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# **Affordable Care Act: Selected Issues For Employers**

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# Susan F. Sterne, CPA



**PERKINS & CO**

is Oregon's largest single-office accounting firm, whose mission is to be a solution for clients who want the services, know-how and sophistication of a large firm, with the personal attention and fast response time typically found in smaller firms. Perkins has been named the "Most Admired" accounting firm the past three years by the Portland Business Journal's survey of 1,800 CEOs and executives across the state. Perkins works in virtually every Oregon industry, and serves mostly Oregon-based clients, including those with operations in most US states as well as abroad.



**Susan** is a tax principal at Perkins & Co who works primarily in professional services, working with physicians, medical clinics, attorneys, architects and engineers. She also serves clients in manufacturing, retail and real estate industries. Because of the particular needs of professional service business, she has worked more than the average tax accountant in the retirement and welfare benefits areas, assisting owner-employees with the tax aspects of employee benefit planning. She also has a long-term interest in healthcare, having grown up with a doctor dad and a healthcare administrator mom.

Susan earned a bachelors degree in theater and German from Wesleyan University in Connecticut, and a Masters in Taxation from San Diego State University. What is a college theater major doing at an accounting firm? Don't worry, she satisfies her creative side by immersing herself every September at the Time Based Art Festival produced by the Portland Institute for Contemporary Art, where she currently serves as Treasurer.





# The ACA & Your CPA

- › Consult on ACA provisions, implementation process & timing
- › Referrals to other professionals
- › Review, provide templates for, or prepare payroll analysis to determine small or large employer status; other ACA-related financial modeling
- › Planning for ACA's changes to tax law
- › Tax credits: eligibility and reporting
- › Employer & individual penalties: applicability and reporting
  - Reporting: still at least a year away – none until the 2014 tax year (early 2015 filing season)
  - 2013: assess, prepare, and plan



# Employer Penalties

## Threshold: 50 Employees

# Employers, Large and Small



- › Penalties under ACA only apply to “large employers”
- › What is large?
  - More than 50 full-time employees
  - Anyone averaging at least 30 “hours of service” per week or 130 per month is considered full-time
  - Other employees’ hours are aggregated monthly and divided by 120 to determine FTE
  - Seasonal employees – rule provided to prevent them from being sole reason an employer is “large” (but only “seasonal” if they work 120 days or less)

# Hours of Service



- › What is an hour of service (HOS)?
  - Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer and
  - for a period of time in which no duties are performed (vacation, holiday, illness, incapacity, layoff, jury duty, military duty or leave of absence)
- › Hourly employees determination made based on actual HOS from records of hours worked and hours paid for no performance of services



# Employees Not Counted



- › Owners
  - Sole proprietors
  - Partners in a partnership
  - More than 2% owners of an S corporation
- › Leased employees
- › Non-resident aliens whose service occurs outside the U.S.



# Are You a Large Employer?



**1** Entities under common ownership may be treated as a single employer for purposes of counting employees. *(Consult with a tax advisor for making this determination)*

**2** Determine the total number of employees **each month** during the preceding calendar year. (Do not count leased employees, sole proprietor, partners or 2% S corp shareholders).

Full-time employees: \_\_\_\_\_

*Enter the number of employees who work at least 30 hours per week or 130 hours per month.*

+

Full-time equivalents: \_\_\_\_\_

*Calculate the number of full-time equivalents by dividing the total number of hours of service by part-time employees for the month (up to 120 for each employee) by 120.*

**3** Determine the average number of full-time employees (including equivalents) for the preceding year.

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Jan Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec

Total the numbers in each month. Then divide by 12.

Average number of full-time employees = \_\_\_\_\_

*For 2014, you may select 6 or more consecutive months in 2013 and divide by the number of months selected*

If fewer than 50, then you are not a large employer. If 50 or more, then proceed to Step 4.

## **4** Seasonal Employee Exception

Yes

No

a Did the employer's workforce exceed 50 full-time employees for 4 months or fewer in Step 3, whether or not consecutive (or a period of 120 days or fewer during the preceding calendar year, whether or not consecutive)?

\_\_\_\_\_

b Are the employees in excess of 50 who were employed during such months seasonal workers? A season worker is one whose employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Examples: agriculture, retail workers, ski instructors, life guards.

\_\_\_\_\_



# Counting to 50: Example



- 45 full-time employees
- 12 part-time employees with 20 HOS/week
- 5 part-time employees with 10 HOS/week

= [ (12 PTE x 20 HOS x 4 weeks) + (5 PTE x 10 HOS x 4 weeks) / 120 ] + 45 full-time employees

= [ (960 HOS) + (200 HOS) / 120 ] + 45 full-time employees

= 9.67 full-time equivalents + 45 full-time employees

= 54.67 (round down)

**54 employees (including full-time equivalents)**

# Seasonal Employee Exception



- › If an employer's workforce exceeds 50 full-time employees for 120 days (or 4 months) or fewer during a calendar year; and
- › The employees in excess of 50 during that period were seasonal employees
- › The employer is not considered a large employer

# Seasonal Employee Exception



Example:

- 40 full-time employees (Jan – Dec)
- 80 seasonal full-time employees (Sept – Dec)

J	F	M	A	M	J	J	A	S	O	N	D	Total
40	40	40	40	40	40	40	40	120	120	120	120	800

How many?  $(800 \text{ full-time employees} / 12 \text{ months}) = 66.767$  (rounded down to 66)

But **not** a large employer after taking seasonal worker exception into account.

# Counting to 50: Complications



- › Employees include common law employees
  - Service recipient has the right to control and direct the service provider as to result and means
  - Service provider is subject to the will and control as to what shall be done and how
  - Actual control not necessary; sufficient employer has the right to do so
- › Employees of related entities are combined
  - Controlled groups - IRC §414(b)
  - Entities under common control - IRC §414(c)
  - Affiliated service groups - IRC §414(m)



# Implementation Transition



- › New employers: “reasonable expectation” of 50 FT employees in current year.
- › Existing employers: transition rule for 2014, using 2013 “look-back” period - can be as few as six consecutive months.
- › Thereafter, calculation based on previous year.
  - Note – this differs from how you determine which employees are full-time for penalty calculation purposes

The background of the slide is a photograph of an office environment. It shows several cubicles with desks, computer monitors, and office chairs. Large windows on the left side of the office provide natural light. A bulletin board with various papers is visible on the wall in the background. The overall scene is a typical modern office setting.

# **Employer Penalties**

## **Subsidy-Eligible Employees**

# Penalty Only Assessed When...



- › One of your employees purchases health insurance through the exchange
- and***
- › The employee receives a federal credit or subsidy to help pay for the coverage

**So if none of your employees are  
subsidy-eligible, you *can't* be  
assessed any penalties.**



# Who is Subsidy-Eligible?

- › Employer coverage not offered to employee, or
- › Employer coverage is not affordable
- and*
- › Employee's household income is less than 400% of the federal poverty line
  - Family of 4: \$94,200 (2013)
  - Single person: \$45,900 (2013)



# Affordability



An employer-sponsored plan is affordable if the employee's required contribution for self-only coverage does not exceed 9.5% of the employee's household income for the taxable year.

- › 3 Safe harbors
  - W-2: Annual contribution does not exceed 9.5% of employee's W-2 box 1 wages
  - Rate of Pay: Monthly contribution does not exceed 9.5% of (Hourly rate x 130 HOS for month) or monthly salary
  - Federal Poverty Line (FPL): 9.5% of the FPL for a single individual (for 2013: \$45,900 \* 9.5% = \$4,360)
- › Employer may use one or more safe harbors for all employees or any reasonable category (uniform and consistent application within categories)
- › Employer meeting (or not meeting) safe harbor does not affect employee's eligibility for a premium tax credit: eligibility is based on the cost of employer-sponsored coverage relative to an employee's household income (not relative to safe-harbor)

# Employee Household Income



- › “Household income” effectively means adjusted gross income (for most taxpayers)
  - Includes investment income in addition to wages, as well as reduction for investment losses
  - Income *before* standard deduction or itemized deductions such as mortgage interest or charitable contributions
  - But after “above-the-line” deductions such as alimony paid and IRA contributions

# Questions?



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