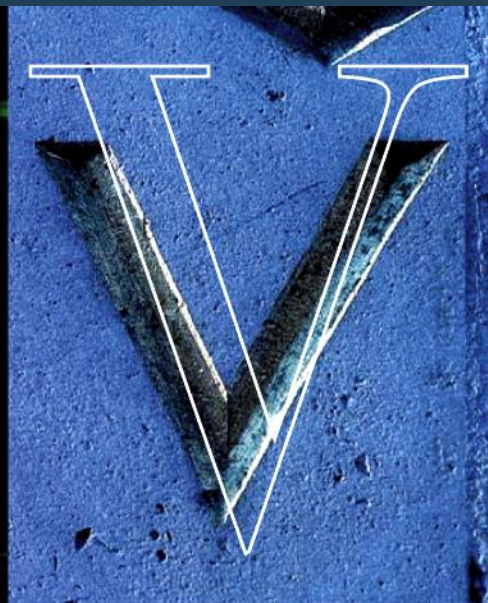
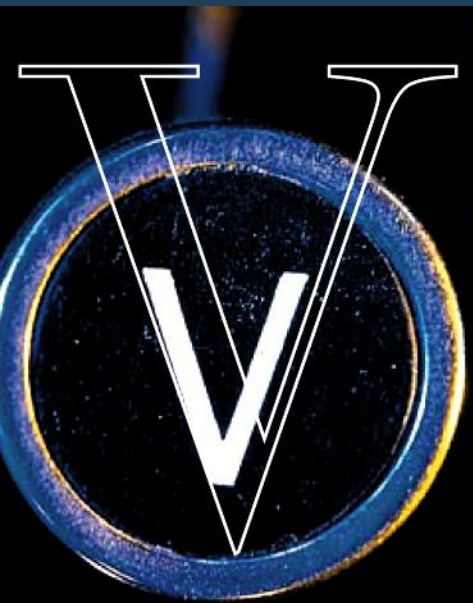


Complying with the Affordable Care Act: “Obamacare” Requirements that Specialty Food Businesses Can’t Afford to Miss

July 24, 2014
Specialty Food Association Webinar

Nicholas M. Reiter, Esq.
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?
 - Transitional Relief Under New Rules
 - Notification Requirements
 - How to Decide Whether to Pay or Play?
 - Health Plan Requirements for Covered Employers
 - Penalties
 - Reporting Obligations
 - Tax Issues and Cadillac Plans
 - The Individual Mandate
 - Discrimination Issues



Which Employers Must Offer Health Benefits

- Employers with 50 or more full-time employees, including “full-time equivalent employees”
- A full-time employee averages at least 130 service hours per month or 30 service hours per week
- 2 part-time employees at 15 hours per week are the equivalent of one full-time employee
- **Common issues:**
 - Strategic look-back periods
 - Seasonal employees
 - Parent-subsidiary relationships, brother-sister groups, and other corporate affiliations



Transitional Relief Under the New Rules

- **100 or more full-time employees: compliance generally not required until January 1, 2015**
- **50 or more full-time employees: compliance generally not required until January 1, 2016 (certification requirements)**
- **Non-calendar year plans may start after January 1, 2015**
- **Applicable large employers must provide coverage to only 70% of full-time employees in 2015**
- **All applicable large employers must provide coverage to 95% of full-time employees in 2016**



Notification Requirements

- **All employers must provide employees information even if less than 50 full-time employees (so long as covered by FLSA)**
- **Required information includes:**
 - 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)
 - 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
- **Model notices available for employers who do and do not offer a health plan**



Should You Provide Coverage or Pay a Penalty?

- **Requires accurate knowledge of:**
 - Number of full-time employees
 - Number of full-time employee equivalents
 - Scope of coverage currently offered, if any
 - Reasonably anticipated changes to workforce
 - Potential penalties
 - Minimum value
 - Affordability
 - Number of full-time employees to whom coverage is not offered



Calculating Full-Time Employees

■ Full-Time Employees

- *IF...* averages 30 or more service hours per week during a measurement period
- *THEN...* will be considered full-time during the next stability period
 - Measurement periods: 3 – 12 months
 - Stability periods: 6 – 12 months but not less than the measurement period
- Periods should be uniform for same types of employees, e.g., hourly, non-hourly, salaried, etc.
- Employers may use an “administrative period” of up to 90 days to perform the calculations
- At date of hire, an employee is considered “full-time” if reasonably anticipated to work on average 30 or more hours per week



Calculating Full-Time Employee Equivalents

- **Full-Time Employee Equivalents**
 - All employees working on average less than 130 hours per month or 30 hours per week
 - Step 1: Sum of all work hours for part-time employees up to 120 hours per individual part-time employee
 - Step 2: Divide sum by 120
 - Example: 60 part-time employees work on average 80 hours per month
 - $60 \times 80 / 120 = 40$ full-time employee equivalents



Health Plan Requirements for Applicable Large Employers

- **Minimum Coverage Requirement**
 - Health plan must provide at least 60% of the allowed costs
 - Federal government calculator
- **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 any 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
 - (2015 only: the first 80 full-time employees are not counted for purposes of this penalty)
- **Assessed on monthly basis**



Penalties for Non-Compliance

- **Penalty 2: Failure to provide “affordable” or “minimum value” health plan**
 - If coverage is offered, but any employee is required to pay more than 9.5% of their household income or does not receive benefits equal to or greater than 60% of allowed costs...
 - 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 the lesser of \$3000 annual penalty per full-time employee who receives the tax credit or \$2000 annual penalty per full-time employee in excess of 30 (80 in 2015 only)
- **Assessed on monthly basis**



Reporting Obligations

- **The IRS wants to hear from employers**
 - Applicable large employers only
 - Value of employer's health plans on W-2 Forms
 - Portion paid by the employer AND the employee
 - Box 12 of the W-2 / code DD
 - No need if no W-2 issued, e.g., retirees
 - COBRA values (less the 2% administrative fee)
 - Plan's actuarial value
- **Does not render amounts taxable**
- **No longer need to report:**
 - Permissible waiting periods
 - Lowest cost option monthly premiums



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 or full-time employee equivalents (average of 40 hours per week for the tax credit)
 - Must pay at least 50% of the cost of individual coverage for their full-time employees
 - The annual average wages of the covered employees are less than \$50,000



“Cadillac” Plans

- **What is a Cadillac plan?**
 - Per the statute’s legislative history, overly generous health plans that drive up the cost of medical care
 - May encourage employees to re-consider unnecessary medical treatment or procedures
- **What is the penalty?**
 - 40% excise tax on employer-paid premiums in excess of \$10,200 for individuals or \$27,500 for families
 - Dental and vision benefits are not included
 - Penalty effective 2018



The Individual Mandate

- **Employees face penalties too**
 - January 1, 2014: everyone must get health insurance for themselves and dependents
 - Transition relief available until the end of non-calendar year plans that end in 2014
 - Some exceptions based upon income or other hardships
- **The penalty**
 - 2014: 1% of household income above filing threshold or \$95 per adult/\$47.50 per dependent for the year, whichever is greater
 - Increases to 2.5% of household income or \$695 per person in or after 2016
 - Subject to maximums



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**
 - Dependents vs. No Dependents
 - Pre-existing conditions
 - Genetic predispositions



Considerations for Providing Coverage

- Evaluate whether your business is eligible for transitional relief
- Calculate the financial impact of providing coverage versus paying the penalty
 - E.g., if approximately 80 full-time employees, the penalty calculation for 2016 would be:
 - $\$2,000 \times (80 - 30) = \underline{\$100,000 \text{ per year}}$
- Non-monetary benefits to providing coverage
 - Recruitment
 - Employee goodwill



Questions?

Nicholas M. Reiter, Esq.

VENABLE LLP

1270 Avenue of the Americas, 24th Floor

New York, New York 10020

(212) 370-6296

nmreiter@venable.com

