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The Affordable Care Act and Employer Confidence

Navigating a Complex Compliance Challenge

HR. Payroll. Benefits.

Contents

Introduction

Employers are grappling with two significant business issues for 2015:

1. **rising health care costs** that continue to increase at twice the rate of inflation or more [1, 2,] and

2. **the many requirements imposed on benefits plans and employers** under the Affordable Care Act of 2010 (ACA).

Failure to comply with the ACA requirements — especially those related to Shared Responsibility beginning in 2015 and the "Cadillac" Excise Tax* beginning in 2018 — could result in substantial, nondeductible tax penalties. Depending on company size, penalties could range from thousands to millions of dollars annually.

In order to gain an understanding of how companies are dealing with these issues, the ADP Research Institute® (ADP RI), a specialized group within ADP®, conducted a study in August and September of 2014, of more than 800 heads of HR and senior HR/benefits executives and managers in midsized (50-999 employees) and large companies (1,000 or more employees). The study was focused on learning what impact ACA requirements are having on organizations, the plans to address these requirements, identifying who is ultimately responsible for making necessary compliance decisions, and organizations' preparedness for compliance.

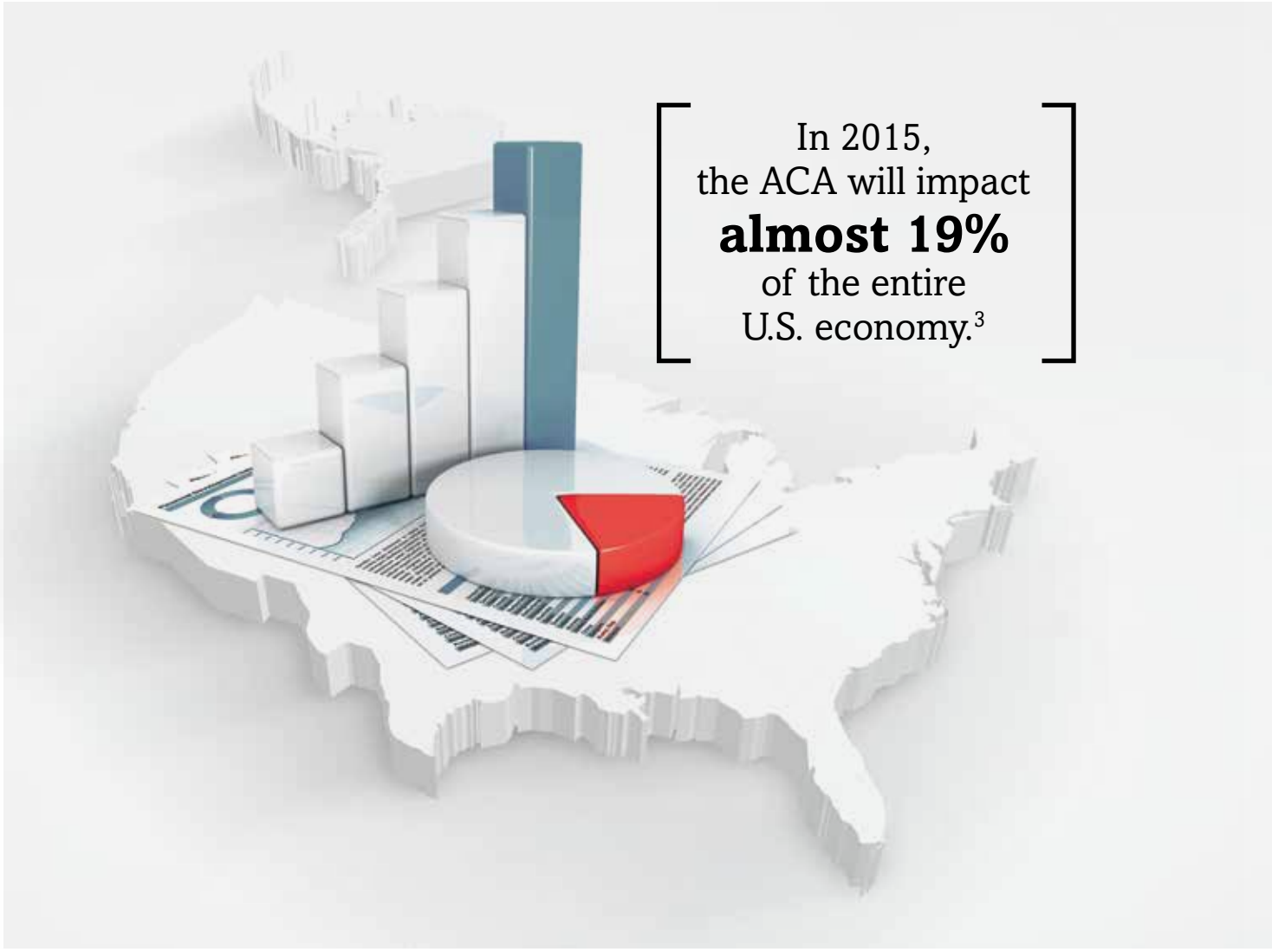
* Under Section 9001 of the ACA, health insurance issuers and sponsors of self-funded group health plans will be assessed an Excise Tax on any benefits provided to employees that exceed a pre-determined threshold.

Impact of the ACA

The ACA is one of the most significant pieces of legislation passed since the inception of Social Security in 1935. It impacts every employer, every person legally residing in the United States, every health care provider, every insurance company selling health care insurance, every pharmaceutical company, and every medical device manufacturer. In 2015, the ACA will impact almost 19% of the entire U.S. economy.[3]

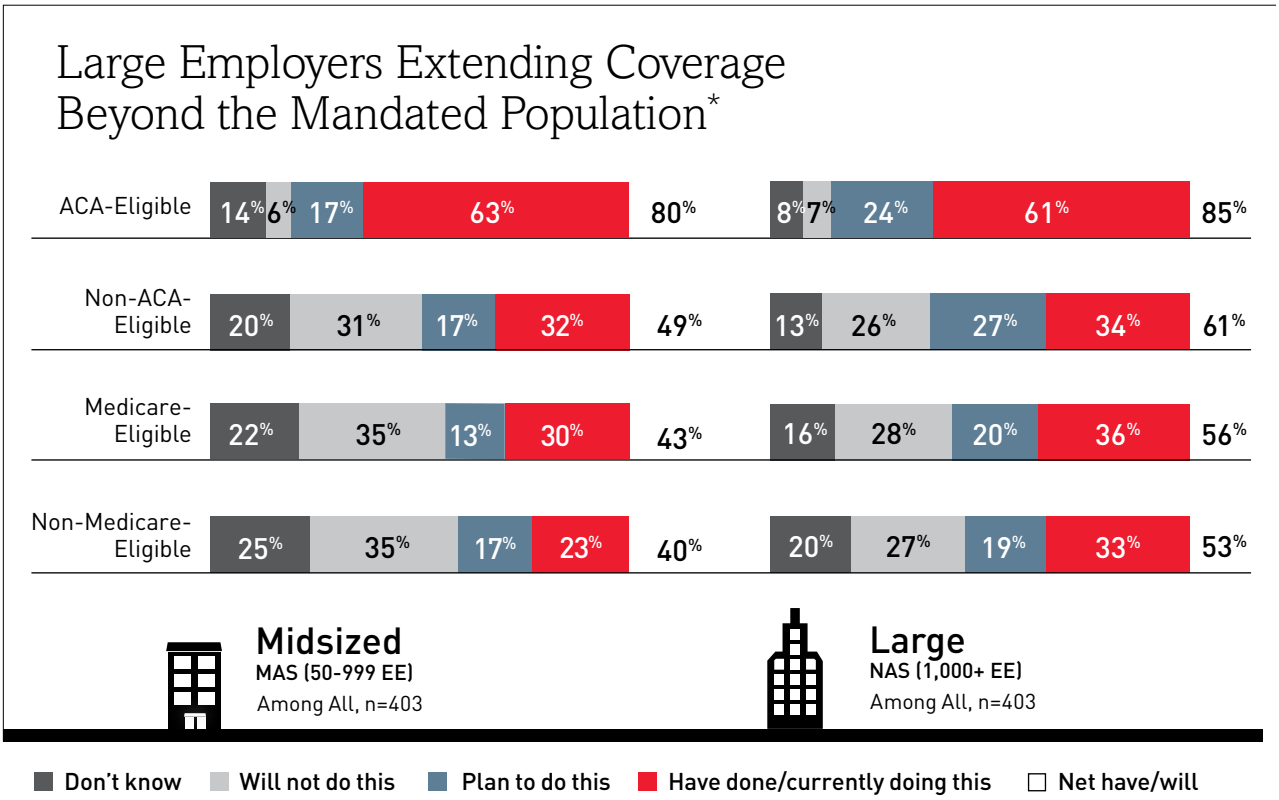
From an employer's perspective, the ACA is not just benefits legislation, but rather legislation that directly impacts many aspects of their business – in particular Human Capital Management (HCM).

Referencing key findings from the ADP RI ACA study, this paper reveals how employers are implementing plans and strategies to address critical ACA-related business issues. For many, complying with the ACA is very much still a work in progress.



Extending Coverage Beyond The Full-Time Mandate

The ADP RI study showed that a significant number of organizations are extending coverage beyond the mandated ACA full-time employee population. This is particularly true of large employers with three out of five indicating that they are extending coverage to those employees who do not qualify as ACA full-time. Half of midsized employers plan on doing the same.



Note: Sum of components may not equal total, due to rounding.

This decision to extend coverage seems to be driven by core business reasons. The ADP RI study showed that about three-quarters of both midsized and large employers say they are doing this in order to attract the talent that they need.

On the other hand, the study also found that the majority of employers are not planning to change employee hours in order to address ACA requirements that they offer coverage to all employees averaging at least 30 hours of service per week during the employer-defined measurement period. Only about one-quarter of midsized employers and two out of five large employers studied have done or are planning to limit some employee hours.

* ACA Study, ADP Research Institute, 2014.

Many Employers – Still Not Prepared

The study revealed that ACA compliance remains a clear point of concern for most employers affected by the ACA.

Somewhat surprisingly, the study also found that a majority of both midsized and large employers do not believe that they are fully prepared to accurately administer all of the ACA compliance requirements.

One reason for this lack of preparedness, at least as it applies to determining employee eligibility based on average hours of service, may stem from the fact that many employers may not have a totally accurate count of unpaid leave hours attributable to the Family and Medical Leave Act (FMLA), Uniformed Services Employment and Reemployment Rights Act (USERRA), and Jury Duty – all three of which must be considered in determining ACA full-time status.

Three areas that highlight compliance unpreparedness for large and midsized employers include the Exchange Notice process, annual health care reporting to the government, and penalty management, as shown in the graphic below.

Note: Sum of components may not equal total, due to rounding.

In addition, nearly three in four (70%) of midsized and large employers surveyed are currently handling ACA compliance tasks internally – a decision that could prove risky, based on existing levels of preparedness.

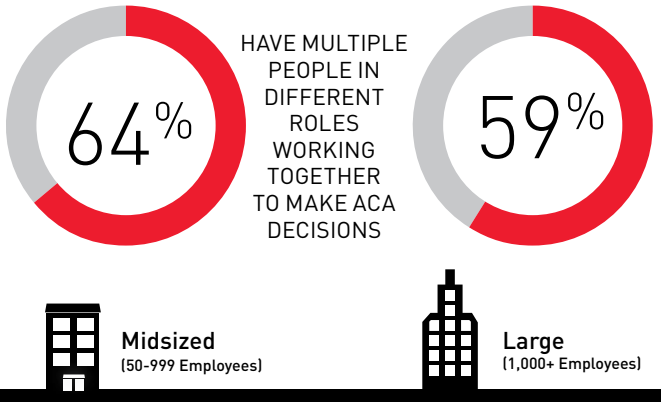
* ACA Study, ADP Research Institute, 2014

Who's Making the Decisions?

The ADP RI ACA study found that the majority of midsized and large companies have **multiple people in various functions** making strategic decisions concerning ACA compliance. However, one-quarter of midsized companies leave the decision to one person and one-quarter of large companies have a formalized committee to address ACA compliance.

Multiple Leaders in Different Roles Are Working Together to Make Decisions*

The majority of midsized and large organizations have **multiple people in different roles** working together to make strategic decisions about ACA compliance.

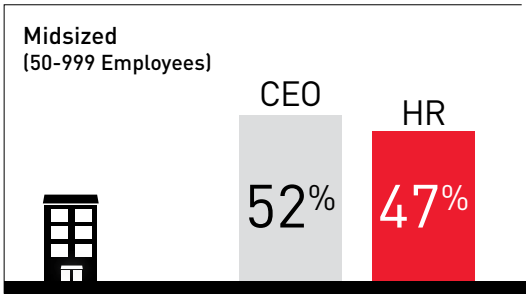


The individuals responsible for making strategic ACA compliance decisions vary somewhat by company size. The CEO and Head of HR are most likely to be making these decisions in midsized companies, while in large companies, it is primarily the Head of HR.

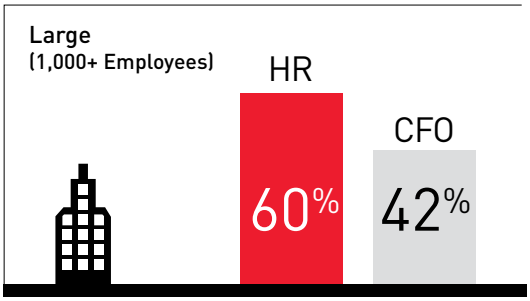
The study also found that – at most companies, regardless of size – managing day-to-day tasks regarding ACA compliance is typically the responsibility of the Head of HR.

A potential area of concern regarding the ACA involves the commingled administrative burden and the associated financial risk of data quality and accuracy that supports documentation and communication to the Health Insurance Marketplaces/Exchanges and the Internal Revenue Service (IRS). This involves a coordinated effort of multiple departments and functional roles. Incorrect data will likely result in a barrage of correspondence and complaints, involving employers, employees, Health Insurance Marketplaces/Exchanges, and the IRS. Faulty or otherwise inadequate information sent to the IRS may result in reporting penalties (up to $100 per occurrence and a maximum of $1.5M per filing).[4] Leveraging the coordinated expertise of multiple functions within an organization should help – so might the added expertise of a third-party provider.

Heads of HR and CFOs Have More Influence in Large Organizations



In midsized organizations, CEOs and HR make the decisions, but in large organizations, it's HR and CFOs.



Note: Sum of components may not equal total, due to rounding.

* ACA Study, ADP Research Institute, 2014.

Plan Design Shifts Costs to Employees

While health care spending trends have evened out somewhat in the last several years, each year per capita health care spending has gone up faster than the rate of inflation, as measured by the Consumer Price Index (CPI).[5,6] As a result, employers continue to explore plan design alternatives that may slow this rate of increase.

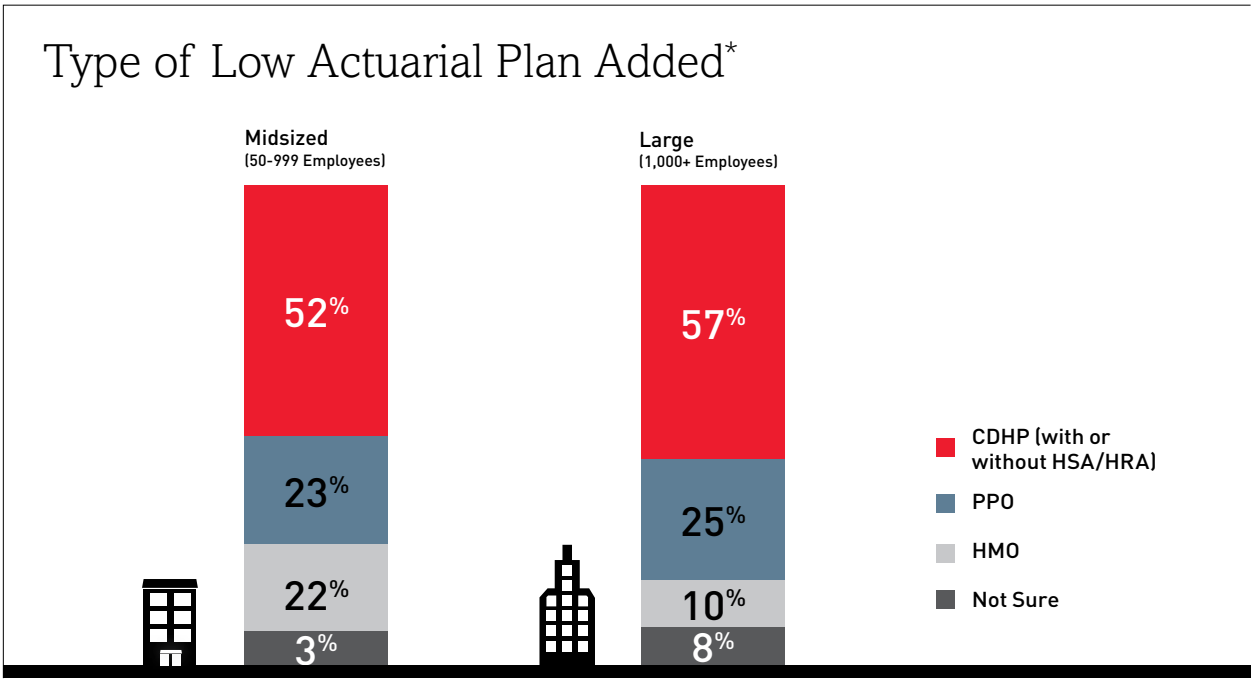
The ADP RI study found that, on the plan design front, employers are shifting costs to employees. More than half of midsized companies and nearly two-thirds of large companies indicate that they have already changed, or are planning on changing, employer contributions – with 44% of midsized employers and 39% of large employers decreasing their company-paid contributions, which seems to indicate that they will be increasing the share of costs that they charge employees in the form of deductibles and co-pays.

* ACA Study, ADP Research Institute, 2014.

The study also found, more significantly, that employers are beginning to emphasize consumerism (a movement which advocates patients' involvement in their own health care decisions) through plan design.

Perhaps the most dramatic move toward consumerism can be seen in the rapidly growing adoption of Consumer Driven Health Plans (CDHPs). According to the study, nearly one-fifth of midsized employers and more than one-third of large employers have introduced a low minimum value plan as part of their health care and ACA compliance strategy. Under the ACA, a health insurance plan's minimum value indicates the average share of medical spending that is paid by the plan as opposed to being paid out of pocket by the consumer. The calculation takes into account a plan's various costsharing features, such as deductibles, coinsurance, co-payments, and out-of-pocket limits.

Employers can document the minimum value of each plan by using the HHS Calculator that can be found at: **http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/mv-calculator-final-4-11-2013.xlsm**. For a small number of plan designs, it may be necessary to have an actuarial valuation performed. Of the employers responding to this specific study, the majority have decided to use a CDHP, as this is generally a low minimum value plan.



Note: Sum of components may not equal total, due to rounding.

CDHPs are the most effective plan design for actively involving employees and their covered dependents in health care decisions. Such plans allow participants to use Health Savings Accounts (HSAs) or Health Reimbursement Accounts (HRAs), to directly pay routine, non-catastrophic health care expenses. These plans provide traditional insurance protection that protects participants from catastrophic medical expenses. Moreover, they allow participants to accrue and grow funds in an HSA – which, over time, can provide additional funds to cover deductibles or even pay for a portion of retiree health care expenses.

Implementing a CDHP plan with a 60% actuarial value to simplify record keeping and reporting could help reduce the potential for ACA Excise Tax penalties.

* ACA Study, ADP Research Institute, 2014.

Looming Large – The Tax on High-Cost "Cadillac" Plans

The ACA Excise Tax on the cost of high-cost health plans above a certain threshold that begins in 2018 is an area that many employers have not yet given serious consideration, according to the ADP RI study. Only about a third of both midsized and large employers felt they had the ability to manage this facet of the ACA.

Beginning in 2018 the ACA imposes an Excise Tax on high-cost (aka "Cadillac") health plans that exceed certain dollar limit. This limit includes both employer and employee contributions, the fair market value of on-site medical clinics, and any pretax contributions to an employer-sponsored FSA, HSA, or HRA. The limit for 2018 is $10,200 for individual coverage and $27,500 for all coverages beyond individual (i.e., employee plus one, family, etc.). The limit is indexed to inflation as measured by the CPI – but as mentioned earlier, for 49 consecutive years, per capita health care spending has risen faster than inflation.

The bottom line is that virtually many employers who don't change their benefits offerings may have to pay the tax. The question is not "if," it is really "when."

For self-insured plans that do exceed the specified limits, the employer will pay a 40% nondeductible Excise Tax on every dollar above the limit. For fully insured plans, the insurance carrier will pay this tax – but it will be passed on to the plan sponsor in the form of premium increases.

The following illustrates how significant this penalty can be, even for a plan that exceeds the limits by only a few hundred dollars per year.

The Excise Tax: Two Simple Examples

Exceeding the Excise Tax limits by even a small amount can result in a significant **nondeductible** penalty.

EXAMPLE 1	Individual Coverage	Family Coverage	Total
Excise Tax Limit	$10,200	$27,500	-
Cost of Plans	$10,550	$28,225	-
Amount Subject to Excise Tax	$350	$725	-
Number of Employees Enrolled	500	1,500	2,000
Annual Penalty in 2018	$70,000	$435,000	**$505,000**

In Example 1:

- Individual costs exceed the Excise Tax limit by only $350 per year ($29 per month)
- Family costs exceed the Excise Tax limit by only $725 per year

EXAMPLE 2	Individual Coverage	Family Coverage	Total
Excise Tax Limit	$10,200	$27,500	-
Cost of Plans	$10,550	$28,225	-
Amount Subject to Excise Tax	$350	$725	-
Number of Employees Enrolled	1,800	6,200	8,000
Annual Penalty in 2018	$252,000	$1,798,000	**$2,050,000**

In Example 2:

- This example illustrates the impact on an employer with 8,000 employees rather than the first example's 2,000 employees

Employers should conduct an analysis to determine which plans will trigger a **40% nondeductible penalty under the ACA Excise Tax**, and in what year this penalty is likely to start. (Note: For many employers this could begin as early as 2018.)

Implementing a CDHP can help in mitigating this potential penalty, due to the fact that many employees will voluntarily leave high-cost plans and enroll in the CDHP — thereby reducing the number of people on whom the Excise Tax penalty will be based.

ADP's experience with many clients has shown that a thorough communications strategy — coupled with a robust decision support tool — are critical factors in achieving high voluntary enrollments in newly introduced CDHP plans. When done properly, employers may see initial enrollments in such plans of more than 25% of eligible participants.

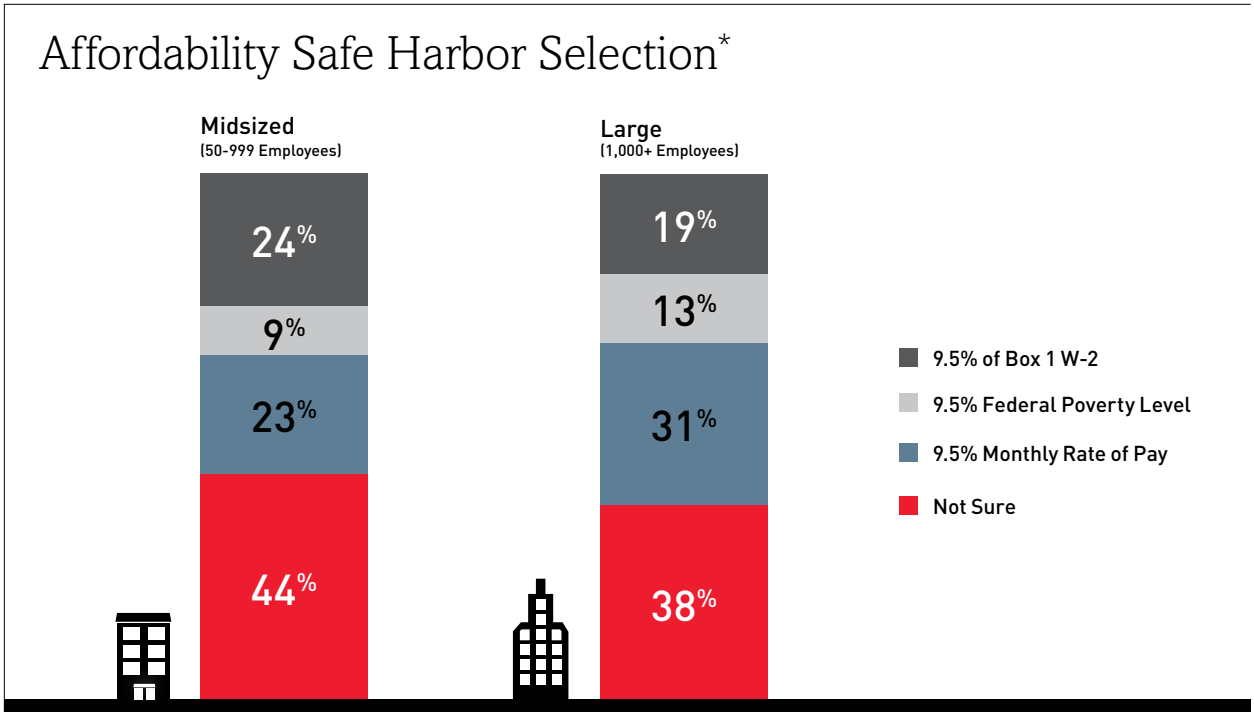
Addressing Affordability Requirements

Another area in which employers are still struggling is how to address the affordability requirements under the ACA.

At present, a significant proportion of employers in the ADP study, who have or are planning to extend benefits, report that they are not sure which affordability safe harbor they will use for their employees.

When choosing among the three safe harbors available to comply with the affordability requirements, very few organizations plan on relying on the Federal Poverty Level approach (9% of midsized employers and 13% of large employers, according to the study).

Overall, employers seem split between using the Rate of Pay approach or the Form W-2, Box 1 wages approach.



Note: Sum of components may not equal total, due to rounding.

Employers should select an affordability safe harbor and test plans offered to help ensure that at least one plan offered with at least 60% minimum value is also affordable, based on the employee cost for self-only coverage.

The study showed that among those employers choosing to use the Form W-2 Safe Harbor, one-fifth of midsized employers and three out of ten large employers are planning to automate this calculation by setting a contribution rate as they have done in the past, but then, on a pay-cycle basis, calculating and capping contributions for each individual so as not to exceed 9.5% of this value.

* ACA Study, ADP Research Institute, 2014

Conclusion

The Affordable Care Act (ACA) presents a myriad of current challenges for employers of all sizes and across all industries. The ADP RI study shares a compelling snapshot of how employers, affected by the ACA, are responding to the law's significant compliance challenges.

1) Many employers are extending coverage beyond the mandated ACA full-time employee population.

2) Most employers are still not prepared for ACA compliance.

3) In a majority of midsized and large companies, multiple people across various functions are making strategic decisions regarding ACA compliance.

4) Employers are shifting more health plan-related costs to employees – giving new emphasis to Health Savings Accounts (HSAs) and Health Reimbursement Accounts (HRAs).

5) Many employers are yet to give serious consideration to the ACA Excise ("Cadillac") Tax on high-value plans that is beginning in 2018.

6) A significant proportion of employers, who are planning to extend benefits, are still struggling with how to address ACA affordability requirements.

Data integration is a key element in ACA compliance. In fact, ACA compliance will require integration of data from at least four disparate systems: Payroll, Benefits, Time and Labor Management, and HR.

Among employers who believe that they can access all of the data needed to comply with the ACA, a significant minority are not confident that they can actually compile and report this information in a timely fashion to the IRS, as required. Among midsized employers surveyed, 38% are concerned that they may not be able to achieve this – and among large employers surveyed, this figure rises to 39%.

Survey results suggest that employers are making good-faith efforts to fully comply with the complex law and its regulations – but in some areas they are still struggling. As employers navigate toward comprehensive ACA compliance, their speed of preparation and readiness should be driven by the fact that the compliance clock keeps ticking.

About the Study

The ADP Research Institute® (ADP RI) conducted the 2014 ACA Study in August and September of 2014 and included input from 806 HR/benefits decision makers in U.S. enterprises.

The study universe was comprised of a representative sample of 403 heads of HR, senior HR/Benefits managers and executives in midsized companies (50-999 employees) and 403 in large companies (1,000 or more) who influence decisions regarding their company's employee benefits, policies and systems. The resulting data achieved statistical reliability at the 95% confidence level in each segment.

About the ADP Research Institute®

The ADP Research Institute provides insights to leaders in both the private and public sectors regarding issues in Human Capital Management (HCM), employment trends, and workforce strategy.

For more information about how ADP can help your organization with ACA Compliance, visit adp.com/health-care-reform or call (855) 237-2650.

Sources

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2. PwC Health Research Institute, PricewaterhouseCoopers LLP, 2014, http://www.pwc.com/us/en/health-industries/behind-the-numbers/.
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4. Current through Pub. L. 113-75, excerpt 113-66. (See Public Laws for the current Congress). www.Congress-summary.com/C-113th-Congress/Status_of_House_Bills_113th_Congress.html.
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