



# **The Affordable Care Act: Overview, Updates and Q&A**

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# Employer Shared Responsibility Requirements

- Applies to “**large employers**” only (i.e. ones with over 50 FTE employees)
- Deals with what an employer is required to do for its full-time employees
- Penalties for failure to comply



## Penalties imposed if:

1. Employer does not offer **qualified** health insurance to at least 95% of its full-time employees (minus 30) **OR**
2. Employer offers insurance but not **affordable,**  
**AND**
3. At least one employee with a subsidy on the exchange



## What is “qualified?”

- i. Must have the essential health benefits;
- ii. And must have minimum value:

**In order to be a minimum value plan, the plan’s share of the total allowed costs of benefits provided under the plan is 60% or more**



## What does “affordable” mean?

- » **Employer must offer at least one “Self-only” plan coverage that cannot exceed 9.5% of the employee’s household income**



# Penalty – Part A

- **Two types of penalties: First type**
  - » If employer does not provide coverage to at least 95% of its full-time employees, then the penalty is (number of full-time employees **minus** 30) x (1/12 x \$2,000)
  - » Penalty is calculated for each calendar month



## Example:

- 100 employees
  - Does not offer qualified health insurance
  - One of the full-time employees gets a subsidy through the state exchange
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- Employer pays penalty of  $100 - 30 = 70 \times \$2,000$ , or \$140,000 for the year



# Penalty – Part B (Affordability)

- Employer **does offer** qualified health insurance, but the plan **costs too much**
- Single coverage costs more than 9.5% of household income
- Penalty is \$3,000 per full-time employee ***who receives an exchange subsidy***





## Example:

- » Employer has 100 FT employees
- » Offers insurance to FT employees
- » But the cost of single coverage **for 5 employees** exceeds 9.5% of their family income
- » And the 5 employees go to the exchange instead and get subsidized insurance
- Employer penalty is  $5 \times \$3,000$  or \$15,000 for the year



# Who is a full-time employee?

- Under the ACA, a **full-time employee** is “**an employee who is employed on average at least 30 hours of service per week**”
- An employer must be able to identify its full-time employees and ensure they are offered coverage that is affordable and of at least minimum value



# *How do you count the hours for non-hourly employees?*

- You can count actual hours, if known
- Or use a day's worked equivalency – crediting the employee with 8 hours of service for each day of work, regardless of how much work is performed on that day
- Or 40 hours of service per week worked or paid



# Time Period for Determining Full-Time Status – Look Back Period

- IRS allows “look back” period
- Employers can determine each employee’s full-time status by **looking back** at a “standard measurement period” of **not less than three (3) and not more than twelve (12) consecutive months** to determine whether the employee averaged at least 30 hours of service per week.



# Stability and Administrative Periods

- If the employee is determined to be full-time based on the standard measurement period, then the employee would be treated as full-time during the subsequent “**stability period**” of at least six (6) consecutive months or whatever the length of the measurement period was



- And the employee will be treated as full-time during this stability period **REGARDLESS** of how much he or she works during the stability period
- Employers may also use a “**90-day administrative period**” before starting the stability period



# The Final IRS Regulations

- Employers need to provide health insurance to only **70%** of their full-time employees for **2015** plan year (whether starting 1/1/15 or 7/1/15 or otherwise)
- Then, in 2016, **back to 95%**
- If you have between 50-100 employees, compliance starts in 2016, not 2015



# Transition Relief and Compliance with the ACA

- Final regulations relax some initial requirements
  - Health care plans that do not start on January 1 may begin compliance when plan starts
  - At least a six-month measurement period in 2015
  - Six-month period to determine whether you are a “large employer” for 2015





# Calculating Penalty

- In 2015
  - If employer (with 100 or more full-time employees) does not provide coverage to at least 70% of its full-time employees, then the penalty is \$2,000 per full-time employee, **minus 80** if one full-time employee receives premium tax credit for month
  - Back to “minus 30” in 2016
  - Affordability penalty capped at number of the employer’s full-time employees for the month (**minus 80**) multiplied by 1/12 of \$2,000



# Calculating “Hours Worked”

- Final regulations provide additional guidance on how to calculate “hours worked” for certain types of employees
  - On-call
  - Student employees
  - Volunteers
  - Adjuncts



# Additional Guidance on Look Back Period

- May be used for ongoing, new, or seasonal employees
- “Reasonably expected to work full-time” –
  - Facts and circumstances at employee’s start date
  - Is employee replacing a full-time or variable hour employee
  - Extent to which hours of service of employees in same or comparable positions varied from 30 hours per week
  - Was job advertised as 30 hours/week or more



# Additional Guidance on Look Back Period

- Variable hour employees
- Part-time employee defined
- Seasonal employees
- Change in employment status
  - Full-time to part-time
  - Part-time to full-time



# Breaks in Service

- Returning employee is a “new employee” if the break in service is 13, rather than 26 weeks (except schools)
- “Rule of parity” still available
- Averaging method for FMLA, USERRA, and jury duty leave
- Educational institutions – averaging method for employment break periods



# Looking Ahead

- IRS reporting requirements
  - Penalty calculation
  - Employee eligibility for premium tax credit
- Nondiscrimination provisions
- Automatic enrollment for employers with 200 or more full-time employees



# Impact of ACA on Massachusetts Health Care Law

- 2014 Budget repealed the Fair Share Contribution requirement under MA law
- HIRD form requirement also repealed
- Employers with 11 or more full-time equivalent employees must still have Section 125 Cafeteria plan
- New - Connector now an after-tax health insurance exchange marketplace
- New - Employer Medical Assistance Contribution



# Best Practices

- Limit number of hours worked by “part-time” and temporary employees
  - Take a sample and see which length of time for look back period works
- Set administrative period to coincide with open enrollment period
- Set stability period to coincide with regular health coverage plan
- Track employees’ hours now and continue to do so
- Start planning now





THANK YOU

