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## **Doing Business in the US – The impact of the US Affordable Care Act**

By [Sibyl Bogardus](#), Chief Compliance Officer for [Hub International](#)

It can be a daunting task to stay on top of changing legislation, but that's just what Canada's HR managers have to do.

It can be even more daunting, however, to stay on top of the American *Patient Protection and Affordable Care Act* (PPACA)—and many HR managers don't even know why it's important to do so. But with the next major deadline looming, this is the perfect opportunity to catch up.

### **The Law**

As of January 1, 2015, employers with 100 or more full-time workers in the U.S. must offer affordable, comprehensive insurance—or face penalties of \$2,000 per full-time employee. Smaller employers are not off the hook; for 2015, the IRS will expect record keeping and certain certifications, even for smaller groups.

Why should Canadian companies take note of this? The Canadian/American border is one of the busiest in the world. Many Canadian companies have cross-border operations in the U.S. that may be impacted by this law. On a basic level, Canadian companies with enough employees in the U.S. will have to offer health care to their U.S. employees if they want to avoid paying those steep penalties.

And Canadian citizens working in the U.S. may face a penalty as well. According to Sibyl Bogardus, Chief Compliance Officer of HUB International Insurance Services, “The law is all about making sure hospitals and other providers get paid for their services. The law is going to urge everyone living in the U.S. to have health insurance.”

### **Potential Issues**

Offering affordable, comprehensive health care that complies with the law can be complicated, and there are a number of pitfalls that may crop up for a **Canadian company with over 100 U.S. employees**. Some of the challenges are:

1. All full-time employees—anyone who works a minimum of 30 hours per week—generally must be offered coverage. Initially, in 2015, employers can offer coverage to just 70% of eligible employees. Companies cannot exclude specific employees by name, but they can leave out certain categories of employees.
2. All employees fall into one of three categories: full-time, seasonal, and variable hour. Employees should be notified when they are hired which category they fall into. In fact, according to Bogardus, “Follow best practices and designate in

writing to the employees exactly which category they fit into, especially if they are hourly or variable employees. In this way, there is no confusion about whether health care will be offered.”

3. Regardless of your specific company’s situation, almost all U.S.-based workers must be able to prove that they have health insurance. If your company isn’t offering health care, you might see employees are demanding larger salaries in order cover their own insurance costs. To stay competitive, businesses may have to compensate in other ways.
4. The U.S. law requires employers to offer coverage to the employee’s children—including adult children up to age 26, whether they are living in their parent’s home or not.
5. There is no blanket exception for employees who are not U.S. citizens.
6. Beware of offering [“skinny” plans](#) that cover preventive care only. Be aware that the skinny plan can still trigger a \$3,000 penalty per full-time employee each year, depending on whether they get federal assistance with private insurance premiums.
7. Be careful about full disclosure with any plan that is not comprehensive. According to Bogardus, “For our clients that are going down this path, employee education is everything. You have to have full disclosure or you’re in trouble under this and other federal laws.” In other words, employees must be made aware of what these plans do and do not cover—and companies should be careful to retain proof that they’ve provided the information to employees and to document how the communication was delivered.

Many U.S. and Canadian companies will be left to wonder whether health reform will ever apply to companies with fewer than 50 employees. According to Bogardus, that seems unlikely. “That 50-employee level is somewhat sacrosanct in the U.S.,” she says. “We don’t like to see federal laws applying below that 50-employee level because then you’re imposing an obligation on smaller businesses who really can’t afford it. The number of businesses in the U.S. that are below 50 employees is astronomical—I’ve seen it quoted as high as 90% of the total number of employers.” Regardless, those companies with fewer than 50 employees might be just a few steps away from growth that tips the scale. Weighing growth aspirations of Canadian companies and the impact of U.S. health reform on that strategy should certainly trigger advance planning.

*[Sibyl Bogardus](#), Chief Compliance Officer for [Hub International](#), is an internationally requested keynote speaker, has testified for the Small Business Committee of the House of Representatives in D.C., and serves on the IRS Advisory Council for the Gulf Coast. She authors numerous [guidance reports](#) on healthcare reform and is part of Hub’s [Employee Benefits Practice](#).*