



ACA UPDATES & REPORTING REQUIREMENTS

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- ❑ Recent Events
- ❑ Recent Regulations
- ❑ Measurement & Stability Periods
- ❑ Penalties
- ❑ Guidance on Minimum Value
- ❑ Reporting
- ❑ Some Traps for the Unwary





LEGAL CHALLENGE

- ❖ SCOTUS Decided *King v. Burwell*
- ❖ Issue: Does ACA Provide Subsidies in FFEs?
- ❖ Majority of States Have FFEs
- ❖ Statutory Language v. Interpretation
- ❖ IRS Regulations Allow Subsidies in all Exchanges





RECENT REGULATIONS

- ❖ 2016 MOOP Amounts
 - \$6,850/Individual
 - \$13,700/Family
- ❖ Individual MOOP Must Apply to Each Person



WHO IS A LARGE EMPLOYER?

- ❖ Definition of Large Employer (Reporting & Penalties)
 - Average of at Least 50 Full-Time Employees
 - During Preceding Calendar Year
 - Calculation Includes Pro-Rata Calculation of PT
 - Exemption for Seasonal Employees (120 Days)
 - Control Group Rules Apply



WHO IS A LARGE EMPLOYER?

All Employees (Including Seasonal Workers) Who Were Not Employed on an Average of at Least 30 Hours of Service per Week for a Calendar Month in the Preceding Calendar Year are Included in Calculating the Number of Full-time Equivalents for That Calendar Month. The Approach for Converting Part-time Employees to Full-Time Equivalents Includes Two Steps:

- 1) Calculate the Aggregate Hours of Service in a Month for Employees Who Are Not Full-time Employees for That Month (Do Not Include More Than 120 Hours of Service for Any Employee)
- 2) Divide the Total Hours of Service From Step 1 by 120

The Result is the Number of Full-Time Equivalent Employees for the Month.



WHO IS A LARGE EMPLOYER?

- 1) Calculate the Number of Full-Time Employees (Including Seasonal Workers) for Each Calendar Month in the Preceding Calendar Year
- 2) Calculate the Number of Full-Time Equivalents (Including Seasonal Workers) for Each Calendar Month in the Preceding Calendar Year
- 3) Add the Number of Full-Time Employees and Full-Time Equivalents Obtained in Steps 1 and 2 for Each Month of the Preceding Calendar Year
- 4) Add Up the 12 Monthly Numbers From Step 3 and Divide the Total by 12. This is the Average Number of Full-time Employees for the Preceding Calendar Year
- 5) If the Number Obtained in Step 4 is Less than 50, Then the Employer is Not an ALE for the Current Calendar Year. If the Number Obtained in Step 4 is 50 or Greater and the Employer Included Seasonal Workers in Step 1 and/or Step 2, the Employer May Then Apply a Special Rule for Seasonal Workers



WHO IS A LARGE EMPLOYER?

An Employer With 50 or More Full-Time Employees Can Avoid ALE Status if:

- ❖ the Employer's Workforce Exceeds 50 Full-Time Employees for 120 Days or Fewer During the Calendar Year; and
- ❖ the Employees in Excess of 50 Employed During the 120-Day Period Were Seasonal Workers

This Rule Makes it Possible to Avoid ALE Status Where the Employer's Non-Seasonal Workforce (Including Full-Time Equivalents for Part-Time Employees) is 50 or Fewer Employees.



WHO IS AN EMPLOYEE?

- ❖ Regulations Require a “Common Law” Approach
 - For Many Employers, This is Not an Issue
 - Issue for Employers Who Employ “Independent Contractors,” “Freelancers,” “1099 Employees”, etc.
 - Agencies Will Not Respect Employer Classifications
 - Will Apply Common Law Test -- e.g., IRS 20 Factor Test
 - Employers Who Fail Can be Assessed Penalties



WHO IS AN EMPLOYEE?

- 1) Employees Are Common Law Employees of Staffing Company
 - Staffing Company Should Offer Affordable Coverage
 - Contract Should Require Offer of Affordable Coverage
- 2) Employees Are Common Law Employees of Employer (or it is Unclear)
 - Regulatory Safe Harbor: (i) Contract Requires Staffing Company to Provide Affordable Coverage and (ii) Employer Charged Extra for Those Who Elect Coverage



FULL-TIME EMPLOYEE

- ❖ Defined as Someone 30 Hours of Service/Week or More
- ❖ Easy Determination for Employees Working a Regular Schedule
- ❖ Not Easy for
 - Variable-Hour
 - Part-Time
 - Seasonal





WHO IS SEASONAL?

- ❖ 120 Days to Determine Large Employer Status
- ❖ 6 Months to Determine Employee's Status



FULL-TIME EMPLOYEE

- ❖ Monthly Method
- ❖ Lookback Method
 - Measurement
 - Administrative
 - Stability





FULL-TIME EMPLOYEE

❖ Measurement Period

- At Least 3 Months
- No More Than 12 Months

❖ Administrative Period

- No More Than 90 Days

❖ Stability Period

- At Least 6 Months
- No Less Than Measurement Period



FULL-TIME EMPLOYEE

- ❖ Separate Period for New Hires
- ❖ Sum of Measurement and Administrative Periods for New Hires Cannot Postpone Coverage Until Later Than the 1st of the Month Following 13 Months of Employment



FULL-TIME EMPLOYEE

- ❖ Hours Paid, Not Worked
- ❖ If You Can't Count Hours
 - 1 Day = 8 Hours
 - 1 Week = 40 Hours
 - Provided it Does Not Understate
 - Can Use Different Methods for Different Groups



FULL-TIME EMPLOYEE

❖ Easiest Approach for Calendar Year Plans

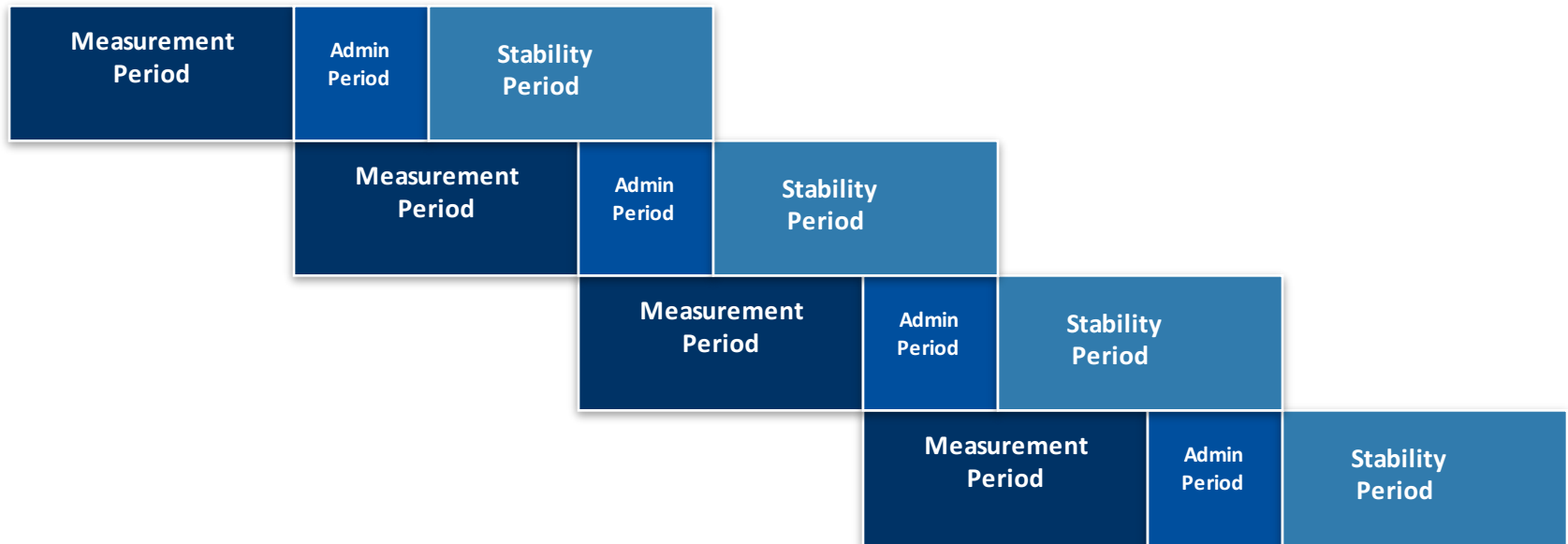
- Measurement Period: November 1 - October 31
 - October 15 – October 14 if OE is Early
- Administrative Period: November 1 - December 31
- Stability Period: January 1 - December 31



LOOK-BACK METHOD OVER FOUR YEARS

Employer With a Calendar-Year Plan Selects a 12-Month Measurement Period:

- ❖ Standard Measurement Period: November 1st Through the Following October 31st
- ❖ Administrative Period: November 1st Through December 31st of Same Year
- ❖ Stability Period: January 1st Through December 31st of the Next Year





FULL-TIME EMPLOYEE

- ❖ Latest Guidance
- ❖ All Employers Need to Establish Measurement, Administrative & Stability Periods
- ❖ If an Employee is FT, Based on Measurement Period, the Employee Must be Offered Coverage Throughout the Stability Period, Even if the Employee Goes on Leave



INDIVIDUAL PENALTIES

- ❖ Individual Fails to Purchase Coverage
 - 2014
 - \$95 or 1% of Income, Whichever is Greater
 - 2015
 - \$325 or 2% of Income, Whichever is Greater
 - 2016
 - \$695 or 2.5% of Income, Whichever is Greater



2015 EMPLOYER PENALTIES

- ❖ Employers 100+ Employees
- ❖ If Employer Fails to Offer MEC to 70%
 - If 1 or More FT Employees Receives Subsidy
 - $\$2,080 \times (\# \text{ FT Employees} - 80)$
- ❖ Offers MEC, But Employee Receives Subsidy
 - \$3,120 Per FT Employee With Subsidy, or Amount From Above, if Less



2016 EMPLOYER PENALTIES

- ❖ Employers **50+** Employees
- ❖ If Employer Fails to Offer MEC to **95%**
 - If 1 or More FT Employees Receives Subsidy
 - \$2,080 (+ Inflation) x (# FT Employees – **30**)
- ❖ Offers MEC, But Employee Receives Subsidy
 - \$3,120 (+ Inflation) Per FT Employee With Subsidy, or Amount From Above, if Less



EXAMPLE # 1

- ❖ Employer With 100 FT Employees & 7 IC's
- ❖ Offers Affordable Insurance to 100 FT Employees
- ❖ IRS Audits for 3 years and Deems 7 IC's Are Common Law Employees
- ❖ Penalty (Assumes at Least One FT IC Receives Subsidized Coverage):
Over \$480,480 for 3 Years of ACA Penalty
($107 - 30 \times \$2,080 \times 3 = \$480,480 + \text{Inflation}$)



EXAMPLE # 2

- ❖ Employer With 100 FT Employees & 5 IC's
- ❖ No "A" Penalty Because Employer Offers Coverage to Greater Than 95%
($105 \times 95\% = 100$)
- ❖ If All 5 IC's Obtain Subsidized Coverage, the Penalty is: Over \$140,400
($5 \times \$3,120 = \$15,600 \times 3 = \$46,800 + \text{Inflation}$)



TRANSITION RULES: CERTIFY ON FORM 1094-C

- ❖ 50-99 Employees – 1-Year Delay in Employer Mandate – Employer Must Certify:
 - 50-99 Employees
 - Did Not Reduce Workforce Size From 2/9/2014-12/31/2014 to Qualify
 - Did Not Eliminate or Materially Reduce Health Coverage, From 2/9/2014-12/31/2015



TRANSITION RULES: CERTIFY ON FORM 1094-C

- ❖ Non-Calendar Year Plan – Delay to 1st Day of 2015 Plan Year – Employer Must Certify:
 - Non-Calendar Year Plan as of 12/27/2012
 - Offered Coverage by 1st Day of 2015 Plan Year
 - Offered Coverage to a “Significant Percentage” of Employees On or Before 2/9/2014



TRANSITION RULES

- ❖ Significant Percentage Calculation Based on Any Day During 12 Months Ending 2/9/2014
- ❖ All Employees
 - Covered At Least 25%
 - Offered Coverage to at Least 33%
- ❖ Full-Time Employees
 - Covered at Least 33%
 - Offered Coverage to at Least 50%



EMPLOYER PENALTIES

- ❖ To Avoid Penalties Employer Must
 - Offer Affordable Coverage
 - That Meets a Minimum Value Test
 - To All Full-Time Employees





AFFORDABILITY

- ❖ Affordable Coverage Means Employee Must Pay No More Than 9.5% of Household Income for Self-Only Coverage
- ❖ Safe Harbors Based on
 - W-2
 - Rate of Pay
 - FPL



AFFORDABILITY

- ❖ W-2 Safe Harbor
 - Must Count Full Month
- ❖ Rate of pay Safe Harbor
 - Can Only Assume 30 Hours/Week



AFFORDABILITY

- ❖ Current Federal Poverty Level for 1 Person:
\$11,670
- ❖ $\$11,670/12 = \972.50
- ❖ $\$972.50 * .095 = \92.39 (Maximum Monthly Contribution for Employee-Only Coverage, Using FPL Safe Harbor)



AFFORDABILITY

- ❖ Current CA Minimum Wage: \$9/Hour
- ❖ $\$9 \times 30 = \270
- ❖ $\$270 \times 52 = \$14,040$
- ❖ $\$14,040 / 12 = \$1,170$
- ❖ $\$1,170 \times .095 = \111.15 (Maximum Monthly Contribution for Employee-Only Coverage, Using Rate of Pay Safe Harbor, at Minimum Wage)



AFFORDABILITY

- ❖ Out-Out Credits (Waivers) Counted as Employee Contributions
- ❖ Wellness Programs: Employers May Treat All Employees as Non-Smokers for “Affordability” Purposes



MINIMUM ESSENTIAL COVERAGE

- ❖ Any Employer-Sponsored Group Health Plan, Except for Excepted Benefits



EXCEPTED BENEFITS

❖ Stand-Alone

- Dental
- Vision

❖ Health FSA

- If Offered in Conjunction With Another Health Plan
- Employer Contributions Do Not Exceed
 - Twice the Salary Reduction
 - \$500



MINIMUM VALUE

- ❖ Minimum Value Means Average Reimbursement Considering Deductible, Coinsurance, Out-of-Pocket Maximum, Covered Expenses, etc. is at Least 60%
- ❖ A Minimum Value Calculator Was Published Online
- ❖ Must Include Substantial Hospital & Physician Care Benefits



SUBSIDIES

- ❖ Employees Will Only be Eligible for a Subsidy if:
 - Not Covered Under an Employer Plan
 - Household Income >133% of FPL
 - Household Income <400% of FPL
 - 2nd Lowest Cost Silver Plan in Exchange Costs More Than 8% of Household Income



SUBSIDIES

- ❖ Employees Offered Employer Coverage Will Only be Eligible for a Subsidy if:
 - The Coverage Does Not Meet the Minimum Value Test, or
 - The Coverage is Unaffordable



PREPARING FOR ACA REPORTING



What Next?



PREPARE FOR REPORTING REQUIREMENTS

- ❖ Code Section 6055 – Insurers and Self-Insured Plans
- ❖ Code Section 6056 – Applicable Large Employer
- ❖ Reporting Includes Employers With 50-99 FTEs Who Are Exempt From the Pay-or-Play Mandate in 2015
- ❖ Must Certify on Their Code § 6056 Reporting Filed in 2016 That They Qualify for the Transition Relief in the Pay-or-Play Regulations



IRS SECTION 6056 INFORMATION REPORTING

- ❖ Due to Employees in January of 2016, Based on 2015 Data
- ❖ Due to IRS in 1st Quarter of 2016
- ❖ Why Information Reporting is Required
- ❖ Self-Funded Employers Must Report on All Covered Employees, Not Just FT Employees
- ❖ Payroll Vendors/Software Should Populate IRS Forms, as for W-2s Now



NEW FORMS

- ❖ 1095-B – From Insurer or Self-Funded Plan to Enrollee
- ❖ 1094-B – Transmittal Form From Insurers & Self-Funded Plans to IRS
- ❖ 1095-C – From ALE to Enrolled Employees
- ❖ 1094-C – Transmittal Form From ALE to IRS
- ❖ 1095-A – From Exchange to Enrollee
- ❖ 8962 – Individuals Who Receive a Subsidy File With 1040
- ❖ 8965 – Individuals Who Claim an Exemption From Individual Mandate File With 1040



EMPLOYER ACA REPORTING

- ❖ General Reporting Method
- ❖ Full Reporting for All Full-Time Employees
- ❖ Reporting on a Month-by-Month Basis
- ❖ Lowest Cost Monthly Premium for Self-Only
- ❖ To Whom Was Coverage Offered (Employee, Spouse, Dependents?)
- ❖ Did the Coverage Provide Minimum Value?
- ❖ Indicator Codes Will be Used



EMPLOYER ACA REPORTING

Each Return Must Show:

- 1) Employer Name, Address and Tax ID
- 2) Name and Phone Number of Employer's Contact Person
- 3) Calendar Year for Which the Information is Reported
- 4) Whether Employer Provided MEC to Full-Time EEs and Their Dependents
- 5) Months Minimum Essential Coverage Was Available
- 6) Each FT EE's Monthly Cost for EE-Only, Minimum Value Plan
- 7) # of FT EEs for Each Month
- 8) Name, Address and Tax ID of Each FT EE During the Year and the Months EE Was Covered



WHO IS A SMALL EMPLOYER?

- ❖ Groups of 50-99 Change to Small in 2016
- ❖ Must Cover All Essential Health Benefits
 - Pediatric Dental and Vision
- ❖ Subject to Limitations
 - Age Rating
 - Plan Design
 - Network
- ❖ Early Renewal / Extended Policies
- ❖ Composite Rating



INDIVIDUAL HEALTH INSURANCE POLICIES

- ❖ FAQs
- ❖ Incentives for Sick Employees to Drop Coverage
- ❖ Employer Reimbursement of Individual Health Insurance Premiums
- ❖ IRS Notice 2015-17 Provides Relief for Small Employers Until 7/1/2015



CADILLAC TAX IS COMING

- ❖ Effective in 2018
- ❖ 40% Excise tax on Costs Above
 - \$10,200 for Self-Only Coverage
 - \$27,500 for Family Coverage
- ❖ Adjusted for Inflation (not Medical Inflation)
- ❖ Includes Salary Reductions
- ❖ Beware if you are Negotiating CBAs

QUESTIONS



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