

Navigating Health Care Reform

Every government contractor should ask these four questions.

Contractors who work on publicly-funded projects are already subject to what can seem like a maze of regulations, including the Davis-Bacon Act, the Service Contract Act and local wage ordinance requirements. Now the Affordable Care Act (ACA), also known as healthcare reform or PPACA, is here to stay, adding more twists and turns for contractors to navigate. Penalties for noncompliance with the ACA begin in less than a year. There's no question that the time to act is now, but many contractors are unsure about where to start.

Offering health insurance coverage to your workers is a smart business decision on many levels, even for employers who may not be subject to provisions of the ACA. When you work on prevailing wage jobs, the funds to pay for health insurance and other benefits are provided in the wage determination. While some state policies may vary, most states (as well as the U.S. Department of Labor) will likely allow the fringe to be used to meet ACA requirements. Using the fringe in this manner reduces your payroll burden because dollars used to provide bona fide benefits are not subject to FICA, FUTA, SUTA or, in most states, workers' compensation insurance. That means leaner, more competitive bids and better chances of winning jobs.

In the past, concern over employees' reactions when they see the reduction in their weekly paychecks has discouraged company owners from putting a plan in place. Employers can now answer workers' objections to using the fringe to provide benefits with the fact that health insurance is mandated by federal law. Offering benefits can also lessen



the challenges of unionization because you are providing the benefits for which employees may otherwise collectively bargain.

Here are some questions government contractors should be asking as the January 1, 2014, deadline approaches.

DOES THE AFFORDABLE CARE ACT APPLY TO ME?

Yes. In fact, it applies to everyone.

Large employers - Employers with 50 or more full-time equivalent employees are required to provide health insurance for their workers or face fines (which can range from \$2,000 to 3,000 per employee) beginning in 2014. Some experts expect the amounts of these fines to increase over time in an effort to offset the costs of implementing the law. Why not invest these dollars in your employees and pick up a business deduction along with satisfying the wage determination,

winning more work, reducing costs and increasing company profits?

Small employers - When you bid on jobs against companies who are mandated to provide health insurance (and have reduced their payroll costs as a result), you will be at a competitive disadvantage if your employees aren't covered. And what happens when you win your next job and need to hire more employees? You may end up scrambling to put coverage in place when you hire your 50th full-time employee.

Individuals - Starting in 2014, all individuals will be required to have health insurance. Those who do not have health insurance will be penalized, and these penalties will be included on individual tax returns. Coverage provided with fringe dollars is paid with pre-tax money (pre-FICA and income tax), and employees who are not covered at work must be underwritten on their own and pay

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potentially higher rates with their after-tax dollars. Most employees would prefer to purchase coverage from their employers rather than figuring it out on their own. By offering a plan, business owners can establish pre-tax accounts, achieve stronger purchasing power and simplify the process for their employees.

IS MY CURRENT PLAN COMPLIANT?

If you are already offering health insurance, you're one step ahead. However, you need to make sure the coverage you offer meets the minimum requirements for compliance with the ACA. Those standards encompass the following:

- The "Minimum Value" standard: The employer plan design must pay 60 percent of costs.
- The "Affordability" standard: Employee contributions must not exceed 9.5 percent of the employee's household income (or W-2 income).

Contractors who do not currently offer health insurance for their workers and are subject to the ACA need to take steps to find coverage now. The longer you wait, the more difficult and expensive it's likely to be to find coverage.

IF I DON'T COMPLY, CAN I AFFORD THE DOUBLE HIT TO MY BOTTOM LINE?

Some employers have indicated that they do not intend to comply with the law and will choose to pay penalties rather than premiums. For government contractors, this is a questionable business decision for two primary reasons. First, prevailing wage for each job classification in most areas of the country already includes funds intended to be used to provide benefits for workers on public works contracts. Additionally, failure to use these funds to obtain health insurance

for these workers means your company is passing up substantial savings on payroll burden (and will incur ACA tax penalties).

Assume a company has 100 employees doing prevailing wage work. These employees each work approximately 1,000 hours per year. The fringe amount above the base rate is \$10 per hour, and the average approximate additional payroll cost when paying fringe dollars as cash wages is 25 percent.

$$100 \text{ employees} \times 1,000 \text{ hours} = 100,000 \text{ total hours}$$

$$100,000 \text{ hours} \times \$10.00 = \$1,000,000 \text{ in additional payroll expense}$$

$$\$1,000,000 \times 25\% = \$250,000 \text{ in savings}$$

Add the cost of penalties for noncompliance with the ACA to these unrealized savings, which can range from \$2,000 to \$3,000 per employee. With 100 employees, noncompliance could cost you \$140,000.

Employers that do not use the fringe to provide health insurance and other benefits and have fewer than 50 full-time employees are also looking at a double-whammy. For these companies, the missed opportunity to save on payroll burden still applies. Some contractors may currently offer health insurance to managers but not their field employees. Field workers often represent a far better risk than office staff to a health insurer. Including them in your plan can greatly

improve the plans and rates for long-term key employees and office staff.

WHAT IF I REDUCE MY EMPLOYEES TO PART-TIME STATUS?

Some employers are considering this strategy as a way to avoid having to comply with the ACA, thinking it will save them money. Doing so may backfire. Workers who are willing to accept part-time status may not be as skilled. If they make mistakes or miss deadlines, that's going to cost you money in the long run. Consider the short- and long-term impact of how this could affect employee morale and your company's reputation.

Nearly every day there's news about a government contractor who is facing fines and possible debarment for failing to comply with prevailing wage laws. The U.S. Department of Labor recently released its agenda for enforcement in 2013, and one of the items listed was a proposal from the wage and hour division that would require employers to provide written "classification analyses" on worker status as independent contractors or employees.

It's logical to think that audits for compliance with healthcare reform will not be far away or that failure to comply may prompt investigators to take a closer look at compliance with other laws.

Providing health insurance coverage for your workers is the right thing to do, particularly when there's fringe included in the wage determination to pay for it. It protects your workers, reduces your payroll burden and helps you avoid penalties.

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