

Ellin & Tucker, Chartered



Contractors' Perspective

WINTER 2011



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Here's to your health care plan

An overview of the Patient Protection and Affordable Care Act

While the initial hoopla about the Patient Protection and Affordable Care Act (PPACA) has begun to fade, rumors and misinformation still run rampant. The staggered implementation and sheer size of the health care reform law, paired with the fact that the details of some provisions aren't hammered out yet, have many business owners scratching their heads. For now, it's important to be aware of a few key provisions of the act that could affect your construction company.

To provide or not to provide

Perhaps one of the most pressing questions on contractors' minds is, "Do I have to provide my employees with health insurance and, if so, by when?"

PPACA doesn't *require* employers to provide health care coverage. But, starting in 2014, if you have 50 or more full-time employees (defined as employees who on average work at least 30 hours per week), you may be fined if:

- You cover less than 60% of health care premiums or you don't offer "minimum essential coverage," *and*
- Any of your full-time employees receive certain government subsidies for health care.

(Subsidies are granted based on income levels and percentage of income spent on health insurance premiums.)

The fine for *not covering sufficient premium costs* is the lesser of \$3,000 per full-time subsidized employee or \$2,000 per full-time employee, minus the first 30 full-time employees. The fine for *not offering minimum essential coverage* is \$2,000 per full-time employee, again minus the first 30 full-time employees. Your benefits advisor can help you better understand the distinction.



Also important: Part-time employees' hours will be totaled to equal one or more full-time employees. So if, for example, two part-time laborers each work 15 hours per week, they'll be considered one full-time employee for the purposes of PPACA.

Smaller employers

Starting in 2010, companies with fewer than 25 full-time employees — whose annual wages average less than \$50,000 — are eligible for tax credits if they provide health insurance. To qualify, you must contribute at least 50% of employees' premiums or a benchmark premium.

Eligible companies can receive a tax credit of up to 35% of the cost of their premium payments through 2013. The credit phases out gradually for those with more than 10 full-time employees and average annual wages of \$25,000 or more.

In 2014, if you meet the above criteria, you may qualify for a tax credit of up to 50% of the money you contribute toward your employees' insurance through the planned state-based

health insurance marketplaces, known as Small Business Health Options Program (SHOP) Exchanges.

2 more provisions to note

When reviewing your construction company's health care program, a couple of other PPACA provisions you may want to take note of include:

1. A PPACA-mandated \$5 billion Early Retiree Reinsurance Program. It's designed to close the gap for retirees who are at least 55, but who are still unable to qualify for Medicare. This program will reimburse eligible companies up to 80% of the money they spend on retirees' insurance premiums. It's important to note, however, that PPACA doesn't require employers to provide health insurance to retirees, nor does it penalize employers that don't provide retiree coverage.

2. Changes to your tax-related filings.

You must report employees' health benefits on their W-2 forms starting with forms for the 2011 tax year. And you may have to send 1099 forms to corporations with which you have conducted business transactions totaling \$600 or more, starting with transactions occurring

after Dec. 31, 2011. This PPACA provision, which goes beyond health care, has been controversial and may be relaxed or repealed before it goes into effect. Check with your tax advisor for the latest information.

You may have to send 1099 forms to corporations with which you have conducted business transactions totaling \$600 or more, starting with transactions occurring after Dec. 31, 2011.

Vast and complex

In a safety-conscious industry such as construction, health care is an important issue. And though PPACA brought reform, it hardly brought simplicity. The law's provisions are vast and complex, and many clarifications and changes likely will be made. For now, keep the points we've covered here in mind and work with your CPA and benefits advisor to ensure you're informed about and compliant with the law. ■

Coverage of dependent children must go on

Does your construction company provide health care benefits to the dependents of your employees? If so, there's an important provision of the Patient Protection and Affordable Care Act (PPACA) that you should know about.

The provision in question *requires* plans that provide coverage to employees' dependent children to now continue making that coverage available until the child turns age 26. You must provide this coverage no later than plan years beginning on or after Sept. 23, 2010. And you may continue providing the coverage for workers' children past age 26, but you don't have to under the law.

PPACA defines "child" as the son, daughter, stepson or stepdaughter of an employee, including those both legally adopted and lawfully placed with the employee for adoption. Foster children placed by an authorized placement agency or by court order are also eligible.

The IRS specifically addressed the tax treatment of this provision for employees in its Notice 2010-38. This guidance pointed out that Sections 105 and 106 of the Internal Revenue Code already excluded coverage under an employer-provided accident or health plan (as well as employer-provided reimbursements for the medical care of the employee, employee's spouse or dependents) from an employee's taxable gross income. PPACA extended this tax benefit to coverage for an employee's child who hasn't reached age 27 as of the end of the employee's taxable year.

Construction fraud: How does it happen?

Many construction business owners think they know their employees too well to fall victim to fraud. Or perhaps they focus on only one or two vulnerable areas. But there are many ways you could lose hard-earned money, and employees — even trusted, long-term ones — may be more prone to committing fraud during these difficult economic times.

Payroll is vulnerable

Let's start with the payroll process, which for construction companies is often complex and, therefore, vulnerable.

One example: A foreman uses his position to create a “ghost” employee to work on his crew. He records all of the hours this fake worker puts in and, with or without the help of someone in your payroll department, receives and cashes the ghost's paycheck.



One way to expose the presence of ghosts is to, at least twice a year, hand out paychecks yourself. Or, if you use direct deposit, work with your bank to fight payroll scams. Many offer a “positive pay” service to fight fraud.

Another measure to consider is making sure one person doesn't have exclusive control of payroll duties over a long period of time.

Accounts receivable could tempt

In some cases, a fraudster may make off with your cash before it even hits the books. A typical scheme of this fashion is known as accounts receivable “lapping.”

An example might be an accounts receivable clerk who periodically pockets a payment from one of your monthly service contract customers. Then, when the next monthly payment comes in, she applies that payment to the previous month's invoice. This can go on undetected for months — years even.

To prevent lapping and other like schemes, segregate banking responsibilities from accounts receivable and accounts payable functions. It's harder for fraudsters to conceal their actions if they can't cover their tracks in the bank reconciliation process.

In addition, enforce mandatory vacations of at least one week per year. Dishonest employees tend to dislike taking time off, knowing that, if someone else handles their responsibilities while they're out, their dishonest activities may come to light.

Supplier scams common

As money almost constantly changes hands between construction companies and their suppliers, plenty of opportunities for fraud arise. One typical scam involves a fraudster who sets up a shell company that outwardly appears legitimate but doesn't provide any products or services.

For example, you receive an invoice from XYZ Lumber for job supplies. Unbeknownst to you, the lumber supplier doesn't exist — one of your employees has made up the company and created the invoice, and he deposits the check into his own account.

If you use direct deposit, work with your bank to fight payroll scams. Many offer a “positive pay” service to fight fraud.

How do you break the shell game? One way is to establish a policy of signing every check (or at least any check above a certain amount). Also require that key documentation, such as the original invoice, purchase order and receiving report, accompany each check.

Additionally, appoint an employee who isn't involved in the accounts payable function to mail checks. Another approach to consider: Having an approved vendor list that must accompany each

distributed check. Compare vendor addresses to employee addresses as well.

Some fraud not surprising

Some forms of fraud aren't surprising. Take kickbacks, for instance — a corrupt employee forms a “partnership in crime” with an outside vendor rep. The vendor rep quotes a higher price than she otherwise would, and then the insider arranges for payment in full. When you pay the bill, the disreputable rep kicks back a percentage of the difference (or another form of compensation, such as a gift or event tickets) to the accomplice.

To stamp out kickbacks, review invoices periodically to determine whether any orders or prices seem unusually high. Also, insist on the solicitation of competitive bids for contracts over a certain threshold and regularly confirm that such bids were actually sought and received.

Many ways, and counting

As you can see, there are many ways fraud can strike. And, unfortunately, fraudsters are thinking up new schemes all the time. Make sure you're paying attention to all of your construction company's vulnerable areas. ■

3 year end tax developments to consider

It's the season for year end tax planning! Unfortunately, tax law uncertainty has been making planning a challenge. Here are three developments that may require action before year end:

1. Section 179 expensing. Sec. 179 is a tax code provision that allows you to immediately write off the full price of qualifying assets you buy rather than depreciating them over several years, provided your purchases don't exceed certain limits.

The Hiring Incentives to Restore Employment (HIRE) Act, signed into law in March, extended to 2010 the increase in the Sec. 179 expensing limit to \$250,000 that has applied in recent years. For 2011, however, the limit was scheduled to drop down to \$25,000.

Fortunately, the Small Business Jobs Act passed in September included an increase in the Sec. 179 expensing limit for 2010 and 2011 to \$500,000. Another provision of the law benefits contractors involved in long-term

contracts by extending 50% bonus depreciation to 2010. Check with your tax advisor for suggestions as to how you can apply these recently enhanced tax breaks to your construction company's activities.

If you retain workers qualifying for the payroll tax exemption for 52 consecutive weeks, you may be eligible for the HIRE Act's retention credit on your 2011 income tax return.

2. Hiring incentives. The HIRE Act exempts most employers (including contractors) from having to pay the 6.2% Social Security portion of payroll taxes on wages paid to qualifying employees from March 19, 2010, through Dec. 31, 2010. To qualify, employees must have been hired after Feb. 3, 2010, and before Jan. 1, 2011, must have been unemployed (defined as not having worked more than 40 hours) for 60 continuous days before starting the new job, and cannot be related to the employer.

If you retain workers qualifying for the payroll tax exemption for 52 consecutive weeks, you may be eligible for the HIRE Act's retention credit on your 2011 income tax return. The tax savings per qualified retained worker are equal to the lesser of 6.2% of the wages paid to the worker during the 52-week retention period or \$1,000.

Additional rules apply to both incentives; work with your tax advisor to determine whether you can benefit.

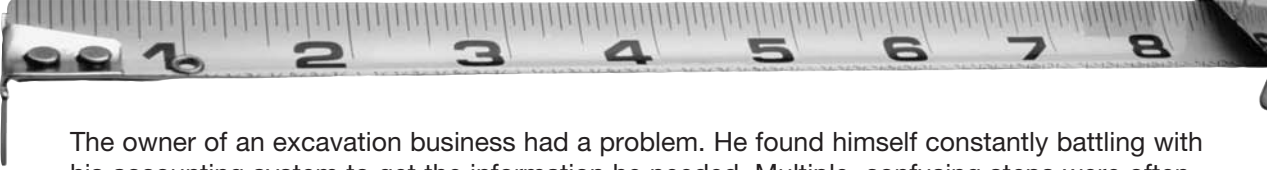
3. A potential tax rate increase. If your construction company is structured as a flow-through entity, such as a sole proprietorship, partnership, limited liability company or S corporation, take note: Individual income tax rates are scheduled to increase next year if Congress doesn't act.

Because you report business earnings on your individual return, you could face a substantial tax increase. Consider whether you should convert from your current flow-through entity status to a C corporation or take other steps to minimize taxes. Your tax advisor can help you determine the best course of action. ■



Construction Success Story

Contractor gets specific with his accounting software



The owner of an excavation business had a problem. He found himself constantly battling with his accounting system to get the information he needed. Multiple, confusing steps were often required to enter and extract data specific to his projects and customers.

Although he didn't have much money to spare, the contractor started to wonder whether it was finally time to move to a construction-specific accounting application. To get a better idea of the pros and cons of doing so, while keeping an eye on his budget, he met with his CPA.

Going granular

The CPA agreed that the contractor was right to consider more advanced accounting software. Many generic accounting programs may be too limiting to perform construction job costing accurately.

Construction-specific accounting programs, on the other hand, feature detailed job costing and reporting modules that allow contractors to pinpoint factors that cause budget overruns. The contractor could use these detailed reports to:

- Identify specific drains on profit,
- Figure out how to fix profit drains and other financial inaccuracies, and
- Determine whether certain types of jobs are less profitable than others.

The contractor's cost breakdowns could go even more granular if he purchased a product with Construction Specifications Institute codes. This feature would allow him to assign a code to each company activity so that he could perform in-depth financial analyses. For example, he might focus on improvements in permitting operations after seeing reports that his company was regularly exceeding its budget in this area.

Taking a step beyond

The contractor's CPA also pointed out that many cost-estimating programs can integrate with other construction-specific software to support purchasing activities, scheduling, productivity monitoring and more, taking a step beyond direct cost and payment tracking.

Another consideration: payroll. Compensating the various types of workers in the construction industry can be complex because of, among other things, prevailing wage laws, which require certified payroll reports. Many construction-specific accounting products come with this capability.

Naturally, there are downsides to consider as well. The CPA warned that the higher-end products can be expensive, straining cash flow and creating pressure to get every possible use out of the software. More complex systems also lengthen the employee learning curve and may even require formal training.

Getting a better picture

After getting the facts on construction-related accounting software, the contractor had a much better picture of the alternatives to his current, creaky system. This wasn't a decision to undertake hastily, but it was one that held great promise for the future of his business.



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Our Construction Industry Services Group consists of experienced professionals focused on making your company a success. We are ready to assist you with a broad range of services tailored specifically to your needs, including:

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For additional information regarding the services listed above, or the ideas presented in this newsletter, please contact Streett Baldwin, Frank Brodnax, Todd Feuerman, Kristin King, or Mike Strauss. We would welcome the opportunity to help you build your success.

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We strive to be recognized as leaders and as the standard of excellence with our clients, employees, community and profession.