COMPLIANCE OVERVIEW

Provided by Blue Ocean Benefits & Consulting, LLC

Employee Benefits Compliance Checklist for Small Employers

Federal law imposes numerous requirements on the group health coverage that employers provide to their employees. Many federal compliance laws apply to all group health plans, regardless of the size of the sponsoring employer. However, there are some compliance exceptions for group health coverage provided by small employers. For this purpose, a small employer is one with **fewer than 50 employees**.

Small employers, for example, are not required to comply with the Affordable Care Act's (ACA) employer shared responsibility rules for applicable large employers (ALEs), the ACA's Form W-2 reporting rules or the Family and Medical Leave Act's (FMLA) requirements.

This Compliance Overview provides a checklist for employee benefit laws applicable to small employers, and also indicates when a requirement does not apply to a small employer's health coverage.

LINKS AND RESOURCES

- Model COBRA notices are available on the DOL's web page for COBRA compliance
- Creditable coverage disclosure notices under Medicare Part D are available through CMS
- Model CHIPRA notice
- Proposed rule on Form 5500 reporting

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

HIGHLIGHTS

APPLICABLE REQUIREMENTS

- The ACA's market reforms (such as the essential health benefits package for small group plans)
- COBRA continuation coverage
- HIPAA portability rules
- Medicare Part D creditable coverage disclosures

NON-APPLICABLE REQUIREMENTS

- Form 5500 filing requirement (if the plan is insured and/or unfunded)
- The ACA's employer shared responsibility rules for ALEs
- Section 6056 reporting for ALEs
- FMLA

Blue Ocean
Benefits & Consulting

AFFORDABLE CARE ACT (ACA)

Health Coverage Changes

The ACA's market reforms apply to health plans and health insurance issuers, with narrow exceptions for certain types of plans (for example, retiree medical plans). **There is not an overall exception for small employers.** The following checklist provides a high-level overview of key ACA market reforms:

- ✓ Must provide **comprehensive health coverage** consisting of the essential health benefits (EHB) package—Applies to all non-grandfathered insured health plans in the small group market. Most states define the small group market as including employers with **50 or fewer employees**.

Effective for plan years beginning on or after Jan. 1, 2016, the ACA was set to expand the small group market to include employers with up to 100 employees. However, on Oct. 7, 2015, the Protecting Affordable Coverage for Employees (PACE) Act repealed the ACA's small group market expansion requirement. As a result, states now have the option, but are not required, to expand their small group markets to include businesses with up to 100 employees.

- ✓ **No annual or lifetime dollar limits on EHB**—Applies to all health plans.
- ✓ **Out-of-pocket maximums** on EHB cannot exceed certain limits—Applies to all non-grandfathered health plans.

Out-of-pocket Maximum Limits		
Plan Year	**Family Coverage**	**Self-only Coverage**
2017	$14,300	$7,150
2018	$14,700	$7,350

- ✓ Cannot impose a **waiting period that exceeds 90 days**—Applies to all health plans.
- ✓ No **pre-existing condition exclusions** on any covered individuals—Applies to all health plans.
- ✓ Cannot discriminate against plan participants who participate in **clinical trials**—Applies to all non-grandfathered health plans.
- ✓ Must cover specific **preventive care services without imposing cost-sharing requirements**—Applies to all non-grandfathered health plans.
- ✓ Health plans that provide dependent coverage for children must make coverage available for **adult children up to age 26**—Applies to all health plans.

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

© 2012-2017 Zywave, Inc. All rights reserved. EM 9/17

✓ Cannot **rescind coverage** for covered individuals, except in cases of fraud or intentional misrepresentation of material fact—Applies to all health plans.

The ACA created several notice and disclosure obligations for group health plans, such as:

- ***Statement of Grandfathered Status***—Plan administrator or issuer of a grandfathered plan must provide this statement on a periodic basis with participant materials describing plan benefits, such as the summary plan description (SPD) and open enrollment materials.
- ***Notice of Rescission***—Plan administrator or issuer must provide a notice of rescission to affected participants at least 30 days before the rescission occurs.
- ***Notice of Patient Protections and Selection of Providers***—Plan administrator or issuer of a non-grandfathered plan must provide a notice of patient protections/selection of providers whenever the 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.
- ***Uniform Summary of Benefits and Coverage (SBC)***—Plan administrator or issuer must provide the uniform SBC to participants and beneficiaries at certain times (including upon application for coverage and at renewal), as well as provide a 60-day advance notice of material changes to the summary that take place mid-plan year.
- ***Exchange Notice***—Employers must provide new hires a written notice about the ACA Exchanges.

W-2 Reporting

The Form W-2 reporting obligation applies to employers sponsoring group health plans. **Small employers (those that file fewer than 250 W-2 Forms) are exempt until further guidance is provided**. Other employers were required to comply with this reporting beginning with the 2012 tax year.

Employers must disclose the aggregate cost of employer-sponsored coverage provided to employees on the employees' W-2 Forms. This reporting is intended to provide information to employees on how much their health coverage costs. It does not mean that the cost of coverage is taxable to employees.

Employer Penalty Rules

Under the ACA's employer penalty rules, applicable large employers (ALEs) that do not offer affordable, minimum value health coverage to their full-time employees (and dependent children) will be subject to penalties if any full-time employee receives a subsidy for health coverage through an Exchange. These employer penalties are also known as the "employer shared responsibility" or "pay or play" rules.

Key Point: "Pay or play" penalties do not apply to employers that do not qualify as ALEs, regardless of whether they offer coverage to some, all or none of their employees. Also, Section 6056 reporting does not apply to employers that are not ALEs.

To qualify as an ALE, an employer must employ, on average, **at least 50 full-time employees**, including full-time equivalent employees (FTEs), on business days during the preceding calendar year. All

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

© 2012-2017 Zywave, Inc. All rights reserved. EM 9/17