# ACA Regulatory Update

**March 20, 2014**

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# ACA Regulatory Update

- Welcome!  We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar.  When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “questions” box located on your webinar control panel.


# ACA Regulatory Update

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# Agenda

- Employer Shared Responsibility Rules Final Regulations
  - Delay for employers with 50-99 FTE
  - Other Transition Rules
  - Full-Time Employee Issues
- Waiting Period Regulations
- Employer Reporting Final Regulations
- Miscellaneous
  - Keep non-compliant plans



# Employer Shared Responsibility Rules
# Final Regulations
# Employer Issues & Transition Rules

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# Employer Shared Responsibility Rules

- 4980H Employer Shared Responsibility Rules Background
  - Applicable large employers must offer minimum essential health coverage to all full-time employees or face possibility of “shared responsibility payments” (penalties)
  - Applicable large employer = employed an average of at least 50 full-time equivalent (FTE) employees in the prior calendar year
  - Full-Time Employees
    - generally defined as any employee averaging 30 hours of service per week
  - Shared Responsibility Rules Often Called “Pay or Play” or “Employer Mandate”



# Employer Shared Responsibility Rules

- 4980H Shared Responsibility Rules Enforcement Delayed
  - Rules originally scheduled to be effective in 2014
  - July 2013 - IRS delayed enforcement of employer shared responsibility rules until 2015
  - Feb. 10, 2014 - enforcement delayed again for certain employers (those with 50-99 FTEs)
  - What has actually been delayed??
    - Employer will not face any penalties for failure to provide coverage to all full-time employees
    - Delays do not change the effective date of other rules (e.g. 90 day waiting period still effective first plan year in 2014, individual mandate tax still effective in 2014, etc.)



# Employer Shred Responsibility Rules

- 4980H Employee Counting Method
  - Determine number of full-time equivalents (FTEs) each month:

Total number of full-time employees (30+ hrs of service/wk)
\+ Total hours of service by part-time employees ÷ 120
= Number of FTEs for month

  - Average the monthly FTEs for 12 months of the prior calendar year

| | JAN | FEB | MAR | APR | MAY | JUN-DEC |
|---|---|---|---|---|---|---|
| FT employees averaging 30 hrs of service/wk | 32 | 32 | 35 | 34 | 35 | etc… |
| Total hours of service by all other employees (PT) | 1200 | 1800 | 1800 | 2400 | 2400 | etc… |
| Part-time FTEs (hours ÷ 120) | 10 | 15 | 15 | 20 | 20 | etc… |
| Monthly Total | 42 | 47 | 50 | 54 | 55 | etc… |

  - Groups Under Common Control - To determine "applicable large employer" status, separate organizations under common control according to Code §414 must be treated as a single employer



# Employer Shared Responsibility Rules

- When Do Employers Have to Comply?
  - All employers with 50 - 99 FTEs will be subject to rules on the first plan year in 2016
  - Most employers with 100 or more FTEs will be subject to the rules on first plan year in 2015
    - Transition rule - To determine applicable large employer status for 2015, employers may use any 6 consecutive months of 2014 employment data
      - To determine status in 2016, the full 12 months of 2015 employment data must be used
    - Special rules for non-calendar year plans



# Employer Shared Responsibility Rules

- Non-Calendar year plans
  - 50 – 99 FTE
    - Must comply by first plan year 2016
  - 100+ FTE
    - Non calendar year plans subject to enforcement on first plan year beginning in 2015 if certain criteria are met
      - Must not have changed plan year since Dec. 2012
        - If the employer has changed plan year to a later month in the year, then the plan is subject to the rules Jan. 1, 2015 regardless of plan year
        - Plan year changes made for other bona fide business reasons (e.g. merger) may also be permitted



# Employer Shared Responsibility Rules

- Non-Calendar year plans
  - 100+ FTE non-calendar year plans (cont.)
    - Must meet one of the following criteria for rules to apply on the first plan year in 2015 otherwise rules apply Jan. 1, 2015
      - All employee rule - Employer must have covered one quarter of ALL employees OR offered coverage to one third of ALL employees on any date in the 12 months ending Feb. 9, 2014
      - Full-time employee rule - Employer must have covered one third of ALL FULL-TIME employees OR offered coverage to one half of ALL FULL-TIME employees on any date in the 12 months ending Feb. 9, 2014



# Employer Shared Responsibility Rules

- 4980H(a) Penalty
  - Employer does not offer minimum essential coverage (MEC) to all full-time employees and dependent children
    - Penalty = $166.67/mo ($2000/yr) times total number of full-time employees (not counting first 30 )
- 4980H(b) Penalty
  - Employer offers MEC coverage to all full-time employees, but coverage is unaffordable or not minimum value
    - Penalty $250/mo ($3000/yr) times number of employees who purchase individual coverage through an Exchange and are certified to receive subsidies
    - 4980H(b) penalty cannot exceed employer liability under 4980H(a)



# Employer Shared Responsibility Rules

- 2015 Transition Rules
  - Margin of Error Rule
    - In 2015 employer must offer coverage to 70% (instead of 95%) of full-time employees to avoid the 4980H(a) penalty
      - Does not save employer from possible 4980H(b) liability
    - Reverts to 95% for 2016 and later
  - 4980H(a) assessable payment not applied to first 80 full-time employees (instead of 30) for 2015 only
    - Beginning in 2016, the 4980H(a) liability does not count first 30
    - Remember that 4980H(b) employer liability cannot exceed the total assessable payment under 4980H(a)
      - Bottom Line - Any employer with 80 or fewer full-time employees (as defined by the ACA) will not be liable for any ACA assessable payments in 2015, even if some employees purchase subsidized individual health insurance



# Employer Shared Responsibility Rules

- 2015 Transition Rules
  - Example 1: Assume 150 FTEs and 100 actual full-time employees - employer chooses not to offer MEC to any of the full-time employees.
    - 2015 assessable payment = $40,000 ((100 - 80) X $2000)
    - 2016 assessable payment = $140,000 ((100 - 30) X $2000)
  - Example 2: Assume 150 FTEs and 100 actual full-time employees - employer offers MEC to 71 of the full-time employees (71%)
    - 4980H(a) assessable payment = $0 because employer offered MEC to at least 70% of actual full time employees
    - 4980H(b) assessable payment risk = $250/month for each full-time employee that qualifies for, and purchases, subsidized coverage through a public Exchange
      - The (b) penalty cannot exceed the maximum liability under (a) ($40,000/yr in 2015 this example) regardless of how many employees choose to purchase subsidized individual coverage



# Employer Shared Responsibility Rules
# Final Regulations
# Full-Time Employee Issues

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# Full-Time Employees

- Background
  - ACA defines full-time as 30 hours of service per week
    - 130 hours per month can be used as alternative to weekly average
  - Month-by-Month vs. Measurement Period Approach
    - Employers must decide to manage full-time status on a month-by-month basis or implement an optional IRS safe harbor look-back measurement period approach
  - Counting Hours of Service
    - Each hour an employee is paid, or entitled to payment, for the performance of duties for the employer
    - Each hour for which an employee is paid, or entitled to payment, for vacation, holiday, illness, layoffs, jury duty, military duty, or leave of absence.



# Full-Time Employees

- Clarifications and Changes in Final Regulations
  - Limited exemptions from hours of service requirements - employers are not required to count any hours of service for the following:
    - Bona fide volunteers
      - Any volunteer of a government entity or a 501(c) not for profit whose only compensation is in the form of
        - (i) reimbursement for reasonable expenses incurred in the performance of services by volunteers, or
        - (ii) reasonable benefits, and nominal fees, customarily paid for the performance of services by volunteers
    - Federal or state work-study students
    - Interns if they are not paid
    - Some members of religious orders



# Full-Time Employees

- Clarifications and Changes in Final Regulations (cont.)
  - No special provisions or exceptions were provided for the following positions
    - Short-term employees, high-turnover positions, paid interns
  - Guidance for other situations requires a reasonable method consistent with 4980H
    - On-call hours - Must credit an employee with an hour of service for any on-call hour for which:
      - payment is due by the employer;
      - employee is required to remain on the employer's premises; or
      - activities while on-call are subject to substantial restrictions that prevent the employee from using the time for their own purposes
    - Special guidance for some unique positions including adjunct faculty, layover hours in the airline industry, and staffing firms



# Full-Time Employees

- Clarifications and Changes in Final Regulations (cont.)
  - Break in service rules
    - Generally if an employee resumes employment after a period of less than 13 consecutive weeks (subject to rule of parity) with no hours of service, the employer must treat the employee as a continuing employee
      - Break in service for educational organizations still 26 weeks
    - Rule of Parity – an employee can be treated as a new employee if the break in service is at least 4 weeks long and longer than the weeks of employment prior to the break



# Full-Time Employees

- Clarifications and Changes in Final Regulations (cont.)
  - Measurement Period Rules
    - The final rules clarified that the employer must apply measurement/stability periods uniformly for all employees within specific categories - periods can vary only between the following categories:
      - Hourly and salaried employees;
      - Union and non-union employees (or separate collectively bargained agreement);
      - Employees in different states; and
      - Different entities within a controlled group
  - For example - if employer chooses to use a measurement period for hourly employees, it must use it for ALL hourly employees, not just a subset (i.e. variable hour and seasonal)



# Full-Time Employees

- Clarifications and Changes in Final Regulations (cont.)
  - Variable hour employee guidance
    - Original definition - “based on facts and circumstances at start date, it cannot be determined the employee is reasonably expected to work 30 hrs of service per week for entire measurement period”
  - Final rules provide factors to consider when making the determination between variable hour and full-time:
    - Whether the employee is replacing an employee who was a full-time employee;
    - Extent to which employees in the same or comparable positions are or are not full-time employees; and
    - Whether the job was communicated or otherwise documented (for example through a contract or job description) as requiring an average of 30 hours of service per week



# Full Time Employees

- Clarifications and Changes in Final Regulations (cont.)
  - Seasonal employees defined
    - An employee in a position for which the customary annual employment is six months or less
    - The period should begin each calendar year in approximately the same part of the year, such as summer or winter
  - Change in employment status
    - Using a measurement method, generally a change in employment status does not effect an employee's status until after the end of a stability period, but final rules provided an exception
      - For employees that were full-time upon hire and then moved to part-time, the employer is allowed to apply the monthly measurement method if the employee actually averages less than 30 hours of service per week for the three months following the change in employment status



# Full-Time Employees

- Clarifications and Changes in Final Regulations (cont.)
  - Transition Rule
    - Counting 2014 hours of service to determine full-time status for 2015
      - Employers may calculate hours of service using 6 consecutive months in 2014 to determine 2015 full-time status even if using a 12-month measurement period
      - 6 months transitional measurement period may not start any later than 7/1/2014 and cannot end more than 90 days prior to the stability period
    - Example:
      - Jan. – Dec. 2015 stability period and plan year
      - Nov. – Dec. 2014 administration period
      - Can use May – Oct. 2014 (6 months) measurement period to determine full time status for Jan. 1, 2015



# Waiting Period Regulations

# Waiting Period Limits

- Waiting Period Rule
  - Waiting period for full-time employees limited to no more than 90 calendar days for first plan year beginning on or after Jan. 1, 2014
    - Applies to large and small employers
  - Employer can require employees to meet a cumulative hours of service requirement before being deemed eligible
    - No more than 1200 hours
    - Could be used by small employers or for part-time employees
    - Discrimination rules may apply if cumulative hours of service are used for only some employees
    - Imposing a cumulative hours of service requirement would expose applicable large employers to potential penalties under 4980H shared responsibility rules



# Waiting Period Limits

- Optional "Orientation Period"
  - New rules were added that allow an employer to require employees to satisfy "a reasonable and bona fide employment-based orientation period" prior to the start of the 90 calendar day waiting period
    - Maximum of 1 month for an employer to evaluate the employment situation and/or to provide orientation and training prior to the start of the official waiting period (e.g. May 3rd – June 2nd or Oct 1st – Oct 31st).
    - The practical effect of implementing an orientation period would be that some employees' coverage may not be effective until the 1st of the month following 3 months of actual employment (a one-month orientation period plus the regular plan waiting period)
    - Very limited guidance released so far



# Employer Reporting Final Regulations

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# Employer Reporting

- Significant New Employer Requirements Beginning in 2016
  - The ACA requires applicable large employers to provide new health plan reporting to the IRS beginning in 2016
  - Final regulations released in March provide some simplification of the requirements, but the reporting requirements will create significant administrative obligations for some employers
- Background
  - Code sections 6055 and 6056 require employers, plan sponsors, and insurers to report certain information the IRS needs to administer the individual mandate tax and employer penalties under the 4980H employer shared responsibility rules
    - Reporting will be very similar to the current employer W-2 process
    - As with W-2s, employers are required to provide an information return containing the required 6055 and 6056 data to the IRS, and also to issue a statement to each individual

# Employer Reporting

- Effective Date
  - Originally the employer reporting rules were to go into effect in 2015
  - July 2013, the IRS announced a delay in the enforcement of the employer shared responsibility rules and the related reporting
  - Employers will not be required to comply with these reporting requirements until early in 2016
    - The first reporting includes information related to coverage provided during 2015 - reporting is on a calendar year basis regardless of the employer's plan year
- Which Employers Must Report?
  - All fully-insured and self-funded "applicable large employers" will be required to comply with the 6056 plan reporting requirements
  - Applicable large employers who sponsor self-funded plans are also subject to separate 6055 coverage reporting rules



# Employer Reporting

- Reporting Details
  - 6056 Employer Plan Reporting – All applicable large employers
    - The employer's name, date, and employer EIN
    - A certification as to whether the employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage
    - The number of full-time employees for each month during the calendar year
    - The name, address, and taxpayer identification number (SSN) of each full-time employee during the calendar year and the months during which that employee was covered under any of the employer's health plans



# Employer Reporting

- Reporting Details
  - 6055 Coverage Reporting - Self-funded applicable large employers
    - The name, address, and social security number (SSN) of the primary insured
    - The name and SSN of each other individual, including spouses and dependents, covered under a policy
    - Which months the individuals were covered
- Timing of Reporting (same as W-2s)
  - Annual employer returns must be filed with the IRS by February 28 (March 31, if filed electronically)
  - Corresponding employee statements must be provided annually to full-time employees by January 31



# Employer Reporting

- Combined Reporting for Self-funded Employers Subject to Both Requirements
  - An employer who sponsors a self-insured plan can report using a single form that will include information required under both Section 6055 and Section 6056.
  - Employers with fully-insured plans will complete only the part of the form containing information required under Section 6056
  - The IRS stated that it will soon release instructions and a draft version
    - Form 1094-C for reporting to the IRS
    - Form 1095-C - an employee statement for combined reporting to employees



# Employer Reporting

- Optional Simplified Alternative Methods
  - Employers are allowed to use alternative simplified reporting methods where the level of information required is reduced if certain criteria are met
    - Employers can choose to use a simplified method for groups of employees, and continue to use the general reporting method for other employees



# Employer Reporting

- Alternative 1: Simplified Reporting Based on Qualifying Offer
  - If an employer certifies that it made a "qualifying offer" to full-time employees for all months during the year, it may report simplified information to the IRS and in the employee statement
  - A qualifying offer =
    - The employer offered minimum value (60% actuarial value) coverage
    - The required employee contribution for employee-only (single) coverage was no more than 9.5% of the federal poverty level (FPL). This would equal an employee contribution for single coverage of no more than $92.39 per month based on the 2014 FPL
    - Minimum essential coverage was offered to employees' spouses and dependents



# Employer Reporting

- Alternative 2: Option to Report without Separate Identification of Full-Time Employees (98 percent Offers)
  - The general reporting rules require employers to provide the IRS with details on each full-time employee - This method allows employers to report to the IRS without identifying or specifying the number of full-time employees. Employers meeting these criteria have significantly reduced reporting requirements
  - Employer would be required to certify that:
    - It offered coverage to at least 98% (95% in 2015) of full-time employees
    - The coverage was minimum value (60% actuarial value)
    - The coverage was affordable based on any of the employer affordability safe harbors in the ACA shared responsibility regulations



# Miscellaneous

- HIPAA Certificates of Coverage
  - Beginning in 2014 health plan pre-existing condition limitations are generally no longer allowed. The final rules clarify that HIPAA certificates of creditable coverage will no longer be required after December 31, 2014
- "Keep Your Non-ACA Compliant Small Group Health Plan" Announcement
  - Administration announced it will allow small group plans to delay implementation of many ACA requirements until 2016
    - However, any continuation of these plans will be subject to state laws and the business and underwriting decision of the carriers
    - Best option is to contact your carrier to determine which small group plans they intend to continue to offer



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*Thank you.*

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