Top Echelon Contracting

Contracting Corner

First Quarter, 2013

The Perm Recruiter's Contracting Resource

Obamacare: Downfall or Windfall? YOU Decide!

The Recruiter's Guide to Healthcare Reform

The election is over. President Obama won another term. Whether or not you are happy with the outcome, it did make one thing clear. The Patient Protection and Affordable Care Act (PPACA), the hotly debated healthcare reform law better known as "Obamacare," is here to stay. Now it's up to employers to figure out how to comply.

But how will it impact you as a recruiter? That depends on you. **Obamacare could be a downfall for recruiters, or it could be a windfall.** *USAToday* reported that employers are already putting the brakes on hiring and cutting employee hours to reduce or eliminate their costs under the law. No hiring means no direct hire job orders, which would be a downfall for direct hire recruiters.

But if you can also provide contract staffing, Obamacare could be a huge windfall for you. Contract staffing can help solve some of the challenges that healthcare reform presents to employers. Before we get into that, here are the basics employers need to know.

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Healthcare Reform Cliff Notes

The PPACA was passed to make healthcare more affordable and accessible to Americans. While many provisions have been implemented, the biggest mandates loom in 2014. But **2013 is critical** because the way companies structure their businesses this year will determine what mandates they have to comply with next year.

What will impact you and your clients the most is the **"employer mandate."** The employer mandate will require employers with 50 or more full-time or "full-time equivalent" employees to provide health coverage to its full-time employees. If they don't, they will have to pay $2,000 per year on each full-time employee (excluding the first 30 employees) if even one employee uses federal premium tax credits to purchase insurance from a state exchange program. NOTE: The IRS recently issued proposed regulations that say the penalty will not apply if employers cover at least 95% of their full-time employees.

Even if an employer does offer coverage, **they could face a penalty if that coverage does not provide "minimum value" or is not "affordable."** The penalty under this provision is $3,000 for each employee who uses premium tax credits to purchase coverage through a state exchange program.

The Cost of Complying

But the costs for offering coverage that meets the requirements could be even more expensive, especially for employers that don't currently offer health insurance. Just obtaining an insurance plan, which must pay at least 60% of the expected claims costs, will be very costly.

Then there are the costs associated with simply learning about Obamacare. Employers may have to pay benefits experts, accountants, and lawyers to help them navigate the complex regulations.

And of course, time is money, and administering the plan will be very time-consuming. Because the PPACA's **"individual mandate"** will require most Americans to have coverage, it will push more people to enroll in employer plans. That means it will take more time to onboard and offboard employees because they will have to be enrolled and terminated from insurance. Employers will also need to address COBRA for each employee at termination.

Even worse, in addition to having to provide coverage if you have more than 50 employees, companies with more than 200 employees will have to auto-enroll employees who don't have other coverage. They will need to collect, track, and store proof of coverage for each employee that opts out.

In addition, employers who use a **"look-back period"** will face complex calculations and tracking. The look-back period was instituted to help companies with employees who work variable hours determine if those employees must be covered.

They are allowed to use a look-back period ranging from three to 12 months. If the employee averages 130 hours per month (or 30 hours per week) during the look-back period, they must be offered coverage during a subsequent "stability period" that must be as long as the look-back period and can't be shorter than six months.

How Employers Are Trying to Avoid Compliance

It's no wonder employers are searching for ways to get out of complying with the PPACA. The most obvious way to avoid it is to stay below 50 full-time employees. A Mercer study cited in *USAToday* stated that half of the companies surveyed that are not currently offering health insurance would make changes to their full-time headcount (cutting hours, hiring freezes, layoffs) to avoid complying with the PPACA. But stifling hiring can also stifle growth, productivity, and profitability.

According to the *Wall Street Journal*, the IRS has already vowed to be vigilant against employers who incorrectly classify workers as 1099 Independent Contractors (IC) rather than W-2 employees to get around the 50-employee threshold. Simply labeling a worker as an IC doesn't make them one. The IRS looks at employer's level of control over a worker, the duration of the relationship, and the payment structure to determine whether or not a worker is truly an IC. So using ICs will not be a viable solution for most employers.

The Windfall, Part 1—More Job Orders

This is where you can turn the downfall of Obamcare into a windfall for yourself. You can help clients legally stay below the 50-employee threshold without reducing their productivity through **contract staffing**. Companies can use contractors to complete projects, meet goals, or respond to business surges without having to worry about the employer mandate because the contractors are employees of the contract staffing provider (back-office). Therefore, the back-office must provide healthcare and take on the cost and administrative burden.

Even if a company has more than 50 employees, you can provide contractors to staff entire departments or projects. For example, companies in manufacturing and IT often have projects running 12 to 18 months. Rather than taking on the cost and burden of providing the workers with benefits, companies can outsource that responsibility by staffing the project with contractors. While they may have to comply with the law, you can help them lower their costs by reducing the number of direct hires they have to cover.

Companies that elect to stay the course and comply may need additional people to help implement the changes coming in 2014. This is a perfect scenario for contractors because the company can simply end the assignments when they are out of the ramp-up and implementation stages.

The Windfall, Part 2—Attracting Star Candidates

Obamacare could make you more popular with candidates, as well. As mentioned above, Americans will be required to have health insurance under the PPACA, and that insurance must meet the regulated minimum value standard. Many catastrophic plans some independent contractors carry will not comply.

Therefore, independent contractors will have to do one of three things: 1.) Find an individual plan that complies; 2.) Go to state exchange programs; or 3.) Become employed by a company that offers the required coverage and contributes to the monthly premium cost. Recruiters who can place them as contractors who are W-2 employees of a back-office that provides a PPACA-compliant plan could attract star candidates!

Back-Office Support

Before you can help your clients, though, you need to align yourself with a quality contract staffing back-office. The back-office will become the legal W-2 employer for the contractors you place, so you don't have to worry about employing them and possibly putting yourself on the hook for PPACA compliance.

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The back-office should be PPACA-compliant and provide health coverage to your contractors.

As a contract staffing back-office, Top Echelon Contracting offers three different health insurance plans through Anthem Blue Cross and Blue Shield. All of the plans are affordable and EXCEED the minimum value regulations required by Obamacare.

To learn more about contract staffing and how we can help you turn Obamacare into a windfall for your firm, please call a contract staffing administrator at **(888) 627-3678**.

This article is for informational purposes only and should not be construed as legal advice.

PPACA Definitions

Minimum Value—Health insurance plan pays at least 60% of the covered expenses.

Affordable Coverage—Health insurance plan costs less than 9.5% of the employee's W-2 wages.

Premium Tax Credits—Credits available to help individuals pay their insurance premium. They will be available to those who obtain coverage through an exchange if their income is between 100% and 400% of the federal poverty level (FPL).

Q&A—Critical PPACA Questions for Staffing Firms

Does my firm have to provide health coverage under the PPACA's "employer mandate"?
All employers, including staffing firms, with at least 50 full-time or "full-time equivalent" W-2 employees must provide coverage. To determine your full-time equivalent number, divide the hours of non-full-time employees in a month, including overtime, paid time off, and holidays, by 120. The number calculated must be added to the number of actual full-time employees to determine if a company falls above or below the 50-employee threshold.

How can I avoid having to provide coverage?
There are basically two ways. First, you could make sure that you don't take on enough contractors to put you over the 50-employee threshold. The problem is, that means possibly turning away business, which no company wants to do. The second way is to outsource the employment of your contractors to a contract staffing back-office, such as Top Echelon Contracting. Because the back-office assumes the employer responsibilities, they are responsible for PPACA compliance, not you. Therefore, you can take on as much contract staffing business as you want without worrying about the costs and headaches that come with the PPACA.

Can I create divisions or separate firms to stay under the 50-employee threshold?
No. Companies and divisions under common ownership count as one company. Therefore, all the employees in companies or divisions under your ownership will be counted when determining where you fall in regards to the 50-employee threshold.

Who is the employer for the purpose of offering coverage: the staffing firm/back-office or the client company?
Common law determines who the employer is. If you pay the contractor as a W-2 employee and assume the employer duties, your firm would be considered the employer and would be responsible for providing coverage.

Who is the employer for purpose of offering coverage if a recruiter/staffing firm <u>OUTSOURCES</u> the back-office?
Any company would be the employer of individuals on its payroll. Therefore, if you outsource the payroll and other employment duties to a contract staffing back-office, they would be the employer and would be responsible for PPACA compliance, including providing health insurance coverage.

Source: American Staffing Association
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Recruiters' Roundtable: Where the placements were in 2012

Contract staffing remained strong in 2012 as employers tried to move forward despite an unstable economy. According to Top Echelon Contracting's (TEC) statistics for 2012, contract staffing nationwide was particularly strong in the following five areas:

1. Healthcare
2. Business Professionals and Support Staff
3. Engineering and Manufacturing
4. Information Technology
5. Finance and Accounting

The Business Professionals and Support Staff sector had the second highest number of placements, behind only Healthcare. The sector accounted for **25%** of the contract placements made through TEC, which was a **9% spike** over 2011.

Employment experts have noted that while a large number of the job losses during the recession were low-skilled manufacturing positions, job creation is coming from the professional services sector. Specifically, they have noted an increased use of contractors in this sector as they move toward blended workforces that are more flexible and cost-efficient.

"We have seen a major shift in the attitudes of both employers and workers towards contract staffing," said Debbie Fledderjohann, President of Top Echelon Contracting. "It is obvious from these statistics that contract staffing is becoming a viable alternative to traditional employment in all aspects of white collar professions."

Inside:

- **Obamacare: Downfall or Windfall?**
  You might not know this, but the answer to that question depends solely on YOU!

- **Q&A**
  What are the critical PPACA questions for staffing firms?

P.O.Box 20990
Canton, OH 44701-0990

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