ACA Employer Shared Responsibility: Union Employees
June 28, 2013

The Affordable Care Act (ACA) requires employers with 50 or more full-time equivalent employees to offer health insurance to their employees or face penalties. There are penalties for failing to offer coverage, and there are also penalties if coverage is offered but it’s considered unaffordable. These are commonly referred to as the “Pay or Play” penalties.

The annualized penalty for failing to offer coverage is $2,000 per full-time employee (with an exemption for the first 30 employees), and applies if just one of those employees obtains subsidized coverage through a public insurance exchange.

The annualized penalty for offering coverage that is considered unaffordable (employee pays more than 9.5% of earnings for self-only coverage) is $3,000 per full-time employee, and applies only to those employees in which coverage is considered unaffordable and who obtain subsidized coverage through a public insurance exchange.

Several questions may come to mind when an employer has union employees, but two questions tend to stand out more than others.

1. **Does an employer have to include union employees in determining whether it has 50 full-time equivalent employees?**

   Employers must include both union and non-union employees in determining the total number of full-time equivalent employees. If the number of union and non-union full-time equivalent employees is 50 or more, then the employer is subject to the “Pay or Play” penalties.

2. **Does an employer have to offer health insurance to union employees if they have 50 or more full-time equivalent employees?**

   Employers are not required to offer health insurance to union employees (nor are they penalized) as long as they are making contributions to a collectively bargained multi-employer plan (a.k.a. union plan), and that plan offers affordable coverage and provides at least minimum value to union employees.
In summary, union employees need to be included to determine the size of an employer, but coverage won’t have to be offered to union employees provided the requirements in Question 2 listed above have been satisfied.

*Please note this is a transitional rule for the year 2014. We expect additional guidance regarding the treatment of union employees to be issued at a later date.*

**View more information on the proposed Employer Shared Responsibility rules >>**