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Separating Fact from Fiction: Final ACA Employer Mandate Regulations

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Today's Agenda

- Health Care Reform
  - The Basics
- Employer Mandate
  - The Basics
  - Drilling Down
- Large Employer Options
- Small Employer Options

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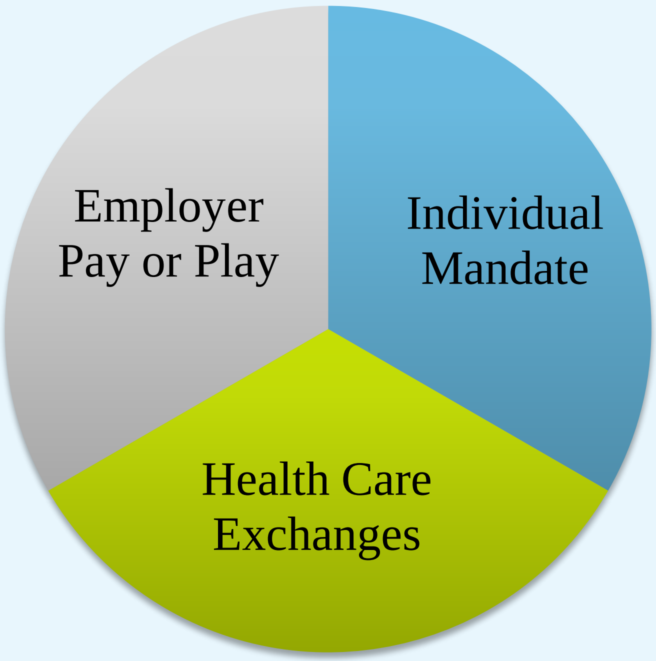
Health Care Reform: The Basics

Health Care Reform

Health Care Reform -- Three Concepts



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Individual Mandate

- Obtain minimum essential coverage or pay a penalty
- Greater of a dollar penalty or a percentage of household income penalty

Year	Individual $ Penalty	% Income Penalty
2014	$95	1.0%
2015	$325	2.0%
2016 (and after)	$695 (as indexed)	2.5%

- Penalty is less for dependents
- Total dollar penalty for a family is capped at 300% of the normal penalty

Health Care Exchanges

- A one-stop marketplace of health insurance issuers
- When do the exchanges become operational?

Individuals	January 1, 2014
Small Employers	January 1, 2014
Large Employers	January 1, 2017

Employers: Pay-or-Play

- Requirement for large employers to offer health coverage to full-time employees or pay a financial penalty

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Employer Mandate:
The Basics

The Basics of Employer Pay-or-Play

- Only “large” employers are subject to the employer pay or play rules, beginning in 2015
- Counting rules for large employer status
- Two types of penalties
  - $2,000 penalty per FTE
  - $3,000 penalty per FTE
    who obtains subsidized exchange coverage
- Plan must provide minimum essential coverage (MEC)

The Basics of Employer Pay-or-Play

Example: The $2,000 penalty

ABC Company employs 500 full-time warehouse employees and 30 full-time truck drivers

- ABC provides a group health plan to the warehouse employees, but excludes the truck drivers

ABC's Penalty = **$1,000,000**

The Basics of Employer Pay-or-Play

- Plan must provide “adequate” coverage
  - Plan must cover at least 60% of the employee’s costs to provide sufficient “minimum value”
- Plan must provide “affordable” coverage
  - Employee’s portion of the premium/cost of coverage cannot exceed 9.5% of the employee’s household income

The Basics of Employer Pay-or-Play

Example: The $3,000 penalty

ABC Company employs 500 full-time warehouse employees and 30 full-time truck drivers

- ABC provides a group health plan to all employees, but charges truck drivers 80% of the cost of coverage
- One truck driver declines the ABC coverage and purchases insurance through the exchange, receiving an income-based subsidy

ABC's Penalty = **$3,000**

Final Pay or Play Regulations

- Employer pay-or-play mandate already delayed from 2014 to 2015
- Final regulations delay one of the key requirements (and its associated penalty) until 2016 for "mid-sized" employers

In order for an employer with 50-99 FTEs to delay applicability of the mandate, it must <u>certify</u> to the IRS that it:

- Employed on average at least 50 but fewer than 100 FTEs during 2014;
- Did not reduce the size of its workforce or hours of service between 2/9/14 and 12/31/14 to be able to take advantage of the delay; and
- Maintained previously offered health coverage for its FTEs between 2/9/14 and 12/31/15 (for calendar year plans).

Employers: Pay or Play Transition Dates

Employer Size	Effective Date
<50 full-time employees (FTEs)	Employer mandate is not applicable
50-99 FTEs	January 1, 2016
100+ FTEs	January 1, 2015

- For 2015 only, large employers can avoid penalty for failing to offer group health coverage so long as coverage is offered to at least **70%** of full-time employees
- Beginning in 2016, large employers must offer group health coverage to **95%** or more of full-time employees

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Employer Mandate: Drilling Down

Counting Employees - Hours of Service

Volunteers

- Hours worked by “bona fide volunteers” are not included as “hours of service” for purposes of the employer mandate

On-call Hours

Hours of service include on-call time if EE:

- is paid or entitled to payment for on-call time;
- must remain on the employer's premises while being on-call; or
- is subject to substantial restrictions on the activities he/she can perform while on-call

Each hour for which an employee is paid or entitled to payment for (i) the performance of duties; and (ii) a period of time during which no duties are performed due to vacation, holiday, sickness, incapacity, layoff, jury duty, military duty or leave of absence

Student Employees

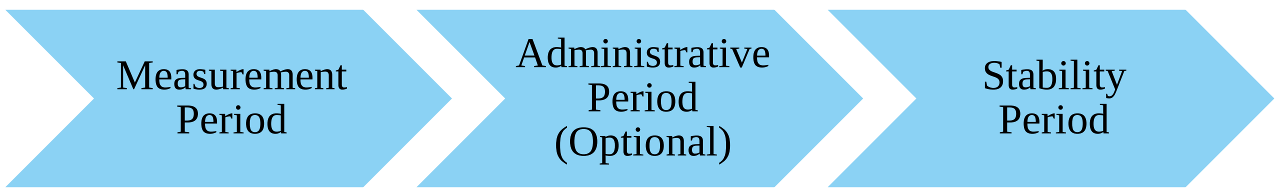
- Service performed by students under federal or state-sponsored work-study programs are not included as “hours of service” for purposes of the employer mandate

Adjunct Faculty

- Employers must use a reasonable method of crediting hours of service for these employees.
  - 2¼ hours of service/week for each hour of teaching or classroom time
  - 1 hour of service/week for each additional hour outside of the classroom the faculty member spends performing required duties

Identifying Full-Time Employees

- 2 ways to identify full-time employees
  - Monthly measurement method
    - Performed in “real-time”
  - Look-back measurement method
    - 3 designated periods



    - Administration of the look-back measurement method differs depending on whether you are measuring
      - ongoing employees; or
      - new variable-hour, part-time or seasonal employees

Look-back Measurement: Ongoing Employees

***Standard* Measurement Period**

- Employer chooses the measurement period – between 3 and 12 months
  - Standard measurement period must be made on a uniform and consistent basis for all employees in the same category
    - Categories include (i) collectively bargained and non-collectively bargained employees; and (ii) salaried and hourly employees

Administrative Period (Optional)

- A large employer may provide for an administrative period that follows the measurement period and precedes the stability period
  - Administrative period cannot exceed 90 days
  - Intent is to allow the employer to compile information regarding its employees' full-time status during a measurement period that precedes open enrollment

Look-back Measurement: Ongoing Employees

Stability Period (coverage period)

- Did employee average at least 30 hours of service per week during the standard measurement period?
  - If yes, employee must be considered to be full-time during the subsequent stability period
  - If no, employer is permitted to treat the employee as not a full-time employee during the subsequent stability period

Example:

- Standard measurement period: January – September
- Administrative period: October – December
- Stability period: January – December of the following year

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Look-back Measurement: New Employees

***Initial* Measurement Period**

- Employer chooses the measurement period – between 3 and 12 months
  - The measurement period must begin no later than the later of (i) the first day of the first calendar month following the employee's start date; and (ii) the first day of the first payroll period that starts after the employee's start date

Administrative Period

(Optional)

- The employer can also use an administrative period of up to 90 days, but the total of initial measurement period and administrative period cannot last beyond the final day of the first calendar month beginning on or after the one-year anniversary of the employee's hire date.

Look-back Measurement: New Employees

Stability Period (coverage period)

- Did new employee average at least 30 hours of service per week during the initial measurement period?
  - If yes, employee must be considered full-time during the subsequent stability period
  - If no, employer is permitted to treat the employee as not a full-time employee during the subsequent stability period

Special Rule

- If new employee is promoted to full-time status, he/she must be offered health coverage no later than the earlier of:
  - 1st day of the 4th month following the date of the promotion, or
  - 1st day of the month following the close of the initial measurement period (plus any administrative period)

Initial Measurement Period – Employer Choices

Example

Standard measurement period:	12 months starting on October 15
Standard administrative period:	October 15 – December 31 (following end of measurement period)
Standard stability period:	following calendar year (12 months)
Initial measurement period:	eleven months following initial month of hire (variable hour/seasonal employees)
Initial administrative period:	one month following initial measurement period
Initial stability period:	12 months that follow the administrative period, but (if not full time) not beyond December 31 of year in which initial measurement period ends

Change in Employment Status

Ongoing Employees

- A change in employment status during the stability period does <u>not</u> change the employee's status as full time (or not full time) for mandate purposes
  - If EE was not full-time during the standard measurement period, the transfer to full-time status during the stability period does not change his/her status as a non-full-time EE for mandate purposes during the stability period

New Variable-hour, Seasonal and Part-time Employees

- If the EE is promoted to a position in which he/she is reasonably expected to be full time, he/she is treated as a full-time EE for whom the employer must offer coverage as of the earlier of
  - The first day of the fourth month following the date of the promotion, or
  - The first day of the first month following the close of the initial measurement period and any administrative period

Rehires and Leaves of Absence

General Rule

If the period for which no hours of service are credited is at least 13 weeks, (26 weeks for educational organizations) employer can treat the individual as having terminated employment and rehired as a new employee

Optional Rule of Parity

Employer can treat as a new hire an individual who is credited with no hours of service for at least four weeks and less than 13 weeks (or 26 weeks for educational organizations), provided that such length of absence is longer than the employee's immediately preceding period of employment

Examples

- Employee works for non-educational employer for 4 years, terminates employment and is rehired 15 weeks later.
- Employee works for non-educational employer for 3 weeks, terminates employment and is rehired 10 weeks later.

Averaging Hours during Unpaid Leave

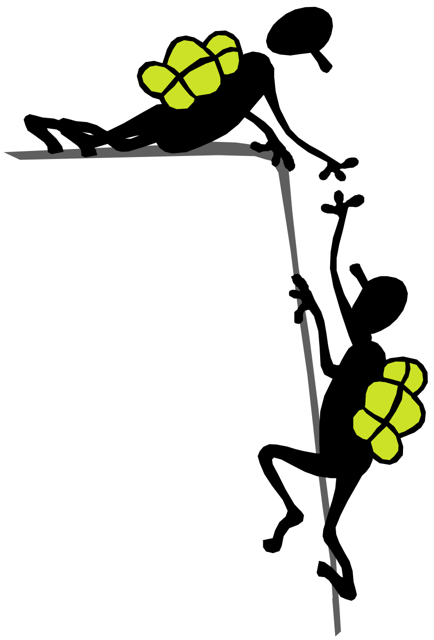
Exclude periods of special unpaid leave (so only periods of active work are counted)

Averaging Hours during Unpaid Leave

Deem hours of service during the special unpaid leave period to include the average weekly rate of hours worked for those weeks in the measurement period during which the employee was not on special unpaid leave

Short-Term and High-Turnover Employees

The commenters asked for help...and the regulators declined



Final regulations provide no relief/special provisions for

- short-term employees; or
- employees in high-turnover positions

International Issues

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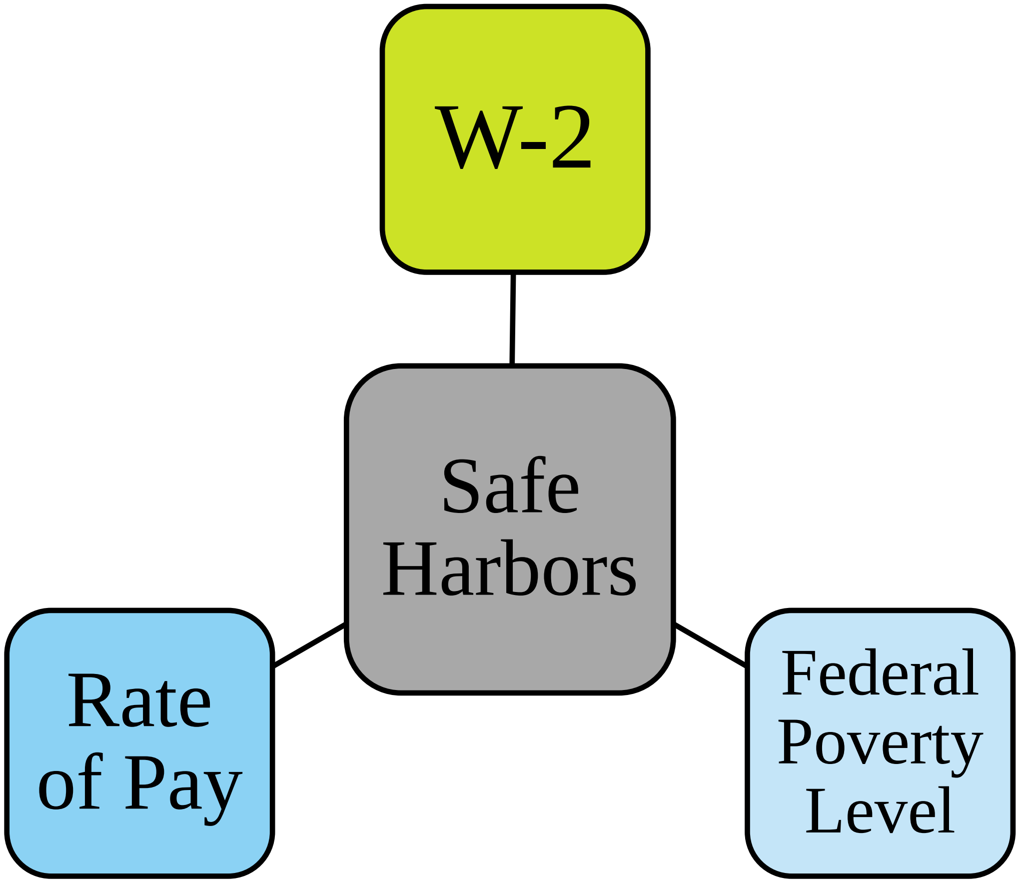
Transition and Interim Rules

Non-calendar year plans	Employers with plan years that do not start on January 1 will be subject to the employer mandate when their plan years begin in 2015
Transition measurement period	For stability periods that begin in 2015, employers may adopt a transition measurement period that is shorter than 12 months but no less than 6 months
Determining large employer status in 2015	Employers can determine whether they are a large employer for 2015 by reference to a period of at least 6 consecutive months in 2014
Dependent coverage	The requirement that employers offer coverage to their full-time employees' dependents will not apply in 2015 to employers that are taking steps to arrange for such coverage to begin in 2016
Multiemployer plans	Provide employers that contribute to multiemployer plans with an administratively feasible means to comply with the employer mandate

Affordability Safe Harbors

Coverage is affordable if required employee contribution for self-only coverage for the lowest cost option that provides minimum value does not exceed 9.5% of household income



IRS Reporting Requirements (6055/6056)

- **IRC Section 6055 reporting**: Insurers, sponsors of self-insured plans, governmental entities, and other parties must

  (1) report information to the IRS for each individual to whom they provided minimum essential coverage; and

  (2) provide a statement to the individual receiving minimum essential coverage.

- **IRC Section 6056 reporting**: Large employers subject to the mandate must

  (1) report information to the IRS about the health care coverage provided to full-time employees; and

  (2) provide a statement to each employee. Employees will be able to use the individual statement to determine eligibility for a premium tax credit.

Effective Date

January 1, 2015 (100+ FTEs)

January 1, 2015 (50-99 FTEs)

IRS Reporting Requirements (6055/6056)

6055 Information

- Employer name, address, and EIN
- Name, address, and TIN of responsible individual/primary insured (*e.g.*, employee or retiree)
- Name, address, and TIN of each covered dependent
- Months of coverage for each individual
- "Regulator's Choice"

6056 (Employer Info)

- Employer name, address, and EIN
- Name and telephone number of employer's contact person
- Calendar year for which reported information relates
- Whether employer offered its full-time employees and their dependents (children to age 26) MEC by calendar month
- Number of full-time employees for each month of the applicable calendar year
- "Regulator's Choice"

6056 (Employee Info)

- Name, address and TIN
- Months that employee was covered under the plan
- Employee's share of the lowest cost monthly premium (self-only) for coverage providing minimum value offered to that employee, by calendar month
- Months during the calendar year when coverage under employer plan was available
- "Regulator's Choice"

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Large Employer Options

Basic Options for Large Employers

- Offer group health coverage to 95% or more FTEs (70% in 2015) that is both adequate and affordable
- Satisfy the affordability requirement by limiting employee cost share (for single coverage) to no more than 9.5% of W-2 wages
- Offer group health coverage to 95% or more FTEs, but which is inadequate and/or unaffordable
- Establish coverage under a "private exchange"
- Use an HRA to promote cost certainty and consumerism
- Send employees to the exchange, and offer to reimburse a portion of the cost or increase salary

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Small Employer Options

Small Employer: 2014 Developments

- Employees are subject to coverage mandate
- Public exchange coverage is now available to all employees and their families, with subsidies for low paid workers
- SHOP exchange coverage is available to small employers (on a limited basis in 2014)
- Employer can no longer reimburse employees for individual insurance premiums on pretax basis
- EGHP coverage is getting more expensive

Small Employer Options

Employer voluntary offers coverage (not mandated)

- Employer group health plan options:
  - private carrier, private exchange or SHOP public exchange plan
- Employee share of premiums can be paid with pretax dollars
- Employer can also offer Flexible Savings Accounts (FSA) allowing an employee to set aside up to $2,500 for out-of-pocket medical expenses
- Requires compliance with non-discrimination rules, W-2 and other reporting (eventually)
- Small employer tax credit remains available in 2014

Small Employer Options

No Coverage Offered

- Employee and family can enroll in public exchange plans and receive subsidies, if eligible
  - No pre-existing condition prohibitions
  - Guaranteed issue
- Premiums are paid with after-tax dollars unless taxpayer has expense of more than 10% of AGI and use Schedule A deduction
- Employer cannot reimburse the employee for the premium costs through HRA or other plan

PREMIUM SUBSIDY SCENARIOS UNDER OBAMACARE

EXAMPLES OF EXCHANGE ENROLLEES	INCOME	UNSUBSIDIZED PREMIUM	−	OBAMACARE TAX CREDIT	=	PREMIUM PAID UNDER OBAMACARE
FAMILY OF 4 TWO 40-YEAR-OLD NONSMOKING PARENTS WITH 2 CHILDREN	**$4417 per month** $53 000 per year (225% of poverty level for a 4-person household)	$962 per month	−	**$645 per month** (tax credit amount based on a premium cap of 7.18% of income for a family at this income level)	=	$317 per month
RETIRED COUPLE TWO 60-YEAR-OLD NONSMOKERS	**$2083 per month** $25 000 per year (161% of poverty level for a 2-person household)	$1365 per month	−	**$1271 per month** (tax credit amount based on a premium cap of 4.51% of income for a couple at this income level)	=	$94 per month
SINGLE ADULT 30-YEAR-OLD SMOKER	**$2500 per month** $30 000 per year (261% of poverty level for a 1-person household)	$428 per month ($285 base premium + $143 tobacco surcharge*)	−	**$76 per month** (tax credit amount based on a premium cap of 8.37% of income for an adult at this income level) (does not cover tobacco surcharge)	=	$352 per month ($209 + $143 tobacco surcharge)

** Insurer can charge tobacco surcharge up to 50% of the base premium (not subsidized).*

Visit Kaiser's health insurance subsidy calculator to explore your own scenarios: http://kff.org/subsidy-calculator.

NOTE: The premiums above are estimates based on Congressional Budget Office projections of the nationwide average second-lowest-cost Silver premium. Silver plans are the basis of exchange tax credits and cover on average 70% of enrollees' total costs. Exchange enrollees can apply their tax credits toward the purchase of more or less comprehensive plans.

Tax-Advantaged Programs

Premium Only Plan (POP)

- Section 125 cafeteria plan
- Employee premium contributions for EGHP paid with pre-tax dollars

Health Reimbursement Account (HRA)

- Employer funds the account in set amount each year
- Employee withdraws to pay qualified medical expenses
- Account funds not spent are carried over into next year
- Plan usually provides for account forfeiture upon termination from employment

Payroll tax savings can help cover expense of plan administration.

All but POP subject to HIPAA

Health Flexible Spending Accounts (FSA)

- Section 125 cafeteria plan
- Maximum annual set aside is $2500
- Subject to use it or loose it requirement

Wrap-Around Plan

- Employer offers supplemental self-insured plan to cover deductibles and copayments of employees.
- No account or carryover to next year
- No requirement to designate fixed amount but employer may want to cap exposure

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Summary

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Questions?

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We also invite you to visit our Health Care Reform Dashboard at www.healthcarereformdashboard.com.