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LIVE

ACA - Healthcare Reform Update

What's new for 2014 and what you need to do in order to comply.



Presented by:

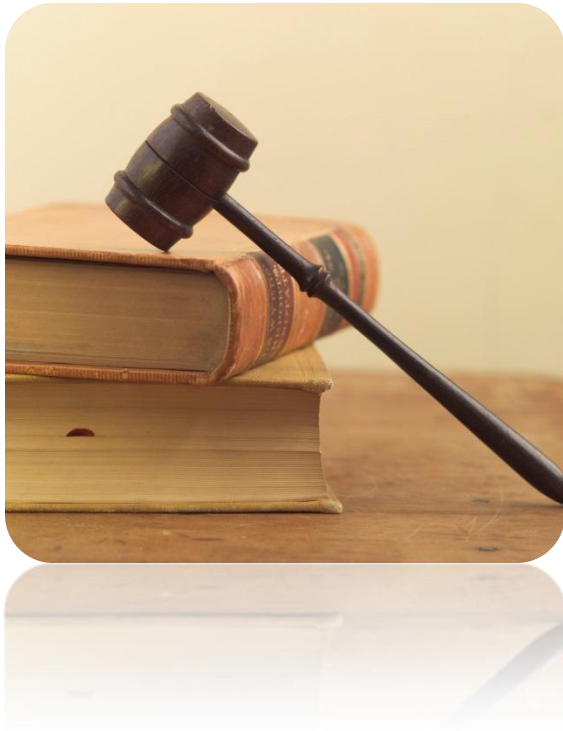
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Agenda

- Review of IRS Final Regs for Large Employer Mandate
- Waiting Period Rules
- Reporting Requirements
- Planning Ahead- Employer Readiness
- Still to Come



IRS Final Regs for Large Employer Mandate

Highlights of Changes in Final Regs

- Employers with 50-99 employees don't have to comply until 2016 – but certification requirements!
- Employers with 100 or more employees still have to comply in 2015 – but some changes
- Numerous Transition Rules will apply in 2014 & 2015
- Clarification on how various employee categories and hours are treated: volunteers, schools, lay-overs, on-call
- “Seasonal employee” – employment position with customary annual employment 6 months or less
- Temporary staffing agency employees – new rule
- Feb. 10, 2014 Final Regs, IRS Q&As, Treasury Fact Sheet

The Large Employer Mandate

“Large employers” - offer coverage to FT EEs

- Face potential penalties if they don't offer “minimum essential coverage” (MEC) to substantially all of their full-time employees

Potential penalties

- If employer offers MEC but it is either not “affordable” or doesn't provide “minimum value”

Two types of penalties

- “Non-offering” employer: \$2,000 x FT EEs minus 30
- Not Affordable or not MV: \$3,000 for each affected EE
- No penalties unless at least one FT EE gets a subsidy

3 New Transition Rules for 2015

1 year delay for employers with 50-99 employees

- Must meet criteria and must file written certification
- Applies for entire plan year beginning in 2015, if no change to plan year after Feb 9, 2014

Large employer can offer to only 70% (not 95%) of full-time employees

4980H(a) Penalty calculation is based on number of FT EEs minus 80 (not 30)

1-Year Delay for Small Employers

- Employer MUST CERTIFY (form not yet issued):
- Limited Workforce Size: Employed on average 50-99 FT EEs (including FTEs) in 2014
- No reduction in workforce or overall hours between Feb. 9, 2014 – Dec. 31, 2014
 - » OK if reduction is due to “bona fide business reasons”
- Maintenance of previously offered health coverage: Continue and not materially reduce (through Dec. 31, 2015) health coverage offered on Feb. 9, 2014.
 - » ER contribution is at least 95% of dollar amount for EE-only coverage, or at least same percentage
 - » If change of benefits, must provide at least minimum value
 - » Not reduce or narrow class of EEs (& dependents) eligible for coverage

Who is a Small Employer?

Same method as before

- Count FT EEs and FTEs in 2013 to determine ER size in 2014
- Can use 6 or 12 months for 2014

Methodology for 2014

- Count FT EEs in each month - count seasonal EEs if worked at least 130 hours
- Count PT EEs separately, sum total hours & divide by 120. Count any fractions
- Add total of above. Do the same for each of 6 or 12 months
- Add the monthly totals for 6 or 12 months, divide by 6 or 12 to get average
- Ignore any fraction: E.g., 49.8 = 49

Seasonal Employees exception

- If ER has at least 50 EEs or FTEs for 120 days (4 months) or fewer, and
- During that 120 days (or 4 months) or fewer, EEs > 50 were seasonal EEs
- Deduct those seasonal EEs from the total count, so ER will NOT be a large ER

70% “Offer of Coverage” Threshold

Employer not subject to “play-or-pay” penalties

- Applies for 2015 only
- Employer can select categories of employees to exclude

Applies for all months on plan year beginning in 2015

- If employer does not change plan year after February 9, 2014

Does NOT apply for 4980H(b) penalty!!

- Employer who does not offer coverage to 30% of FT EEs could still owe \$250/month for any FT EE who buys coverage on the Exchange and gets a subsidy

80-Employee Offset in Penalty Calculation

4980H(a) penalty

- Penalty = \$167/mo x (# of FT EEs – 80)

Applies for all months of plan year beginning in 2015

- If employer does not change plan year after February 9, 2014

Reason for change

- For 2015 “Large” employer is 100 FT EEs rather than 50

Other Change in 2015: Affordability Safe Harbors

Can use rate-of-pay S/H even if ER reduces hourly pay rate

- Apply separately for each month, but
- Cannot increase monthly maximum if EE's rate of pay increases

Federal Poverty Line Safe Harbor

- Use rate in effect 6 months prior to start of plan year.

W-2 Safe Harbor

- Still use Box 1 wages, which do not include employee pre-tax 125 or 401(k) contributions

Extension of Old Transition Rules

2014 TRANSITION RELIEF NOW APPLIES IN 2015

- **Determining employer size:** can use any 6 consecutive month period in 2014 to determine if large employer in 2015
- **Shorter Measurement Period:** can use 6-month Measurement Period in 2014 & 12-month Stability Period in 2015
- **Non-calendar year plans:** Effective date of Employer Mandate is now 1st day of 2015 plan year, if certain criteria are met, not January 1, 2015.
- **Dependent coverage:** Plans that do not currently offer dependent coverage but are working on it are OK for 2015.
- **Multiemployer plans.**

Employer Size & 6-Month MP

Employer Size

- Can use any consecutive 6-month period in 2014 to determine average number of FT EEs
- But “seasonal worker” exception applies on 12-month basis

VH Employees - 6-month Measurement Period & 12-month Stability Period

- MP must begin no later than July 1, 2014
- MP must be at least 6 consecutive months
- MP must end within 90 days of the 1st day of the 2015 plan year

Transition Rule for Non-Calendar Year Plans (“significant percentage” rule)

- Effective date of Employer Mandate is now 1st day of 2015 plan year, if certain criteria are met, not January 1, 2015.
 - » ER had a non-calendar year plan as of 12/27/12 and has not modified the plan year since, and
 - » ER offered coverage to at least **1/3**, or actually covered at least **1/4**, of **all** employees for PY ending before 2/9/14, or
 - » ER offered coverage to at least **1/2**, or actually covered at least **1/3**, of all **full-time** EEs for PY ending before 2/9/14.
- ERs who do NOT meet the 1st bullet + either the 2nd or 3rd must comply JAN 1, 2015 to avoid penalty, NOT 1st day of 2015 plan year.

How to Determine FT EE Status

Look-back or Monthly Measurement Period

- Variable hour employees
- Seasonal employees
- Part-time employees

Monthly Measurement Period

- For all other employees

Look-back method

- MP 3-12 months, Admin Period, Stability Period

Issue: Is New-Hire FT or VH?

How do you know, at date of hire, whether to treat a new employee as Full time and start the waiting period, or track hours during the initial and standard measurement periods?

- Variable hour employees
- Seasonal employees
- Short-term employees
- High-turnover positions

Factors: Is New EE a VH EE?

Facts & circumstances at EE's start date

Is EE replacing a FT or PT employee?

Have ongoing EEs in comparable positions worked FT, PT or VHs in recent measurement periods?

Was job advertised as averaging more or less than 30 hours/week?

No single factor is determinative

Seasonal Employees

Customary annual employment is 6 months or less

- Proposed regs allowed employers to use any good-faith definition

If seasonal:

- Treat as variable hour EEs & track hours over the measurement period

If NOT Seasonal:

- (because work 9 months): must use monthly measurement method, so employee likely to be FT and must be offered coverage within 90 days

Note:

- Ski instructor who usually works 6 months, but one year works 7 months due to long snow season, is still a seasonal employee

Short-term & High-Turnover Positions

Short-term:

- Expected to average > 30 hours/week but for < 12 months, & not seasonal

High-turnover:

- Significant % of employees expected to terminate in a short time

No special rules

- Because IRS is concerned about potential for abuse
- Must use Monthly method, not Look-back method, unless hours vary > 30

IRS Notes:

- ER can have 3-month waiting period, & can use look-back method if VH EE

Some Workers are NOT Employees

Volunteers: are NOT full-time EEs.

- E.g., firefighters, first responders,
- Must be bona fide volunteers at govt. or tax exempt organization
- May be bona fide even if get expense reimbursement, benefits, or nominal pay

Real Estate Agents and Direct Sellers

Home Care Workers

- Can treat home care worker as EE of service recipient, which is likely a small employer – so home care staffing agency is not the employer

Counting Hours for Specific Categories of Employees

Adjunct Faculty Members - “Reasonable method” – such as:

- Credit 2 ¼ hours for each hour of teaching or classroom time,
- + 1 hour for each hour outside the classroom (e.g., office hours or faculty meetings)

School employees – are full-time even if no hours during school breaks

- EEs ARE full-time EEs even if they don't work full-time all year because out during school break periods (e.g., summer)
- Cannot require EEs to work minimal hours to reduce average hours to part-time

Counting Hours for Specific Categories of Employees

On-call EEs: “Reasonable method” – but must pay for any hour:

- For which EE is paid or due payment by the ER
- For which EE is required to remain on-call on ER’s premises
- For which EE’s activities on call are subject to substantial restrictions

Layovers (e.g., airlines): “Reasonable method”

- Credit all hours for which EE is paid or that count to earn regular compensation
- “Reasonable method” such as 8 hours/day (16 hours for 2 days + overnight stay)

Independent Contractors:

- No special rules or safe-harbor relief – determine status based on “common law”
- No “section 530 relief” as for employment taxes

Hours of Service & Breaks in Service

- Overall structure remains the same as in proposed regs
- Final regs. change 26 weeks to 13 weeks, but not for Educational Organizations
- Rule of Parity becomes 4-13 weeks rather than 4-26 weeks

Example: employer can have a standard rule that if employee is gone for 13 weeks, he will be treated as a new hire upon return.

Parity Example: Less than 4 weeks = continuing employment

More than 4 weeks, but less than 13 weeks= depends on whether period of time gone is longer or shorter than prior period worked.

- EXCEPTION: “Special Leave” – Military, Jury Duty, FMLA

Temporary Staffing Agencies

Issue #1: Who is the common law employer?

- Contract between Staffing Agency & Client Employer can include elements that would indicate which employer is the “common law” employer, but IRS or DOL could later say otherwise

Issue #2: Which temporary employees are Variable Hour or Full-Time?

- Final Rule lists FACTORS Staffing Agency can consider for NEW employees

Issue #3: How to provide health benefits to temporary employees?

- Final Rule includes a special rule

Why It Matters WHO is the Employer

The common law employer must:

- Determine if new EE is full-time or Variable Hour Employee,
- If FT EE: Offer coverage at end of waiting period
- If VH EE: Track hours in Measurement Period, offer coverage to FT EEs in SP
- Subject to potential 4980H penalties

Special Rule: Temporary Staffing Agencies Can Offer Benefits

Staffing Agency can offer health coverage to Temp Employee on Behalf of Client Employer

- If Temp Agency is NOT the common law employer, and
- Temp Agency offers EE coverage in Temp Agency plan, on behalf of the client Employer ,
- It's treated as coverage offered by the Client Employer (for pay-or-play purposes) only if:
 - Client Employer pays a higher fee to the Temp Agency for an EE enrolled in health coverage than for the same EE if the EE did NOT enroll



Waiting Period Rules

Waiting Periods

- **Once an employee is in a benefits-eligible position, plan can impose a waiting period before benefits actually begin**
 - » Maximum 90 days if WP is solely based on time
 - » Or other eligibility criteria not based on time
- **Applies to grandfathered & non-grandfathered, insured & self-funded plans**
 - » Effective Date: 2014 for proposed regs; 2015 for final regs and new proposed regs
- **OK to have a 1-month orientation period before the waiting period begins**

Final Waiting Period Regs

Max 90 day WP – count weekends and holidays – offer earlier if necessary

OK if EE doesn't *elect* until after 90 days, but must be *offered*

Special or late enrollee – could be > 90 days since eligibility date

ER can require up to 1200 hours worked instead of elapsed time

WP begins once an EE is eligible – ER defines eligibility

Eligibility other than Elapsed Time

In an eligible job classification

Have a job-related license

Meet specified sales goals

Earn specified level of commission

Successfully complete orientation period

Orientation Period Allowed

Maximum length = 1 month

- First day employee is in an eligible position + one calendar month – one calendar day

Bona fide = not designed to avoid compliance with 90 limit

- Probably NOT ok to have a 6-wk training program
- Waiting Period must begin on first day after orientation period

What happens during an orientation period?

- ER & EE evaluate whether they like the employment situation
- ER can begin (& end) standard training and orientation processes

California WP & ACA Orientation Period

- CA AB 1083 – maximum 60-day waiting period
- Applies to insured plans & HMOs covering employees who reside in California – even if employer is out of state!
- Can California employer start California 60-day WP after 1-month Orientation Period?
- AB 1083: Plan may apply a WP of “up to 60 days as a condition of employment if applied equally to all eligible EEs and dependents and if consistent with PPACA...”
 - » Arguably, employees are not eligible until have completed 1-month orientation period

Final Regs – 2 New Provisions

- **Reasonable & bona fide employment-related orientation period**
 - » Proposed Regs clarify what is allowable orientation period
- **EEs who are terminated & rehired can be treated as new EEs & subject to new WP**
 - » Same applies for EEs who transfer from benefit-eligible to non-eligible position & back to eligible
 - » **What this means:** EE who is treated as a new EE must meet a new waiting period before becoming eligible for coverage



IRS Reporting Requirements

IRC 6056 Reporting in 2015

- Large ER reporting, for 2015, due in 2016
- ERs with 50-99 EEs, & those subject to transition rule for non-calendar year plans, are subject to reporting requirements for 2015.
- IRS Return- Annual filing with details for each calendar month
- Simplified alternative reporting-with “qualifying offer” for all 12 months
- Annual Statement to employees
- Due Date- last day of Feb of the year following reporting year or Mar 31st if report filed electronically
- Single, combined form with two parts
- Simplified option for employer reporting

Large Employer Reporting Requirements

Information Required in Annual Filings	Employer Filing (6056)	MEC * Provider (6055)
The large employer's name and EIN (6055 filing also must include employer's address, but presumably the 6056 filing also would)	X	X
The date of the filing	X	X
Whether the large employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan,	X	
The duration of any waiting period for such coverage	X	
The months during the prior calendar year when coverage was available	X	
The monthly premium for the lowest cost option in each enrollment category under the plan	X	
The employer's share of the total allowed costs of benefits	X	
Portion of the premium paid by the employer		X
The number of full-time employees for each month of the prior calendar year	X	
Each full-time employee's name, address, SSN, and the months (if any) during which the full-time employee (or any dependents) were covered under the employer plan	X	X
Whether the coverage offered is a QHP offered through an Exchange		X
If the coverage is a QHP offered through an Exchange, the amount of any advance payment of the premium tax credit or cost-sharing reduction		X
Any other information required by the IRS	X	X



Planning Ahead Employer Readiness

What Employers need to know now!

- Are you a large or small employer in 2015?
- Is your plan grandfathered or not?
- Which ACA requirements apply based on your size, insured or self insured status and grandfather status?
- What is the Value of the plan you currently offer?
cciio.cms.gov/resources/files/av-calculator-2-25-13.xlsm
cciio.cms.gov/resources/files/mv-calculator-final-2-20-2013.xlsm
- Is your plan affordable to your employees?
- Will ACA change your contribution strategy?
- Will some of your employees be eligible for Medicaid?
- Large employers- what information will you have to report to IRS for 2015?
 - » Where will you get the information?

Employer Readiness

Employee Eligibility and Impact

- Clarify which employees are PT, FT and VH
- Communicate new eligibility rules to employees, i.e. Wrap Doc, Employee Handbook, New Hire Materials, etc.
- Test systems for readiness to track hours of service and breaks in service for VH employees
- Determine who will be eligible for benefits in 2015
- Financial Impact Analysis- plan options and rates, affordable contribution strategy, management carve outs, anticipated participation in plan

Employer Readiness

ERISA & non-discrimination

- Is there an ERISA Compliant Plan Document?
Who wrote it? is it a wrap doc? file name and location
- Review Plan Document for compliance with ACA
- Date of most recent SPD (Summary Plan Description)
- Date distributed to participants and distribution method
- Date of most recent SMM (Summary of Material Modifications) distributed.
- Administrator files form 5500 (Annual Report) when required
- Wellness Program provides correct disclosures
- Non discrimination testing of:
Cafeteria Plan, Health FSA, Dependent Care FSA, Self Insured Medical Plan

Employer Readiness

DOL Audits of HCR Compliance

- HIPAA Portability, COBRA, ACA
- Age 26 coverage
- Prohibition on rescissions
- Lifetime and annual dollar limits on EHBs
- Grandfathered plan status
- Choice of provider notice
- Claims and external review documents
- DOL Self-compliance tool
- HIPAA Portability, ACA, COBRA
- SPDs, notices, contracts with carriers and TPAs
- Have documentation readily available

Employer Readiness

Employee Disclosures and Notices

ACA Notices

- Notice of Health Care Exchanges - within 14 days after hire (& Oct 1, 2013)
- Notice IF claiming Grandfather Status
- Summary of Benefits and Coverage (SBC) for all plans available
- W-2 Reporting of Health Coverage Cost for large employers

Non-ACA Notices

- COBRA Notice – at enrollment – new Model notice includes Exchange information
- HIPAA Privacy Notice – new Model notices on DOL website
- Notice of special enrollment rights
- Women's Health and Cancer Rights Act Notice
- Newborns' and Mothers' Health Protection Act Notice
- Medicare Part D Notice

Employer Readiness

Non ACA Compliance Issues

- Same-Sex Spouse Benefits- no imputed income for 2013 W-2
Review plan's definition of "spouse" and amend if needed
- Stand-Alone HRAs and PRAs no longer allowed
Understand new rules, amend plan if necessary, communicate new rules to participants
- Cafeteria Plan Changes- "Use it or Lose it" Rule change, Mid Year Enrollment
Understand new rules, amend plan if necessary, communicate new rules to participant
- Wellness Program Incentive Changes
- HIPAA Compliance- Sept 23, 2013
Update HIPAA privacy and security policies and procedures and privacy notice
- Mental Health Parity Final Regulation- PY July 1 2014 and after
Confirm Compliance with carrier/behavioral vendor

Employer Readiness HR and/or Technology

- Tracking Eligibility
- Variable Hour measurement and stability periods
- Variable Hour – Hours of Service, Breaks in Service
- IRS Reporting- Disputing IRS Penalties
- Benefits Administration Systems- Decision Support and Electronic Enrollment
- Systems Integration- HRIS, Payroll, Timekeeping, Eligibility, Enrollment, Terminations, COBRA, etc.
- HR Education, Preparation and ongoing Compliance
- Communications Campaign-online, written materials, call center, language assistance
- Outsourcing, Private Exchanges and other options

Important Preparation

ACA Audit

- » Fully audit your plans and policies for compliance with ACA rules
- » Note any required changes with regards to plans, time tracking, waiting periods, eligibility, contributions, etc.
- » Compliance report

Technology Audit

- » Are your systems ready to track reporting data, hours worked (FMLA, Jury Duty, Military), eligibility, enrollment, communications, disclosures, etc.
- » Assessment and Recommendations report

Assess HR

- » The roles and responsibilities of your HR and Benefits administration teams will be impacted by compliance requirements. Do you need to hire additional help? Does your HR department need support or training in preparation?
- » Prepared for ongoing compliance?

Still to Come

Non Discrimination Testing of health benefits

- Applies to non-grandfathered small and large group health plans
- Implementation delayed until regulations issued (insured plans)
- Employers not allowed to discriminate in favor of HCl's with regards eligibility and benefits

Cadillac Plan Tax

- Effective Jan 1, 2018 a 40% excise tax will apply to high cost employer sponsored health coverage.

Auto Enrollment

- Employers who offer health coverage and more than 200 full time employees
- Required to automatically enroll eligible employees in group health plan and give sufficient time to opt out.
- Implementation delayed until regs issued

Government Sites on ACA

- **Department of Labor PPACA Resource Page** (links to FAQs, regulations, and guidance): <http://www.dol.gov/ebsa/healthreform/>
- **The Center for Consumer Information and Insurance Oversight** (within CMS): <http://cciio.cms.gov/>
- **IRS: Affordable Care Act Tax Provisions:**
<http://www.irs.gov/newsroom/article/0,,id=220809,00.html?portlet=6>
- **Consumer Information on PPACA:** www.healthcare.gov
- **California Exchange:** www.healthexchange.ca.gov:
www.coveredca.com

Resources on ACA

- **Employer Mandate- Final Rule 227 Pages**
<https://s3.amazonaws.com/public-inspection.federalregister.gov/2014-03082.pdf>
- **Employer Mandate- IRS Fact Sheet 3 Pages**
<http://www.treasury.gov/press-center/press-releases/Documents/Fact%20Sheet%20021014.pdf>
- **Employer Mandate-IRS Q&S's 15 pages**
<http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>
- **Waiting Period Final Rule**
<http://www.dol.gov/opa/media/press/ebsa/20140220-redfeg1.pdf>
- **IRS Employer Reporting Requirements**
<https://s3.amazonaws.com/public-inspection.federalregister.gov/2014-05050.pdf>

Questions?

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