MEMORANDUM

TO: Gary Thaden

FROM: Bill Cumming

DATE: October 23, 2014

RE: Summary of ACA Employer Responsibility Requirements

The following is a summary of the Employer Shared Responsibility coverage and penalty rules for large employers that will be enforced starting in 2015 for employers with 100 or more full-time employees (FTEs) or FTE equivalents, and 50 or more FTEs beginning with 2016, with some limited exceptions. Final regulations were issued earlier in 2014, and are supplemented by additional IRS and HHS proposed regulations. This summary should provide a basic framework for understanding when and what is required under the rules. However, if additional information is required, or if unique circumstances exist, the employer may need to consult a professional advisor. According to the Treasury Department, these rules should only apply to about 4% of the employers in the United States.

Employers with employees participating in Taft-Hartley health plans generally fair better under the regulations compared to employers outside the Taft-Hartley space. There are several safe harbor tools that are available to make administration somewhat manageable. The rules remain complex. Employers with unusual circumstances or who need additional guidance due to their situation can consult the full text of the regulations, or consult with a professional advisor.

A. Employees Having Contributions Made to Taft-Hartley Plans. A piece of good news in these difficult regulations is that an employer that is required to make contributions to a Taft-Hartley fund under the terms of a collective bargaining agreement is deemed to have offered coverage to that employee, whether or not they actually have coverage from the Taft-Hartley plan in any month. The only qualification is that the coverage available through the Taft-Hartley plan must be affordable minimum value coverage. The Pipe Trades MN Welfare Plan coverage is affordable and minimum value under the ACA.

The only bad news is that under the penalty calculation regulations described in Section D below, full-time employees on whose behalf contributions are made to a Taft-Hartley fund are still counted for purposes of any penalty calculations, if a penalty applies.

B. What Employer Shared Responsibility Means. Employer Shared Responsibility, also referred to as Employer Responsibility, is the requirement under the ACA that most "large" employers offer affordable minimum value health care coverage to their full time employees and their dependents. Surprisingly, a dependent does not include an employee's spouse. This offer of coverage requirement has three components – 1) being a large employer; 2) offering affordable coverage; and 3) that meets minimum value standards.

1. Defining a large employer. Generally, a large employer is an employer with 50 or more full-time employees, or full-time equivalents. For 2015, compliance will be required generally for employers with 100 or more full-time or full-time equivalent employees, but not all employees will need to be offered coverage. In 2015, employers with 50 or more full-time employees (including equivalents) but less than 100 will not need to comply. This deferred compliance date requires, however, that the employer not reduce its work force or their hours of work just to avoid having to comply with the rules.

   A full-time employee is one who regularly works 30 or more hours per week, or 130 hours a month. Employers generally use the employee count in 2014 to determine their status as a large employer in 2015. There are some optional calculation periods that an employer can elect to use. Only employees working in the United States are counted.

   In addition to their clearly full-time employees, employers must also add to their full-time employee count full-time equivalents. The equivalents are calculated by adding all of the hours worked each month by employees regularly working less than 30 hours a week, and dividing that total by 120, and rounding down to the next lower whole number. For example, if all the part-time hours in a month total 1,260, that is divided by 120 resulting in 10.5, and rounded down to the next lower whole number, which is 10. If this employer had 91 employees regularly working 30 or more hours a week, the employer would add 10 to that number for a total of 101 full-time and full-time equivalent employees.

Employers total the full-time employees (and equivalents) for each month of the entire year and divide by 12 to arrive at the average monthly FTEs and equivalents for the year. This addresses month-to-month variations in the workforce across the year and ensures that no single month determines if an employer is or is not a large employer. Employers under common control will have their full-time employees aggregated for purposes of determining if the employer is a large employer. This means that an owner or ownership group with (for example) three businesses will need to combine their FTE and equivalents for the three entities to determine large employer status.

Generally, seasonal workers, employed for less than 120 days a year, will not count for these large employer calculations. As noted below, these FTE and equivalent counts are used only for determining large employer status, not who must be offered coverage. Who must be offered coverage is described in Section B, below.

2. Affordable coverage. Coverage is considered affordable if it does not cost the employee more than 9.5% of the employee's household income for employee only coverage. Employers would not typically know the employee's household income, so the regulations allow using one of several safe harbors to assess affordability. The easiest measures that can be used are the amount that the employer pays the employee, or the employee's hourly rate. If an employee is paid $1,000 per month, then the employee's share of the cost of individual health coverage cannot exceed $95 a month for the coverage to be considered affordable. What the employer pays the employee is based upon the entry in Box 1 of their W-2. If an employee pays nothing for individual coverage, it is always affordable.

3. Minimum value coverage. The health coverage must also meet minimum value standards. This is typically identified for the employer by the health plan. It is measured by determining whether the policy covers at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan. The IRS and HHS have a calculator that employers can use to measure this minimum value themselves (if they are so inclined). The Pipe Trades MN Welfare Plan provided notice to employers that its coverage provided minimum value for covered employees. An employer's other carriers should be able to answer this question for their policies.

C. What is a Large Employer's Obligation. First, to be clear, if an employer is not a large employer as defined above, it has no obligation to provide coverage under the ACA. Individuals are still required to have coverage, regardless of whether their employer offers it.

Generally, the rules require each large employer to offer affordable minimum value coverage to at least 95% of their full-time employees (not part-time employees working less than 30 hours a week) and their dependents. For 2015, as transition relief, a large employer need only offer the coverage to 70% of its full-time employees, and may be able to avoid offering coverage to dependents for that year if it is in the process of lining that coverage up. In 2016 the 95% standard will apply, and coverage must also be offered to dependents of full-time employees. Contributions to a Taft-Hartley plan on behalf of full-time employees will count toward these percentages.

D. Circumstances under which an Employer can be Subject to a Penalty. There are two circumstances that can lead to a penalty assessment.

1. Not offering enough full-time employees coverage. If a large employer does not offer affordable minimum value coverage to any of its full-time employees (and dependents starting in 2016), or offers it to less than 70% of its full-time employees in 2015, and 95% of its full-time employees in 2016 and beyond, it will incur a penalty. The penalty is calculated in 2015 by taking the total of the full-time employees (no equivalents used here) minus 80 times $2,000. If the employer offers coverage for some months, but not others, then the penalty amount is divided by 12 and is due for each month of non-compliance. The IRS is working out forms for reporting this penalty.

2. If any full-time employee obtains a tax credit in connection with obtaining coverage on an exchange. This can generally only happen if the employer does not offer affordable minimum value coverage to a sufficient percentage of its full-time employees, or the coverage offered by the employer is not affordable or minimum value for that employee. This penalty is calculated by taking the number of full-time employees who receive a premium tax credit in a month times 1/12 of $3,000 ($250). This amount is capped, however, for a month by the number of full-time employees for that month minus 30 (minus up to 80 in 2015) and multiplied by 1/12 of $2,000. This "safety valve" limit is intended to make sure that an employer is not prejudiced for offering coverage.

Generally speaking, an employer will not necessarily know if a full-time employee has obtained a premium tax credit, so it is expected that the IRS will need to notify the employer. The IRS is working on this too.

Please let me know if I can answer any questions on these rerquirements.