

Same Song, Different Dance

New Guidance on the Employer Mandate and Reporting Requirements under the Affordable Care Act

Presented By:

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Ogletree
Deakins

EMPLOYEE BENEFITS
LAW

FROM A DIFFERENT
ANGLE



Agenda

- Shared Responsibility in a Nutshell
- New Final Regulations
 - Employer Mandate
 - Waiting Periods
 - Employer Reporting



Shared Responsibility in a Nutshell

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Shared Responsibility

- The individual mandate—secure and maintain “minimum essential coverage” or pay a fine
 - Individual mandate effective January 1, 2014
- The employer mandate—provide “minimum essential coverage” that is affordable and that offers minimum value or pay a fine
 - Employer mandate generally effective January 1, 2015
 - Transition relief for smaller “ALEs” until January 1, 2016



Penalty Trigger for Employers

- Employee must purchase coverage on Exchange and receive a premium tax credit:
 - Household income must be between 100% and 400% of federal poverty level, and
 - The individual must not have an offer of affordable, minimum value coverage



Truth and Consequences

- Large employers will be assessed nondeductible penalty if:
 - Fail to offer coverage, *or*
 - Fail to offer the “right” coverage, *plus*
 - At least one FT employee is eligible for premium tax credit for Exchange coverage



Truth and Consequences (cont.)

■ Penalty Formula

- “Large” penalty
 - $\$2,000 \times \text{FT headcount (less 30; 80 for 2015 only)}$
- “Smaller” penalty
 - $\$3,000 \times \text{number of subsidy-eligible employees}$



New Final Regulations

The Employer Mandate



Who is a FT Employee?

- Generally, 30 hours/week *or* 130 hours/month on average
 - “Hours” include working and non-working time for which payment is due
 - *Some* volunteer and student work is excluded
 - Hours earned/paid outside the U.S. are excluded generally



Who is a FT Employee? (cont.)

- How hours are counted depends on the type of employee at issue
 - Hourly: use actual hours
 - Non-hourly: actual hours or daily/weekly equivalencies (but anti-abuse rules apply)
- Different methods can be used for different plan years and employee groups, subject to some limits



Who is a FT Employee? (cont.)

- Choices for measuring—
 - Monthly method
 - Look-back method
- Monthly method
 - Hard to administer
- Look-back method
 - Mostly carried over from proposed regulations
 - For variable hour, seasonal, and part-time employees
 - For full-time employees after first year



Who is a FT Employee? (cont.)

- Measurement and stability periods assume variable hour or seasonal employees not likely to work a FT schedule
- Employer's determination assessed for reasonableness (facts and circumstances)
- Factors include—
 - Replacement of existing FT position
 - Hours for comparable positions
 - Communications about anticipated working hours
- Incentive to err in favor of offer of coverage?



Who is a FT Employee? (cont.)

- New definition: **part-time employee**
- Clarified definition: **seasonal employee**
- Clarified definition: **variable hour employee**



Who is a FT Employee? (cont.)

- New rule for rehires (or return-to-service) determination
 - New hire treatment only if 13 consecutive weeks break in service before rehire
 - 26 weeks for educational institutions
- Special rules apply for absence due to FMLA, USERRA, or jury leave



Refinements for “Dependents”

- Offer of coverage must extend to FT employees and their “dependents”
 - Not spouses
 - Not stepchildren and foster children
 - Generally not children who are not U.S. citizens or resident in the U.S. or a contiguous country
- A child is a dependent for the entire month during which he/she turns 26



Special Jobs & Situations

- Adjunct faculty, layover hours, on-call employees have special rules
- Short-term/high-turnover—no special rules
- Changes in status—tricky if occurs during initial measurement period



Staffing Companies/PEOs/Union Plans

- Coverage offered by union plan under a collective bargaining agreement qualifies if MV and affordable
- Coverage offered by staffing company or PEO qualifies if MV and affordable and if worksite employer charged more for employees who enroll in staffing company/PEO plan



Transition Relief

- Smaller ALEs (between 50 and 99 FTEs) have until 2016, if conditions are met
- ALEs may use transitional measurement period for 2015
- For 2015, offer of coverage to at least 70% of full-time employees will avoid large “no coverage” penalty; after that, must be 95%
- For 2015, larger penalty calculated on all but 80 of full-time employees; after that, exclude 30
- Plans without dependent coverage



New Final Regulations

Permissible Waiting Periods



Regulatory History

- Temporary and proposed guidance issued in 2012 and 2013
- Final regulations published 2/24/2014, along with new proposed regulations on “employment-based orientation periods”



Permissible Waiting Periods

- Health plan can't require eligible individual to wait longer than 90 calendar days for coverage to become effective
- Applies first day of 2014 plan year



Coordination Rules

- Job classification OK
- Licensing requirement OK
- 1-month bona fide orientation period allowed
- If 12-month initial look-back, coverage must be effective by first of month after 13 months from start date
- Cumulative service up to 1,200 hours allowed



New Final Regulations

Employer Reporting



Employer Reporting

- Two new reporting requirements
- Employers and other coverage providers report
- Enforcement of employer and individual mandates requires reporting and verification of coverage
 - Individual penalty assessment
 - Employer penalty assessment
 - Individual premium tax credit eligibility
- To IRS, HHS/State Exchanges, Individuals



New Reporting Obligation #1

- Code Section 6055 – Minimum Essential Coverage
- Includes filing return with IRS and furnishing statement to individuals
- Used to match coverage reported by individual on Form 1040, with coverage reported by employers and insurance carriers
- **First report due in 2016 for 2015**
 - **No delay under 4980H transition relief**



Who reports under 6055?

- Type of coverage determines reporting party
 - Self-insured coverage – employer reports
 - Insured coverage – insurance carrier reports
 - Multiemployer plan – Board of Trustees reports
 - Self-insured MEWA – each employer reports
- Reporting extends to *all covered individuals, including*
 - employees who died during the year
 - employees exempt from individual mandate
 - non-employees with coverage (e.g., directors)



What coverage is reported under 6055?

- Report health plans that provide Minimum Essential Coverage
- Not:
 - On-site clinics
 - Excepted benefits
 - Integrated wellness programs
 - HRAs providing supplemental coverage
 - HSAs
 - Retiree coverage that supplements Medicare



What is reported to the IRS under 6055?

■ Report to IRS:

- Primary insured (employee) – name, truncated SSN
- Covered spouse and dependents – name, truncated SSN (or date of birth if SSN not available, after “reasonable efforts” to obtain)
- Months enrolled and entitled to receive benefits (for at least one day of month)
- Plan sponsor – name, address, EIN



What is reported to individuals under 6055?

- Furnish statement to each covered employee who enrolls:
 - Info on reporting entity - name, address, contact phone number
 - Info reported to IRS on employee and covered spouse and dependents
 - Policy number, if any
 - Can check box that individual covered for all 12 months



New Reporting Obligation #2

- Code Section 6056
- Applicable Large Employer reports health insurance offered
- **Due in 2016 for 2015**
 - **No delay for transition relief under 4980H**
- Includes an IRS filing + individual statement
- May contract for TPA to file with IRS and furnish to individuals, but still liable



New Reporting Obligation #2

- Report to IRS and to individuals information about health care coverage offered to full-time employees
- Purpose is to determine:
 - whether employers met mandate
 - whether individuals met mandate
 - whether individuals can claim a premium tax credit on their tax return




Who files under 6056?

- Each “ALE” member with ≥ 50 full-time equivalent employees files return
 - Even though controlled group is aggregated to determine whether ≥ 50 FTEs
 - Assessments under employer mandate are determined separately for each member
 - Generally, ALE member reporting under 6056 is the common law employer
 - One ALE member can facilitate filing by others, but each member remains liable




How do you report to the IRS under 6055 and 6056?

- File IRS Form 1095-C
 - Some non-employer entities will file Form 1095-B for 6055 reporting only
- Combined 6055 and 6056 filing for sponsors of self-funded plans on 1095-C
- Electronic filing required if file at least 250 forms under Section 6056
- File corrected returns within 30 days to avoid penalties



When must you first report to the IRS under 6055 and 6056?

- File annually with IRS by February 28 (March 31 if filed electronically) after year of coverage
- **Initial filing due February 29, 2016, or March 31, 2016 if filed electronically**
- May apply for up to 30-day extension for good cause



When do you report to individuals?

- Employee statements furnished annually to full-time employees on or before January 31
- Electronic distribution permitted with consent
- **Initial statements due February 1, 2016**



Consequences?

- Same penalties as for information returns generally
 - \$100 per return/statement
 - \$1.5 million annual cap
 - Applies to report and statement
- Reasonable cause exception for both
- Reductions possible for quick fixes
- IRS may review for accuracy



Consequences? (cont.)

- Transition Relief for 2015 for 6055
 - No penalties for 6055 returns and statements filed in 2016 for 2015 if
 - Good faith effort to comply
 - Returns and statements timely filed
 - Only error is incorrect or incomplete information
 - E.g., SSN's and dates of birth



Preparing for New Reporting

- IRS encouraging voluntary compliance for 2014 reporting
- No penalty for waiting
- Urging employers to build systems and report for 2014:
 - to have “real-world testing of reporting systems and plan designs”
 - to contribute to a “smoother transition to full implementation for 2015”

Questions?



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