Bracing for Impact:
What you need to know about health care reform

Q & A from Webinar Presentation

March 26, 2013

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Questions related to

Small Employers

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What does a company with less than 50 employees need to comply with?

- The non-discrimination requirements for one as well as other already existing ERISA requirements.
- If you have and want to keep a grandfathered health plan, there are some hoops to jump through there as well.

How does this affect small employers?

- For one thing, if you have competitors who are over 50, they may see overall costs go up, allowing you to be more competitive with them.
- The other changes of ACA will also fuel an across the board increase in short-term medical rates (according to most estimates).
- It may also permit you to lower your insurance costs by buying coverage through the exchange for your workers.

Do firms with less than 50 employees have no ACA requirements, hence no penalties for not providing insurance?

- No. Under 50 employers are not subject to the employer mandate. They are not penalized for not offering coverage, but the other areas of the ACA apply to under 50 the same as everyone else.

Are employers with less than 50 employees required to report monthly employee counts?

- At this time, no, that is not a requirement. But the reporting requirements have not been finalized.
- Regardless of whether you have to report it, it's a good idea to track it.

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We are a small church with only three employees. Does this apply? All three of us are covered under health insurance elsewhere.

- Since you are well under the 50 full-time requirement, the employer pay or play mandate does not apply to you.
- **Note:** A church of sufficient size would be subject to the mandate.

For employers with under 50 employees, do we need to enter the annual premium on the 2013 W-2?

- No, not for 2013 anyway.
- This may change.

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How are seasonal employees defined? We are a 24/7/365 operation and hire college students during the summer months. Can our seasonal functions be separated off?

- For purposes of large employer testing, probably not no. Even if you were to drop those activities into a separate company, the related ownership would pull those employees back in. The rule is that if you are over 50 full-time employee only because of seasonal workers working 120 days or less, you are not a large employer. The kind of structure you described doesn't really fit into that rule.
- The IRS did solicit comments on other business structures that might have a different take on seasonal workers that they could add to their guidance.

What is the penalty for individuals?

- If you fail to prove to the IRS that you have health care coverage, and you file a tax return, and you are not one of the exempt groups, then you will be assessed an additional tax on your tax return.
- This is the greater of a fixed dollar amount or a couple percentage points of your income (it changes by year).

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As an employer with fewer than 50 employees, are there advantages to canceling the current group coverage and having employees go to the exchange for coverage?

- Yes. There may be better coverage at cheaper costs through the exchange than your current insurance benefits structure.
- You could even buy *your* insurance coverage through the exchange and offer it to your employees. You can take the dollars you are currently paying and allow your employees to choose from a range of options in the exchange (i.e., you choose a metal tier and they can pick within that or they can pick any coverage they want). In this way, you can allow your employees to choose the level of coverage they want to pay for by providing your contribution and then letting *them* choose the additional premium for the quality of plan they choose. Maybe you pay most of the premiums for a Silver tier plan and then if they want a Gold plan, they pay the difference.
- Of course, your business can also save money by reducing the contributed amount, especially if you have workers who would get the subsidies to buy their health care on the exchange (so their costs don't go up and your costs go down).

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Questions related to

Employee Calculations

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If temporary agency employees work only for the entity and the entity controls the schedule and the task, will they have to be offered insurance?

- If the temp agency employs over 50 full-time employees, and the employees you are referring to are full-time common law employees of the temp agency, absolutely, they will need to be offered coverage.
- The temp agency can elect to pay one of penalties if they do not “play.”

In the case of an individual with majority ownership in multiple entities, is it most likely that the FTE's will be aggregated regardless of entity type and structure?

- Yes.

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If you have a part-time employee who is scheduled for 25 hours per week, but picks up extra hours and goes over 30 hours, what happens to the status of insurance?

- If this is a regular occurrence, and they are full-time after the measurement period testing that applies to them, they will be full-time under ACA and will need to be offered insurance.
- If you have proper measurement periods in place, an occasional 40 hour week or 130+ month will not be a problem. The key there is you have to have the proper policies in place!

What about multiemployer collective bargaining agreements? We have six different multiemployer plans that provide health care. Do all these employees count for the large employer count?

- For the large employer count, look at who the ***common law employer*** is. A common law employer/employee is a very fact intensive area.
- Only employers whose businesses are part of commonly controlled groups have to aggregate employees.
- If you know which EIN is the common law employer of the workers, and you know how those EINs are related, then you can properly aggregate groups for Large Employer testing.

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Can you discuss Amish employees needs briefly?

- Amish employees (but not employers) have a religious exemption from the requirement to buy health care the same as they have in several other areas of the law. There are existing rules on how this works in other areas which the ACA has adopted.
- Employers should offer coverage and obtain a waiver from their Amish employees.
- Amish employers should offer coverage to their employees, assuming they are large employers under ACA.
- Remember that it takes a full-time worker going to the exchange and buying coverage with a subsidy to trigger the penalties – an Amish employee should not do that (unless they really want health care coverage and are willing to risk the non-tax related consequences I suppose).
- **Note:** The religious exemption must be renewed by minors that come of age (18, I believe). Employers should track this and obtain new waivers accordingly.

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We are a trucking company and have never needed to track hours because we do not fall under the FLSA. How will they measure hours for a trucker?

- By actual hours worked. If they are not paid on an hourly basis (but by the job), there are the 8 hours/day and 40 hours/week safe harbors.
- This might be a great time to talk to an external company that has stand-alone options for hour tracking that are proven and low cost.
- The IRS is soliciting comments on how to deal with folks that are obviously full-time (like pilots), but that have some restrictions on their workday due to other areas of the law. Truckers, I believe, have similar rest period requirements.

What happens during elections, when the Board of Elections hires employees for approximately 1 and 1/2 months, 10+ hours day?

- If that's all they are employed for, it's probably not a problem. Remember, there is a 90 day administrative waiting period that you can build into your policies.
- You don't have to provide, nor can you be penalized, for not providing coverage to anyone during their first 90 days.
- If those workers will be employed more than 90 days, so long as you have the proper measurement period established and they are otherwise not hired to be full-time, you will be ok.

If there are five restaurants under one common holding company with more than 50 people combined, are they considered a large employer? If yes, what if they were to each be their own separate company, would it still apply?

- In both situations, it sounds like we have common ownership. You would aggregate the employees for purpose of Large Employer testing and it sounds like you would be a large employer.
- For *penalty* testing, they would each be considered on a separate company basis.

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Are seasonals designed as 120 days or can they be defined differently if stated as such by our organization?

- Seasonal workers are 120 days maximum, for now, no real flexibility.
- The IRS has solicited comments on other ways of providing a seasonal safe harbor.

We only have to be concerned about part-time/full-time if they exceed full-time over the entire measurement period, correct?

- For purposes of ***Large Employer testing***, you look at actual hours by month – measurement periods do not apply/are not applicable.
- For ***penalty testing,*** to see if someone is full-time or not, you are correct that it is over the whole measurement period.
- **Note:** If you hire someone *intending them to be full-time*, the measurement period rubric doesn't apply to them – they are simply considered full-time.

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Questions related to

Penalty 4980H9(a) –

Not Offering Coverage

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How did you figure the $5000 first penalty?

- 50 employees – first 30 free = 20 employees.
- 20 employees times $166 monthly (A) penalty = $3,320.
- The $5,000 was based on the $250/month (B) penalty rate.
- The $3,320 is a better figure for the (A) penalty potential cost. The $3,320 would also serve as the cap for the (B) penalty so it's just a better number to use!
- The $28,000 figure is the correct figure for an employer with 200 employees (200 - 30 = 170; 170 x 166 = $28,220).

We had to drop coverage recently due to insufficient participation. Does ObamaCare suspend the insurance company participation rules?

- If you are a large employer, you must offer coverage to your full-time workers or pay a penalty.
- You may see some changes coming from your insurance company.

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We pay most of our employees $10.00 per hour and don't offer coverage at all. Would these all go under the poverty level that couldn't afford the coverage of even a bronze level.

- No, probably not. 100% of the federal poverty level is around $11,000 of annual income for a single individual. Now, that changes based on family size. (You have less buying power with the more people you are trying to support on the same income.)
  - If you are a large employer and if your workers are full-time and make more than this amount, you must provide them health care coverage or pay one of the penalties.
  - Assuming these workers have 2080 hours of paid time a year (40 hours a week), they are making $20,800.
  - Unless they have a couple more people in their family (thus pushing them under 100% of the federal poverty level and therefore eligible for a government plan), you would have to offer them coverage.
- **Note:** If the state has decided to expand governmental programs (Medicaid, specifically) under other provisions of ACA, replace the 100% of the federal poverty level with 138%.
  - ***Generally speaking***, this has tended to be a political decision, with Republican-controlled states tending to not expand coverage and those with Democrat-control tending to elect to expand coverage. These are just trends, you should check with your particular state to see where they are on this. Here is a source that might help: http://www.advisory.com/Daily-Briefing/2012/11/09/MedicaidMap#lightbox/1/.

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If an organization fails to provide adequate coverage to at least 95% of their FTE's, does the $166/FTE/month penalty apply to ALL employees?

- All of your full-time employees – the first 30 free.

Can we fund an individual's HSA account to meet the Affordability Test?

- If it is specifically to pay cost share costs, HSA contributions would count yes.

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Does the $3000 apply to employee only coverage or does it include the cost of family coverage?

- For now, the penalties are tied to you offering affordable, minimum value single-only coverage to your full-time employees.
- What if single only coverage meets this test but the family coverage you offer is too expensive?
  - No penalty to you the employer, but employee may be stuck with your coverage and be unable to go to the exchange to get a subsidized plan. That can really put the employee in a bad spot.
  - This is an issue that many commenters have touched on in providing comments back to the IRS on the current proposed rules and more guidance will be coming.
  - For now, the $3,000 is for employee-only coverage but this may change, stay tuned!

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Affordability

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What is minimum essential coverage? Is a $5000 deductible ok? How about a co-pay? How about maximum annual amounts? Health care plans vary significantly. What is the MINIMUM requirement?

- There really isn't much to offering essential minimum coverage. The ***essential minimum coverage*** standard is different than **minimum value**.
  - ***Minimum value*** is concerned with all the things you are mentioning – a deductible amount, a co-pay, a cap.
  - ***Minimum coverage*** is not concerned at all with those things – you just have to offer something.
  - Basically if you offer coverage right now, that's good enough for the minimum coverage rules.
  - The issue with minimum coverage is really more about correctly identifying who is full-time and giving them access to the plan you have as opposed to how good the plan is – that's the affordability and minimum value tests.
  - What's the MINIMUM for minimum coverage? Offer something!
- **Note:** Most employer plans (employee welfare plans) are subject to ERISA, which has a number of requirements in terms of recordkeeping, reporting and non-discrimination. Those rules, if they are going to apply to your coverage, apply to you already.

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Our insurance costs $25,000 per year for a family plan. A $2000 a year penalty looks really attractive. We don't see an insurance program we can buy for less than $2000 a year.

- Paying the penalty, I feel pretty confident in saying, *is almost always going to be less than buying health care* for your employees. ACA is ok with this, if you want to just pay into the system, they would love to have you and have your employees use the exchange to buy coverage.
- Remember, the penalty rubric (at least right now) ***does not care about family coverage costs***. If you offer 95%+ of your workers an affordable, minimum value ***self-only plan,*** you will not even have to pay the $2,000 a year per employee penalty.
- Assuming that doesn't work, the issues are non-tax ones – can you attract and retain quality employees for your business if you don't offer coverage? What will dropping coverage do to employee morale? What other HR concerns are there? Does a drop of coverage expose you to lawsuits?
- Consider something creative. Maybe take a portion of the $25,000 and help fund an HSA for workers who can then go out and buy coverage? Maybe you need to increase employee wages in exchange for dropping coverage options? Or you may want to shop for some lower quality (metal tier bronze) insurance options and offer those instead. If you offer a minimum value, affordable self-only plan to workers, you get out of the A penalty (still potentially subject to the B penalty). However, by doing that you may destroy the ability of your workers to go to the exchange and get a premium subsidy if they are under 400% of the poverty level.

Regarding the affordability piece, will wellness rates be used, or rates for those not participating in our wellness program?

- Right now the IRS is considering which of those two figures to use. For now, use the more conservative number – the number without discounts.

What is the current dollar value of the poverty level?

- From Health and Human Services:

2013 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA	
Persons in family/household	Poverty guideline
For families/households with more than 8 persons, add $4,020 for each additional person.	
1	$11,490
2	15,510
3	19,530
4	23,550
5	27,570
6	31,590
7	35,610
8	39,630

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Do we have any guidance on IRC Sec 125 and whether or not it may be available to employers to assist employees offset their health care premiums?

- Cafeteria plans can be used as normal to help employees with costs.

For employers that may send employees to the exchanges, is there any guidance on IRC Sec 125 and whether or not it may be available to employers to assist their employees offset their health care premiums?

- Cafeteria plans can be used as normal to help employees with costs.

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Questions related to

Miscellaneous Items

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What is the calculator that was mentioned? Is there a tool to help?

- Health and Human Services has a draft calculator out that will permit you to take the major portions of your plan – the elements with the greatest impact on actuarial value – and plug them into the calculator to assess the actuarial value of your plan.
- It's not for the faint of heart (fair warning!).
- You can find it here: http://www.cciio.cms.gov/resources/regulations/ under plan management.

What do you mean by "the Exchange?"

- The new Health Insurance Exchanges are state and federal group insurance plan offerings that are open to individuals and small businesses.
- They are going to be new marketplaces with standardized rules so you can comparison shop health care insurance.
- The plans offered will fit into new metal tiers of coverage – bronze, silver, gold and platinum. As you go up the metal tier grades, your out-of-pocket costs for health care drop dramatically, but higher metal tier grades cost more in premiums.
- These will go live in 2014, though you will see many details before that.
- California has their exchange details ready to go: http://www.coveredca.com/media/10748/CoveredCA-HealthPlanBenefitsComparisonChart.pdf

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With regard to non-discrimination, if you only have 24 employees, are they all technically the highest compensated since the benchmark is 25 employees?

- That is one of the benchmarks, yes.
- The question would be, which groups are you offering or not offering certain things to? If you offer some things to the high comp group and not to others, even if its just one, then you have a problem.
- You should carefully look at who you are not offering certain things to and go through the safe harbors to ensure that you are in compliance.

Define controlled/ affiliate group.

- This references an area of tax law that existed prior to ACA. Basically if you have 50%+ common ownership you have to aggregate.

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Can employees opt to go with spouse's coverage if spouse works for a municipality? Meaning, what will state, county, city be offering?

- You can always choose to be covered on a spouse's plan, if that employer offers coverage to spouses.
- State, county and city employers are subject to the same rules as for-profit businesses. I don't know what they'll be offering, but they will be looking at this in the same way other businesses are – trying to provide the best result for their employees they can afford, while remaining competitive so that they can attract/retain quality employees.
- Often, these public entities are dealing with collectively bargained worker groups. These workers should ask their unions and negotiators these questions: What do we want the city/state/county to offer us? What will we be asking for? Do we want more coverage or is now the time to push for an increase in wages with a reduction in benefits? (Keep in mind the Cadillac plan rules might force this anyway.) What is available on the exchange verses what we have now? If the union is providing the coverage, what changes might be coming?
- **Note:** Public employers have limited funding and so any penalty has to come from another part of the budget. Those working for public employers, and groups advocating on their behalf, should sit down and look at the numbers with the employers to come up with the best strategy. There is great opportunity to balance coverage, cost sharing, wages and penalties to minimize the overall cost of quality insurance for everyone, but that might require looking at the entire wages/benefits package in a new way. This could also make an already contentious issue – non-wage benefits – even more so.

Need Clarification?

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