



**DATE:** February 19, 2020

**TO:** Budget and Finance Committee

**FROM:** Interim Director of Human Resources

**SUBJECT:** Receive an Update on the Patient Protection and Affordable Care Act (ACA) and Impacts to the City of Hayward

## **RECOMMENDATION**

That the Council Budget and Finance Committee receives this informational report and provides comments.

## **SUMMARY**

This informational report provides the Council Budget and Finance Committee with an update on the Patient Protection and Affordable Care Act (ACA) and the various elements of the plan that affect the City of Hayward. The City is in full compliance with these elements.

## **BACKGROUND**

In March 2010, President Obama signed comprehensive health care reform, the Patient Protection and Affordable Care Act (ACA), into law with the stated intention of assuring that all Americans have access to affordable health insurance by increasing the quality and affordability of health insurance.

Since the ACA was signed into law, Congress continues to focus on reviewing and revising the ACA and there have been several updates, legal challenges and amendments. Staff continues to monitor and participate in regional discussions as well as work closely with the City's Benefits broker, Alliant Insurance Services, and the City's Medical Plan Administrator, California Public Employees Retirement System (CalPERS) to remain informed on updates and revisions to the ACA law. The goal of this report is to provide an update on the ACA and potential impacts to the City and its employees to date.

## **DISCUSSION**

The ACA was designed to achieve a necessary transformation of health insurance in the United States. Three major elements were identified: 1) shared responsibility with employers; 2) complete insurance market reform; and 3) enrollment by all Americans in

health coverage. The ACA includes provisions applicable to both individuals and employers. This overview will focus on the employer obligations and impacts.

Under the ACA, employers have benefit offering, reporting, and payment obligations (tax penalties) under which they must comply. Below is an outline of the major components of the ACA impacting the City, followed by a more detailed discussion of each.

### **Employer Obligations of the Affordable Care Act Impacting the City of Hayward:**

- **Pay or Play** – Employers with more than 50 employees must offer “minimum essential coverage” that is “affordable” and that provides “minimum value” to “substantially all” full-time employees and dependents or make employer shared responsibility payments (pay tax penalties).
- **Internal Revenue Service (IRS) Reporting** – Employers are required to report coverage information to covered employees and to the IRS; CalPERS is required to provide enrollment information (for employees and retirees) to covered individuals and to the IRS; individuals are required to show proof of coverage for self and dependents.
- **Cadillac Tax** – This tax has now been repealed but was originally intended to be a 40% excise tax on health plan premiums exceeding the estimated thresholds in 2018 (\$10,200 Single/\$27,500 Family) as adjusted.

#### Pay or Play – Employer Shared Responsibility

Pay or Play (A.K.A.: Employer Mandate) is a requirement to offer comprehensive and affordable benefits to “substantially all” full-time employees. A large employer is defined as having 50 or more full-time employees and full-time employees are those employees working 30 hours or more per week, or 130 hours or more per month. An employer meets the “substantially all” threshold if the employer offers medical coverage to at least 95% of its full-time employees. The City of Hayward is in compliance with this provision as it offers medical coverage to 100% of full-time employees and closely monitors staffing levels, time and attendance for part-time and temporary employees in order to remain in compliance.

Since 2015, the City has made changes to relevant policies and procedures to ensure the City remains in compliance with the Pay or Play requirements. These changes included the development of a staffing model that limits the hours for temporary employees to 25 hours or less, weekly and implementation of an internal tracking system to monitor temporary assignments and ensure temporary workers are not reaching the 30-hour weekly or 130-hour monthly thresholds. In instances where an exception is made due to operational needs, temporary employees hired to work 30 hours or more per week, are now offered medical coverage equivalent to that of a regular employee in a similar position. The City has also contracted with a third-party vendor, ACAWorks, to assist with tracking hours and the determination of projected eligibility based on hours worked.

The City must also offer “minimum essential coverage” that is “affordable” and that provides “minimum value”. For a plan to be considered “affordable” under the ACA, the employee’s required contribution should be no more than 9.78% (as adjusted for 2020) of that employee’s household income. Because employers generally do not know their employees’ household incomes, there are three different “Safe Harbor Tests” employers can use to determine affordability. Safe Harbor Tests are all based on the cost of single coverage for the least expensive plan offered by the employer. To pass the Safe Harbor Test, the employee cost of the plan must be less than 9.78% (down from 9.86% in 2019) of either: 1) The Federal Poverty Level; 2) Employee hourly wage x 130; or 3) W-2 Earnings. The City currently uses the Employee Rate of Pay Safe Harbor Test to determine affordability which uses hourly wage times 130 hours to determine if medical plans will satisfy the affordability requirement. Table 1 shows an example of the Employee Rate of Pay Safe Harbor calculations.

**Table 1: Safe Harbor Calculation for Employee Rate of Pay Model**

| SAFE HARBOR TEST METHODOLOGY       | TEST CALCULATION                     | MAX ANNUAL EMPLOYEE CONTRIBUTION | MAX MONTHLY EMPLOYEE CONTRIBUTION |
|------------------------------------|--------------------------------------|----------------------------------|-----------------------------------|
| Employee Rate of Pay x 130 (hours) | $(\$15.82 \times 130) \times 9.78\%$ | \$2,413.68                       | \$201.14                          |

For 2020 calendar year plans using the Employee Rate of Pay Safe Harbor calculations to determine affordability, an employee’s premium payment cannot exceed \$201.14 per month. The City offers at least one “affordable” health plan that is less expensive than the Safe Harbor limit, regardless of employees’ negotiated contributions. Most labor groups have several plans to choose from which are less expensive than the Safe Harbor limit. Some of the “affordable” health plans offered by the City include PERS Select, Anthem Select, Western Health Advantage and Kaiser where employee contributions range from \$0 to \$174 monthly, including for those employees with a shared contribution rate.

Under the Pay or Play provisions, medical plans are also required to provide “minimum essential coverage” and “minimum value.” A plan is considered to meet these standards if it covers at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan and provides substantial coverage of inpatient hospitalization services and physician services. With the passage of the ACA, CalPERS implemented changes to their health plans to comply with the ACA and all medical plans offered through CalPERS currently meet the “minimum value” standard under the ACA. All CalPERS plans offered by the City of Hayward are in the 80% to 90% minimum value range and thus far exceed the minimum value standard established by the ACA. The medical plans offered by the City currently satisfy the Pay or Play standards set forth under the ACA and the City remains in a good position to avoid associated employer shared responsibility payments which are essentially tax penalties for failure to comply with the ACA.

### IRS Employer Reporting

The ACA includes two reporting requirements: Minimum Essential Coverage (MEC) reporting, and Applicable Large Employer (ALE) reporting. MEC reporting applies to

healthcare providers and requires they report information about their coverage to covered individuals and to the IRS. The City's Medical Plan Administrator, CalPERS and its medical carriers are responsible for MEC reporting annually to the IRS. ALE reporting is the responsibility of the employer and requires the City to report to both employees and the IRS respectively. The City must provide a report to the IRS which identifies their full-time employees and reports on the coverage they are offered, ensuring affordability and minimum value. The City must also provide employees a statement that includes the same information provided to the IRS.

Due to the complexity associated with reporting, preparation and submission of ALE reports as well as the liability associated with incorrect reporting, the City contracts with ACAWorks, who has an established software program designed to facilitate ACA reporting. The City is currently in compliance with the ALE reporting requirements.

#### Cadillac Tax for High Value Plans

One of the more highly debated provisions of the ACA is the Cadillac Tax which has now been repealed; it was originally intended to be a 40% excise tax on high value medical plans in excess of the limits formerly established by the government for 2018 (\$10,200/individual and \$27,500/family). In December of 2015, an initial two-year delay of the Cadillac Tax was passed which postponed the tax then scheduled to go into effective in 2018. In January of 2018, another two-year delay on the Cadillac Tax was signed into law which made it effective in 2022. Finally, on December 20, 2019, Congress passed, and the President signed into law H.R. 1865, the "Further Consolidated Appropriations Act, 2020" which includes a complete and permanent repeal of the Cadillac Tax.

#### Potential Liability Under the ACA for Failure to Comply

Below outlines the City's potential liability under the ACA for failure to comply with the different elements of the law. There are distinct circumstances under which an employer may be responsible for employer shared responsibility payments (tax penalties) and information reporting fines. Table 2 shows the conditions under which the City would be liable under the ACA for failure to comply with its various requirements.

**Table 2 – City of Hayward Potential Liability Under ACA**

| HAYWARD WOULD BE SUBJECT TO PAYING PAYMENTS AND/OR PENALTIES IF...   | POTENTIAL PENALTIES IF NOT IN COMPLIANCE  |
|--|---|
| <b>Pay or Play</b> - The City does not offer coverage or offers coverage to less than 95% of its full-time employees (and their dependents), <b>AND</b> at least one of the full-time employees receives a premium tax credit to help pay for coverage through a Marketplace.  | Up to \$2,570/Employee Per Month (as adjusted, minus the first 30 FTE's) <sup>6</sup> |
| <b>Pay or Play</b> - The City offers coverage to at least 95% of its full-time employees (and their dependents), <b>BUT</b> at least one full-time employee receives a premium tax credit to help pay for coverage through a Marketplace, which may occur because the employer did not offer coverage to that particular employee or | Up to \$3,860/Per Employee Per Month (as adjusted) <sup>6</sup>                       |

| HAYWARD WOULD BE SUBJECT TO PAYING PAYMENTS AND/OR PENALTIES IF...  | POTENTIAL PENALTIES IF NOT IN COMPLIANCE  |
|---|---|
| because the coverage the employer offered that employee was either unaffordable or did not provide minimum value.   |   |
| <b>IRS Reporting Fines-</b> The City does not comply with IRS information reporting requirements and/or does not file correct information in a timely manner. | <ul style="list-style-type: none"> <li>• Failure to File w/ IRS or provide to EE \$100 - \$270/Per Employee Per Year (cannot exceed \$1,500,000-\$3,275,500 respectively)</li> <li>• Intentional Disregard - \$530/EE with no max.</li> </ul> |

<sup>6</sup> As adjusted for 2020

### Other Updates

In June of 2019, the Department of Treasury, Labor, and Health and Human Services released final rules which relaxed regulations associated with Health Reimbursement Arrangements (HRAs). This change now permits integration of HRAs with individual market health insurance and creates a new “excepted benefit” class of HRAs that fall outside of ACA regulations. The significance of this change is that it now permits employers, under certain circumstances, to pay for employees’ individual coverage through an HRA which was previously prohibited under the ACA. Preliminary review suggests that the most significant impacts of these changes are expected to benefit the small employer market rather than agencies the size and complexity of Hayward. Other considerations relate to the lack of appeal of such arrangements due to the requirement for employers to offer this type of arrangement consistently across the same class of employee and in lieu of traditional group health plans. Human Resources staff will continue to work closely with the City’s benefits broker, Alliant Insurance Services to research and understand the implications of these changes in order to determine if this provides additional plan design options for the City.

### **FISCAL IMPACT**

Exact fiscal impact of implementing all ACA requirements is approximate and assumes the City’s continued compliance with the “Pay or Play” and information reporting requirements. The City is in full compliance with the “Pay or Play” requirements and as such, will not be impacted by the “Pay or Play” tax penalties. The City is also in full compliance of the ACA’s information reporting requirements, avoiding associated fines in 2018 and 2019. The City’s ongoing administrative fees for contracting with ACAWorks in calendar year 2019 and beyond is budgeted at \$10,800 annually.

## **NEXT STEPS**

Staff will continue to work with the City's benefits broker and plan administrator to monitor legislation regarding the ACA.

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*Recommended by:* Maria A. Hurtado, Assistant City Manager/Interim Director of Human Resources

Approved by:

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Kelly McAdoo, City Manager