What You Need to Know About

MERGERS & ACQUISITIONS AND THE ACA

Mergers and Acquisitions (M&A) are common but thinking through ACA reporting and liabilities associated with ACA penalties is often overlooked. There are two primary M&A transaction methods—asset and stock acquisitions. The following are ACA considerations you should review while working through either of these M&A types.

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ASSET ACQUISITION AND THE ACA

How do I know it's an asset acquisition? An asset acquisition is the purchase of a company by buying its assets instead of its stock. This commonly occurs when an acquirer is only purchasing some of the assets but not all. If the Employer Identification Number (EIN) of the acquired company does not transfer to the acquirer, then that's a good sign it's an asset acquisition.

ACA CONSIDERATIONS FOR ASSET ACQUISITIONS

EMPLOYEE TRACKING: The main point you need to remember for an asset acquisition is that you treat all employees as new hires. That means that benefit eligibility dates, effective dates and hire dates should all reflect the date of the acquisition.

BENEFITS CROSS-OVER: Typically, the benefits from the acquired company end near but not on the acquisition date. Ensuring that your ACA vendor understands where the old benefits end and where the new benefits start will help you avoid reporting inaccurate gaps in coverage on 1095-C forms.

REPORTING: Follow the terms of the sale when determining who will file ACA reporting. If the terms do not outline the owner of ACA responsibilities, then the two companies should discuss this up front, so the decision is made and there are no surprises. For example, if employees will start receiving benefits from the acquirer before the acquisition closes, the acquired company may need that information to complete their side of the 1095-C reporting.

→ **Tip:** *Do not import the original employee hire date. While this date is commonly used to credit employees with years of service for other benefits, it is irrelevant for ACA reporting and can cause severe data errors that are costly to fix.*

STOCK ACQUISITIONS AND THE ACA

How do I know it's a stock acquisition? A stock acquisition is when one company buys the target company's stock; typically, this means they are purchasing a majority of the target company's shares that are outstanding. If the EIN of the acquired company transfers to the acquirer, then that's a good sign it's a stock acquisition.

ACA CONSIDERATIONS FOR STOCK ACQUISITIONS

EMPLOYEE TRACKING: For stock acquisitions, the EIN typically stays the same, although employees may start shifting into other EINs post-acquisition. You must continue tracking employee hours, as employees are not treated as new hires like they are for asset acquisitions.

MEASUREMENT PERIOD: Investigate what measurement period the acquired company uses. If it's a different methodology, then you should plan on how to transition. For example, if your company uses the lookback period but the company you acquired uses the monthly measurement, you'll eventually want to arrive at the same method for all.

STABILITY PERIODS: Any stability periods that are effective, both new hire and standard, as well as limited non-assessment periods, must remain in place after the acquisition date. That means if an employee had measured as Full Time but moves to Part Time after the acquisition, you must continue offering benefits until the Full Time stability period ends.

ACA OWNERSHIP: Plan for who will be responsible for ACA compliance with the acquisition so that reporting is streamlined. Each employee can only receive one form from an EIN, so unless the acquisition date is on January 1st, you will need to coordinate in order to provide a single form per employee from the acquired EIN.

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CONTINUED—ACA CONSIDERATIONS FOR STOCK ACQUISITIONS

RISK ASSESSMENT: Before acquiring a company, do your homework to evaluate potential ACA risks. Once you acquire them, the risk becomes yours.

- Have they sent forms to employees and filed with the IRS on time?
- Have they received or do they anticipate receiving ACA penalty notices for any of the following reasons: failing to meet the ACA minimum required MEC percentage, not offering health insurance to eligible employees, or offering insurance that wasn't affordable per ACA guidelines?

AFFORDABILITY: Check if the acquired company's employees will still have an affordable option based on the new plans/ restructure.

- What is the lowest cost plan offered to employees?
- Was this lowest cost plan in effect before the acquisition or was it previously not affordable?
- Did they company you acquire follow the three safe harbor checks (Federal Poverty Level, Rate of Pay, W-2) or did they use a blanket Qualifying Offer Code?

DATA MANAGEMENT: Make sure you know where the ACA data will come from within the acquired company to make reporting easier. Where are the following housed?

- Core employee demographic data (address, SSN, birthdate, name)
- Employee benefits data (date of offer, benefits enrollment date, opt-out dates, enrolled plan)
- Payroll data (pay periods, hours of service, W-2, hourly or salary rate)

If you're using an outside vendor to help you manage ACA compliance, make sure that you let them know that you're planning an acquisition. If they are an experienced, full-service vendor like Tango Health, they will be able to guide you through the process and answer any questions.

NEED SOME HELP MANAGING ACA?
Contact Tango at gotango@tangohealth.com

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