Controlled Groups and Health & Welfare Plans

The Below is INFORMATIONAL only and in simplified form. We cannot determine whether a controlled group exists. Employers should consult with legal counsel and/or accountants to determine controlled group status.

Why This Matters: Controlled group rules are used to determine whether two or more entities are considered a single employer as it pertains to various benefit-related laws. Count employees whether they are offered coverage or not.

How This May Affect Benefits

- **Cafeteria Plans:** A controlled group may have a single cafeteria plan covering employees of all entities under common control or each employer may sponsor a plan separately. The plan must satisfy nondiscrimination requirements (to satisfy the requirements, the plan will be viewed as one entity).
- **Nondiscrimination Testing:** Entities considered under common control are viewed as one entity.
- **ACA:** All employees of a controlled group of entities or affiliated service group are considered to determine if, when combined, are an Applicable Large Employer (ALE). If an ALE when combined, each entity is an ALE member and subject to the employer mandate. However, coverage may be offered on an entity-by-entity basis, meaning each ALE member is not required to offer the same coverage or coverage through the same carrier. Any applicable penalties will also apply on an entity-by-entity basis.
- **ERISA:** A health and welfare plan providing coverage to two or more entities within the same controlled group may be considered a single employer plan under ERISA. But, a plan providing coverage to employees of two or more employers not in the same controlled group would be considered a MEWA (Multiple Employer Welfare Arrangement). MEWAs are subject to heightened regulatory scrutiny and reporting requirements.
- **COBRA:** A group health plan is not subject to COBRA for a CY if all employers in the controlled group employed fewer than 20 employees on a typical business day during the preceding year.
- **FMLA:** FMLA generally applies to employers with 50+ employees. FMLA does not use controlled group rules to determine size. Typically, the legal entity which employs the employee is the employer under FMLA, so each corporation would be treated as a separate employer (unless there is joint employment or it's considered an integrated employer).
- **MHPAEA:** Employers with 50 or fewer employees may be exempt from MHPAEA. If in a controlled group or affiliated service group, all employees of the related employers must be counted when determining whether the exemption applies.
- **Medicare Secondary Payer:** Common control is defined differently for MSP to determine employer size, which determines who pays first. For MSP, 51% is the threshold to identify common ownership. A controlled group and an affiliated service group must count all employees in each member of the group to determine if MSP applies.

  Affiliated Service Group for MHPAEA and MSP: two or more organizations with a service relationship and/or ownership relationship, where all employees of the members of an affiliated service group are treated as if employed by one employer.
- **Carrier Requirements:** Generally, state insurance law and federal law dictates whether employers are rated small or large group. Many states use a definition of 50 or fewer employees and count based on controlled group rules. Some states may use an "up to 100 employee" threshold to identify small group. It is good to disclose the number of EINs to the carrier to determine group size. Work with carriers to identify market placement.

What is a Controlled Group in Simple Terms? (Remember never to make this decision for a group)

- A group of related businesses that have common ownership. IRS defines a controlled group as:
  - combination of two or more corporations under common control.
  - group of trades or businesses such as partnerships and proprietorships.

Three Types of Relationships

Note: This is not exhaustive and must not be used to determine whether a controlled group relationship exists. Employers should work with counsel/accountants to make that determination.

1. **Parent-Subsidiary:** one or more corporations are connected through stock ownership with a common parent corporation, AND
   b. at least 80% of the stock of each corporation is owned by one or more corporations in the group; AND
   c. the parent corporation must own at least 80% of at least one of the other corporations.
2. **Brother-Sister:** two or more corporations where five or fewer common owners own directly or indirectly a controlling interest of each and have effective control.
   - **Controlling interest** generally means at least 80% or more of the stock of each corporation.
   - **Effective control** generally means more than 50% of the stock of each corporation only if stock ownership is identical.
3. **Combination of the Two**
   Sometimes a person is treated as owning an interest in a business that is not actually owned by that person (attribution).