Patient Protection and Affordable Care Act

Nondiscrimination Rules

Non Grandfathered fully insured plans must comply with this provision of PPACA or be subject to a $100 per participant per day penalty. *Currently this requirement has a delayed application date (IRS Notice 2011-1) we are still waiting for guidance.*

Who are Highly Compensated Individuals?

Highly Compensated Individuals are any of the following:

- One of the five highest paid officers
- A shareholder who owns more than 10% in value of the stock of the employer
- Among the highest paid 25% of all employees

Some warning signs that a plan may be discriminatory:

- Difference in employer contribution
- Differences in the length of probationary periods
- Richer and incremental benefits for certain employees
- Difference in participant eligibility

How do employers know if they are compliant with the law?

Employers should test both benefits and eligibility requirements to determine whether their plans are discriminatory.

The Benefits Test

If a benefit is provided to highly compensated individuals, it must be provided to other employees under the same terms and conditions.

The Eligibility Test

Step 1: Determine which if any, employees may be excluded from the eligibility test. Those that may be excluded include:

- Employees who have not completed 3 years of service
- Employees under age 25
- Part-time or seasonal employees
- Employees covered under a collective bargaining agreement
- Employees who are nonresident aliens and who receive no earned income from U.S. sources

Step 2: If a benefit is provided to highly paid employees, at least one of the following must also be true:

- At least 70% of all non-excluded employees are enrolled in the plan; or
- At least 70% of all non-excluded employees are eligible to participate in the plan and 80% of these are actually enrolled in the plan; or
- The IRS determines that the plan benefits employees who qualify for coverage under a non-discriminatory classification of employees