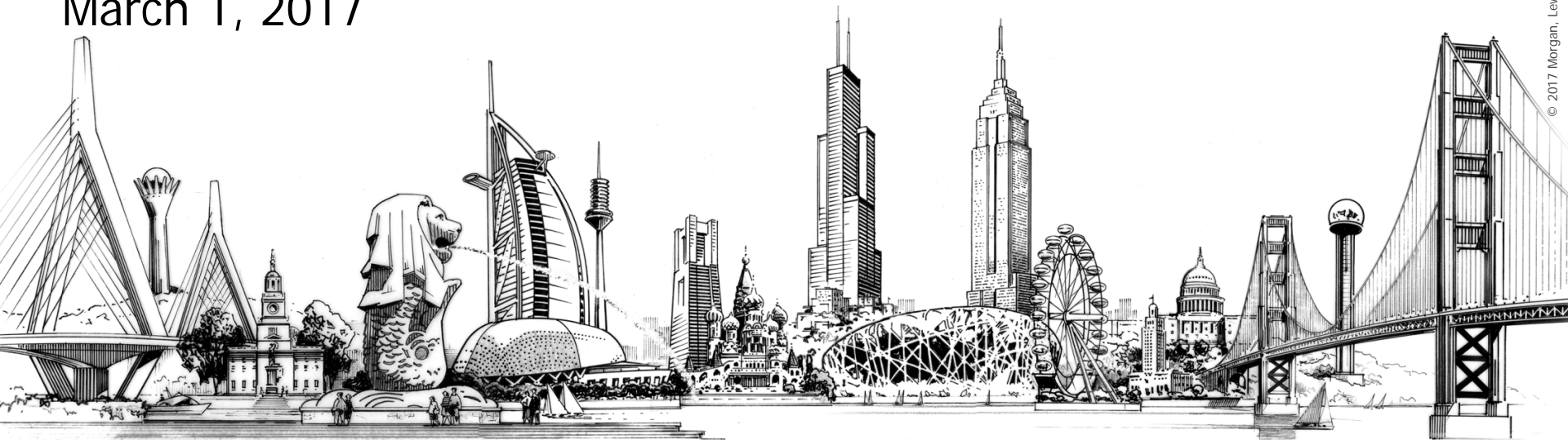


Morgan Lewis

EXPATRIATE HEALTH PLANS

Jonathan Zimmerman
ALI-CLE The Year in Employee Benefits
March 1, 2017



Agenda

- Potential Penalties
- Applicable Requirements
- Legislative Relief

Potential Penalties

- Individual Mandate
- Employer Mandate
- Information Reporting
- Market Reform Rules

Applicable Requirements Individual Mandate

- Only “applicable individuals” are required to purchase “minimum essential coverage” (MEC)
 - Excludes individuals who are nonresident aliens for the entire year, or not lawfully present for any day during the month
- An individual is deemed to have MEC (even if not offered coverage) if the individual is:
 - A U.S. citizen who establishes that he or she is a bona fide resident of a foreign country or countries (or a U.S. possession) for an uninterrupted period that includes an entire taxable year, or
 - A U.S. citizen or resident who is present in a foreign country or countries for at least 330 full days during a 12-consecutive month period.
- Coverage by a non-U.S. insurer may qualify as MEC

Applicable Requirements Employer Mandate

- Outbound Transfers
 - Foreign affiliates can be “applicable large employer (ALE) members” subject to the mandate
 - Employee may be treated as terminated if:
 - Position expected to continue for at least 12 months, and
 - Substantially all income will be non-U.S. source
 - Otherwise employee’s status is determined based on measurement methods used by both employers
- Inbound Transfers
 - Employee may be treated as a new hire subject to waiting period if:
 - Non-U.S. position was expected to continue for at least 12 months,
 - Substantially all income was non-U.S. source, and
 - No “hours of service” for at least 13 weeks before the transfer
 - Otherwise look to measurement methods

Applicable Requirements Information Reporting

- Scope of 6055 reporting mandate may be broader than the individual mandate
 - E.g., non-U.S. insurers may need to report
- Scope of 6056 reporting generally tracks the employer mandate requirements
 - Non-U.S. affiliates need to report, unless they have zero employees with “hours of service”
 - Reporting requirement can be triggered by transfer of a single employee with U.S. hours of service
 - One ALE Member can report for others, but separate Forms 1094-C are required for each EIN

Legislative Relief Status

- Expatriate Health Coverage Clarification Act enacted in December of 2014
 - Provides limited relief under ACA for “expatriate health plans”
- Proposed regulations issued in June of 2016
 - Effective for plan/policy years beginning on or after 1/1/2017
 - FAQs provided relief for earlier periods
 - Taxpayers may rely on proposed regulations
- Enforcement???

Legislative Relief Requirements

- Substantially all of the primary enrollees are:
 - Non-U.S. nationals temporarily assigned to the U.S., need access to health insurance in multiple countries, and are receiving other “multinational benefits;”
 - U.S. nationals working outside the U.S. for at least 180 days during a 12-month period; and/or
 - Part of a group performing international nonprofit work
- Plan must:
 - Be self-insured or insured by a U.S. insurer that meets certain requirements
 - Provide “minimum value”
 - Cover certain services
 - Offer dependent child coverage through age 26 if dependent child coverage is offered
 - Satisfy other pre-ACA mandates (ERISA reporting and disclosure, HIPAA special enrollment and non-discrimination, etc.)

Legislative Relief

Scope of Relief

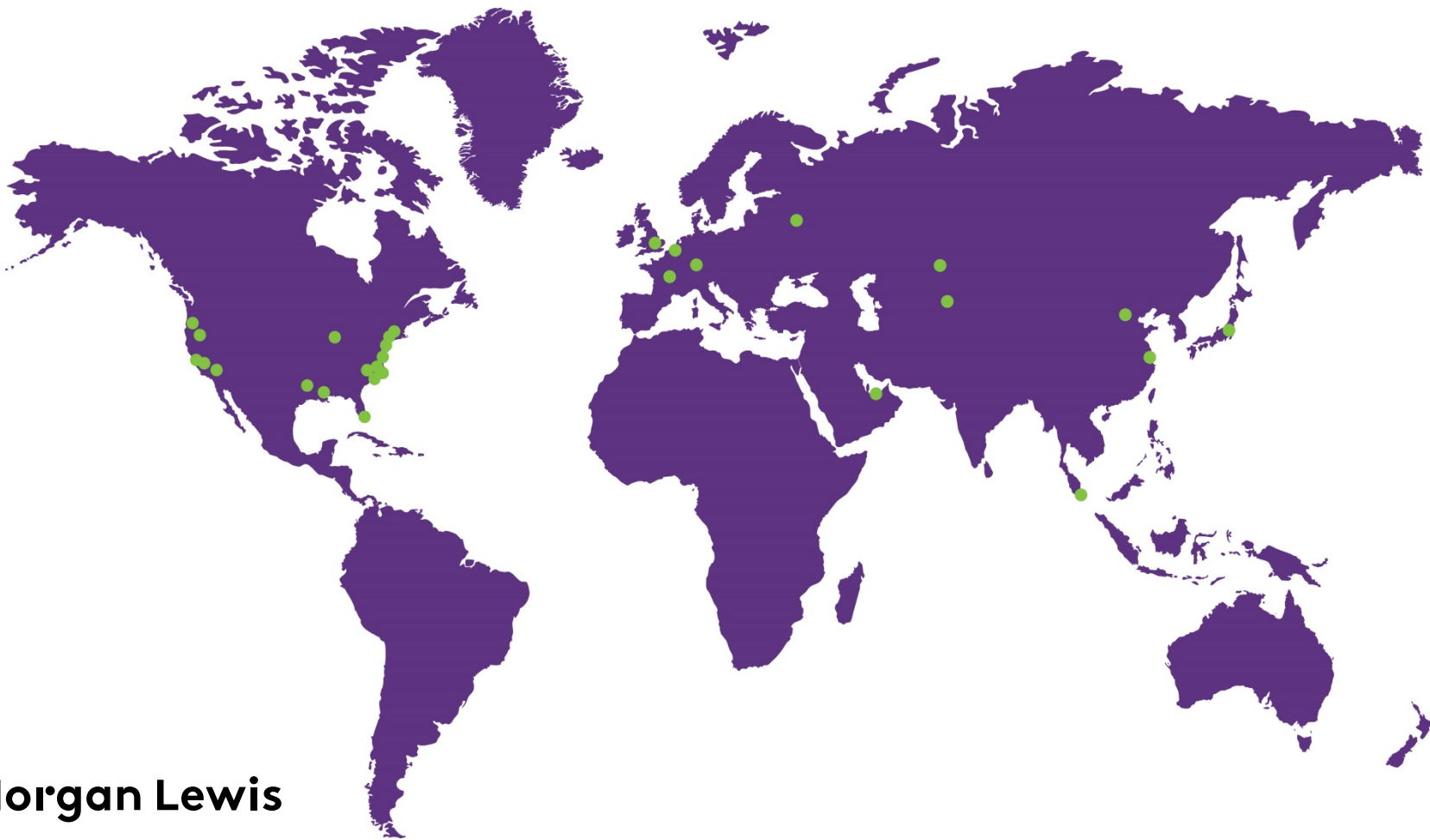
- “Expatriate health plans” are deemed to satisfy or exempt from the following requirements:
 - Requirement to provide MEC for both the individual and employer mandates.
 - Market reform rules
 - Cadillac plan excise tax, unless an employee is assigned (rather than transferred) to the U.S.
 - ACA fees (e.g., PCORI, transitional reinsurance program, health insurance providers fee)
 - Medical Loss Ratio reporting/rebate rules
- Not exempt from:
 - Reporting requirements
 - But may furnish statements electronically unless recipient opts out
 - Section 4980H excise tax determination

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

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THANK YOU

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