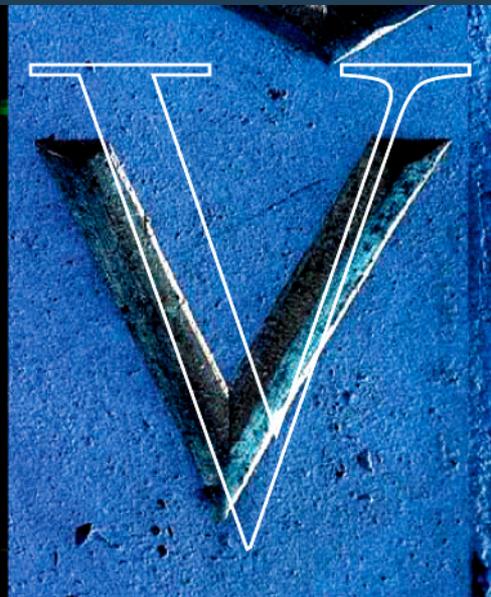
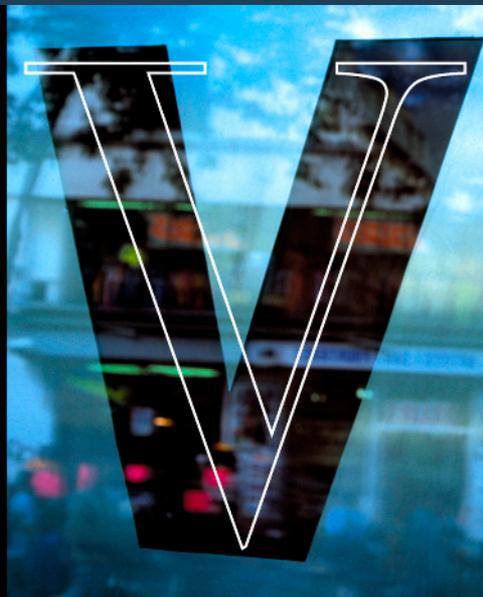


# Complying with the Affordable Care Act: “Obamacare” Requirements that Restaurant and Foodservice Employers Can’t Afford to Miss

March 3, 2014  
International Restaurant & Foodservice Show of New York

Michael J. Volpe, Esq.  
Nicholas M. Reiter, Esq.  
VENABLE LLP



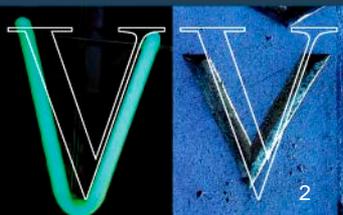
# *National Federation of Independent Business v. Sebelius*

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

**But...**

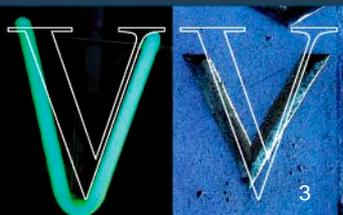
**“The Federal Government does have the power to impose a tax on those without health insurance.”**

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



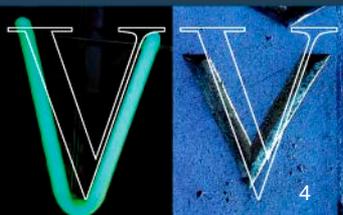
# Overview

- **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



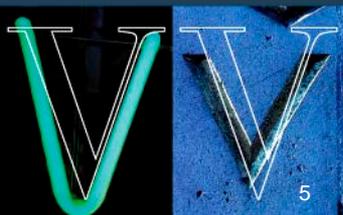
# Which Employers Must Offer Health Benefits

- **Employers with 50 or more full-time employees, including “full-time employee equivalents”**
- **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



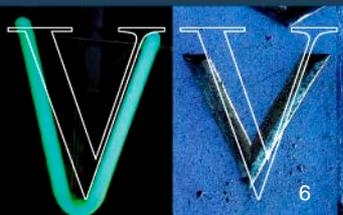
# Transitional Relief Under the New Rules

- **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**



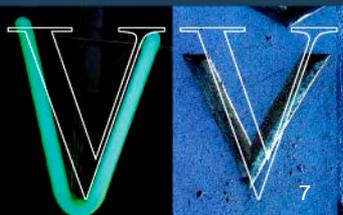
# Notification Requirements

- **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



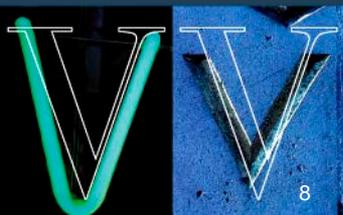
## Notification Requirements (cont.)

- **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?

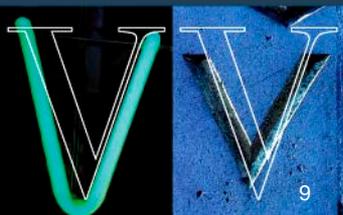
- **Requires accurate knowledge of:**
  - Number of full-time employees
  - Number of full-time employee equivalents
  - Scope of coverage currently offered, if any
  - Reasonably anticipated changes to workforce
  - Potential penalties
    - Minimum value
    - Affordability
    - Number of full-time 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



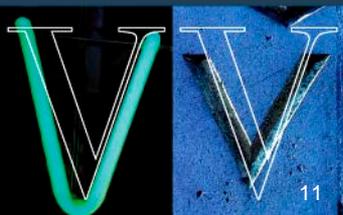
# Calculating Full-Time Employee Equivalents

- **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



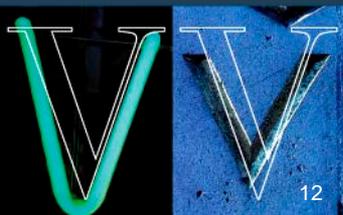
# Health Plan Requirements for Applicable Large Employers

- **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



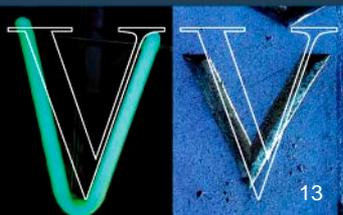
# Penalties for Non-Compliance

- **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**



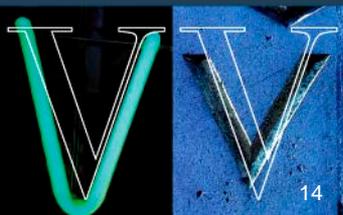
# Penalties for Non-Compliance

- **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**
  - 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 (90-day maximum)
  - Lowest cost option
  - Plan's actuarial value



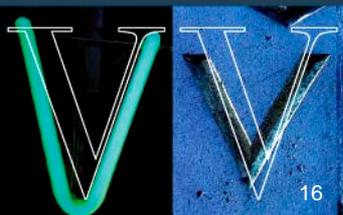
# Tax Issues

- **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



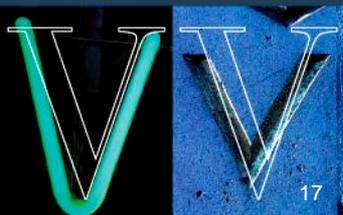
# “Cadillac” Plans

- **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



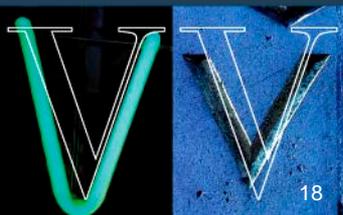
# The Individual Mandate

- **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



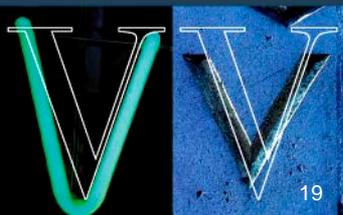
# Discrimination Issues

- **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?

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