Employee Benefits Broadcast

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"The Benefits News You Need
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Tuesday, February 26, 2013
12:00 p.m. – 1:00 p.m. CST

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Today's Speakers


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In the Spotlight

Employer Shared Responsibility Rules of the Health Care Reform Act

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In the Spotlight

It's All About the Shared Responsibility Rules

- Effective dates
- Who's covered
- Cost of non-compliance
- Offering coverage to full-time employees
- Offering coverage that is affordable and provides minimum value
- How to approach the new law

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In the Spotlight

Effective Date

- January 1, 2014
- No delay for collectively bargained employees

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In the Spotlight

Delay for Fiscal Year Plans (as of 12/27/12)

- Full delayed effective date until 2014 plan year begins if:
  - Offered coverage to at least 1/3 of employees during pre-12/27/12 enrollment period

  OR
  - Actually covered at least ¼ of employees, measured one day from 10/31/12-12/27/12
- Partial delayed effective date until 2014 plan year begins:
  - No need to provide minimum value or affordable coverage to those employees who would meet the eligibility requirements as in effect on 12/27/12

**Delayed effective dates only applicable if in full compliance for 2014 plan year

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In the Spotlight

Applicable Large Employer

- Subject to law if employed 50 or more full-time and full-time equivalents (FTEs) during prior calendar year
  - 2013 is first year to measure 50+ FT employees and FTEs
  - Special rule for 2013 only -- any continuous 6-month period
- Determined on controlled group/affiliated service group basis

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In the Spotlight

Applicable Large Employer

- Controlled group – entities connected through 80% ownership (or board control if not-for-profit)
  - “Owner” can include 5 or fewer persons
  - Business owner cannot take 80-employee entity, split into two 40-employee entities
- Affiliated service group – several definitions
  - Entity and its management services company
  - Service organization (doctors, lawyers, accountants) and related entities

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In the Spotlight

Counting 50 FTs and FTEs

- Common-law employees
- Month-by-month determination
  - Average 30+ hours per week in the month = FT employee
  - All others, add hours and divide by 120= FTEs
- Average results for each month ➔ more than 50?
- Counts hours paid for both working and non-working time (such as vacation)

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In the Spotlight

Special Exception for Seasonal Workers

- If fewer than 50 FT & FTEs for all but 120 days/4 months (need not be continuous) or less
- Seasonal workers caused average to exceed 50 in those 120 days/4 months
- Then not applicable large employer
- If occurs in 5 or more months, no special exception
- Seasonal worker = good faith determination

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In the Spotlight

Who is Subject to the Excise Tax?

- Large Employers (50 Full-Time Employees and FTEs)
- Excise Tax Applies on a Member-by-Member Basis

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In the Spotlight

What Coverage Must a Large Employer Provide?

- Minimum Essential Coverage- Coverage under an eligible employer sponsored plan
- Affordable Health Coverage- 9.5% or less of employee's household income
- Minimum Value Coverage- Plan's share of total allowed cost of benefits provided is at least 60% of these costs

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In the Spotlight

When is the Excise Tax Triggered?

- Employer Fails to Offer:
  - Minimum Essential Coverage, OR
  - Affordable Health Coverage, OR
  - Minimum Value Coverage, AND
- Full-Time Employee Receives:
  - Premium Tax Credit, or
  - Cost-Sharing Reduction
    - For purchase of insurance on Insurance Exchange

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In the Spotlight

Penalty for Failing to Offer Coverage

- Employer failed to offer coverage to at least 95% of its full-time employees (and their dependents)
- Excise Tax Equals:
  - Number of full-time employees employed for the year,
  - Minus 30,
  - Multiplied by $2,000

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In the Spotlight

Penalty for Offering Non-Compliant Coverage

- Employer offers coverage to at least 95% of its full-time employees (and their dependents)
- Excise Tax Equals:
  - Payment computed separately for each month
  - Number of full-time employees who received a premium tax credit for that month
  - Multiplied by 1/12 of $3,000, OR
  - Amount of penalty that would have been imposed under $2,000 Excise Tax Calculation
    - Whichever is less

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In the Spotlight

Notification by IRS

- Employer notified after end of each calendar year if any employees received:
  - Premium Tax Credit, or
  - Cost-Sharing Reduction
    - For purchase of insurance on Insurance Exchange

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In the Spotlight

Avoiding Penalties: Offering Coverage to Full-Time Employees

- Penalties hinge on whether coverage is offered to full-time employees (and their dependents)
  - Failure to offer coverage to at least 95% of full-time employees (and their dependents):
    - Penalty = $2,000 ($166.67/month) x # of full-time employees
  - Failure to offer coverage to full-time employee (if 95% requirement is met):
    - Penalty = $3,000 ($250/month) <u>IF</u> employee receives premium tax credit/cost-sharing reduction
- Cost-benefit analysis: Full compliance desirable?

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In the Spotlight

Definition of "Dependent"

- The term "dependent" means an employee's child under age 26
- An employee's spouse is <u>not</u> considered a dependent under the shared responsibility rules

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In the Spotlight

Definition of "Full-Time Employee"

- Full-Time Employee: An employee who is employed an average of at least 30 hours of service per week (or alternatively, 130 hours of service per month)
  - Common law definition of employee
  - Exclusions: independent contractors, leased employees, sole proprietors, partners in a partnership, 2% S-corporation shareholders
- Are persons classified as independent contractors truly independent contractors rather than common law employees?

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In the Spotlight

Calculating Hours of Service

- Calculation Method
  - Hourly Employees: Actual Hours
  - Non-Hourly (Salaried) Employees
    - Actual Hours
    - Days-worked equivalency method (8 hours/day)
    - Weeks-worked equivalency method (40 hours/week)

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In the Spotlight

"Hours of Service" Defined

- Hours of Service include:
  - Each hour for which employee is paid, or entitled to payment, for the performance of duties for employer; and
  - Each hour for which employee is paid, or entitled to payment, by the employer on account of a time period during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence

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In the Spotlight

Determining Full-Time Employee Status

- Monthly Determination vs. Look-Back Rule
- Look at workforce to determine best method
  - Employees working over 30 hours per week
  - Employees working under 30 hours per week
  - Employees in between (may or may not work 30 hours per week)
  - Seasonal employees

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In the Spotlight

Look-Back Rule

- Under look-back rule, full-time employee status is determined by hours credited during a look-back "**measurement period**" to determine whether an employee must be offered coverage during a subsequent "**stability period**"
- May use an "**administrative period"** to notify employees of their eligibility to participate, and enroll those employees who elect coverage
- Application of look-back rule depends on whether an individual is an "ongoing employee" or "new employee"

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In the Spotlight

Measurement Period for Ongoing Employees

- Determine Standard Measurement Period
  - Period of at least three but not more than 12 months (as selected by the employer) during which an employee's hours are measured to determine if he or she is a full-time employee
  - Special rule to avoid splitting payroll periods
- May have different measurement periods for:
  - Each group of union employees covered by a different collective bargaining agreement
  - Union and non-union employees
  - Salaried and hourly employees
  - Employees whose primary places of employment are in different states

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In the Spotlight

Stability Period for Ongoing Employees

- Hours worked during measurement period determine whether employee is treated as full-time employee during subsequent stability period (without regard to hours worked during stability period)
- In general, length of stability period = length of standard measurement period
  - However, if employee is treated as a full-time employee, stability period must be at least six months
- Transition Rule for 2014: May use 12-month stability period if use measurement period of at least 6 months that begins no later than 7/1/13 and ends no earlier than 90 days before first day of 2014 plan year

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In the Spotlight

Use of Administrative Period for Ongoing Employees

- May use administrative period of up to 90 days between standard measurement period and start of stability period to notify and enroll employees
- Must overlap with prior stability period and cannot reduce or lengthen the measurement or stability period

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In the Spotlight

Example - Ongoing Employee

- ABC Corporation has over 500 employees and limits coverage to employees classified as full-time employees under the look-back rule. ABC Corporation uses a 12-month standard measurement period beginning October 15th to determine which employees will be offered coverage during the next 12-month stability period (which is the calendar year). ABC Corporation uses the period of October 15th through December 31st to notify and enroll employees in coverage.
- **Example 1**: Allen was hired on April 1, 2002. After reviewing Allen's hours from October 15, 2014 through October 14, 2015, ABC Corporation determined that Allen worked, on average, 30 hours of service per week.
- **Conclusion**: Since Allen was a full-time employee during the measurement period ending October 14, 2015, he must be offered coverage during the 2016 calendar year.
- **Example 2:** Same facts as Example 1. In addition, during the period of October 15, 2015 through October 14, 2016, Allen worked, on average, 28 hours of service per week.
- **Conclusion:** Since Allen did not work at least 30 hours per week during the measurement period ending October 14, 2016, ABC Corporation does not need to offer Allen coverage during the 2017 calendar year. However, ABC Corporation must continue to offer Allen coverage through the end of 2016 calendar year.

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In the Spotlight

Offering Coverage to New Employees

- Determine whether new employee is a full-time employee, variable hour employee, or seasonal employee
  - Full-Time Employee: reasonably expected to be employed on average at least 30 hours per week (and is not a seasonal employee)
  - Variable Hour Employee: Cannot determine whether employee will work 30 hours per week
    - 2014 transition rule for short-term employees
  - Seasonal Employee: Worker who performs labor on a seasonal basis
- For new employees, look-back concept applies only if employee is a variable hour or seasonal employee

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In the Spotlight

Offering Coverage to New Employees (Cont'd)

- Must offer coverage to new full-time employee at or before conclusion of employee's three initial full calendar months of employment
- Employer has flexibility to delay coverage for variable hour and seasonal employees through application of the look-back rule

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In the Spotlight

Initial Measurement Period for New Employees

- Period of 3-12 months beginning on any date between employee's start date and first day of month following employee's start date
  - Must be same length as standard measurement period, but actual period will vary based on employee's date of hire
- The following rules for ongoing employees also apply to new employees:
  - Ability to vary measurement periods for different classifications of employees
  - Special rule to avoid splitting payroll periods

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In the Spotlight

Stability Period for New Employees

- Hours worked during initial measurement period determine whether employee is treated as full-time employee during subsequent stability period (without regard to hours worked during stability period)
- In general, length of stability period = length of standard measurement period
  - if employee is treated as a full-time employee, stability period must be at least six months
  - if employee is NOT treated as full-time employee, stability period cannot be more than one month longer than initial measurement period and cannot exceed remainder of standard measurement period (plus any associated stability period)
- 2014 transition rule for ongoing employees also applies to new employees

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In the Spotlight

Administrative Period for New Employees

- May use administrative period of up to 90 days between employee's date of hire and start of stability period
  - Administrative period includes entire period between employee's start date and date employee is first offered coverage (other than initial measurement period)
- Limit on length of combined measurement period/administrative period
  - May not extend beyond last day of first calendar month beginning on or after one anniversary of employee's start date

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In the Spotlight

Example – New Employee

- ABC Corporation uses a 12-month initial measurement period that begins on an employee's start date and applies an administrative period from the end of the initial measurement period through the end of the first calendar month beginning on or after the end of the initial measurement period.
- **Example 1.** Bob is hired by ABC Corporation on February 26, 2014. At the time Bob is hired, ABC Corporation reasonably expects that he will work, on average, 40 hours per week during the measurement period.
- **Conclusion:** Since Bob is a new full-time employee, the look-back rule concept does not apply. ABC Corporation must offer health coverage to Bob prior to June 1, 2014.
- **Example 2:** Carl is hired by ABC Corporation on February 26, 2014 as a variable hour employee. During his initial measurement period, Carl works, on average, 30 hours per week.
- **Conclusion:** ABC Corporation must offer coverage to Carl from April 1, 2015 through March 31, 2016.

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In the Spotlight

Example– Transition to Ongoing Employee

- **Example 1**: Same facts as Example 2 in prior slide. After reviewing Carl's hours from October 15, 2014 through October 14, 2015, ABC Corporation determined that Carl worked, on average, 25 hours of service per week.
- **Conclusion**: ABC Corporation must continue to offer Carl coverage through March 31, 2016 (the end of the stability period corresponding to Carl's initial measurement period). However, ABC Corporation does not need to offer Carl coverage during the period of April 1, 2016 through December 31, 2016.

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In the Spotlight

Special Rules for New Employees Who Have a Change in Status

- If new employee has a change in status during initial measurement period, such employee is treated as a full-time employee as of earlier of:
  - The first day of the 4th month following the change in status; or
  - The first day of the first month following the end of the initial measurement period (if the employee averages more than 30 hours of service per week during the measurement period)
- Change in Status: change in position of employment or employment status that, had the employee begun employment in the new position or status, would have resulted in the employee being considered a full-time employee

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In the Spotlight

Example – Change in Status

- **Facts**: Doug is hired as a variable hour employee on 5/10/15. On 9/15/15, Doug is promoted to a position that can reasonably be expected to average at least 30 hours per week.
- **Conclusion**: Doug must be treated as a full-time employee as of 1/1/16

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In the Spotlight

Special Rules for Employees Returning from Break in Service

- May treat as new employee if employee incurs a four week break in service and either:
  - Employee incurs break-in-service of at least 26 weeks; or
  - Employee incurs break in service that is longer than the employee's period of employment immediately prior to break in service
- Otherwise, treat as ongoing employee

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In the Spotlight

Special Rules for Returning Employees Treated as Ongoing Employees

- Measurement/stability period that would have applied if employee had remained continuously employed continues to apply
- If treated as full-time employee, must be offered coverage on date of re-hire (or as soon as administratively practicable thereafter)
- Special rule for certain leaves (FMLA, USERRA, jury duty, employment break periods)

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In the Spotlight

Example – Returning Employee

- **Facts**: As of April 1, 2015, Ed had been employed by ABC Corporation for 10 years. Ed terminates employment on April 1, 2015 and is rehired on December 1, 2015.
- **Conclusion**: Ed may be treated as a new employee for purposes of determining Ed's full-time status.

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In the Spotlight

Minimum Value and Affordable Coverage

- Even employers that offer minimum essential coverage to FT employees may face $3,000 excise tax penalty
- The tax is triggered if employee buys subsidized coverage from an exchange because:
  – Employer-provided coverage fails to provide "minimum value"; or
  – Employer-provided coverage is "unaffordable"

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In the Spotlight

Minimum Value

- Employer-provided coverage provides “minimum value” if the plan pays at least 60% of the total cost of benefits provided
- IRS/HHS have created a “minimum value calculator” to help employers determine whether their plans provide minimum value
  - http://cciio.cms.gov/resources/regulations/index.html#pm
  - Other approaches may also be available

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In the Spotlight

Affordability

- Employer-provided coverage is “affordable” if the employee’s required contribution does not exceed 9.5% of the employee’s household income
  - Affordability test applies to self-only coverage
- Practically, though, there’s no way for employers to determine total household income
  - Other sources of income included, etc.
- IRS has announced 3 affordability safe harbors

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In the Spotlight

IRS Affordability Safe Harbors

- An employer may use the IRS safe harbors only if it:
  - Offers FT employees/dependents the opportunity to enroll in minimum essential coverage under an employer-sponsored plan;
  - Coverage offered provides minimum value with respect to self-only coverage
- Employer use of safe harbors is optional

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In the Spotlight

Form W-2 Safe Harbor

- Employee's cost for self-only coverage cannot exceed 9.5% of taxable wages reported in Box 1 of Form W-2
- Determined at end of the year for each employee
- Employee's required contribution must remain a consistent amount or consistent percentage of Form W-2 wages for the year
  - But may be subject to employer-specified dollar limit

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In the Spotlight

Rate of Pay Safe Harbor

- Employee's cost for self-only coverage cannot exceed 9.5% of employee's monthly rate of pay
  - Hourly rate X 130 (hourly workers)
  - Monthly salary (salaried workers)
- Rate of pay measured from beginning of year
- To use, employer cannot reduce hourly wages/salary during the year
  - What if employees voluntarily take pay reductions?

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In the Spotlight

Federal Poverty Line Safe Harbor

- Employee's cost for self-only coverage cannot exceed 9.5% of the Federal poverty line for a single individual, divided by 12 (monthly basis)
- Must use applicable Federal poverty line for the State in which employee is employed
- Employers can use guidelines in effect at beginning of plan year

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In the Spotlight

How to Approach the Law? – Cost/Benefit Analysis

- How many employees would be offered coverage if offer coverage to all FT employees?
- Do we have a 60% plan option? How much would it cost if comply with 9.5% premium rule?
- How much penalties would we pay if we didn't comply?

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In the Spotlight

How to Approach the Law? - Mitigation

- Can we manage our workforce so that no one is above 30+ hours?
  – Scheduling
  – Job descriptions
  – ERISA 510 claims (discrimination)
- Should we restructure corporate entities?
- Should we lease more workers?
  – Be sure they are not your common-law employees

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In the Spotlight

How to Approach the Law? - Practical

- Selection of periods

  - If lots of seasonal or variable, use 12-month measurement period

  - Be careful of rehires
- Coordination with payroll
- Rewrite SPDs, enrollment materials, etc.
- Be prepared to respond to IRS

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