

GROWERTALKS

Features

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'Tis the Season for the Affordable Care Act

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Thus far, implementation of the Affordable Care Act (ACA) has been less than a smooth sleigh ride o'er the hills and snow. It's been more of a roller coaster with missing sections of track, broken cars and an ever-growing line outside the gate. The cost of admission seems to have caught supporters off guard as well. While rollouts of other government programs have experienced similar challenges, they happened before the age of blogs, social media and 24-hour cable news channels.

If the October shutdown of the federal government was a teachable moment, we learned that the ACA is here to stay. Deadlines may be moved to develop fixes over time, but the President's signature domestic policy initiative isn't going away. The shutdown also demonstrated lingering animosity between Congress and the Administration.

Before getting down to the business of decking the halls, trimming the tree and filling my home from floor to ceiling with beautiful poinsettias for the holidays, I took a moment to appeal to a higher power with the hope that he could intervene and restore comity to the healthcare debate in this country.

Dear Santa,

First, I did not forget about you or stop believing. I just wanted to save any future appeals for a time when they were most needed, a rainy-day policy. Santa, it's pouring. So here's my grown-up Christmas list as it relates to the U.S. green industry and compliance with the ACA. If you're a little confused about the specifics, I will try to explain things in a way that you can understand.

For Congress

Undoubtedly, most of the 535 federally elected officials serving in Congress are on your "naughty" list. But before you start doling out stockings full of coal, perhaps you can give them another chance to channel their holiday spirit to work together to fix issues with the ACA before some real damage is done:

Moving the definition of full-time employee from 30 to 40 hours per week—Were the North Pole in the United States, you would have long ago decided which of your elves were full-time employees by how many hours they worked per week over the course of a year. To attract and retain the best worker elves, maybe you choose to offer health benefits to your full-time employees. Because you're so generous, you may even offer coverage to part-time elves if you could afford it within your business plan.

Unfortunately, the ACA defines full-time at a standard lower than our industry uses and coupled that with a requirement of employers with 50 or more full-time equivalents to offer coverage to those individuals. Many green industry employers will be forced to reduce employee hours or staffing levels because they simply cannot afford to provide coverage. Likewise, employees that see hours reduced may have to take on a second job or seek employment elsewhere to meet the ACA's individual mandate to avoid their own tax penalty. Would you be able to run a functional workshop if you had fewer elf hours to utilize or had to coordinate the elves' schedules with the Easter Bunny?

First wish: 177 members of Congress have co-sponsored legislation that would in some way address this issue. Please encourage Congress to work together to restore a definition of full-time employment that is more widely recognized by employers before the employer mandate takes effect in 2015.

Defining seasonal employment—Clearly, you have full-time elves that you employ year-round for things like sleigh maintenance, customer service and wish-list filing. But much like your operation, the green industry needs to hire additional employees before the holidays and at other peak times throughout the year to meet demand and move product. Basically, your reindeer and a florist's delivery drivers on Valentine's Day serve the same purpose.

The green industry doesn't typically offer benefits to seasonal employees, as they have not been considered full-time. But because Congress did not specifically define what constitutes seasonal employment under the ACA, large employers would be responsible for offering coverage to a seasonal worker that meets the full-time standard, even if they only worked for them for a few months.

Second wish: Please ask Congress to consider the significant differences in what constitutes seasonal employment throughout various industries and to restore a definition of seasonal employment that does not recognize seasonal workers as full-time employees.

For the Administration

Congress is probably not alone on your naughty list. Those responsible for enforcing the ACA have been very slow in deciding how it's all going to work. They still haven't defined what a seasonal employee is and are proposing onerous rules with what's left to implement. Maybe you can check in with the boys and girls at the Departments of Treasury and Labor to ensure they consider more reasonable ways for employers to comply with a few provisions:

Employer reporting to the IRS—Were you based here, Mrs. Claus and the HR department might need to be ready for loads of paperwork. In order to administer the ACA's employer mandate and process information on individual tax credits, the Treasury Department is proposing to collect employer information, identifying information for all full-time employees and data about the health benefits offered to employees

(including employee cost, time offered, etc.) on a monthly basis. Elf by elf, every month you would need to file a report with the IRS that tells them whether you offered insurance, how much it cost them, how many hours they worked and so on.

Third wish: Please recommend to the Administration that they offer streamlined reporting processes that are viable for employers with differing workforces. While the largest employers in the U.S. have the capacity to undertake the reporting as currently proposed, virtually none of our industry's employers have the staff or resources to meet reporting requirements.

Non-Discrimination provisions—This is a small, largely unknown provision that could have a major impact on the green industry. Let's say you had a health plan for yourself, Mrs. Claus and your kids that you purchased or amended after March 23, 2010. You offer the same health plan to elves in management, but not to every elf because of cost.

Using rules originally designed for 401k and other retirement benefits, the IRS could determine that you're discriminating in favor of highly compensated employees and fine you \$100 per employee/per day for each elf that's not offered health benefits, regardless of the size of your workshop. To comply, you would either need to offer every elf your same level of health benefits to continue deducting the cost as a business expense or drop your plan and purchase coverage as an individual or family.

Fourth wish: Please ask the Administration to continue non-enforcement of these non-discrimination provisions until the potential effects on businesses of all sizes can be more fully understood and necessary changes can be made.

For Green Industry Employers

Good health and happiness. Great weather. A sustained uptick in the economy and consumer confidence. Certainly our industry could use any and all of those. And while those make up my wishes for the green industry this holiday season, I was hoping you might be able to share some of these helpful tips as a stocking stuffer on your trip around the States later this month:

2014 ACA Compliance Checklist

Here's a checklist for the coming year that green industry businesses can use to assist with ACA compliance (might look nice on a parchment scroll):

- Make sure all new employees receive notification of the existence of an Exchange upon hire.
- Check with your benefits provider to verify whether or not your existing health benefits plan is grandfathered to determine potential exposure to non-discrimination provisions.
- Make sure you and your family are in compliance with the ACA's individual mandate.
- Develop or purchase a tracking system for employee hours worked in 2014 and prepare for potential monthly reporting to the IRS on benefits.
- Research the costs for health benefits in the private market and on the Small Business Health Options Program (SHOP) Exchange.
- Explore potential alternatives for compliance including offering dental or vision, or contributing to a health savings account to offset an employee's purchase of higher deductible coverage in the individual

Exchange.

Utilizing SAF tools and resources to ensure compliance

SAF has spent countless hours developing tools like the Health Care Resource Center and personally assisting industry businesses with the development of their ACA compliance strategy. We will continue to do so throughout 2014 as the employer mandate again approaches. Maybe you could leave a little sticky note with my email (cconnors@safnow.org) or phone number (703-836-8700) for people to call and ask questions.

Thank you for all of your consideration and help, Santa. Now that I'm of age, lets skip the milk and cookies and grab a couple cold ones. That sounds real good to me right about now.

Happy Holidays,

Corey C.

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