The Affordable Care Act

What are the employer requirements and what is the current status?

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Exchange Market

24 million
9% of total
(19 million subsidized)

Outside the Exchange
Nongroup & Other Coverage
22 million
8% of total
("Other" is about half and includes Medicare)

Medicaid Enrollment
(non-elderly)
51 million
18% of total

Structure in 2014

Exchange
- Qualified Health Plans
- Subsidies

“SHOP” Exchange
- Qualified Health Plans

Employers
Small and Large
162 million
58% of total

Small Business
(<100 employees)
SHOP Enrollment
5 million

Note: Enrollment figures are CBO projections for 2019 (CBO, March 2011 Baseline).
Employer Requirements Under the Law

- Employers with over 50 full-time equivalent employees are required to offer coverage to their full-time employees or potentially face a penalty
- Coverage must be affordable
- Coverage must meet “minimum value”
- Employers with less than 100 employees (or less than 50 employees) may purchase through the SHOP Exchange

Changes in 2013

MAJOR

Notice to employees – October 1, 2013

Educate them on benefits and Exchanges

Open enrollment in the SHOP Exchanges - October 1, 2013
**Status of Exchange Implementation**

- 18 States have been conditionally approved to operate a State-based Exchange: CA; CO; DC; HI; ID; KY; MD; MA; MN; NV; NM; NY; OR; RI; UT*; VT; and WA.
- 7 States have been conditionally approved to operate a Partnership Exchange: AR, DE, IL, IA, MI, NH, and WV.
- 26 States have deferred to the Federal government: AL; AK; AZ; FL; GA; IN; KS; LS; ME; MS; MO; MT; NE; ND; NJ; NC; OH; OK; PA; SC; SD; TN; TX; VA; WI; and WY.

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**Employer Coverage Requirements**

- An “applicable large employer” is required to offer its “full-time employees” and “dependents” “affordable coverage” that provides “minimum value”.
  - Who is an “applicable large employer”?
  - Who is a “full-time employee”?
  - Which “dependents” must be offered coverage?
  - What is “affordable coverage”?
  - What is “minimum value”?

- Otherwise, may pay a penalty. **DELAYED until 2015**

- Employers may also be subject to whistleblower claims, when realigning workforce in determining whether employees fall within FULL-TIME WORKER status.
Which Employers Must Comply?

- **Definition of Employer**
  - Uses the common-law test.
  - Employer includes a predecessor employer.
  - A new employer is a large employer for the current year if reasonably expected to employ at least 50 full-time employees during the year.
  - **Common Control**: Entities treated as a single employer by IRS under Common Control Clause still treated as a single employer and all employees taken into account to determine large employer status.

- **Definition of Employee**
  - A worker who is an employee under the common-law test.

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Measuring FTEs

- **Large Employer**: 50+ Full-Time AND Full-Time Equivalent (FTE) Employees

- **Measuring FTEs**
  - For all NON Full-Time Employees, add total number of hours worked in one month
    - Up to 120 hours for each NON full-time employee
  - Divide the total number of hours by 120
  - Result equals the number of FTEs for that month
Who is a Full-Time Worker?


> A full-time employee is one who works at least 30 hours per week, measured as 130 hours of service in a month.

Full-Time Employee Determination

- **Who is a Full-Time Employee?**
  - Is employee expected to be full-time? *Yes*°
  - FT/PT status is unknown
  - Measure actual hours worked on set period (3-12 months).

- Employee averages 130+ hrs/month
  - Employee considered eligible for full-time coverage *Yes*°

- Offer coverage to employee within 90 days of hire
  - *Assumes that the employee is "otherwise eligible" at hire date.

°*Assumes that effective date of coverage is at 3-12 months for same period.*
Categories of Employees (and Dependents)

- **Existing Full-Time Employees.** 30 hours per week/130 hours per month.
- **New Full-Time Employees.** Expected to work full-time.
- **Full-Time Employees’ Dependents.** Employers must offer coverage (not necessarily affordable) to full-time employees’ dependents.
  - Dependent does not include a spouse.
- **Permissible categories of employees.** Union/non-union; salaried/hourly; and employees in different States.
- **Part-Time Employees.** Work less than 30 hours per week/130 per month.
- **New, Variable Hour Employees.** At start date, employer cannot determine whether they will work 30 hours per week/130 hours per month.
- **Seasonal Workers.** Those employees who perform labor or services on a seasonal basis as defined by the Secretary of Labor, including (but not limited to) agricultural workers and retail workers employed exclusively during holiday seasons.

Affordability Test

- Coverage must be “affordable”
- Affordable means:
  - Premium charged to employee cannot be more than 9.5% of the employee’s income derived from employer.
  - Premium contribution to self-only coverage, not dependent coverage.
- The proposed rule includes three safe harbors:
  - **Form W-2 Safe Harbor.** Employee’s share of the self-only premium not more than 9.5% of W-2 wages for that year.
  - **Rate of Pay Safe Harbor.** Monthly wages = (hourly rate of pay) x (130 hours).
  - **Federal Poverty Line (“FPL”) Safe Harbor.** Employer may set the employee contribution level at 9.5% of the FPL for a single individual.
Minimum Value

- Coverage must meet “minimum value test”
- Minimum value of an Employer-Sponsored Health Plan
  - Plan pays out 60% of the benefits of the plan
    - Includes employer contributions to HSAs and amounts made available under HRAs
  - Four ways to determine:
    - “Eye ball test” of examples in the guidance of plans that meet the requirements;
    - Download into an HHS Calculator;
    - Actuarial certification; or
    - Any metal tier plan.

Examples

- Employer offers coverage to all 230 full-time employees (and dependents).
  - Coverage is unaffordable for 40 full-time employees.
  - These 40 full-time employees get tax credits to buy coverage in the Exchange.

- Employer must pay $120,000, the smaller penalty.
  - $3,000 x 40 FT employees receiving tax credit = $120,000; versus
  - $2,000 x (230-30) 200 FT employees = $400,000.

**PENALTIES DELAYED UNTIL 2015**
Examples

> Employer with 230 full-time employees *does not* offer coverage to all full-time employees.

> 40 full-time employees get government tax credit to buy coverage in the exchange.

> Employer must pay:
  - $2,000 \times (230-30) = $400,000.

**PENALTIES DELAYED UNTIL 2015**

Guidance Delaying Reporting Requirements

> On July 2, 2013, Department of Treasury announced a one-year delay of the employer reporting requirements and the penalty for not offering coverage to full-time workers.

> This delay only applies to reporting requirements and only to the application of penalties if a full-time employee receives a tax subsidy as a result of an inability to verify that employee was offered minimum value, affordable coverage.

> July 9, 2013 guidance encourages employers to voluntarily comply in 2014 with the reporting requirements and other employer requirements.
What does this mean?

1. Notices are required.
2. W-2’s must include total value of the premium.
3. Exchange applications will be filled out with the employer information.
4. Some believe that employers must still be in compliance with “full-time” worker strategy by 1/1/14.
5. ONLY DELAYED the penalty if a full-time worker receives a tax subsidy.

Large Employer Concerns

> Complex compliance and reporting costs;
> Fees added to cost of coverage and concern with State efforts to place fees on insurance/self insurance/providers;
> ACA definition of “full-time” worker is different than FLSA definition.
Commonly Asked Questions

> Can I offer a plan that provides less than minimum value and avoid a penalty?

<table>
<thead>
<tr>
<th>Federal Requirement</th>
<th>Standard</th>
<th>Penalty Imposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Mandate</td>
<td>Minimum essential coverage</td>
<td>The greater of:</td>
</tr>
<tr>
<td>Individual taxpayer must maintain coverage for self and any dependents</td>
<td></td>
<td>• $95 annually in 2014; $325 annually in 2015; and $695 annually after 2015.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• 1% of household income in 2014; 2% of household income in 2015; and 2.5% of household income after 2015.</td>
</tr>
<tr>
<td>Employer Requirements</td>
<td>Employees may seek coverage through the Exchange; if earn between 133%*–400% FPL, then eligible for a tax subsidy</td>
<td>$2,000 x (each full-time employee – 30)</td>
</tr>
<tr>
<td>If large employer offers no coverage to full-time employees (and their dependents)</td>
<td>Employees may seek coverage through the Exchange; if earn between 133%*–400% FPL, then eligible for a tax subsidy</td>
<td>The lesser of:</td>
</tr>
<tr>
<td></td>
<td>Employees may seek coverage through the Exchange; if earn between 133%*–400% FPL, then eligible for a tax subsidy</td>
<td>• $3,000 for each employee that receives a tax subsidy</td>
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<td></td>
<td></td>
<td>• $2,000 x (each full-time employee – 30)</td>
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<td>If large employer offers minimum essential coverage to full-time employees (and their dependents)</td>
<td>Employees may seek coverage through the Exchange; if earn between 133%*–400% FPL, then eligible for a tax subsidy</td>
<td>No penalty</td>
</tr>
<tr>
<td>If large employer offers minimum value coverage that is affordable (based on the safe harbors) to full-time employees (and dependents)</td>
<td>Employees may seek coverage through the Exchange; may not be eligible for tax subsidy unless the plan is unaffordable based on family AGI.</td>
<td>No penalty</td>
</tr>
</tbody>
</table>

*Depending on Medicaid expansion in State.
I have 55 employees in total. 45 of my workers are full-time. The 10 others are not full-time. How do I know if I’m a large employer, subject to these requirements?

For the 10 non full-time employees, measure their hours for each month – up to 120 hours each – and divide the total by 120, to determine how many “FTEs” you have.

For example, if each non full-time employee worked 60 hours total in January, you would have 5 FTEs.

60 x 10 = 600/120 = 5 [Divide Total Hours by 120]

This means you have 50 employees (5 FTEs + 45 Full-time Employees = 50) and you are a LARGE EMPLOYER.

Can I keep my plan as it is and still be in compliance?

This will depend on your current plan structure, which you will need to evaluate.

– Are you meeting minimum value?
– Is your plan affordable?
– Are you offering coverage to all full-time employees?
Commonly Asked Questions

> I count my employees as full-time if they work 40 hours per week. Those that work 30 hours per week, I consider part-time. What should I do?

> Educate employees – October 1 notice
> Offer employees options

Resources

> [http://business.usa.gov/healthcare](http://business.usa.gov/healthcare) - provides ACA information based on business size and location, and connects businesses to HHS, Treasury, and the Small Business Administration.
> [https://www.healthcare.gov/](https://www.healthcare.gov/) - Federal website with information on health reform for individuals and families, large and small employers, States and others.
> [https://www.regtap.info/](https://www.regtap.info/) - Information hub for CMS technical assistance related to Exchange and Premium Stabilization programs.
QUESTIONS?
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