Health Care Reform: Ready for 2015?

Presented by
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Director of Employee Benefits
Governance & Compliance

AGENDA

• Session Objective
• Case Study - Overview of Facts
• Pay or Play - The Basics
• Does Transition Relief Apply?
• Affordability Safe Harbors
• FT Waiting Period Rules
AGENDA

• Population Identification & Management
• New Employer Reporting Requirements
• Case Study Results
• Q & A

CASE STUDY #1

• FACTS
  – Industry = Health Care
  – Plan Year = January 1
  – Total # of EE’s = 800 (200 are clearly FT)
  – Current Eligibility Definition = 35 hrs/wk FOM 60 days
  – Any Excluded Classes = PT & Temporary
  – # of PT, Variable, Seasonal = 600 (caregiver positions at all hours level)
  – Non-Traditional Working Relationships = No
  – Fully Affordable = No
  – Minimum Value Offering = Yes
CASE STUDY #2

• FACTS
  – Industry = Energy
  – Plan Year = September 1
  – Total # of EE’s = 3500 (2700 are clearly FT)
  – Current Eligibility Definition = 30 hrs/wk FOM 30 days
  – Any Excluded Classes = PT, Temporary, Intern
  – # of PT, Variable, Seasonal = 800
  – Non-Traditional Working Relationships = Yes (200)
  – Fully Affordable = Yes
  – Minimum Value Offering = Yes

CASE STUDY #3

• FACTS
  – Industry = Financial Services
  – Plan Year = January 1
  – Total # of EE’s = 600 (590 are clearly FT)
  – Current Eligibility Definition = 30 hrs/wk FOM 30 days
  – Any Excluded Classes = PT, Temporary, Intern
  – # of PT, Variable, Seasonal = 10
  – Non-Traditional Working Relationships = Yes (2)
  – Fully Affordable = Yes
  – Minimum Value Offering = Yes
§4980H “Play or Pay”
The Basics

To eliminate the $2,000 “Pay” penalty
1. Have an annual open enrollment (or annual ability to decline)
2. Offer “Minimum Essential Coverage” (MEC) to at least 95% of all FT employees (70% for 2015 plan year if plan year date has not changed)
3. Offer MEC to FT employees’ children to age 26
   – Potentially not required for 2015 plan year if some or all dependents not offered coverage in 2013-2014 and offer is made starting 2016 plan year

To eliminate the $3,000 “Play” penalty
Include required items noted above, plus:
4. Offer Coverage providing “Minimum Value”
5. Offer Coverage meeting “Affordability” standards
   – Three Affordability Safe Harbors for employers to choose from
§4980H “Play or Pay” Basics

• Fundamental goals for applicable large employers:
  I. Determine §4980H start date – does transition relief apply?
  II. Offer affordable, minimum value coverage to all FT employees (and their dependents) by 91st day of work
  III. Identify Employee/Worker status (IRS definition) for administration of benefits, elimination/reduction of penalty exposures, and fulfilling new reporting requirements
  IV. Implement procedures for correct handling of new hires or employees transitioning to/from FT status
  V. Be prepared for new employer reporting requirements

§4980H “Play or Pay”
Non- Calendar Year Transition Relief
Transition Relief: Non-CY Plan Delay to 2015 PY Date

- **IF** ALE certifies on CY 2015 §6056 report (due in 2016) that:
  - Plan was already non-CY on 12/27/12
  - **AND** PY was not modified after 12/27/12 to occur later in the CY
  - **AND** a CY plan is not offered
  - **AND** coverage is offered to at least 70% of FT employees in 2015 PY
- **THEN** for the class of FT employees eligible on 2/9/14:
  - Any “Pay” penalty would exclude these FT eligible employees until 2015 PY date
  - Any “Play” penalty would be waived for these FT eligible employees until 2015 PY date if coverage is affordable & MV on 2015 PY date
  - For classes of FT employees not eligible on 2/9/14, additional transition relief testing applies to determine if penalties may be waived

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Transition Relief: Non-CY Plan Delay to 2015 PY Date

For FT classes not eligible on 2/9/14, “Pay” penalties waived until 2015 PY Date **IF**:

<table>
<thead>
<tr>
<th>Option 1 (old option still available, dates updated)</th>
<th>OR Option 2 (new option, same updated dates)</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Covered ¼ of ALL employees any date between 2/10/13-2/9/14</td>
<td>• Covered ¼ of all FT* employees any date between 2/10/13-2/9/14</td>
</tr>
<tr>
<td>• OR offered MEC to ½ of ALL employees at last open enrollment before 2/9/14</td>
<td>• OR offered MEC to ½ of all FT* employees at last open enrollment before 2/9/14</td>
</tr>
</tbody>
</table>

*Play” penalties also waived if coverage on 2015 PY date is affordable and MV  *FT using IRS definition
Affordability Safe Harbors
FT Employee Waiting Period Rules

3 to choose from by “any reasonable class of employees”, may alter each year

<table>
<thead>
<tr>
<th>FPL Safe Harbor</th>
<th>Rate of Pay Safe Harbor</th>
<th>W-2 Safe Harbor</th>
</tr>
</thead>
<tbody>
<tr>
<td>• At beginning of plan year, use 9.5% of highest single federal poverty level (FPL) from the last 6 months</td>
<td>• For salaried, monthly base salary at beginning of plan year × 9.5%</td>
<td>• Uses 9.5% of employee’s W-2 Box 1 wage divided by 12 (not a gross wage and not known until the calendar year is complete)</td>
</tr>
<tr>
<td>• Single figure for everyone, “set it and forget it” ahead of time, easiest to administer</td>
<td>• Cannot reduce salaries during the year, even for legitimate reasons</td>
<td>• Ideal for commission or tipped employees</td>
</tr>
<tr>
<td>• 2014 FPL = $11,670, +12 × 9.5% = $92.38</td>
<td>• For hourly, lowest 30-hrs/wk base hourly rate at beginning of plan year × 9.5% × 130 hours</td>
<td>• If not full-time entire calendar year, must multiply W-2 Box 1 wage by number of months offered coverage divided by number of months full-time</td>
</tr>
<tr>
<td>• Lowest cost MV plan’s single employee contribution ≤$92.38 at beginning of plan year is “affordable” entire plan year</td>
<td>• If lowest 30-hrs/wk base hourly rate goes down during the year, affordability the rest of the year for hourly employees is based on new lower rate of pay</td>
<td></td>
</tr>
</tbody>
</table>

Watch grandfather status. Affordability always based on single tier of lowest-cost MV plan. Different contributions by class may impact cafeteria plan and §105(h) nondiscrimination testing.
90-Day Waiting Period Rules

- Final rule confirms:
  - First of the month following 90 days is not permissible
    - First of the month following 60 days is the longest practical waiting period for employer plans
  - Employment-based criteria may be required (as written in the plan document) before the waiting period will begin, such as:
    - Must achieve a work-related license/certification
    - Must work a certain number of hours
      - Cannot require more than 1,200 hours
      - Cannot require this every year
    - Bona fide orientation period not exceeding one month
  - Warning: §4980H penalties may be assessable if position is full-time and employee is not offered coverage within 3 months

“Play or pay” penalties may be assessable during these times

Population Identification & Management
Identify Employee Classes

Clearly Full-Time (always 30+ hrs/wk)
- Should be eligible for coverage to begin no later than 91st day of work
- Can trigger “play or pay” penalties

Clearly Part-Time (always <30 hrs/wk)
- If eligible for coverage, it should begin no later than 91st day of work
- Cannot trigger “play or pay” penalties

Variable-hour and/or Seasonal
- Regularly measure hours to determine FT/PT status
- Many rules apply, gets complicated
- Any employee deemed FT can trigger “play or pay” penalties

Important Determination: Is New Hire FT?
- Final rule offers guidelines to consider in determining whether employee is FT at hire:
  - Replacing an employee that was FT
  - Employees in same or comparable positions are FT
  - Job advertised or communicated as FT
  - Educational employers may not take potential break periods into consideration
  - Beginning 2015, employers may not consider the potential length of employment...if reasonably expected to average 30+ hrs/wk, the new hire is FT

» Look-back method only: Exception for seasonal employees
Look-back Method: Seasonal Employees

- New definition of seasonal employee (for look-back ONLY):
  - Hired during set time of year
  - Positions intended to last 6 months or less
  - Occasionally exceeding 6 months is permissible if circumstances warrant (such as spring snow extending a snow season)

- New seasonal employees may be treated as variable hour and measured, even if expected to average 30+ hrs/wk

- Employee rehired after a break of at least 13 weeks (26 weeks for educational employers) may be a “new hire” subject to an initial measurement period
  - This will help when the seasonal employees end up working longer than 6 months due to an extended season

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### Problems to Identify: Populations and Transitions

<table>
<thead>
<tr>
<th>Consideration</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indicate which workforce populations are present:</td>
<td></td>
</tr>
<tr>
<td>☐ Full-time (30 or more hrs/wk)</td>
<td></td>
</tr>
<tr>
<td>☐ Part-time (&lt;30 hrs/wk)</td>
<td></td>
</tr>
<tr>
<td>☐ Variable hour</td>
<td>☐ Temporary workers from a staffing agency</td>
</tr>
<tr>
<td>☐ 1099 Workers</td>
<td>☐ Temporary employees on your payroll</td>
</tr>
<tr>
<td>☐ Interns</td>
<td>☐ Leased employees (PED / Staffing Agency)</td>
</tr>
<tr>
<td>☐ Seasonal Employees</td>
<td>☐ Seasonal (hired same time of year for ≥6 months)</td>
</tr>
</tbody>
</table>

**Please indicate which transitions may occur:**

<table>
<thead>
<tr>
<th>FT salaried to PT salaried</th>
<th>FT hourly to PT hourly</th>
</tr>
</thead>
<tbody>
<tr>
<td>FT salaried to PT hourly</td>
<td>FT hourly to PT salaried</td>
</tr>
<tr>
<td>FT salaried to FT hourly</td>
<td>FT hourly to variable hour</td>
</tr>
<tr>
<td>FT salaried to FT salaried</td>
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<td>FT salaried to FT salaried</td>
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<td>FT hourly to PT salaried</td>
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<tr>
<td>Variable hour to FT salaried</td>
<td>Variable hour to FT hourly</td>
</tr>
<tr>
<td>Variable hour to PT salaried</td>
<td>Variable hour to PT hourly</td>
</tr>
</tbody>
</table>

- All of these warrant utilizing look-back method on all hourly employees
- If any of these are salaried, look-back should be used for all employees (or just utilize look-back on hourly and salaried for consistency)

- Switching to FT status can be handled by providing coverage immediately/first of the month following transition
- Transitions to PT or variable hour status may result in extension of benefits beyond the transition date
- Transition results may vary depending on measurement method
**Hours of Service**

*To identify FT employees AND to determine ALE status*

### Hourly

- Must credit hours which are or should be paid

  - Includes paid vacation, holiday, illness, incapacity, disability, layoff, jury duty, and leaves of absence
  - Unpaid jury duty, FMLA, and USERRA only apply to the look-back method

### Non-Hourly

- May use actual hours
- May use equivalency of 8 hrs/day or 40 hrs/wk, unless:
  - That would substantially understate hours
  - OR that would understate hours for a substantial number of employees

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**Measuring Hours**

- Measurement options help identify employee status:
  - FT or PT *(determination needed per calendar month under §4980H)*
  - Variable hour or Seasonal *(inherent issues to determining FT status)*

#### Monthly Method

- Determine FT/PT status at end of each month, best to be sure of FT/PT status ahead of time
- Only viable IF:
  - No variable hour/seasonal
  - OR applied to IRS-defined classes with no variable hour/seasonal
  - Traditional approach

#### Look-back Method

- Use look-back measurements to determine FT/PT status during future stability periods
- Most viable to classes with variable hour/seasonal, but available for all classes
- Tends to misalign with §125 status change rules

#### Monthly & Look-back

- May use both methods per IRS-defined classes
- Hourly and Salaried
- Employer locations in different states
- Collectively bargained and not collectively bargained
- Employees under different collective bargaining agreements
- Separate ALE members in a control group
Calendar Year Plan
12-Month Look-Back Process for Ongoing Employees

26½ MONTHS

12 months

Standard measurement period
• May use pay periods

Administrative period
• Oct 15 – Dec 31, 2014: assess, open enroll

Stability period
• Jan 1 – Dec 31, 2015: FT/PT determination holds

2½ months

Standard measurement period
• May use pay periods

Administrative period
• Oct 15 – Dec 31, 2015: assess, open enroll

Stability period
• May use pay periods

12 months

Stability period
• Jan 1, 2017 – Dec 31, 2017: FT/PT determination holds

Initial measurement period
• Hired early March 2015
• Mar 15, 2015 – Mar 14, 2016: tracking
• May use pay periods

Administrative period
• Mar 15 – Apr 30, 2016: assess, special enroll

Initial Stability period
• May 1, 2016 up to Apr 30, 2017: FT/PT determination holds

If FT then FT again, open enroll, but if no election at open enroll, do not cease coverage until initial stability period ends
If FT then PT, do not cease coverage until initial stability period ends
If PT then FT, open enroll
If PT then PT, no coverage required

1½ months

UP TO 25½ MONTHS

Up to 12 months

Standard measurement period
• May use pay periods

Administrative period
• Oct 15 – Dec 31, 2016: assess, open enroll

Stability period
• Jan 1, 2017 – Dec 31, 2017: FT/PT determination holds

12 months

If FT then FT again, open enroll, but if no election at open enroll, do not cease coverage until initial stability period ends
If FT then PT, do not cease coverage until initial stability period ends
If PT then FT, open enroll
If PT then PT, no coverage required

If PT then PT, no coverage required
Rehire Rules
(for look-back & monthly methods)

New Hire or Rehire?

13+ week gap is new hire
- Employee works 4/2-12/31 each year
- Gap is exactly 13 weeks, rehire may be treated as “new”
- Work just one extra day (before 4/2 or after 12/31) and gap is not long enough to treat rehire as “new”

Gap of 4 to 13 weeks that is longer than period of prior employment is new hire, otherwise rehire
- Employee works 8 weeks from 11/5-12/31
  - If rehired 2/25 (8 week gap), then gap is not long enough to treat rehire as “new”
  - If rehired 2/26 (gap is 8 weeks and a day), rehire may be treated as “new”

<4-week gap is rehire
- Employee works 8 weeks 11/5-12/31
- Rehired 1/26 (<4-week gap), may not be treated as “new”

Programming this into the payroll/HRIS system may be challenging

Transitions - Examples
Ongoing Employee Switching from Salaried FT

<table>
<thead>
<tr>
<th>Transition Type</th>
<th>Hourly: Look-Back Method</th>
<th>Salaried: Monthly Method</th>
<th>Hourly and Salaried: Look-Back Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaried FT to Salaried PT</td>
<td>Handle as usual</td>
<td>Term benefits end of month, offer COBRA</td>
<td>3-month tail Otherwise, measurement &amp; stability controls</td>
</tr>
<tr>
<td>Salaried FT to Hourly PT</td>
<td>3-month tail</td>
<td>Otherwise, finish stability period, “better of the 2” for next stability period, then measurement &amp; stability controls</td>
<td>3-month tail Otherwise, measurement &amp; stability controls</td>
</tr>
<tr>
<td>Salaried FT to Hourly Variable Hour</td>
<td>Apply stability period, “better of the 2” for next stability period, then measurement &amp; stability controls</td>
<td>Measurement &amp; stability controls</td>
<td></td>
</tr>
<tr>
<td>Salaried FT to Hourly FT</td>
<td>Apply stability period, “better of the 2” for next stability period, then measurement &amp; stability controls</td>
<td>Measurement &amp; stability controls</td>
<td></td>
</tr>
</tbody>
</table>

3-Month Tail: When a FT employee has been continuously offered MV coverage since hire and moves to a clearly PT position not eligible for benefits, continue stability period for 3 full calendar months (plus partial month before that if applicable), then:

a) if measured PT during each of those 3 months, term benefits, offer COBRA, and use monthly method for rest of current and next stability periods;
b) otherwise, finish current and next stability periods.
Be Prepared to Provide Detailed Reporting
CASE STUDY #1

• Results
  – Changing Eligibility – No excluded class- based on 30 hrs by virtue of FT position or measurement
  – Modified job descriptions for caregivers to include full-time, part-time, or variable – better process management
  – Implementing look-back measurement process
  – Plan will not be fully Affordable with risk of Play penalty assessments within certain compensation range; plan will satisfy MV

CASE STUDY #2

• Results
  – Qualifies for Transition Relief until 9/1/2015
  – Changing Eligibility – No excluded class – based on 30 hrs by virtue of FT position or measurement
  – Implementing look-back measurement process
  – Analyzing 200 non-traditional work relationships for common law employer status
    • May impact the plan for 2015 plan year under “play” penalty & may have “pay” penalty implications in 2016
CASE STUDY #3

• Results
  – Changing Eligibility – No excluded classes & ALL employees regardless of status and hours worked are eligible
  – Will use monthly method to report FT employees to IRS
    • Avoids use of look-back, re-hire, and transition processes
  – Will monitor non-traditional work relationships for common law employer status

Q & A
Karen D. Vines
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Director of Employee Benefits Governance & Compliance

Karen’s 29 years experience in the Employee Benefits arena includes compliance, strategic planning, benefit analysis, plan design, self-funding, consumer-driven health plans, and implementing value-based benefit strategies.

Over the past 4 ½ years, Karen has been a featured speaker on Health Care Reform to numerous audiences both regionally and nationally. She has become a go-to resource for publications such as Business Insurance and The Business Journals on this topic.

This presentation and supporting materials are intended to provide only a general overview of selected issues related to the health care reform law. They do not provide a complete analysis. The information in the outline is for general use only and is not intended to provide specific advice or recommendations, legal or otherwise, for any individual or organization. The information provided herein is not intended to be and should not be construed as legal opinion or advice.