

Morgan Lewis

The Road To 2014: ACA Considerations For Employers

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The Road to 2014

- ACA considerations for employers
 - Who is subject to the Shared Responsibility requirements?
 - Which employees must be offered healthcare coverage?
 - What healthcare coverage prevents a Shared Responsibility penalty?
- ACA considerations for group health plans
 - March 12, 12-1 p.m. EST
- ACA considerations for individuals
 - March 21, 12-1 p.m. EST

The Road to 2014

- The Road to 2014 is still under construction, and will be for years to come (not to mention patches and possible road widening in future years)
 - But, we have a good idea where the road is going, and how to get to 2014
 - Expect some detours along the way—and perhaps even some dead ends
- We'll all have to make some educated guesses along the way
 - Don't expect too many more significant regulations
 - Expect to hear, along the way, “Off Route: Recalculating” on occasion!

The Road to 2014

- Today's objective:
 - Determine if the Shared Responsibility penalty applies—in its various forms—in 2014
 - *Analyze how it works and how to avoid it*
 - *Determine whether to embrace it fully or in a limited fashion*

When Does The Employer Mandate Apply?

- Typically effective 1.1.2014, but there are limited delayed effective date rules for non-calendar year plans
 - Delayed until start of non-calendar year for any employee eligible to participate on 12.27.2012
 - Delayed until start of non-calendar year for all employees (whether previously eligible or not) if:
 - *Offered plan to at least one-third of all employees at most recent OE; or*
 - *Covered at least one-quarter of all employees on any day between 10.31.2012 and 12.27.2012*
 - Not all will qualify!

Who Is Subject To The Employer Mandate?

- Applies to, basically, all employers
 - Private, government, nonprofit, church, etc.
 - No exception or delay for collectively bargained plans
 - *Throws a huge monkey wrench into current collective bargaining agreements*
 - Reopen?
 - Ask for assurances?
 - Provide fail-safe coverage as a backstop?
 - *Limited collective bargaining transition rule provides little real assistance or relief for employers*

Who Is Subject To The Employer Mandate?

- Only large employers
 - On average, at least 50 full-time employees on business days during the previous calendar year
 - *Six consecutive-month transition rule for 2013*
 - Determine if “large” by adding together:
 - *FT employees, and*
 - 30 hours per week (or 130 hours per month)
 - *FT employee equivalents*
 - Total hours worked by part-time (PT) employees divided by 120
 - *From all controlled group employers*

Who Is Subject To The Employer Mandate?

- Special rules for:
 - *Seasonal employees*
 - *New employers*
 - *Predecessor employers (reserved for future guidance)*
- Most employers will know, well in advance of 2014, whether they are subject to the employer mandate

So I'm Subject To The Mandate—Now What?

No Coverage Penalty	Inadequate Coverage Penalty
If employer does not offer Minimum Essential Coverage to 95% of its FT employees	If employer offers coverage to its FT employees, but the coverage is not Affordable and/or does not provide Minimum Value
AND	
One FT employee enrolls in an Exchange <u>and</u> receives a subsidy	
Employer must pay penalty of: \$2,000 for <u>all</u> FT employees (less 30) (including those receiving coverage)	Employer must pay penalty of: \$3,000 for each FT employee receiving a subsidy (capped at the maximum No Coverage penalty)

No Coverage Penalty

- Offer
 - At least 95% of all FT employees (and their children in 2015)
 - *FT employee = 30+ hours per week (130+ hours per month)*
 - Qualifying coverage
 - *“Minimum Essential Coverage” (basically any ER-sponsored plan)*
- Or pay No Coverage penalty
 - \$2,000 times all FT employees (minus 30)
 - *Note: employers who have fewer than 30 FT employees will pay no penalty*

No Coverage Penalty

- Only applies if one FT employee enrolls in Exchange and receives a subsidy
 - *No subsidy available if:*
 - Eligible for Medicaid (100%-133% of federal poverty level)
 - Household income more than 400% of federal poverty level
- Calculated on ALL FT employees of each controlled group member separately
 - *30-employee reduction apportioned across controlled group members*
- This is an employer that has decided to (or is inadvertently obligated to) “Pay”

Inadequate Coverage Penalty

- Offer
 - To all FT employees (and their children)
 - *FT employee = 30+ hours per week (130+ hours per month)*
 - Qualifying coverage
 - *Is “Minimum Essential Coverage” and*
 - *Provides “Minimum Value”*
 - That is Affordable
 - *Not more than 9.5% of household income for employee-only coverage*

Inadequate Coverage Penalty

- Or pay Inadequate Coverage penalty
 - \$3,000 per each FT employee who receives subsidy for Exchange coverage (capped at maximum No Coverage penalty)
 - No subsidy available if:
 - *Eligible for Medicaid (100%-133% of federal poverty level)*
 - *Household income more than 400% of federal poverty level*

Employer Mandate – Inadequate Coverage Penalty

- Applied separately to each controlled group member
 - *Limits scope of penalty to only part of controlled group*
- This is also an employer that has decided to (or is inadvertently obligated to) “Pay”

Who Is A Full-Time Employee?

- Average 30 hours of service/week
 - For non-hourly employees, 8 hours/day or 40 hours/week
 - 130 hours/month can be used
- Different from large employer determination
 - No need to combine PT employees into FT equivalents
- Determined on a controlled group basis
 - Very challenging for transfers within a controlled group

Who Is A Full-Time Employee?

- Determination of FT status
 - Under statute, this is determined monthly on an ongoing basis
 - *Administratively difficult and unpredictable for variable-hour or seasonal employees whose FT status is unknown*
 - *Regulators do not want individuals with variable hours moving in and out of coverage (and in and out of subsidized Exchange coverage) on a monthly basis*
 - *Employees whose status is clearly FT when hired must be offered coverage within 90 days of hire*

Who Is A Full-Time Employee?

- Voluntary safe harbor method for new variable-hour and seasonal employees
 - *Permits employers to calculate employee hours during an initial measurement period (3-12 months after employment) and lock in the resulting status for the following stability period (6-12 months)*
 - *Employer can define periods, subject to consistency based on categories of employees (i.e., salaried/hourly, union/nonunion, different entities, different states)*
 - *Short (less than 2 months) administration period to start coverage if using full initial measurement period*
 - *Will be complicated to track and implement*
 - **With flexibility comes complication!**

Who Is A Full-Time Employee?

– Voluntary safe harbor method for ongoing employees

- *Permits employers to calculate employee hours during a consistent ongoing measurement period (3-12 months) and lock in the resulting status for the following stability period (6-12 months)*
- *Employer can define periods, subject to consistency based on categories of employees (i.e., salaried/hourly, union/nonunion, different entities, different states)*
- *Likely tied to open enrollment process and timing*
- *Full three-month administration period to start coverage*
- *Must transition new variable-hour and seasonal employees to this ongoing measurement process*

What Is Minimum Essential Coverage?

- Necessary to avoid the No Coverage and Inadequate Coverage penalties
- Coverage constitutes Minimum Essential Coverage if it is under an “eligible employer-sponsored plan”; no particular level or type of benefits, but must meet 2014 ACA mandates, e.g.:
 - No annual or lifetime limits
 - No cost-preventive services (in most cases), etc.

What Is Minimum Essential Coverage?

- Plan can be insured/self-insured, but not excepted benefits (e.g., certain dental/vision, fixed indemnity)
- Multiemployer plan qualifies

What Is Minimum Value?

- Necessary to avoid Inadequate Coverage penalty
- Generally plan must cover at least 60% of total allowed costs in four core categories of benefits:
 - physician and midlevel practitioner care,
 - hospital and emergency room services,
 - pharmacy benefits, and
 - laboratory and imaging services
- Determined by design-based safe harbor, calculator, or actuarial certification borrowed from HHS Exchange coverage rules

When Is Coverage Affordable?

- Necessary to avoid Inadequate Coverage penalty
- Premium for cheapest employee-only coverage must be less than 9.5% of household income
 - No cap on spouse/children premiums
 - *May be up to COBRA cost of coverage*
- Three safe harbors:
 - W-2: Premium cannot exceed 9.5% of the employee's W-2 wages from the employer for that year

When Is Coverage Affordable?

- Rate of Pay: Premium cannot exceed 9.5% of the employee's hourly rate of pay (or monthly salary) multiplied by 130 hours at the beginning of the coverage period
 - *Useful when hours worked drop*
 - *Ignores pay for hours in excess of 130*
- Federal Poverty Line: Premium cannot exceed 9.5% of an amount equal to the federal poverty line for the year divided by 12
 - *Also useful when hours worked drop or as a fail-safe*
 - *Roughly \$83*

Who Is A “Play” Employer?...

- ...only an employer that avoids both the “No Coverage” and “Inadequate Coverage” penalties
 - This can be a tough challenge
 - *Inadvertent failures are the big concern*
 - Some employers may deliberately decide to “Pay,” for part or all of the controlled group, as \$2,000 times all FT employees (minus 30) is much cheaper than typical group health coverage
 - *Expect penalties to increase*
 - *Anticipate that employees will ask for wage increases to reflect forgone subsidies*

Lingering Concerns

- Nondiscrimination rules
 - Particularly worrisome if employer has different health coverage, or varying “P-O-P” responses across its controlled group
- Wellness plans
 - Incentives/penalties may hit affordability of coverage
- ERISA section 510 claims
- Cadillac Tax
 - Some coverage may be too rich for 2018
 - *Is 2014 the time to cut back?*

Questions?

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