Nonprofit Organizations Committee Legal Quick Hit:

What's Ahead for 2015: Preparing Your Nonprofit's Group Health Plan for the Employer Mandate

MODERATOR: JEFFREY S. TENENBAUM, ESQ.

PRESENTER: THORA A. JOHNSON, ESQ.

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Program Overview

- Introduction to the Play-or-Pay Rules
- Identifying Full-Time Employees
- New Reporting Requirements

Employer Mandate (Generally Effective January 1, 2015)

- A one-year delay; originally effective January 1, 2014
- Special rules for fiscal year plans
- The ACA imposes a mandate on large employers to offer minimum essential coverage to full-time employees and their dependent children (up to age 26) or pay a penalty tax.
- In addition, if that minimum essential coverage is not affordable or does not provide minimum value, the employer is subject to a penalty tax.

Penalty Tax Trigger

- A penalty tax is due for any month in which at least one full-time employee is certified to the employer as having purchased health insurance through an Exchange with a premium subsidy from the government for that coverage.
- An individual is NOT eligible for a premium subsidy offered through the Exchange if he or she is eligible for employer-sponsored coverage that is affordable and provides minimum value.

Applicable Large Employer

- Applies to "applicable large employers," defined as "an employer that employed an average of at least 50 full-time employees [including full-time equivalent employees ("FTEs")] on business days during the preceding calendar year"
  - Determined on a controlled group basis
  - Full-time means an average of 30 hours/week or 130 hours/month
  - Common law test used for identifying employees

Note – Special Transition Rule for 2015 – At least 100 full-time employees (including FTEs)

The "No Coverage" Penalty

- Penalty for failure to provide coverage
  - If more than 5% of full-time employees are not offered coverage (that includes dependent children) and even ONE full-time employee obtains a subsidy through an Exchange, the no coverage penalty is triggered.

Note – Special Transitional Rule for 2015 – If more than 30% (not 5%)

The “No Coverage” Penalty

- Penalty for failure to provide coverage
  - Penalty = $2,000/year * TOTAL number of full-time employees
    - Assessed on a monthly basis ($166.67/employee/month)
    - First 30 (80 for 2015) full-time employees are disregarded
- Penalty applies on an employer-by-employer basis and not on a controlled group basis
- Be careful not to play AND pay

Identifying Full-Time Employees

- An employee is full-time if he or she works an average of at least 30 hours of service/week or 130 hours of service/month
- Hours of Service
  - Each hour for which an employee is paid (or entitled to payment) for performance of work
  - Each hour for which an employee is paid (or entitled to payment) for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military leave, or leave of absence

Identifying Full-Time Employees

- There are two measurement methods of determining "full-time" status
  1. The monthly measurement method
  2. The look-back measurement method

The Monthly Measurement Method

- Ongoing Employees
  - Determine each employee’s status as a full-time employee by counting the employee’s hours of service for the prior calendar month
  - Little margin for error (5%, 30% for 2015)
- New Hires
  - If full-time, must be offered coverage no later than the first day of the first calendar month immediately following three full months of employment
    - Ex: Hired June 15 into full-time position, must be offered coverage as of October 1 to avoid penalties
  - Remember, maximum 90-day waiting period

The Look-Back Measurement Method

- Safe harbor for determining if employee is full-time
  - If an employee averages 30 or more hours of service per week during a measuring period, he or she should be treated as "full-time" (*i.e.*, offered coverage) during the subsequent stability period
  - There is an administrative period between the measuring period and the stability period to: (1) determine if an individual is full-time and (2) offer coverage

Measuring Period	Administrative Period	Stability Period

The Look-Back Measurement Method

- **Standard Measuring Period** = 3 to12 months
- **Standard Administrative Period** = Up to 90-day period between a standard measuring period and a corresponding stability period
- **Standard Stability Period** = 6- to12-month period immediately following the standard measuring period (and any applicable administrative period)

The Look-Back Measurement Method

Ongoing Testing of Employees

Standard Measuring Period 1 (11/1/13-10/31/14)	**Administrative Period 1** (11/1/14-12/31/14)	**Stability Period 1** (1/1/15-12/31/15)		
	Standard Measuring Period 2 (11/1/14-10/31/15)		**Administrative Period 2** (11/1/15-12/31/15)	**Stability Period 2** (1/1/16-12/31/16)

The Look-Back Measurement Method

- New hires
  - Any individual reasonably expected to work at least 30 hours per week is automatically considered a "full-time" employee
  - All other employees = variable hour
    - Includes part-time employees (i.e., employees not expected to work 30 hours/week
    - "Seasonal employees" (even if they are initially expected to work 30 or more hours per week)

The Look-Back Measurement Method

- New hire reasonably expected to work 30 hrs/week
  - Must be offered coverage no later than the first day of the first calendar month immediately following three full months of employment
  - Again, remember the maximum 90-day waiting period
- New hire variable hour employee
  - **Initial Measuring Period** = 3 to12 months from date of hire
  - Overlaps with first full **Standard Measuring Period** after employment begins

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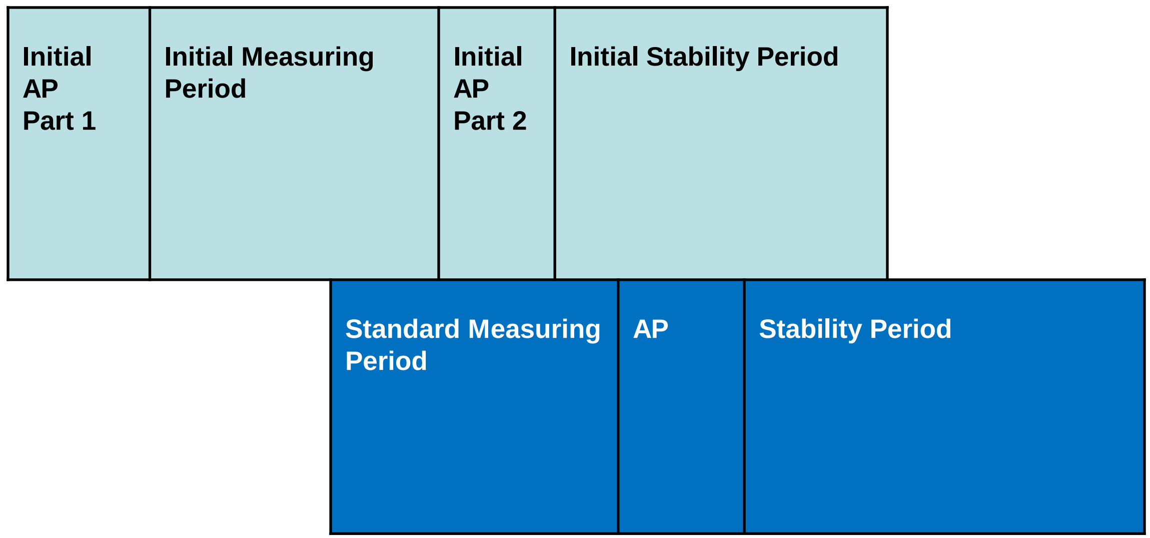
The Look-Back Measurement Method

Testing for New Variable Hour Employees



Using Different Measurement Methods

- Different measurement methods are permissible only for the following categories of employees
  - Employees employed by different entities
  - Salaried vs. hourly
  - Employees in different states
  - Collectively bargained vs. non-collectively bargained
  - Each group of collectively bargained employees
- Can't use monthly measurement for employees with predictable hours and look-back measurement method for all others

The “Unaffordability” Penalty

- Penalty for not providing affordable/minimum value coverage
  - Applies if:
    - Employee’s share of the premium for lowest-cost employee-only coverage would exceed 9.5% of the employee’s income, or the affordable plan does not provide minimum value (pay at least 60% of the allowed costs under the plan), AND
    - The employee receives a subsidy through an Exchange

The "Unaffordability" Penalty

- Penalty for providing "unaffordable" coverage
  - Penalty = $3,000/year/employee
  - Assessed on a monthly basis ($250/employee/month)
  - Applies only to employees who actually receive a premium subsidy for coverage on an Exchange

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The “Unaffordability” Penalty

- Safe harbors for determining if the cost of coverage exceeds 9.5% of employee’s income
  - Form W-2 compensation
  - Rate of pay
  - Federal poverty limit
- Minimum value
  - Safe harbor plan designs
  - Minimum value calculator
  - Actuarial analysis

Overview: Code Sections 6055 and 6056

- Calendar year basis (regardless of plan year)
- Effective for 2015, with initial reports due in early 2016
- Two overlapping sets of reporting requirements
  1. Code Section 6055: Health insurance issuer/self-funded plan sponsor—to facilitate compliance with the individual mandate provisions
  2. Code Section 6056: Employers subject to the coverage mandate—to facilitate compliance with the Employer Mandate and premium subsidies

Our focus today is on the latter—reports satisfying the latter will also satisfy the former

Overview: Code Section 6056

- Defined terms and concepts from the Employer Mandate
- Each entity within a controlled group reports separately
- IRS will issue forms for reporting:
  - Form 1095-C (one form for each full-time employee)
  - Form 1094-C (aggregated data for all full-time employees of the reporting entity)
  - These forms (and their instructions) will fill in gaps left in the regulations
- No 2015 reporting exemption for employers with between 50 and 99 full-time employees who qualify for the 2015 special transitional rule

Content of Report to IRS (Primary Method)

1. Name, address and EIN of the reporting employer
2. Name and phone number of contact person at the reporting employer (or its third-party reporting agent)
3. Calendar year to which report pertains
4. For each full-time employee, certification of whether the full-time employee (and dependents) were offered minimum essential coverage (MEC), by calendar month
5. For each full-time employee, months during the calendar year for which MEC was available

Content of Report to IRS (Primary Method)

6. For each full-time employee, the full-time employee's cost share for the lowest cost monthly premium for self-only coverage providing minimum value, by calendar month

7. The number of full-time employees for each month during the calendar year

8. Name, address and TIN of each full-time employee during the year, and the months, if any, during which the full-time employee was covered

Content of Report to IRS (Primary Method)

9. Information about whether the coverage offered provides minimum value and whether spouses were eligible
10. The total number of employees, by month
11. Whether an employee was subject to a permissible waiting period, by month
12. Whether the employer had no employees or otherwise credited any hours of service during any particular month, by month

Content of Report to IRS (Primary Method)

13. Whether the reporting employer is a member of a controlled group, and, if so, the name and EIN of each controlled group member

14. Certain additional information for governmental plans, multiemployer plans and third-party reporting entities

15. Any other information required by the Instructions to the Forms 1094-C and 1095-C (to be determined)

Timing of Report to IRS

- Must be filed by March 31 following the calendar year, if filed electronically
- Must be filed by February 28 following the calendar year, if filed on paper

Statement to Participant (Primary Method)

- Must provide a Form 1095-C to each full-time employee reported to the IRS
- All of the information reported to the IRS with respect to such full-time employee
- By January 31 following the calendar year to which it pertains

Alternative Reporting Methods Method #1: "Qualifying Offers"

- Method #1: "Qualifying Offers"
  - Coverage offer to one or more full-time employees
  - Offer covers all months in the calendar year for which the individual was a full-time employee (except months for which there is a Section 4980H penalty exemption)
  - Coverage provides minimum value
  - Employee cost of employee-only coverage does not exceed 9.5% of the mainland single federal poverty level (which is $1,108.65 – or 9.5% of $11,670, for 2014)
  - Offer extends to dependents and spouse

Alternative Reporting Methods Method #1: “Qualifying Offers”

- Method #1: “Qualifying Offers”
  - Each full-time employee who received a “qualifying offer” for all 12 months in the calendar year is eligible to be reported using an abbreviated Form 1095-C
  - Other full-time employees (who did not receive “qualifying offers”) are reported using the “primary method”

Alternative Reporting Methods Method #2: “98% Offers”

- Method #2: “98% Offers”
  - Reporting employer certifies it offered coverage qualifying for Section 4980H(b) penalty relief (*i.e.*, minimum value, affordable, to employee and dependents) to at least 98% of its employees who were full-time at any time during the calendar year (and are therefore subject to Section 6056 reporting).
  - Exempts the employer from identifying in its Section 6056 reporting whether a particular employee is a full-time employee for one or more months during the year
  - Exempts the employer from reporting its total number of full-time employees for the year

Penalties for Non-Compliance

- $100 per late or incorrect return filed (or not filed) with IRS (Code Section 6721)
- $100 per late or incorrect statement provided (or not provided) to a participant (Code Section 6722)
- IRS may choose to waive penalties upon a showing of reasonable cause

Contact Information

Jeffrey S. Tenenbaum, Esq.
jstenenbaum@Venable.com
t 202.344.8138

Thora A. Johnson, Esq.
tajohnson@Venable.com
t 410.244.7747

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