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## Understanding the Affordable Care Act

Critical New Issues for Today's Employer

Presented by  
**Gary W. Francis**

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### Today's Presenter



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### What Will We Cover

- Review of what ACA has brought us thus far
- What is ACA's impact on employers?
- Review of ACA compliance dates
- Implications of final regulations and transition relief
- Recordkeeping and reporting requirements
- Miscellaneous concerns about ACA

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### Recap of ACA Highlights So Far

- Abolished pre-existing condition exclusion for children under 19
- Abolished lifetime benefit limits
- Abolished co-pays and deductibles for preventative care
- Ensured coverage for adult children through age 26
- Imposed restrictions on annual benefit limits

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### Recap of ACA Highlights So Far

- Insurers cannot rescind coverage except for fraud
- Participants must receive uniform explanation of coverage.
- OTC drugs ineligible for FSA reimbursement
- \$2,500 Health FSA maximum
- State Health Insurance Exchanges
  - Uninsured individuals and small employers
  - Bronze, silver, gold and platinum coverage

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### Basics of ACA

- Patient Protection and Affordable Care Act (**PPACA or ACA**) enacted March 23, 2010
- Significant new responsibilities for employers
- Major impacts on providers
- Multiple effective dates for various provisions

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### How Does ACA Affect Employers

- Employer shared responsibility provision or employer mandate
- Employer mandate applies only to “applicable large employers.”
  - Employers with more than 50 full-time equivalent employees (FTE)

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### How Does ACA Affect Employers

- Employer mandate creates a “Pay” or “Play” scenario for applicable large employers.
  - “Play” – offer healthcare coverage to “substantially all” full-time employees that meet certain criteria
  - “Pay” – failure to offer proper level of coverage or no coverage at all, may lead to employers paying penalties.

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### Employer Shared Responsibility Provision - Penalties

- IRC 4980H sets forth two penalties
  - 4980(a) – failure to offer required coverage to full-time employees and dependents
    - \$2,000 x total number of full-time employees, if at least one is receiving a tax credit
    - Employer may subtract first 30 employees from total penalty cost.

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### Employer Shared Responsibility Provision - Penalties

- 4980(b) – employer offers coverage, but coverage is unaffordable or does not provide minimum value
  - Lesser of \$3,000 x total number of full-time employees receiving tax credit or \$2,000 x total number of full-time employees

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### Employer Shared Responsibility – How to Prepare

- Key questions to be asked by all employers:
  - What is employer mandate?
  - Am I covered by employer mandate?
  - Do I have over 50 full-time equivalent employees?
  - Am I offering coverage that is affordable?
  - Am I offering coverage that meets minimum value?

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### Safe Harbor

- Due to difficulties in determining full-time status in preparation for 2014, IRS has offered a “look back” safe harbor period for active or ongoing employees.
- Use of initial measurement period to examine status of employees who have been employed for at least length of initial measurement period
- Conclusions during initial measurement period applied during subsequent stability period

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### Initial Measurement Period

- Applicable large employer shall determine **initial measurement period** of three to 12 consecutive months.
- Applicable large employer would examine each employee during **initial measurement period** to determine if he/she worked 30 hours per week or 130 hours per month.

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### Initial Measurement Period

- Employee who is considered full-time during initial measurement period is entitled to coverage as a full-time employee during subsequent **stability period**.
- **Stability period** cannot be less than six consecutive calendar months/not less than initial measurement period selected.

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### Initial Measurement Period

- Employers can utilize different measurement and stability periods for different categories of employees:
  - Collectively bargained employees and non-collectively bargained employees
  - Salaried employees and hourly employees
  - Employees of different entities
  - Employees located in different states

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### Safe Harbor – New Employee

- New employee is one who has worked less than initial measurement period.
- If expected to work as full-time employee (> 30 hours per week), applicable large employer must offer healthcare coverage before end of three months of employment.
- If new employee is variable hour employee, and it cannot be determined if he/she will work > 30 hour per week, applicable large employer can utilize an initial measurement period.

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### Safe Harbor – Administrative Period

- Administrative periods applicable to both on-going and new/variable employees under safe harbor.
- Generally 90-day administrative periods
- Certain restrictions on administrative periods

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### 2014 Full-Time Employees & Safe Harbor Provisions

- Full-time employee – works an average of 30 hours per week in any given month
- Employers will use information about employees they employ during 2014 to determine whether they employ enough employees to be subject to these new provisions in 2015.

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### 2014 Revisions to Employer Shared Responsibility Provision

- Final Regulations – transition relief and guidance
- Transition relief
  - Effective date of employer mandate partially delayed
    - Effective date for employers with 100 or more full-time employees remains at Jan. 1, 2015.
    - Effective date for employers with 50 to 99 full-time employees is now Jan. 1, 2016.

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### 2014 Revisions to Employer Shared Responsibility Provision

- Level of workforce covered
  - Employers with 100 or more full-time employees must offer coverage to only 70 percent of full-time employees in 2015, instead of 95 percent.
  - Beginning in 2016, it must be 95 percent.

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### 2014 Revisions to Employer Shared Responsibility Provision

- Employers with FTE of 50 to 99 employees may face penalties if they do not provide “affordable” care to at least 95 percent of their full-time employees by Jan. 15, 2016.
- HOWEVER, mid-size employers are still required to comply with pay or play reporting requirement and individual mandate reporting requirement, if they sponsor self-funded group health plan.

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### 2014 Revisions to Employer Shared Responsibility Provision

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- Final regulations – transition relief:
  - Non-calendar year plans
  - Shorter measurement period
  - Coverage for dependents

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### 2014 Revisions to Employer Shared Responsibility Provision

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- Guidance regarding hours of service and certain employee categories:
  - Volunteers
  - Adjunct faculty
  - On-call employees
  - Foreign service

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### 2015

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- Large employer's health coverage is affordable if employee's required contribution to plan does not exceed 9.56 percent of income.
  - Up from 9.5 percent in 2014

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### Concerns – 2017 State Exchanges

- Beginning in 2017, states may elect to allow large group plans (100 plus) to be sold on the exchange, as well, and states may form regional exchanges.

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### 2018 Cadillac Plan Tax

- **Who:** Insurers of employer-sponsored plans and companies that self-insure their own plans
- **What:** Excise tax, if plan cost is:
  - > \$10,200 for individual coverage
  - > \$27,500 for family coverage
- **How much:** 40 percent of value of plan in excess of above thresholds

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### 2018 Cadillac Plan Tax Implications

- Employers who sponsor plans will have two alternatives:
  - Incorporating tax into their pricing by increasing employer and/or employee contribution; or
  - By cutting benefits to avoid tax by increasing co-payments or co-insurance paid by employees

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### ACA Concerns – Auto Enroll

- Employers with more than 200 full-time workers have to enroll new, full-time employees in company health plans, unless employee chooses not to join.
- Employers don't have to comply until Department of Labor issues regulations (no word on when they are coming).
- Effort to get it repealed by trade organizations

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### ACA Concern – Non-Discrimination Rule

- Technically already in place, but IRS has not yet issued regulations, and rule specifically does not apply until IRS issues regulations.
- Expands self-insured plans non-discrimination requirements to insured plans.
- Will be very difficult to apply.

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### Employer Pitfalls – Recordkeeping and Reporting

- Notice of Health Care Exchanges
  - Notice to new hires
  - Self-Insuring Employers (IRC 6055)
  - Health insurance report, including names of individuals obtaining coverage, dates of coverage and whether coverage is plan offered through an exchange

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### Employer Pitfalls – Recordkeeping and Reporting

- Application for advance premium credits
  - Assistance with application when requested by employees
- W-2 reporting requirements (IRC 6051)
  - Employer reporting aggregate value of healthcare coverage
  - Applies to employers who issue at least 250 W-2 forms annually

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### Reporting Requirements

- IRC 6055 – self insured employers to file reports with IRS that include information on each individual to whom organization provided minimum essential health coverage and to send those individuals statements each year for tax filing purposes
- IRC 6056 – reporting to IRS health coverage employers provided to full time employees under shared responsibility – employers must also send to employees

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### Reporting Requirements

- Large Employers (IRC 6056)
  - Information return to IRS reporting whether employer offer employees and dependents coverage, waiting period to enroll, and information regarding those enrolled in such coverage.

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## Reporting Requirements

- Required reporting under sections 6055 and 6056 begins:
  - January 2016 to employees
  - March 2016 to IRS
- Data reported will be based on what happened in 2015, so gather it as you go along!

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## Prepare for Reporting

- System in place to gather data beginning January 2015.
- IRS draft forms only available source for determining info to gather (may change).
- Anticipate info similar to that required for W-2s.
- Check with relevant vendors to find out what support is available.
- Create staged process with deadlines.
- Make employee communications clear and easy to understand.

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## Recordkeeping & Information Collection

- Social Security numbers of employees, spouses and dependents
- Names and employer ID numbers of other employers within reporting employer's controlled group of corporations for each month of calendar year
- Number of full-time employees for each calendar year

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## Recordkeeping & Information Collection

- Total number of employees (full-time equivalents) for each calendar month
- Employees share of lowest cost monthly premium for self-only, minimum value coverage for each calendar month
- Applicable Section 4980H safe harbor for each calendar month

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## Questions?



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## Post-Webinar Survey



We want to hear from you!

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## Audio File of Today's Program



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## 2015 Informed Employer Series



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## Thank You!



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The content of this webinar was intended to provide general information about legal issues and should not be taken as legal advice in any specific instance.

The information presented in this webinar was current at the time of the original presentation on Nov. 13, 2014.

Information can become outdated or inaccurate as the result of subsequent amendments to laws or the issuance of new regulations or court decisions interpreting the laws differently.

When legal advice is needed, always consult an attorney experienced in the relevant area of law.

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