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Affordable Care Act and How it Affects Your Business

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&
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Agenda

- Health Care Reform Overview
- Applicable Large Employer Determination
- Employer Mandate Requirements
- Potential Penalties
- Other ACA Provisions Impacting Large Business
- Tax Credits for “Small Employers”
- Small Business Health Options Program (SHOP) and Exchanges
- Individual Tax Increases
Health Care Reform Overview

- Employers must move forward with planning to:
  - Comply with the requirements of the law
  - Adjust/refine health care strategies to comply with the law and support business and HR objectives

- Some major concerns for employers and uncertainties
  - Considerable delegation to Federal Regulators under the Act
  - Increased regulatory activity by the states
  - Potential legal challenges to the Act
  - Unknown cost increases in 2014 and beyond

- Strategic thinking is required now
Rationale behind ACA

- The number one concern for small businesses has been cost
- The number one concern for employees has been access to affordable health care
- Small businesses pay on average 18% more for health insurance than big businesses
- ACA was enacted with the goal of helping small businesses lower premium cost growth and increasing access to quality, affordable health insurance
ACA Reduces Premium Cost Growth

- Before ACA, Small Employers Faced Many Obstacles to Covering Workers
  - Too few choices
  - Higher premiums and unpredictable rate increases
  - Higher rates for groups with women, older workers & those with chronic health concerns or high-cost illnesses, in most states
  - Waiting periods or no coverage for individuals with pre-existing conditions
ACA Reduces Premium Cost Growth

Today, under ACA, insurance companies:

- Face limits on administrative spending. Most insurers must now spend at least 80% of consumers’ premium dollars on actual medical care.
- Must disclose and justify proposed rate hikes of 10% or more, which states, or federal government, may review.
ACA Reduces Premium Cost Growth

Starting in 2014, insurance companies:

◦ Cannot charge higher rates or deny coverage because of a chronic or pre-existing condition
◦ Cannot charge higher rates for women, and face limits on charging additional premiums for older employees
◦ Will pool risks across small groups creating larger pools like large businesses
◦ Must not have annual dollar limits (cap on benefits)
◦ Must offer plans that provide a core package of “Essential Health Benefits” equal to typical employer plans in the state
Determining if you are a small or large employer

- Starting on January 1, 2015, employers with at least 50 full-time equivalent (FTE) employees must offer all FTE employees an “affordable” health plan that meets a “minimum value” standard.

- If less than 50 FTE’s, considered a small employer
  - Have option of offering health benefits (not mandated)

- Penalties have been postponed to 2015 on this mandate.
Determining if you are a small or large employer

- Step 1: Definition of Employer (Ownership Test)
  - Defined by IRS Tax Code “Common Control” - Section 414 (b), (c), (m), (o)
  - Employers with common owners or who are otherwise related are aggregated together to determine whether they meet the threshold number of 50 or more FTE employees
  - Rules are complicated, consult your tax advisor
Determining if you are a small or large employer

Step 2: Employee Hours or Service

- Full Time
  - 130 hours of service per calendar month is the equivalent of 30 hours a week on average in any given month

- Part-time
  - Law does not require employers to offer coverage to part-time employees
  - Must aggregate hours of service to figure out applicable large employer status (count no more than 120 hours per person)

- Seasonal
  - Seasonal exemption
  - If exceed 50 FTE for fewer than 120 days or 4 calendar months, may qualify for exemption in following year
Determining if you are a small or large employer

- Step 3: Measurement dates
  - Measure previous year January – December
Determining if you are a small or large employer

- Step 4: Monthly Calculation

30 + Hours

26 full-time

5,640 hours / 120 = 47

73 FTEs

Regulatory proposal: only count max 120 hours per part-time employee
## Determining if you are a small or large employer

- **Step 5: Average Over 12 months Applicable Large Employer: 86 FTEs**

<table>
<thead>
<tr>
<th>2013</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>Aug</th>
<th>Sept</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
<th>Ave FTEs</th>
</tr>
</thead>
<tbody>
<tr>
<td>FT 130 hrs/ calendar month</td>
<td>26</td>
<td>26</td>
<td>26</td>
<td>31</td>
<td>35</td>
<td>35</td>
<td>38</td>
<td>38</td>
<td>38</td>
<td>38</td>
<td>38</td>
<td>38</td>
<td>38</td>
</tr>
<tr>
<td>FT Seasonal (130 hours per calendar month) (4 months or ≤120 days)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
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<td>0</td>
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<td>0</td>
</tr>
<tr>
<td>Total of hours worked by all other employees */120 (includes seasonal/part-time hours)</td>
<td>47</td>
<td>48</td>
<td>48</td>
<td>51</td>
<td>52</td>
<td>52</td>
<td>52</td>
<td>52</td>
<td>50</td>
<td>48</td>
<td>48</td>
<td>48</td>
<td>48</td>
</tr>
<tr>
<td># of FTEs</td>
<td>73</td>
<td>74</td>
<td>74</td>
<td>82</td>
<td>97</td>
<td>97</td>
<td>100</td>
<td>100</td>
<td>88</td>
<td>86</td>
<td>86</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>86</strong></td>
</tr>
</tbody>
</table>

* Do not count more than 120 hours for each part-time employee
If Total number of FTE employees is 50 or higher

- Employer is considered an applicable large employer
  - Subject to employer mandate
  - Additional reporting requirements

If Total Number of FTE employees is less than 50

- Employer is considered a small employer
  - Not subject to employer mandate
  - Additional reporting requirements
Employer Mandate Requirements

- Applicable large employers must offer their full-time employees (and their dependents) “minimum essential coverage” or face potential penalties.
What Does it Mean to “Offer” Coverage?

- Make available with “effective opportunity” to accept or decline coverage
- Employees can opt out if covered by spouse’s plan
Full-Time Employees & their Dependents

- Dependent = an employee’s child who is under 26 years of age.
  - Offer to an employee’s spouse is not required
- Rely on employee for their children’s identity and ages
Minimum Essential Coverage

- Minimum Value
- Plan must cover 60% or more of the total allowed cost benefits provided by the plan
  - Deductibles
  - Co-pays
  - Covered services
- Affordable
Affordability

- Affordable for the full-time employee
  - Full-time employee's premium contribution cannot be more than 9.5% of household income (MAGI)
  - Based on single-only coverage

- 3 Affordability Safe Harbors for Employers Available
  - Form W-2 Safe Harbor (less than 9.5% of box 1 wages on W2)
  - Rate of Pay Safe Harbor (9.5% of lowest paid employee)
  - Federal Poverty Line Safe Harbor
What Triggers an Employer Penalty?

- Any full-time employee using a federal subsidy to purchase coverage on the exchange
  - Unaffordable
  - Below minimum value
  - 5% not offered coverage

<table>
<thead>
<tr>
<th>Poverty Level FPL</th>
<th>2013 Single</th>
<th>2013 Family of 4</th>
<th>Expanded Medicaid Eligible</th>
</tr>
</thead>
<tbody>
<tr>
<td>100%</td>
<td>$11,490</td>
<td>$23,550</td>
<td>Yes</td>
</tr>
<tr>
<td>133%</td>
<td>$15,282</td>
<td>$31,322</td>
<td>Yes</td>
</tr>
<tr>
<td>400%</td>
<td>$45,960</td>
<td>$94,200</td>
<td>No</td>
</tr>
</tbody>
</table>

- Impact of states not expanding Medicaid
Employer Penalties (IRC §4980H)

- 4980H (a): Employer does not offer “minimum essential coverage”
- 4980H (b): Employer offers minimum essential coverage, but unaffordable, not of minimum value or 5% not offered coverage
Do I Pay or Play?

- To play, offer minimum essential coverage to substantially all full-time employees.

- Must pay if:
  1. Don’t offer coverage - pay $2,000 annually per full-time employee over 30 full-time employees.
  2. Offer unaffordable coverage or coverage that lacks minimum value - pay $3,000 annually per full-time subsidized employee
     - 2 tests: minimum value and affordability
     - $3000 annual penalty per full-time employee for whom it is unaffordable, etc. ($250/month)
     - Indexed after first year
     - Max limit of (a) penalty cannot exceed to $2000 penalty calculation
Penalties effective on January 1, 2015 unless employers qualify for certain transitional relief for fiscal years plans. However, employers must know by October 1, 2013, whether they will pay or play in order to issue required notices to all employees regarding coverage options and exchanges.

- See https://www.dol.gov/ebsa/healthreform/index.html for technical release and model notices
- This penalty has also been postponed but still encouraged to send notifications.
Expansion of Coverage - Individual Mandate

- **Individual Mandate** (if employee chooses not to accept the employer plan)
  - With limited exceptions, ALL individuals must maintain “minimum essential coverage” or pay a penalty
    - Government provided coverage
    - Employer sponsored coverage
    - Exchange coverage

- **Exemption from mandate**
  - If required contribution to purchase insurance exceeds 8% of household income
  - Religious objection
  - American Indians
  - Incarcerated individuals
  - Those with income below the tax filing threshold
  - Uninsured for less than 3 months of year
Expansion of Coverage- Individual Mandate

- Penalty amount is the higher of a flat dollar amount or percentage of income.
  - 2014: $95 per adult and $47.50 per child (up to $285 for family) or 1% of household income
  - 2015: $325 per adult and $162.50 per child (up to $975 for family) or 2% of household income
  - 2016 and later: $695 per adult and $347.50 per child (up to $2,085 for family) or 2.5% of household income
  - Online calculator (Kaiser Family Foundation) KFF.org
Other ACA Provisions Impacting Large Business

- Summary of Benefits and Coverage disclosure rules
- Sample notices drafted by the U.S. Department of Labor
  - [http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf](http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf) (for when no employer health plan is offered)
- W-2 reporting of annual health care costs
  - Report health care coverage costs on W-2, Box 12, Code DD
  - Tax year 2013: all employers
- October 1, 2013 deadline to provide written notice to employees about exchanges (penalty postponed)
Small Business Health Care Tax Credit

- Since 2010, eligible small businesses can get tax credits worth up to 35 percent of their premium contribution to help them pay for health insurance. About 360,000 businesses and business owners who provide health insurance received the tax credit in 2011.

- Better options through new Health Insurance Marketplaces: Starting January 1, 2014, the self-employed and small businesses will have access to a range of affordable health care options.
Businesses with less than 25 FTE Employees

- If these smaller businesses provide coverage, they may qualify for the Small Business Health Care Tax Credit to help offset costs:
  - Must have average annual wages below $50,000; and
  - Contribute 50% or more toward employees’ self-only premium costs

- Note: The maximum tax credit is available to employers with 10 or fewer full-time equivalent employees and average annual wages of less than $25,000

- Note: Credit works on a sliding scale, i.e., for each FTE above 10 and average annual wages above $25,000, the credit is reduced. See IRS Form 8941
Small Business Health Care Tax Credit

- Business employs less than 25 full-time equivalent employees
- Employees’ average annual wages are less than $50,000
- Business pays for at least 50% of employees’ self-only premium costs

Up to 35% Federal Tax Credit in 2013 and *50% in 2014 if for-profit entity

* SHOP participants only
Starting January 2014, if a small business, with under 50 employees, chooses to offer coverage, there is a new streamlined way to do so: Small Business Health Options Program (SHOP)

State-based online marketplaces scheduled to be up and running October 1, 2013 for January 1, 2014 start
Health Insurance Marketplaces

- **SHOP= Small Business Health Options Program**
  - Part of the new Health Insurance Marketplaces (sometimes called “Exchanges”)
  - Spurs competition for customers based on price and quality, rather than by avoiding risk
  - Provides “Essential Health Benefits” – same level of benefits and services that would be covered in most employer-based plans
  - Helps employers better predict and control health insurance expenses
  - Will pool risks for small groups and reduce administrative complexity, thereby reducing costs
  - Works with new insurance reforms and tax credits to lower barriers to offering health insurance that small employers face
Through a SHOP, smaller employers can:

- Offer employees a meaningful choice of qualified health plans from different private health insurers
- Decide which qualified health plans to make available to employees
  - SHOP can allow employers to offer a single plan or multiple plans
- Employer decides how much to contribute toward premium costs (credit at 50% if qualified)
- Collect employee share of premiums through payroll deduction
  - Premium contributions can be made with pre-tax dollars
- Get one monthly bill, make one monthly payment to SHOP
- Take advantage of enhanced level of Small Business Health Care Tax Credits
Enrolling in SHOP: Who, When & How

- Which small businesses are eligible?
  - Businesses with generally 50 or fewer employees (some states may allow businesses with up to 100 employees)
  - In 2016, employers with up to 100 employees will be eligible to participate
  - Once a business enrolls, it can grow and still remain in SHOP

- When can businesses enroll?
  - Starting October 1, 2013 for coverage beginning January 1, 2014
  - Thereafter, throughout the year on a monthly basis

- How can businesses enroll?
  - Through a broker, OR
  - Directly through the SHOP. Visit www.healthcare.gov for more information and to sign-up for alerts
Exchanges

- State-based
- Rhode Island is expected to offer 28 plans
- Shop & Exchanges Act like Expedia or Orbitz for health insurance
  - Individual and small firms
  - Obtain information
  - Compare and purchase private health insurance
- RI: HealthSource RI website
- MA: Health Connector website
- CT: Access Health CT website
Beginning 2014, 90-day maximum waiting periods for otherwise eligible new hires to begin coverage

Starting in 2014, additional incentives/rewards to provide workplace wellness programs will be in place (e.g. max reward increases to as much as 50% for smoking cessation programs)

New information reporting requirements for issuers of health insurance coverage - applies to employers of any size that have self-insured health plans. First reports due 2015
Patient Centered Outcomes Research Fee (2012)

- Form 720
- Annual tax of $1 (increase to $2 in second year) multiplied by average number of covered lives in plan
- Assessed on health insurers and sponsors of self-funded plans
  - Likely passed down to fully-insured plans
- HRA – Employer is considered self-funded
Health insurers and third party administrators (on behalf of self-funded plan sponsors) will contribute to a transitional reinsurance program for exchanges.

Total contributions over 3 years required at $25 billion:
- Contributions will be determined on a per capita basis.
- 2014: $5.25 per month ($63) per year.
- Employers may see this passed down from insurer.
Health Insurance Tax (2014)

- Tax on health insurers, based on net premiums written
- What it means: higher costs for health insurers
Cadillac Plan Tax (2018)

- Tax imposed when premiums exceed $10,200 for individual and $27,500 for family

- 40% tax on excess of the annual value of a health plans cost over threshold above
Individual Tax Rate Changes for 2013

- Highest tax rate change to 39.6%
- Increase in capital gains & dividend rates to 20% for high earners
- Medicare Surtax of 3.8% on certain passive investment income of individuals, trusts and estates
- Hospital insurance tax on s/e income of .9%
- 3% phase-out of itemized deductions on high earners
- Personal exemption phase-out on high earners
Questions?

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