

# VENABLE<sup>®</sup><sub>LLP</sub>

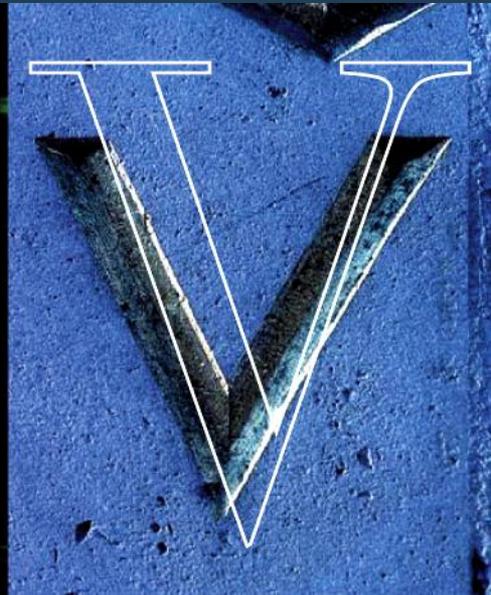
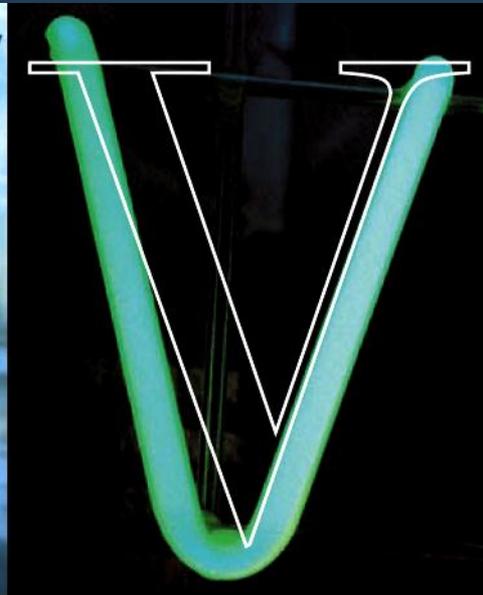
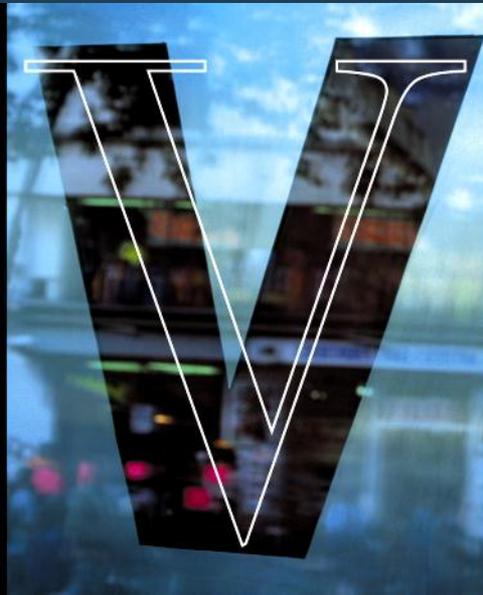
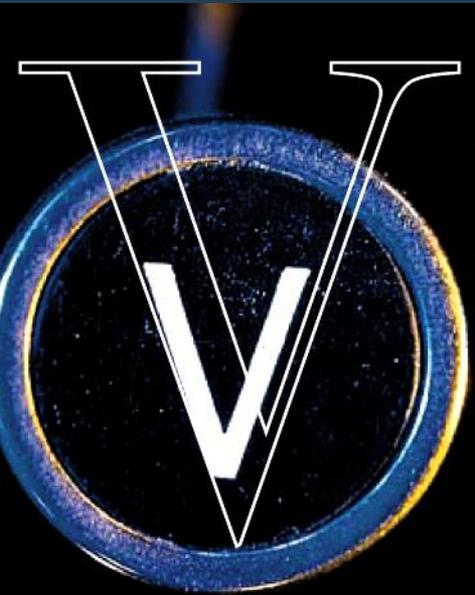
## The New Health Care Law Has Arrived: What Restaurant and Foodservice Employers Need to Know

March 4, 2013

1:30 p.m. – 2:30 p.m.

International Restaurant & Foodservice Show of New York

Michael J. Volpe, Esq.  
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VENABLE LLP



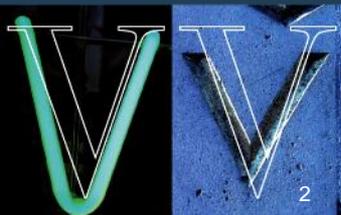
# National Federation of Independent Business v. Sebelius

**“The Federal Government does not have the power to order people to buy health insurance.”**

**But...**

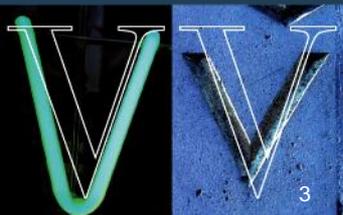
**“The Federal Government does have the power to impose a tax on those without health insurance.”**

**- Chief Justice John Roberts  
United States Supreme Court  
June 28, 2012**



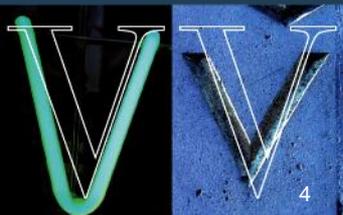
# Overview

- **Preparing employers for compliance with the Patient Protection and Affordable Care Act**
- **Topics covered today:**
  - Eligibility – Who's covered by the law?
  - Notification Requirements
  - Reporting Obligations
  - Health Plan Requirements for Covered Employers
  - Penalties
  - Tax Issues
  - State Exchanges
  - The Individual Mandate
  - Discrimination Issues



# Which Employers Must Offer Health Benefits

- Employers with 50 or more full-time employees
- A full-time employee averages at least 130 hours per month
- Problems calculating the number of full-time employees
  - Part-time employees' work hours are counted as full-time equivalents
  - Monthly calculations necessary to compile average annual full-time employee equivalent number
  - Parent-subsidiary relationships, brother-sister groups, and other corporate affiliations
- Automatic enrollment if 200 or more full-time employees



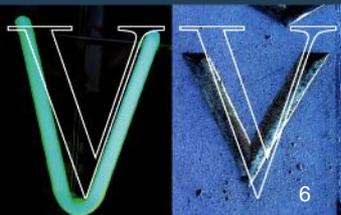
# Notification Requirements

- **All employers must provide employees information even if less than 50 full-time employees (so long as covered by FLSA)**
  - Whether your state has an exchange for procuring health insurance
  - If so, how employees may access the state exchange
  - That employees may be eligible for tax credits to purchase health insurance through the state exchange
  - That employees may lose the employer's contribution toward health benefits, resulting in tax consequences to the employee
  - “Plain English” summary of your offered health benefits, if any



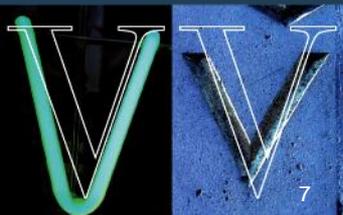
## Notification Requirements (cont.)

- **Applicable large employers (50 or more employees) must also notify employees about components of their offered health plans:**
  - Dependents up to age 26
  - No more lifetime limits on dollar value of benefits
  - Notice of grandfathered health plan (if applicable)
  - Right to choose primary care provider when health plan requires designation
  - If the employer's health plan is inadequate, i.e., it does not meet the actuarial value of 60%
  - Contact information for questions and complaints about the health plan



# Reporting Obligations

- **The IRS wants to hear from employers**
  - Value of employer's health plans on W-2 Forms
    - Portion paid by the employer AND the employee
  - COBRA values (less the 2% administrative fee)
  - Length of waiting periods
  - Lowest cost option
  - Plan's actuarial value
- **No mandatory reporting for those without a W-2, e.g., retirees**



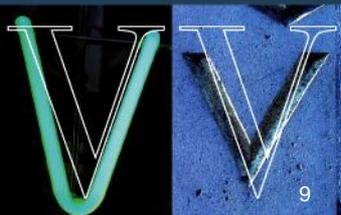
# Health Plan Requirements for Applicable Large Employers

- **Minimum Coverage Requirement**
  - Health plan must provide at least 60% actuarial value
  - Average costs that the health plan is expected to cover
- **Minimum Value Requirement**
  - Full-time employees cannot be required to pay more than 9.5% of their household income for individual coverage
  - How to determine minimum value?
    - W-2 is affordability safe harbor
    - Estimates based on paid wages



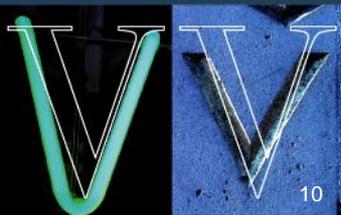
# Penalties for Non-Compliance

- **Penalty 1: Failure to provide health plan**
  - If no coverage offered...
  - AND
  - So long as at least one full-time employee uses a tax credit to purchase insurance through a state exchange...
  - THEN
  - Employer is liable for \$2000 annual penalty per full-time employee after the first 30 full-time employees



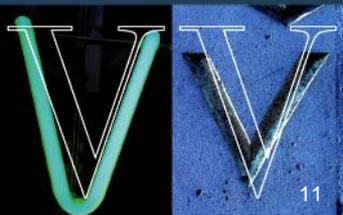
# Penalties for Non-Compliance

- **Penalty 2: Failure to provide “affordable” health plan**
  - If coverage is offered, but any employee is required to pay more than 9.5% of their household income...
  - AND
  - So long as at least one full-time employee uses a tax credit to purchase insurance through a state exchange...
  - THEN
  - Employer is liable for \$3000 annual penalty per full-time employee without “affordable” coverage



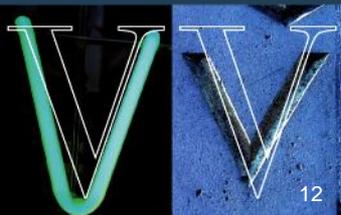
# Tax Issues

- **Employee Eligibility for Premium Tax Credit**
  - Employees between 100% and 400% of the federal poverty level and who procure insurance through an exchange
  - Employees must not be eligible for government sponsored program like Medicaid
  - Employer must not offer compliant health plan
- **Small-Employer Eligibility for Tax Credit**
  - Fewer than 25 full-time employees (average of 40 hours per week for the tax credit)
  - Must pay at least 50% of the cost of coverage for their full-time employees
- **“Cadillac Plans” (coming in 2018)**
  - 40% excise tax on the value of coverage in excess of \$10,200 for individuals or \$27,500 for families



# State Exchanges

- **What is a State Exchange?**
  - Not an insurer – a collection of insurers
  - One-stop shopping
  - Compare benefits and prices of several plans
  - Objectives:
    - Curb against adverse selection
    - Promote transparency and accountability
    - Spread risk
    - Reduce costs
  - If no state exchange, federal exchange available



# The Individual Mandate

- **Employees face penalties too**
  - 2014: everyone must get health insurance for themselves and dependents
  - \$95 penalty during first year up to \$695 per year or up to 2.5% of income in 2016 and onward
  - Some income exemptions
  - Employees under 30 years can purchase catastrophic coverage only
  - Young employee exception does not work both ways – employers can't simply offer catastrophic coverage



# Discrimination Issues

- **The Affordable Care Act prohibits discrimination based upon income level**
  - Cannot establish eligibility rules based upon compensation level
  - Very stiff penalties: \$100 per day per affected employee
  
- **Other Discrimination Issues**
  - Marital status
  - Pre-existing conditions



# Questions?

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