

# Time to get busy

## Employers need to get serious about compliance with Affordable Care Act

INTERVIEWED BY MARK SCOTT

Employers could afford to take a wait-and-see approach with the Affordable Care Act when it was first signed into law in 2010. Skeptics speculated that the initiative could be modified or even be repealed.

The circumstances have evolved as we enter 2015, says Ralph Breitfeller, Of Counsel at Kegler, Brown, Hill + Ritter.

“The problem now is we’re deep into the time when you have to comply,” Breitfeller says. “If you’re an employer, I don’t think you can say at this point, ‘Well, I’m going to wait and see what happens.’ You have to assume it’s here to stay.”

Breitfeller says more change is always possible, but a wholesale repeal of the ACA seems unlikely. Those who choose to hold out for such an outcome risk incurring financial penalties.

*Smart Business* spoke with Breitfeller about the key compliance dates and requirements that lie ahead this year and what you can do to prepare.

### What key dates do employers need to know this year regarding ACA?

The biggest date to be aware of came to pass this month, Jan. 1, 2015. Employers that have more than 99 full-time employees now have to comply with the ACA. The other one is Jan. 1, 2016, when employers with between 50 and 99 employees have to comply with the law.

The larger employers, those with 100 or more full-time employees, have to offer coverage to 70 percent of their full-time employees in order to comply in 2015. That goes up to 95 percent in 2016 to be compliant.

If you are in that 50- to 99-employee range, you have to start preparing. The

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way it works is there is a measurement period that must be between three and 12 months. It’s during that time that you determine who is a full-time employee and entitled to coverage and who is not. You sort through the numbers, come up with a plan and then offer the plan so that you’ve got everything in place by the compliance date.

### What are some factors that complicate this effort?

Smaller employers will likely run into questions about certain employees. Somebody working less than thirty hours a week, looking at the average during the measurement period, does not have to be offered coverage while another person working 30 hours or more a week does have to be offered coverage.

But other questions may need to involve a lawyer. Let’s say you have a particular employee who starts off as part-time and then becomes full-time. Or the tougher situation where he starts off full-time and then becomes part-time.

The general rule is if they were full-time during the measurement period, you have to treat them as full-time during the stability period.

But there are exceptions where you can treat them through a change in status as a part-time employee.

### What about employers who choose to pay the penalty rather than offer health insurance?

There has been a lot of talk amongst employers about not offering a health insurance program and just providing extra money to employees so they can buy health insurance on their own. They may be subject to a penalty, but believe it’s less expensive than buying a health plan.

However, there are some complex regulations that were in place long before the Affordable Care Act that say that if you provide health insurance to your employees, it is treated as pre-tax dollars.

Some employers believe that if they go the route of giving employees money to buy their own health insurance, they need to use post-tax dollars and it will be fine.

However, about a month ago, the IRS and the Department of Labor made it clear that if you do that, even if you’re using post-tax dollars, you have what is treated as an employer health plan that could trigger all sorts of tax issues and potential penalties.

To avoid this, employers cannot condition the payment of the extra money on the employee using it to buy health insurance. So in the end, providing money to employees to buy their own insurance is probably not the solution it appears to be. ●