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Construction is Among the Industries Most at Risk for ACA Penalties

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SOME CONTRACTORS HAVE RECEIVED NOTICES OF FINES IN THE MILLIONS OF DOLLARS FOR FAILING TO MEET AFFORDABLE CARE ACT REQUIREMENTS.

The average annual employee turnover rate for the construction industry is 68%, according to data issued by job search site Zippia, more than 10 percentage points higher than the national average of 57.3%.

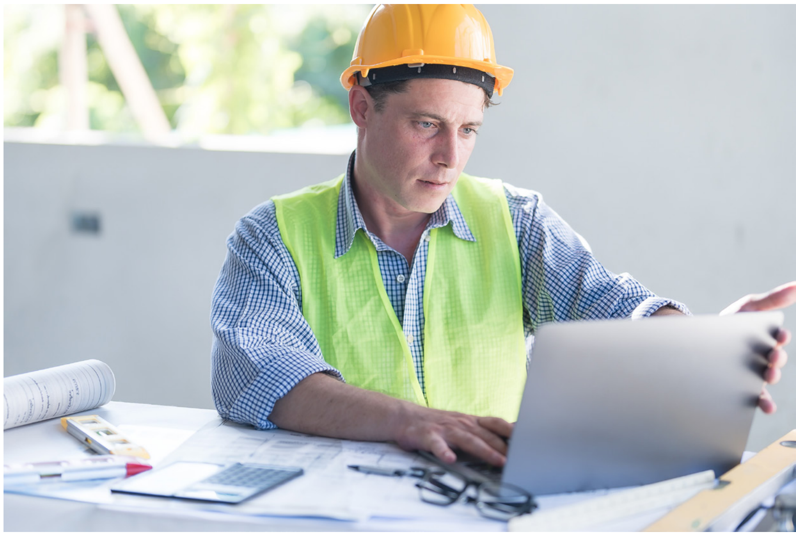
Why does that matter? With new employees coming and going at this rate, it can be difficult for construction employers to keep track of who is eligible for health coverage and who isn't, creating unique challenges in meeting Affordable Care Act requirements.

Under the ACA's Employer Mandate, employers with 50 or more full-time employees or equivalents are required to:

» Offer minimum essential coverage to at least 95% of their full-time employees (and their dependents)
» Ensure that the coverage for the full-time employee is affordable based on one of the IRS-approved methods for calculating affordability

Employers in the construction industry that fail to meet these requirements can be subject to significant penalties. Some contractors have been shocked to receive ACA penalty notices from the IRS that are in the millions of dollars.

Here's why the construction industry is so susceptible to receiving ACA penalties:



» Human resources is often a non-centralized function, making it challenging to gather the data necessary for tracking ACA compliance efforts.
» The industry has a high percentage of hourly workers with varying schedules, making it difficult to determine who is ACA full-time and requires an offer of health coverage.
» It employs workforces that disproportionately decline offers of health coverage benefits, creating a heavier employer burden in tracking declinations.
» Employees come and go during the year with high staff turnover rates, increasing the employer's burden to track all such employees.

» Per diem piece work and multiple rates of pay complicate the determination of pay rates and subsequent ACA affordability requirements.

Determining the accurate full-time and part-time status of employees under the ACA is arguably the first, and most important, step for compliance. There are real ramifications for inaccurately classifying employees.

For example, let's look at an employer that improperly classifies an employee as part-time and fails to extend an offer of insurance. That employee goes to a government marketplace exchange to purchase health insurance and receives a Premium Tax Credit (PTC) that helps subsidize the cost of the health insurance purchased on the exchange. This event can trigger the issuance of an IRS Letter 226J penalty notice to the employer.

But that notice will cover more than just the single employee in question. Instead, it will be applied to every full-time employee working for that employer during the course of the tax year. For the 2022 tax year, that penalty could be as high as $275,000 for 100 employees.

Construction employers can avoid situations like this by assessing their compliance processes via this quiz, which determines the risk of receiving IRS penalties by analyzing an organization's unique workforce composition. The eight questions are:

» Does your organization employ variable hour or part-time employees?
» Do you use the Look-Back Measurement Method, which measures hours worked over a set period, to determine ACA full-time status?
» How do you determine ACA affordability?
» Does your payroll provider administer your ACA compliance software?
» Has your business acquired any new entities since 2015, or do you plan to acquire new entities soon?
» How many different payroll platforms do you use?
» Do you have employees residing in Massachusetts, New Jersey, California, Rhode Island, or the District of Columbia?

Your answers to these questions can help determine your risk of significant penalties, particularly if you have not been filing ACA-required information annually with the IRS. Doing so before getting an unexpected notice from the IRS should be a top priority for construction executives.

About the Author

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