

# Anderson Kill & Olick, P.C.

## POLICYHOLDER ADVISOR

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### The Affordable Care Act “Play or Pay” Requirements Take Effect January 1, 2014 —Are You Ready?

By Rhonda D. Orin and Daniel J. Healy

**T**he Patient Protection and Affordable Care Act has gone from a distant deadline to an imminent reality, with the controversial “play or pay” provisions scheduled to take effect on January 1, 2014. While the media focuses on the political implications, most employers are scrambling to identify and meet the requirements — and, if possible, avoid paying. But what is really required?

#### Are You a Large Employer?

The trigger point for certain penalties is being a large employer, i.e., having 50 or more full-time employees. Assessing whether you qualify can be complicated, particularly if you have seasonal or part-time employees who, in combination, could constitute “full-time equivalents.” If you haven’t done so already, now is the time to analyze your payroll carefully.

#### Who Is Entitled to Coverage?

Large employers are obligated under the Affordable Care Act to offer compliant cover-

age to each full-time employee, so assessing who is full-time is important as well. The IRS has issued guidelines explaining how to answer this question, based in part on an analysis of a given employee’s work history. The guidelines, while complex, allow employers to measure, rather than guess, who is full-time. Precision is important because getting it wrong for just one full-time employee may trigger substantial penalties.

#### What Coverage Must Be Offered?

Compliant coverage involves providing what has been deemed to be “minimum essential coverage” for which 1) the employee is not required to pay more than 9.5% of his or her monthly household income in monthly health coverage premium, and 2) the coverage pays at least 60% of the average total allowable cost of benefits. The first requirement may be met (imperfectly) by looking at the employee’s W-2, and keeping premiums below 9.5% of that amount. The second requirement means,

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on a fundamental level, that if a service is covered, the coverage must represent an average of 60% of the allowed cost.

### What Are the Penalties?

Penalties are triggered when a large employer fails to offer compliant coverage to at least one full-time employee, and that employee qualifies for a federal subsidy in a state insurance exchange. The penalties are at least \$40,000, and can increase depending on your total employee count and the total number of employees who qualify for subsidies.

### What Are the New Reporting Requirements?

Much like employment tax reporting, the Affordable Care Act requires employee reporting on a W-2 and employer reporting. The IRS and other federal and state agencies are expected to cross-check reported information in order to confirm that 1) employers are offering compliant coverage, and 2) the individual mandate is met.

While doubtful that many employers have sympathy for agencies tasked with Affordable Care Act enforcement, those agencies have been somewhat overwhelmed with the effort. The IRS has issued many rounds of evolving regulations, and continues to do so. The regulations to date, while perhaps not a model of simplicity, have softened the blow of the health care law and provided flexibility. The Departments of Labor and of Health and Human Services are actively involved in creating the state exchanges, and recently pushed back employer deadlines related to the exchanges.

Employers should watch the evolving regulations and look for Affordable Care Act provisions that may provide them added flexibility. For example, different coverage can be offered to employees depending on whether the employees are: collectively bargained vs. non-collectively bargained; salaried vs. hourly; employed by different entities; or employed in different states.

In sum, the Affordable Care Act is sweeping, and its deadline's fast approaching. Employers need to be adjusting now, before 2014.▲

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## About Anderson Kill & Olick, P.C.

Anderson Kill practices law in the areas of Insurance Recovery, Commercial Litigation, Environmental Law, Estate, Trusts and Tax Services, Corporate and Securities, Antitrust, Bankruptcy, Real Estate and Construction, Anti-Counterfeiting, Employment and Labor Law, Captives, Intellectual Property, Corporate Tax, Health Reform and International Business. Recognized nationwide by Chambers USA for Client Service and Commercial Awareness, and best-known for its work in insurance recovery, the firm represents policyholders only in insurance coverage disputes — with no ties to insurance companies and has no conflicts of interest. Clients include Fortune 1000 companies, small- and medium-sized businesses, governmental entities, and nonprofits as well as personal estates. Based in New York City, the firm also has offices in Ventura, CA, Stamford, CT, Washington, DC, Newark, NJ, Philadelphia, PA, and Burlington, VT.

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