

Satisfying the Individual Mandate with a “Minimum Essential Business” ERISA Plan

Overview

The Patient Protection and Affordable Care Act (ACA) generally requires individuals to obtain “minimum essential coverage” or pay a tax penalty. By starting and operating your own “minimum essential business”, you can provide coverage to yourself under the Employee Retirement Income Security Act (ERISA), thus avoiding the tax. The business need not generate any particular amount of revenue or take up much time. While ERISA plans covering one employee are exempt from almost all state and federal insurance regulation, there are a number of steps involved in operating a business and creating a plan.

Step by Step Guide

Determine Your Potential Customers

To operate a business, you will endeavor to provide a product or service to one or more customers that generates income. However, the business need not generate significant revenue year round. Indeed, earning or attempting to earn a few dollars on a single day of the year is enough to qualify as business activity. While it is possible to create a business consisting purely of investment management activities, such a business could be considered a personal holding company and subject to higher taxes.

There are a number of sources offering limited work over the Internet. For example, Craigslist has a “gigs” section offering a variety of short-term labor, talent, and domestic work opportunities. A number of crowdsourcing sites including oDesk, Elance, and Mechanical Turk offer a variety of freelance work including writing, graphic design, programming, business services, and miscellaneous tasks.

Obtain Employer Approval

If you work for an employer, your employer may have “full time and attention” clauses in your employment contract or other policies that restrict outside work. If such policies apply to you, it may be possible to obtain approval for a limited non-competing business from your manager or corporate ethics committee. Without approval, you may risk termination or other disciplinary action, and could be civilly liable for any harm to your employer’s business.

Form Your Business

It is possible to operate a business as a “sole proprietor” in your capacity as an individual, however you will be personally responsible for any liability arising from business activities. Alternatively, you may form a corporation or limited-liability company which will protect your personal assets from any business-related litigation. There will be a one-time cost to incorporate in your state, and there may be annual fees or reporting requirements. Your state government will have information on incorporation requirements.

Comply with Business Regulations

Depending on the type of business, a number of state and federal regulations may apply. For example, businesses are generally required to display notification posters in the workplace explaining minimum wage laws and other regulations. Depending on the type of business, you may be required to obtain a license or permit. Your state government will generally have a list of legal requirements.

Create a Summary Plan Description

ERISA plans are required to create a summary plan description document which explains what the plan covers and how it operates, as well as a plan document describing other aspects of operating the plan. A [sample summary plan description and plan document](#) are available from the Self-Insured Americans Inc. web site. You have flexibility in specifying what health benefits the plan offers, and may choose not to use all or even any of those benefits. The sample documents have more information on plan requirements.

To avoid additional regulations, it is important you be the only employee of the business, and thus only person covered directly by the plan. However, through family coverage provisions, the plan may indirectly cover your spouse or dependent children, thus exempting you from taxes imposed for having family members without minimum essential coverage as well.

Perform the Work

Obviously, the essence of any business is offering a useful service or product. In some cases, this will require purchasing tools or equipment, acquiring inventory, or contracting with other businesses.

Pay Required Taxes

When operating a business you will need to pay taxes on that business income as well as employment-related taxes. A sole-proprietorship generally reports income on Form 1040 Schedule C, while incorporated businesses use Form 1120. Incorporated businesses pay unemployment and Social Security payroll taxes, while unincorporated individuals pay self-employment tax. For an incorporated business, reasonable compensation, dependent in part on revenue, must be paid for work done as the sole employee and reported on form W2. Estimated and withheld taxes will need to be paid throughout the year. Depending on the type of business, there may be different ways of minimizing associated taxes, such as electing to be treated as an S corporation under federal law, requiring different schedules or forms. Depending on your state and type of business, you may owe state taxes as well.

You may choose to deduct business expenses, including medical plan expenses, from income taxes. However when operating a “minimum essential business” be aware that if an activity is viewed as a hobby by the IRS because it is not consistently profitable, deductions cannot exceed the gross receipts for the activity.

Provide Notification of Coverage

You will need to file a return with the IRS notifying them you are providing minimum essential coverage. The law also requires you to provide yourself with a statement of coverage to be included on your individual income tax return. The required information is filed on form 1094-B and 1095-B, which will be available from the [IRS web site](#).

Legal Considerations

ERISA allows any business to form a welfare benefit plan, and Section 514 preempts state laws that relate to any such plan.

Exemption from Annual Reports

While ERISA generally requires employee welfare benefit plans to submit an annual report, employers who have less than 100 employees and pay for the benefits from the general funds of the business are exempt from the reporting requirement under 29 CFR 2520.104-20.

Exemption from Fiduciary Requirements

ERISA Section 301 provides that there are no minimum funding requirements for welfare benefit plans. With respect to plans that pay for benefits from the general funds of the business, there are no “plan assets” (as defined under ERISA Section 3) requiring a trust or special treatment of funds. Under such plans, fiduciaries are exempt from bonding under ERISA Section 412.

Exemption from ACA Requirements

ERISA section 732(a) and IRC section 9831 provide that plans having less than two employees are exempt from ERISA section 715 and IRC section 9815 respectively. Therefore the requirements of the PHSA modified by the ACA, including benefit requirements, generally do not apply to such plans. Self-insured entities are not “health insurance issuers” within the meaning of the PHSA and are exempt from participation in risk adjustment programs.

Retroactive Coverage Possible

It is possible to adopt a plan with retroactive coverage, and thus provide minimum essential coverage for months prior to the adoption of the plan.

Summary

A minimum essential business provides a great way to comply with insurance mandate requirements. While requirements may seem daunting, it is possible to create a plan using a sample document in a matter of a few minutes. Many regulations are not customarily enforced with respect to very small businesses, and legal requirements should not be a reason to refrain from engaging in business activity.

Resources

US Department of Labor – ERISA Information

<http://www.dol.gov/dol/topic/health-plans/erisa.htm>

US Department of Labor – Health Reform

<http://www.dol.gov/ebsa/healthreform/>

US Department of Labor – Workforce Poster Requirements:

<http://www.dol.gov/oasam/boc/osdbu/sbrefa/poster/matrix.htm>

IRS Forms and Publications

<http://www.irs.gov/Forms-&-Pubs>

Notice

This document does not constitute legal advice. You should personally review all applicable laws, contact the relevant government agencies, and/or hire an attorney to insure you are in compliance with all applicable laws and regulations.