



HARRIS BEACH <sup>PLLC</sup>  
ATTORNEYS AT LAW



# It's Here! Open Enrollment with the ACA

October of 2014

# Establishing An Affordable Care Act Compliance Program

## Where You Should Be Now and What You Need to Prepare For

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# By Now You Need to Know If You Are A Large Employer!

- Large employers have 50 or more full-time or full-time equivalent employees
- Calculated on a monthly basis
  - Hourly employees: 30 hours of service per week. 130 hours of service per month is the equivalent of 30 hours of service per week.
  - Non-hourly employees: Count hours or use daily (8 Hours)/weekly equivalency (40 hours).
- What are full-time equivalent employees
  - The total number of FTEs in a month is determined by calculating the aggregate number of hours of service for non-full-time employees for that month and dividing that number by 120.

# By Now You Need to Know If You Are A Large Employer!

## Seasonal Employee Exemption

- This exemption exists for employers where the workforce exceeds 50 full-time employees for no more than 120 days or four calendar months if the employees in excess of 50 were employed during a period which was in fact “seasonal” to the business.

## Aggregation Rules

- Companies under common control are combined together for determining whether the threshold for large employers is met.
- If the combined total number of full-time and full-time equivalent employees is equal to or greater than 50, then each separate company is subject to the employer mandate.
- The 30 (or 80) employee reduction must be allocated for aggregated companies.

# By Now You Should Clearly Understand the Penalties and What Will Cause a Penalty

- 4980H(a): If a covered employer does not offer coverage to its full-time employees and their dependents, and one employee receives a premium tax credit, the penalty will be:
  - (Number of full-time employees – 30) x \$2,000
- 4980H(b): If a covered employer does offer coverage, but that coverage is not affordable or does not provide minimum value, and one employee received a premium tax credit, the penalty will be the lesser of:
  - Number of full-time employees – 30 x \$2,000; or
  - Number of full-time employees who receive subsidized coverage through an exchange x \$3,000

# Shared Responsibility: Transition Relief

- In 2015, the shared responsibility provisions will not apply to employers with less than 100 full-time and full-time equivalent employees. Employers cannot reduce the size of their workforce or overall hours of service in order to gain this transition relief and they must maintain any health coverage offered as of February 9, 2014.
- For 2015, employers may determine whether they had 100 full-time employees or full-time equivalents in the previous year by referencing any consecutive six-month period in 2014.
- Employers with fiscal year plan years will be able to begin complying with the employer mandate at the start of their plan years in 2015 instead of January 1, 2015.

# Shared Responsibility: Transition Relief

- For 2015 only, employers that are subject to the employer mandate only need to offer coverage to 70% of their full-time employees (instead of 95%) in order to avoid the 4980H(a) penalty.
- For 2015 and any calendar months of 2016 that fall within the employer's 2015 plan year, if an employer with 100 or more full-time employees is subject to a 4980H(a) penalty, the penalty calculation will be made after subtracting the employer's allocable share of 80 fulltime employees (instead of 30).
- In 2014 (preparing for 2015), employers may use a measurement period of six months and still utilize a 12 month stability period in 2015. This measurement period must begin no later than July 1, 2014, and end no earlier than 90 days before the first day of the plan year beginning on or after January 1, 2015.

# Shared Responsibility: Transition Relief

- For 2015 only, employers do not need to offer coverage to dependents of full-time employees, defined as children up to the age of 26. This requirement applies in 2016 and beyond.
- The final regulations amend the definition of dependent to exclude foster children and stepchildren.
- Solely for January 2015, a large employer may offer coverage on the first day of the first payroll period that begins in January 2015 (as opposed to the first day of the calendar month).



# You Should Understand ACA “Eligibility”

## ACA Full Time Employee Status is Based on Hours of Service

- Hours for which an employee is paid, ***or entitled to payment***, for the performance of duties;
- Hours for which an employee is paid, or entitled to payment, for ***a period of time during which no duties are performed*** due to vacation, holiday, illness, incapacity, layoff, jury duty, military duty, or leave of absence.
  - Exclusions:
    - Hours of service performed as a bona fide volunteer, as part of a Federal Work-Study Program; outside the US.
    - The final regulations provide a definition for “seasonal employees” clarifying that seasonal employees are those in a position for which the customary annual employment is six months or less.
    - On-call and other complex situations - if time is paid for it is most likely a “hour of service” for ACA purposes



# You Need to Know Who Is Full Time Under the ACA

## These are the Employees You Must Offer Coverage to for ACA Compliance 1-1-15

- At least 30 hours of service per week
- Distinction between hours of service and hours worked
- You should have a list of these employees and be prepared to collect proof of the offer of coverage
- Do not forget to follow your customary rules/contract, unless those have been lawfully modified
- You should have an established system (preferably technology solution) which will monitor this requirement on an ongoing basis for existing employees and new hires

# You Should Know What Period You Will Look at To Determine Who is a Full-Time Employee

By now you should understand the two methods for determining full-time employee status:

- The Monthly Measurement Method
  - Employees with 130 hours of service in a month will be treated as full-time.
- The Look-Back Measurement Method
  - Determine the status of an employee during a future period based on the hours of service he/she worked in a prior period.
  - Applies differently depending on whether you are dealing with ongoing employees or new employees.

# You Should Have Established Your Measurement Periods/Methods

## ▪ Look-Back Measurement Method for Ongoing Employees

- Employers may select a “look back” measurement period of between 3 - 12 months.
- If an employee was employed on average at least 30 hours per week during the measurement period, then he/she must be treated as full-time during a corresponding stability period, regardless of the number of hours of service actually worked in the stability period.
- Duration of the stability period must 6 months or length of the look-back period, whichever is greater

# You Should Have Established Your Measurement Periods/Methods

## ▪ New Full-Time Employees

- New hires, if reasonably expected to be full-time employees at the start of employment, must be offered coverage by the first day of the month immediately after the employee's first 3 months of employment.

## ▪ New Variable and Seasonal Employees

- Select a forward rolling measurement period if based on the known facts and circumstances at the employee's start date, it cannot be determined whether the employee is reasonably expected to work an average of at least 30 hours of service per week.

# You Should Have Determined Affordability of Your Lowest Cost Plan Option

- To avoid penalties under 4980H(b), a covered employer must offer self-only coverage that is “affordable”
- By now you must have run a workforce analysis to determine whether your coverage is affordable
- You should have selected or be in the process of selecting an affordability safe harbor. The employee’s premium share for the cheapest qualified self-only coverage cannot exceed 9.5% of the safe harbor amount
  - Form W-2 Safe Harbor
  - Rate of Pay Safe Harbor
  - Federal Poverty Line Safe Harbor

# Upcoming Compliance Action Items What You Need To Prepare For

# IRS Information Returns

- Large employers must file the §6056 returns for 2015 with the IRS by February 28, 2016 (March 31 if filed electronically).
- Employers must also provide all full-time employees with a §6056 employee statement on or before January 31 of each year.
- §6056 returns require a significant amount of information for each employee. While the final regulations provide several “streamlined” methods, the reporting will be burdensome for large employers.



# Section 6056 Large Employer Information Reporting

- Final regulations on 6056 employer information reporting were issued in March of 2014 and draft 1094-C and 1095-C Forms were released in July of 2014. Draft instructions for 1094-C and 1095-C Forms were issued on August 28, 2014.
- Large employers must file 1094-C and 1095-C Forms for the 2015 calendar year with the IRS by February 28, 2016 (or March 31 if filed electronically). Employers must also provide all full-time employees with a 1095-C on or before January 31 of each year.

# Section 6056 Large Employer Information Reporting

- Form 1094-C is utilized to report summary information for each employer and to transmit Forms 1095-C. Form 1095-C is used to report information about each employee. Both of these forms are used to determine whether an employer is subject to a penalty under the employer shared responsibility provisions of the ACA.
- Draft Instructions: <http://www.irs.gov/pub/irs-dft/i109495c--dft.pdf>
- Draft Form 1095-C: <http://www.irs.gov/pub/irs-dft/f1095c--dft.pdf>
- Draft Form 1094-C: <http://www.irs.gov/pub/irs-dft/f1094c--dft.pdf>

# IRS Draft Form

Form **1095-C** **Employer-Provided Health Insurance Offer and Coverage**  VOID  CORRECTED OMB No. 1545-2251  
**2014**

Department of the Treasury Internal Revenue Service 600115

Information about Form 1095-C and its separate instructions is at [www.irs.gov/1095c](http://www.irs.gov/1095c).

**Part I Employee** **Applicable Large Employer Member (Employer)**

|  |  |                                |  |  |  |                 |  |  |  |   |  |
|--|--|--------------------------------|--|--|--|-----------------|--|--|--|---|--|
| 1 Name of employee                         |  | 2 Social security number (SSN) |  | 7 Name of employer                             |  |                 |  | 8 Employer identification number (EIN) |  |   |  |
| 3 Street address (including apartment no.) |  |                                |  | 9 Street address (including room or suite no.) |  |                 |  | 10 Contact telephone number            |  |   |  |
| 4 City or town                             |  | 5 State or province            |  | 6 Country and ZIP or foreign postal code       |  | 11 City or town |  | 12 State or province                   |  | 13 Country and ZIP or foreign postal code |  |

**Part II Employee Offer and Coverage**

| 14 Offer of Coverage (enter required code)                           | All 12 Months  | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept | Oct | Nov | Dec |
|--|--|-----|-----|-----|-----|-----|------|------|-----|------|-----|-----|-----|
|  | 15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage | \$  | \$  | \$  | \$  | \$  | \$   | \$   | \$  | \$   | \$  | \$  | \$  |
| 16 Applicable Section 49901H Safe Harbor (enter code, if applicable) |  |     |     |     |     |     |      |      |     |      |     |     |     |

**Part III Covered Individuals**

If Employer provided self-insured coverage, check the box and enter the information for each covered individual.

| (a) Name of covered individual(s) | (b) SSN | (c) DOB (if SSN is not available) | (d) Covered all 12 months | (e) Months of Coverage   |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|-----------------------------------|---------|-----------------------------------|---------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
|                                   |         |                                   |                           | Jan                      | Feb                      | Mar                      | Apr                      | May                      | June                     | July                     | Aug                      | Sept                     | Oct                      | Nov                      | Dec                      |
| 17                                |         |                                   | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 18                                |         |                                   | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 19                                |         |                                   | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 20                                |         |                                   | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 21                                |         |                                   | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 22                                |         |                                   | <input type="checkbox"/>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 60705M Form **1095-C** (2014)

DRAFT AS OF  
October 15, 2014  
DO NOT FILE

# Cadillac Tax

- Starting in 2018, employers will be subject to an excise tax on their sponsored health insurance coverage if the value of that coverage exceeds \$10,200 for individual coverage and \$27,500 for family coverage. The tax is equal to 40% of the aggregate value of coverage in excess of these threshold amounts.
- You must be planning for this tax as you consider health insurance plans, plan changes, insurance costs.

# PCORI Fees

- PCORI Fees
  - §4376 of the IRC imposes as temporary annual fee on the sponsor of an applicable self-insured health plan for plan years ending on/after October 1, 2012 and before October 1, 2019.
  - Calculated based on the number of “covered lives” under a plan.
    - \$2 per covered life for plan/policy years ending between October 1, 2013 and October 1, 2014.
  - Payment is due on July 31 of the year following the last day of the policy/plan year.

# Reinsurance Fees

## ■ Transitional Reinsurance Program Fees

- Temporary annual fee paid by insurers and plan administrators for calendar years 2014, 2015, and 2016.
- Designed to help stabilize premiums for coverage on the individual market
  - Will allow for “reinsurance” payments to be given to insurers who cover high-risk populations.
- Calculated based on the number of “covered lives” under a plan.
  - 2014: \$63 per covered life.
  - 2015: \$44 per covered life.
  - 2016: Will be determined at a future date.
- Employers must provide HHS with enrollment count by November 15, 2014
  - Payment is due 30 days later.

# Employee or Independent Contractor?

- Employee counts are used to determine large employer status, determine liability under the shared responsibility penalties, and calculate penalties.
- Misclassifying an employee as an independent contractor can result in liability.
- The ACA applies the common law definition of the term “employee.”
- The essential factor is whether the company has the right to control and direct the individual who performs the services, not only as to the result of the work, but also as to the means by which the work is accomplished.

# Employee or Independent Contractor?

- Factors such as written contracts, method of payment, and the past practices of the parties are not dispositive.
- You should review all current independent contractors to determine whether they are actually misclassified employees, and make all necessary changes.
- Areas of focus should include any individuals that performs duties on company property on a regular basis, including IT staff, nursing/medical personnel, and long-term consultants.