Introduction

Affordable Care Act
How It Will Affect Your Business

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• On June 28, 2012 the Supreme Court declared the individual mandate to be permissible exercise of Congress’s taxing powers under the Constitution.

• The mandate was not a penalty, but a tax and was allowed under Congress’s power to tax under Article 1 of the Constitution.

• The government's arguments that the Constitution's Commerce Clause or the Necessary and Proper Clause authorized Congress to enact Health Reform were rejected.

• The mandate that requires people to purchase health insurance or make a shared-responsibility payment does not regulate existing commercial activity, but instead compels individuals to become active in commerce by purchasing a product.
Affordable Care Act

Overview of Changes Until Now
Summary of Benefits & Coverage

- A four-page “summary of benefits and coverage” ("SBC") is required to be provided to applicants and enrollees before enrollment or re-enrollment.

- SBC’s are created by the insurance carriers. However, employers are responsible for their distribution.

- First SBC must be distributed by the first open enrollment occurring after September 23, 2012 or for those who enter the plan any other time, the plan or policy year beginning after September 23, 2012.

- Must be distributed at open enrollment, initial enrollment and special enrollment upon request.

- A penalty of not more than $1,000 may apply for each willful failure to provide the required plan summary or advance summary of a material modification.
Overview of changes during 2013
Flexible Spending Accounts

• The $2,500 limit on annual salary reduction contributions to health FSAs offered under cafeteria plans, effective for plan years beginning after December 31, 2012.

• Applies to employee contribution only.

• All health FSAs offered under cafeteria plans must comply.

• The limit does not apply to Dependent Care FSAs, HRAs or HSAs.

• Employers who have staff pay for a portion of premium under a POP plan need to amend their plans to allow individual premium accounts.
• The employee portion of the hospital insurance tax part of FICA, currently amounting to 1.45% of covered wages, is increased by 0.9% on wages that exceed a threshold amount for tax years beginning after 12/31/2012.

• The additional tax is imposed on the combined wages of both the taxpayer and the taxpayer’s spouse, in the case of a joint return.

• The threshold amount is $250,000 in the case of a joint return or surviving spouse, $125,000 in the case of a married individual filing a separate return, and $200,000 in any other case.
Medicare Tax on Unearned Income

- Additional Medicare contribution tax will be imposed on the unearned income of individuals, estates and trusts, reduced by the deductions properly allocable to such income.
- Individuals pay a tax equal to 3.8% of the lesser of net investment or the excess of modified adjusted gross income over the threshold amount.
- The threshold amount is $250,000 in the case of a joint return or surviving spouse, $125,000 in the case of a married individual filing a separate return, and $200,000 in any other case.

Net investment income does not include distributions from a qualified retirement plan.

- The tax applies to a trade or business only if it is a passive activity with respect to the taxpayer or it consists of trading financial instruments or commodities.
Notice of Exchange

• Employers are required to provide all new hires and current employees with a written notice about the health benefit Exchange and some of the consequences if an employee decides to purchase a qualified health plan through the Exchange in lieu of employer-sponsored coverage.

• Employees hired on or after the effective date must be provided the Notice of Exchange at the time of hiring.

• Employees employed on the effective date must be provided the Notice of Exchange no later than the effective date.
With this notice, employees must be informed of the following:

- The existence of an Exchange, given a description of the services provided by the Exchange, and told how to contact the Exchange to request assistance.
- They may be eligible for a premium tax credit or a cost-sharing reduction (under PPACA 1402) through the Exchange if the employer plan’s share of the total cost of benefits under the plan is less than 60%.
- If they purchase a qualified health plan through the Exchange, then they may lose any employer contribution toward the cost of employer-provided coverage; and all or a portion of employer contributions to employer-provided coverage may be excludable for federal income tax purposes.
This entity will be funded in part by fees (sometimes referred to as “PCOR fees” or “CER fees”) paid by certain health insurers and applicable sponsors of self-insured health plans.

Fees are payable in connection with policy/plan years ending after September 30, 2012, but stop applying for policy/plan years ending after September 30, 2019.

While insurers will file reports and pay the fees for insured policies, self-insured plan sponsors must file reports and pay these fees.

Employers that have HRA plans are subject to the fees and subsequent filings. Plan sponsors and insurers will file IRS Form 720 to report the fees and make annual payments. This return must be filed each year by July 31 of the calendar year immediately following the last day of the policy year (for insured plans) or the plan year (for self-insured plans).
Overview of Changes During 2014
Waiting Periods

- A plan must not apply a waiting period that exceeds 90 days.
- Hard 90 day cap employee eligible by 91\textsuperscript{st} day.
- This prohibition applies to group health plans and insurers but not to certain “excepted dental and vision benefits.”
A plan may not impose any pre-existing condition exclusion.

This will be the case whether or not an individual has prior creditable coverage and whether or not the individual is a late enrollee.

The prohibition includes both denial of enrollment and denial of specific benefits based on a preexisting condition.

A PEC also includes any limitation or exclusion based on information relating to an individual's health status, “such as a condition identified as a result of a pre-enrollment questionnaire or physical examination given to the individual, or review of medical records relating to the pre-enrollment period.”
Cost Sharing Requirements

• Health care reform requires that “cost-sharing” be limited.
• This requirement applies to all group health plans (including self-insured plans)
• Cost-sharing includes deductibles, co-insurance, co-payments or similar charges, and any other required expenditure which is a qualified medical expense with respect to essential health benefits covered under the plan.
• Cost-sharing does not include premiums, balance billing amounts for non-network providers, or spending for non-covered services.
Overall Cost-Sharing Limitation (Out-of-Pocket Maximum):

• A plan must not impose cost-sharing in excess of the maximum out-of-pocket amount in effect for high deductible health plans for 2014.
• For 2013, the HDHP maximum out-of-pocket expense limit (that is, the sum of the plan’s annual deductible and other annual out-of-pocket expenses (other than premiums) that the insured is required to pay, such as co-payments and co-insurance for an HDHP) cannot exceed ($6,350 for 2014) for self-only coverage and ($12,700 for 2014) for family coverage.
• For 2015 and later years, the maximum is subject to increase.
Are you a Large or Small Employer?

- An employer is large if it employed an average of at least 50 full-time employees on business days during the preceding calendar year.
- For 2014 an employer may use any preceding 6 month period for determination of full-time status.
- Size to be determined on annual basis.
- In determining the number of full-time employees, an employer must add up the total number of hours worked in a month by part-time employees, divide by 120, and add that number to the number of full-time employees.
- A “full-time employee” for any month is an employee who is employed for an average of at least 30 hours of service per week.
- Record keeping needed to do this
- When calculation of full-time equivalency do not include more than 120 hours per month for each part-time employee.
Employer Mandate

Exceptions for seasonal employees

• Special rules apply to seasonal employees
• If an employers work force exceeds 50 for 4 months or less these individuals are not counted toward determination of their employer size as large or small.
Employer Mandate

Are you a large employer or small?

1. Number of full time employees (30 hours) average per week  
   A. ______

2. Number of part time employees 
   hours worked per month 
   Part time # of hours ___ ÷ 120  
   B. ______

   Total A & B  
   _________

3. If total is greater than 49 you are a large employer
4. If you are less than 50 employees you are currently not subject to the Employer Mandate.
Small Employer

• Small employers are not subject to the 30 hour rule.
• Small employers do **not** have to offer coverage to the employees who work over 30 hours.
• Employees who are not offered coverage can buy coverage from the individual marketplace, federal assistance in the form of cost sharing subsidies or premium tax credits will be available.
Employer Mandate

Small Employers Who Have Coverage

An employee will be eligible for premium tax credits and cost sharing subsidies if they are offered coverage that does not meet:

Minimum Value Test
• A plan that provides 60% coverage with respect to the total allowed costs and benefits will be deemed having minimum values.
• Starting in 2014 all small group plans will comply to the minimum value test by law.

Affordability Test
• Employer plan that charges an employee premium that does not exceed 9.5% of wages.

If an employee is offered coverage that does not meet both the minimum value test and affordability test they will be eligible subsidies from the individual marketplace.
Small Employer Coverage 2014 & Beyond
How Will Small Groups Buy Coverage?

- Small Groups will have several options for purchasing coverage beyond 2014.
- The Small Business Health Options Program (SHOP) is the federally run marketplace (Delayed until 2015)
- Private Exchanges- Market places offered through a single or several carriers with simplified plans and guidelines, and greater experience level
- Group Insurance brokers and agents will still be around to simplify the plans and offerings
Actuarial Value, is calculated as the percentage of total average costs for covered benefits that a plan will cover.

- An AV of 70 percent, on average, a consumer could expect to be responsible generally for 30 percent of the costs of all covered benefits in that plan.
- AV’s or metal levels: 60 percent for a bronze plan, 70 percent for a silver plan, 80 percent for a gold plan, and 90 percent for a platinum plan.
- Metal levels will allow consumers to compare plans with similar levels of coverage, with consideration of premiums, provider networks, and other factors, help the consumer make an informed decision.
- A plan can meet a particular metal level if its AV is within +/- 2 percentage points of the standard. The comparable limit this year is $6,250.
Employer Mandate

Small Business Check List
To Do Now!

- Determine if you are a Small Employer or Large.
- Check status of FSA and amend to add individual premium accounts.
- Do you have an HRA
  - File Form 720 by 7/31/2013
- Determine if you are eligible for a tax credit (shop).
- Determine if plan will conform to Minimum Value and Affordability.
  - Strategic plan to comply or not comply to allow access to subsidies on the health care exchange.
- Your benefits will change.
- Furnish “Notice of Exchange” to all staff.
- Determine the proper time to apply the 90 day waiting period if applicable.
Employer Mandate

Large Employers

• Certain large employers may be subject to penalty taxes for failing to offer health care coverage for all full-time employees, offering minimum essential coverage that is unaffordable, or offering minimum essential coverage under which the plan's share of the total allowed cost of benefits is less than 60%.

• The penalty tax is due if any full-time employee is certified to the employer as having purchased health insurance through an Exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee.
Employer Mandate

Large Employers

• Large employers who do not offer “minimum essential coverage” and have at least one full-time employee who receives premium tax credits would be assessed a fee of $2,000.

• An applicable large employer will pay a penalty tax (i.e., make an assessable payment) for any month that—

  • (1) the employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in “minimum essential coverage” under an eligible employer-sponsored plan for that month; and

  • (2) at least one full-time employee of the employer has been certified to the employer as having enrolled for that month in a QHP for which a premium tax credit or cost-sharing reduction is allowed or paid.
Employer Mandate

Large Employer

• If an employee is offered affordable minimum essential coverage under an employer-sponsored plan, then the individual generally is ineligible for a premium tax credit and cost-sharing reductions for health insurance purchased through an Exchange.

• But, employees covered by an employer-sponsored plan will be eligible for the premium tax credit if the plan's share of the total allowed costs of benefits provided under the plan is less than 60% of the cost (that is, the plan does not provide “minimum value”), or the premium exceeds 9.5% of the employee's income, (based on W2).

ex:, Employee earns $23,000 x .095 = $2,421 a year or $182.08 a month.
Large Employer

- The penalty tax (assessable payment), is equal to $250 (1/12 of $3,000, adjusted for inflation after 2014), times the number of full-time employees for any month who receive premium tax credits or cost-sharing assistance (this number is not reduced by 30).

- This penalty tax is capped at an overall limitation equal to the “applicable payment amount” (1/12 of $2,000 adjusted for inflation after 2014), times the employer’s total number of full-time employees, reduced by 30.
Employer Mandate

Penalty Scenario’s:

<table>
<thead>
<tr>
<th>to 49 FTE's</th>
<th>Scenario A</th>
<th>Scenario B</th>
<th>Scenario C</th>
<th>Scenario D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employer Offers Coverage</td>
<td>N/A</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td># of Full Time Employees</td>
<td>20</td>
<td>70</td>
<td>70</td>
<td>70</td>
</tr>
<tr>
<td># of Full Time Employees Receiving Tax Credits</td>
<td>N/A</td>
<td>None</td>
<td>1</td>
<td>None</td>
</tr>
<tr>
<td>Annual Penalty Calculation</td>
<td>No penalty</td>
<td>(70-30) \times $2,000 = $80,000.00</td>
<td>No penalty</td>
<td>Lesser of: (70-30) \times $2,000 = $80,000.00 or (20) \times $3,000 = $60,000.00</td>
</tr>
</tbody>
</table>

All penalties are in after tax dollars
Employer Mandate

Large Employer

Notice to Employer of Premium Assistance:

• The penalty tax is triggered, in part, by the employer receiving a certification that one of its employees is determined to be eligible for a premium assistance credit or a cost-sharing reduction.

• The employee may be eligible because the employer does not provide minimal essential coverage through an employer-sponsored plan.

• Or the employee may be eligible because the coverage the employer offers either is not affordable, or the plan's share of the total allowed cost of benefits is less than 60%.

• The employer must also receive notification of the appeals process established for employers notified of potential liability for penalty taxes.
Employer Mandate

Reporting of Health Insurance Coverage:

• Certain employers are required to report to the IRS whether they offer their full-time employees and their employees' dependents the opportunity to enroll in “minimum essential coverage” under an eligible employer-sponsored plan and to provide certain other information.

• Reporting employers must also provide a related written statement to their full-time employees.
Employer Mandate

Reporting of Health Insurance Coverage:

The employer's return, which must in the form be set out by the IRS, must contain the following information—

• the employer's name, date, and employer identification number (EIN);

• a certification of whether the employer offers its full-time employees and their dependents the opportunity to enroll in “minimum essential coverage” under an eligible employer-sponsored plan (as defined in Code 5000A(f)(2));

• the number of full-time employees the employer has for each month during the calendar year;

• the name, address, and taxpayer identification number (TIN) of each full-time employee employed by the employer during the calendar year and the months (if any) during which the employee and any dependents were covered under a health benefit plan sponsored by the employer during the calendar year; and

• any other information required by the IRS.
Reporting of Health Insurance Coverage:

- Employers that offer the opportunity to enroll in “minimum essential coverage” must also report—
  - the months during the calendar year for which coverage under the plan was available;
  - the monthly premium for the lowest cost option in each of the enrollment categories under the plan;
  - the employer's share of the total allowed costs of benefits provided under the plan;
  - in the case of an employer that is an applicable large employer, the length of any waiting period with respect to such coverage; and
  - in the case of an employer that is an offering employer, the option for which the employer pays the largest portion of the cost of the plan and the portion of the cost paid by the employer in each of the enrollment categories under such option can offer more than one plan, but one must be minimum.
Employer Mandate

Notice Requirements:

• Employers required to submit a report of health insurance coverage to the IRS must also furnish a written statement to each of their full-time employees whose name was required to be included in the report.

• This statement must include—
  
  - the name, address, and contact information of the reporting employer; and
  - the information required to be shown on the return with respect to the individual.

• The written statement must be furnished to full-time employees on or before January 31 of the year following the calendar year for which the information was required to be reported to the IRS.
Decision Time!!

Part Time
• No responsibility to provide coverage to any employee working under 30 hours average

Full Time
• Any employee who works on average more than 30 hours must be offered affordable and minimum value coverage to avoid shared responsibility penalties
Safe Harbors

Fixed hour employees are easily determined, however, variable hour employees status determination is more difficult.

**Defined time periods.** The safe harbors allow employers to use these time periods to predict whether an employee will qualify as full-time for shared-responsibility purposes and avoid penalties:

- **Measurement period.** Employers select a fixed three-to 12-month measurement period for determining whether an employee has averaged at least 30 hours of service per week.
• **Stability period.** After meeting the minimum-hours threshold during the measurement, employees must be treated as full-time – regardless of actual hours worked – during a subsequent “stability period,” provided they remain employed.

• Employees who fail to meet the minimum-hours threshold during the measurement period do not have full-time status during the stability period and will not trigger shared-responsibility penalties.
Safe Harbors

- **Optional administrative period.** Employers may need time after the measurement period ends to decide which employees must be offered coverage during the ensuing stability period.

- The administrative period can’t exceed 90 days or be applied in a way that imposes a gap in employees’ coverage.
Safe Harbor for Ongoing Employees

- **Standard measurement and stability periods.** The measurement and stability periods that an employer selects to apply to its ongoing employees are called its “standard” measurement and stability periods.

- **Optional administrative period.** Where employers decide to use this option, the administrative period adopted can’t reduce or increase the length of the standard measurement or standard stability period.

- To prevent the administrative period from causing any gaps in a person’s coverage (once the periods have completed a full cycle), the administrative period must overlap with the prior standard stability period.
Safe Harbor for Ongoing Employees

Ongoing Employees Full Time Timeline

- Determine which variable hour & seasonal EEs have worked full time for entire measurement period.
- Employees who earned full-time status would be eligible for coverage for the entire stability period.

Measurement Period Yr 1
11/1/12 - 10/31/13

Admin Period

Stability Period (Plan Year) 1 Yr
1/01/14 - 12/31/14

Measurement Period Yr 2
11/1/13 - 10/31/14

Admin Period

Stability Period Yr 2
01/01/15 - 12/31/15

Determine again which variable hour & seasonal EEs have worked full time for entire measurement period.
Safe Harbor for New Employees

• A second safe harbor applies for determining which new employees must be treated as meeting the minimum-hours threshold.
• This safe harbor has a simple rule for new hires expected to meet the threshold from their start dates, plus a series of more complex rules for new variable-hour and seasonal employees.
• In addition, an employer must establish separate “initial” measurement and stability periods for new hires that may overlap with its “standard” measurement and stability periods for ongoing employees.
Safe Harbor for New Employees

• **New hires expected to work full time:** If a new employee in an eligible class is reasonably expected to average at least 30 hours of service per week, offering qualifying coverage that takes effect by the end of the employee’s initial three full calendar months of employment satisfies the shared-responsibility mandate.

• But that may not satisfy the 90-day cap on waiting periods.

• Interaction with 90-day maximum waiting period.

  – The waiting-period guidance sets stricter timelines than the shared-responsibility safe harbor for these new employees.
  – Coverage for new hires expected to meet the minimum-hours threshold must become effective by the 91st day after the employee becomes eligible (assuming the employee timely completes any enrollment steps).
Safe Harbor for New Variable Hour Employees

- Initial measurement and stability periods. The initial measurement and stability periods are unique to each new variable-hour or seasonal employee, reflecting the individual’s actual start date or, alternatively, the start of the first calendar month after that date.
Applicable Rules

• Once a new employee has completed an initial measurement period and an entire standard measurement period, the employee must be tested for full-time status.
• Starting with that standard measurement period, the employee’s full-time status is determined at the same time and using the same conditions applied to other ongoing employees.

  – An employee who meets full-time status during the initial measurement period must be treated as full-time for the entire initial stability period.
  – This is so even if the employee’s hours drop below the full-time threshold during the overlapping or immediately following standard measurement period.
Safe Harbor for New Employees

New Employee Full Time Timeline

- Determine if new employee worked full time for the entire initial measurement period
- EE who earned full-time status eligible for entire initial stability period beginning no later than one (plus partial) month after end of measurement period regardless of hours worked

Employee's Initial Measurement Period
2/15/13 - 2/14/14

Admin Period

Employee's Initial Stability Period
04/01/14 - 3/31/15

EE Part-time
5/1-8/31

Standard Measurement Period
11/01/13 - 10/31/14

Admin Period

Standard Stability Period
01/01/15 - 12/31/15

Since EE did not work full-time during the entire standard measurement period they would not be eligible for the full stability period.
Establishing safe-harbor time periods

• **When to start measuring hours worked.** Some employers may want to impose a 12-month measurement period followed by an administrative period, with a stability period matching the calendar year.

• To do so, employers need to begin tracking hours of service by Oct. 15, 2012, to set the first stability period equal to calendar-year 2014.

• For employers that currently record hours of service, this may simply involve sharing already-captured payroll or workforce management data with benefit staff and enrollment vendors.

• For other employers, however, settling on a strategy and beginning to track needed data may prove more daunting.
• For employers with large numbers of short-term employees, shorter measurement and stability periods may be optimal, at least for certain permitted categories of employees.

• But when designing a health benefit strategy to minimize shared-responsibility penalties, a 12-month stability period generally should be considered before alternative approaches to determine eligibility.
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