly known as the ACA’s “play or pay” provision.

A few highlights of the rules for employee classification under the look-back rules can illuminate some of the issues involved. First, employees classified as part-time, seasonal or variable-hour fall under one set of rules based on the “initial measurement period.” Meanwhile, employees deemed to be full-timers are governed by another set of rules. This is where some employers have run into trouble in classifying new full-time employees as part-timers.

The ACA’s 90-day limit on a health plan’s holding period before allowing newly hired and newly eligible full-time employees to receive coverage is one month shorter than the ACA’s employer deadline for offering coverage. To avoid confusion between the two deadlines, employers are generally advised not to exceed the 90-day period.

In contrast, you can hold off on offering coverage to part-time, variable-hour and seasonal employees without penalty during an “initial measurement period” up to the first day of the 14th month following their employment. But, if that later deadline is used and such an employee is deemed (in an audit) to have been misclassified (that is, he or she should have been classified as a full-timer), you could face a penalty for the gap between the two deadline periods.

Note: Employees with variable hours can be deemed as eligible for health benefits if they average at least 30 hours of work per week during the look-back measurement period.

**Anticipate IRS attention**

The general standard employers are expected to adhere to in classifying new employees is the “reasonable expectation” of their work patterns. Although the IRS can apply a subjective assessment of “facts and circumstances” in determining whether you have properly classified employees, regulations spell out several guiding principles its auditors will apply.

For example, in determining whether an employee is properly classified as variable-hour, the agency will likely apply the following three factors:

1. Whether the new employee is replacing another one and what the previous employee’s work pattern was
2. How similar the responsibilities of the new employee are to current employees who aren’t full-time
3. How the job was described in solicitations to job applicants
Two other common ACA compliance shortfalls that often attract IRS attention are improper documentation of an offer of coverage and errors on Forms 1094-C and 1095-C. On August 1, the IRS released draft instructions for Forms 1094-C and 1095-C for the 2016 reporting year. The offer of coverage should clearly explain the various options and associated employee costs. In addition, you need to attach a statement regarding whether coverage offered satisfies the ACA’s minimum value standard.

Even if your offer meets those requirements, you need a system to prove that the offer was made, should you be challenged on that count. The simplest way to do so is to include a detailed confirmation-of-receipt document with the offer, which you’ll need to provide to employees and ask them to fill out and return. The document should also stipulate that, if the employee doesn’t respond to the offer itself, it will be assumed that the offer has been declined.

The cost to companies for outsourcing the filing of Forms 1094-C and 1095-C is estimated to be over $1 billion in 2015 and 2016. As mentioned, the complexity of these forms, whose completion on behalf of full-time employees is required of all fully insured applicable large employers, can easily lead to mistakes. For instance, there are 200 possible combinations of codes on lines 14 through 16, yet only 49 could, in theory, be accurate. The bottom line: Check and double-check that the forms have been filled out correctly. The IRS says it will have some sympathy for employers who make a “good faith effort” to do the job right, but good faith is in the eye of the beholder.

Respect the volume

Employers need to respect the sheer volume of regulations associated with the ACA. One government official recently estimated the total at 20,000 pages — and the actual number is probably greater. If stacked in a pile, those pages would be taller than recently retired basketball superstar Kobe Bryant.

But this challenge is manageable. With guidance from your professional advisors, and by focusing on some of the most common compliance trouble spots, you can minimize your organization’s chances of being subject to a time-consuming audit and costly penalties.

If you have questions about ACA compliance, please contact Ron Present, Partner and Health Care Industry Group Leader, at rpresent@bswillc.com or 314.983.1358.