

Employee Benefits Compliance for Small Employers

Federal law imposes numerous requirements on group health coverage. Many federal compliance laws apply to all group health plans, regardless of the size of the sponsoring employer.

This Checklist provides a brief compliance overview for employee benefit laws applicable to small employers. For this purpose, a small employer is one with **50 or fewer employees**.

COMPLIANCE CHECKLIST

□ *Affordable Care Act (ACA)—Health Coverage Changes*

Summary—The ACA makes many changes to health coverage requirements, such as extending coverage for young adults up to age 26, prohibiting rescissions of health coverage (except in cases of fraud or intentional misrepresentation), eliminating preexisting condition exclusions, prohibiting lifetime and annual dollar limits on essential health benefits, and requiring coverage for preventive care without cost sharing.

Notices/Disclosures—The ACA created a number of notice and disclosure obligations for group health plans, such as:

- Statement of Grandfathered Status—Plan administrator/Employer was required to provide the first statement before the first plan year beginning on or after Sept. 23, 2010. The statement must continue to be provided on a periodic basis with participant materials describing plan benefits. This requirement only applies to grandfathered plans. Failure to provide Grandfathered Statement could result in forfeiture of grandfathered status.
- Notice of Patient Protections and Selection of Providers—Plan administrator/Employer must provide a notice of patient protections/selection of providers whenever the summary plan description (SPD) or similar description of benefits is provided to a participant. These provisions relate to the choice of a health care professional and benefits for emergency services. This requirement does not apply to grandfathered plans.
- Uniform Summary of Benefits and Coverage—Plan administrator/Employer must provide the uniform summary of benefits and coverage (SBC) to participants at certain times, including upon application for coverage and at renewal. Employers must also provide a 60-day advance notice of material changes to the summary that take place mid-plan year. The SBC requirement is currently in place. Failure to provide appropriate SBC could result in \$1,000 penalty per failure.
- Uniform Glossary—Plan administrator/employer must provide a Uniform Glossary upon request by any employee.

More information on the ACA, including model notices, is available from the [Department of Labor](#) (DOL).

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Employee Benefits Compliance for Small Employers

□ **Affordable Care Act (ACA)—Employee Notice of Exchange**

Applicability—The employee notice of Exchange requirement applies to all employers who are subject to the Fair Labor Standards Act (FLSA), which is most employers. **There is not an exception for small employers.**

Summary—Employers must provide all employees with a written notice about the ACA's health insurance Exchanges. The compliance deadline for providing the Exchange notices matched up with the start of the first open enrollment period under the Exchanges, as follows:

- **Current Employees**—With respect to employees who are current employees before Oct. 1, 2013, employers were required to provide the notice no later than **Oct. 1, 2013**.
- **New Hires**—Employers must provide the notice to each new employee **within 14 days** of an employee's start date.

In general, the notice must: (1) include information regarding the existence of an Exchange, as well as contact information and a description of services provided by an Exchange; (2) explain that employees may be eligible for a premium tax credit or a cost-sharing reduction if the employee purchases a qualified health plan through the Exchange; and (3) inform employees that, if they purchase coverage through the Exchange, they may lose any employer contribution toward the cost of employer-provided coverage, and that all or a portion of this employer contribution may be excludable for federal income tax purposes.

Notices/Disclosures—The DOL provided the following model Exchange notices:

- A [model Exchange notice](#) for employers who do not offer a health plan; and
- A [model Exchange notice](#) for employers who offer a health plan to some or all employees.

Employers may use one of these models, as applicable, or a modified version, provided the notice meets the content requirements described above. The notice may be provided by first-class mail, or may be provided electronically if the requirements of the DOL's electronic disclosure safe harbor are met.

□ **Affordable Care Act (ACA)—Employer Penalties and Related Reporting**

Applicability—The ACA imposes penalties on employers with **at least 50 full-time (and full-time equivalent) employees** if they do not offer health coverage to their employees or if they offer health coverage to their employees that is not "affordable" or does not provide "minimum value". *If two or more companies have a common owner or are otherwise related, they are combined for purposes of determining whether they employ enough employees to be subject to the Employer Shared Responsibility.* Employers that are subject to the employer penalty rules are called "applicable large employers" (or ALEs).

On Feb. 12, 2014, the Internal Revenue Service (IRS) published [final regulations](#) on the employer penalty rules. Under the final regulations, **applicable large employers that have fewer than 100 full-time employees generally will have an additional year, until 2016, to comply with the pay or play rules, pending certification of specific requirements.** Applicable large employers with 100 or more full-time employees must comply with the pay or play rules starting in 2015.

Summary—Applicable large employers (those with at least 50 full-time employees, including equivalents) that do not offer health coverage will be subject to a penalty if any of their full-time employees receives a subsidy toward a health plan offered through an Exchange. The monthly penalty will be equal to the number of full-time employees (minus 30), multiplied by 1/12 of \$2,000 for any applicable month.

A special transition rule applies to the penalty calculation for 2015 that allows employers with 100 or more full-time employees (including equivalents) to subtract 80 employees (rather than 30) from their full-time employee count.

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Employee Benefits Compliance for Small Employers

Applicable large employers that do offer coverage may be subject to penalties if the coverage is not “affordable” or does not provide “minimum value” and at least one full-time employee obtains a subsidy under an Exchange. The monthly penalty for each full-time employee who receives an Exchange subsidy will be 1/12 of \$3,000 for any applicable month. However, the total penalty for an employer would be limited to the total number of full-time employees (minus 30), multiplied by 1/12 of \$2,000 for any applicable month.

Notices/Disclosures—Effective for 2015, Internal Revenue Code (Code) section 6056 requires applicable large employers to report to the IRS information about the health care coverage, if any, they offered to full-time employees. Section 6056 also requires those employers to furnish related statements to employees. According to the IRS, this information reporting is necessary in order to administer the employer penalty rules.

Reporting is required for 2015, with the first returns due in 2016.

□ **Waiver of Coverage**

Applicability—Every Employer who offers group-sponsored benefits to its employees.

Summary—Any employee is entitled to waive coverage for which they are eligible. When that happens, the Employer should keep record of any coverages that employee refuses, in the event of any later discrepancy.

Waiver Form—Your agent can provide you with a customizable waiver form to record any employee waiving the offers of coverage.

□ **COBRA**

Applicability—COBRA applies to employers that had **20 or more employees**.

Summary—COBRA requires employers to provide eligible employees and their dependents who would otherwise lose group health coverage as a result of a qualifying event with an opportunity to continue group health coverage.

Notices/Disclosures—There are a number of notice/disclosure requirements for COBRA compliance.

[Model COBRA notices](#) are available from the DOL.

□ **State Continuation**

Applicability—State Continuation applies to employers that had **less than 20 employees**.

Summary—Continuation requires employers to provide eligible employees and their dependents who would otherwise lose group health coverage as a result of a qualifying event with an opportunity to continue group health coverage.

Notices/Disclosures—There are a number of notice/disclosure requirements for Continuation compliance.

Information on Illinois State Continuation is available from the [Department of Insurance](#).

□ **ERISA—General Requirements**

Applicability—ERISA applies to employee welfare benefit plans, including group health plans. Church and government plans are not subject to ERISA. **There is not an exception for small employers.**

Summary—ERISA imposes a variety of compliance obligations on the sponsors and administrators of group benefit plans. Generally, employers would want to utilize an ERISA administrator for appropriate documentation and administration to help avoid costly penalties.

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Employee Benefits Compliance for Small Employers

Notices/Disclosures—ERISA requires plan administrators/employers to provide the following notices/disclosures, including:

- Summary Plan Description (SPD)—Plan administrator must automatically provide an SPD to participants within 90 days of becoming covered by the plan.
- Summary of Material Modifications (SMM)—Plan administrator must provide an SMM automatically to participants within 210 days after the end of the plan year in which the change was adopted. If benefits or services are materially reduced, participants generally must be provided with the SMM within 60 days from adoption.
- Plan Documents—Plan administrator must have a Plan Document in place and maintained, readily available for inspection upon request.

Disclosure Rules of ERISA Plan Communications—For Electronic Distribution:

- Employees WITH work-related computer access—Plan administrator/Employer may distribute documents and notices electronically without obtaining employee consent IF:
 - Employer uses appropriate and necessary means to ensure actual receipt of the information.
 - The electronically-furnished documents meet all requirements that are otherwise applicable (such as requirements on format and timing).
 - The Employer notifies each recipient, at the time of electronically furnishing the information, of the significance of the document and of the recipient's right to request a paper version of the document.
 - The employees can access documents at any location where they are reasonably expected to perform employment duties.
 - The employees' access to the electronic information system is an integral part of their employment duties.
- Employees WITHOUT work-related computer access—For individuals who do not have work-related computer access and who do not affirmatively consent to electronic disclosure, the Employer must provide paper copies of the documents or notices and generally cannot charge an amount to do so.

□ **ERISA—Form 5500 Requirements**

Applicability—The Form 5500 requirement applies to plan administrators of ERISA plans, unless an exception applies. **Small health plans (those with fewer than 100 participants on the first day of the ERISA plan year) that are fully-insured, unfunded or a combination of fully-insured and unfunded, are exempt from the Form 5500 filing requirement.**

Summary—The Form 5500 is used to ensure that employee benefit plans are operated and managed according to ERISA's requirements. The filing requirements vary according to the type of ERISA plan. Unless an extension applies, the Form 5500 must be filed within seven months after the plan year end.

□ **ERISA—Summary Annual Report (SAR)**

Applicability—Plan administrators of ERISA plans are subject to the SAR requirement, unless an exception applies. **Plans that are exempt from the annual Form 5500 filing requirement are not required to provide the SAR.**

Summary—The SAR is a narrative summary of the Form 5500 and includes a statement of the right to receive a copy of the plan's annual report. The SAR must generally be provided within nine months after the end of the plan year.

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Employee Benefits Compliance for Small Employers

□ **IRS—Section 125 Premium Only Plan (POP)**

Applicability—Every plan administrator/employer who offers a group-sponsored plan with pre-tax payroll deductions must put in place a Premium Only Plan. **There is not an exception for small employers.**

Summary—The POP allows employees' health insurance premiums to be deducted with the use of pre-tax dollars through a payroll deduction. Generally, the POP must include documentation, administration and reporting. Generally, employers would want to utilize a Section 125 administrator for appropriate documentation and administration to help avoid costly penalties for non-compliance.

Notices/Disclosures—POP documents include:

- [Plan Document](#)
- [Summary Plan Description \(SPD\)](#)
- [Employee Notification Forms and Handouts](#)

□ **IRS—Employer Health Care Arrangements**

Applicability—Every Employer who does **not** offer a group-sponsored plan for its employees.

Summary— Through a series of Notices issued since 2013 by the Department of Labor, Health and Human services, and the IRS (The Departments), Under IRS Notice 2013-54 employers are not permitted to reimburse or pay for individual policy premiums as a tax deduction, nor can they withdraw premium from employees pre-tax for Individual policy premiums.

Employers who disregard or are unaware of this disqualified arrangement could be subject to IRS excise tax 4980D: \$100 per day per applicable employee.

More information on Employer Health Care Arrangements is available from [The Department of Labor](#).

□ **HIPAA Portability**

Applicability—HIPAA's portability rules apply to all group health plans and health insurance issuers. **There is not an exception for small employers.**

Summary—HIPAA's Portability rules are designed to help individuals transition from one source of health coverage to another. HIPAA's portability provisions limit exclusions for preexisting conditions, prohibit discrimination based on health status and provide for special enrollment opportunities. Effective for plan years beginning on or after Jan. 1, 2014, the health care reform law prohibits group health plans and issuers from imposing preexisting condition exclusions on any enrollees.

Notices/Disclosures—HIPAA Portability Notice:

- [Notice of Special Enrollment Rights](#)—Plans/Employers must provide the special enrollment rights notice at or before the time an employee is initially offered the opportunity to enroll in the plan.

□ **Medicare Part D**

Applicability—The Medicare Part D requirements apply to group health plan sponsors that provide prescription drug coverage to individuals who are eligible for Medicare Part D coverage. **There is not an exception for small employers.**

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Employee Benefits Compliance for Small Employers

Summary—Employer-sponsored health plans offering prescription drug coverage to individuals who are eligible for coverage under Medicare Part D must comply with requirements on disclosure of creditable coverage and coordination of benefits.

Notices/Disclosures—Medicare Part D requires the following notices/disclosures:

- *Disclosure Notices for Creditable or Non-Creditable Coverage*—A disclosure notice must be provided to Medicare Part D eligible individuals who are covered by, or apply for, prescription drug coverage under the employer's health plan. The purpose of the notice is to disclose the status (creditable or non-creditable) of the group health plan's prescription drug coverage. It must be provided at certain times, including before the Medicare Part D Annual Coordinated Election Period (October 15 through December 7 of each year).
- *Disclosure to CMS*—On an annual basis (within 60 days after the beginning of the plan year) and upon any change that affects the plan's creditable coverage status, employers must disclose to the Centers for Medicare and Medicaid Services (CMS) whether the plan's coverage is creditable.

[Model forms](#) are available from CMS.

□ **Women's Health and Cancer Rights Act (WHCRA)**

Applicability—The WHCRA applies to group health plans that provide coverage for mastectomy benefits. **There is not an exception for small employers.**

Summary—The WHCRA requires health plans that provide medical and surgical benefits for a mastectomy to also cover: (1) all stages of reconstruction of the breast on which a mastectomy has been performed; (2) surgery and reconstruction of the other breast to produce a symmetrical appearance; and (3) prostheses and physical complications of mastectomy, including lymphedemas.

Notices/Disclosures—Plans must provide a notice describing rights under WHCRA upon enrollment and on an annual basis after enrollment.

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