

PPACA – Impact on Collective Bargaining

(UPDATED FOR RELEASE OF I.R.S. Notice dtd 12/28/2012)

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Notes

1. Michigan Exchange Marketplace
2. Pay or Play? Pay penalties in lieu of coverage
3. Private Exchanges and DC plans (i.e. 401k)
4. How does PPACA collide with RTW and PA152/54
5. Employer Recordkeeping
6. Individuals To Go In and Out of the Exchange

Establishment of the Exchanges

- The Exchanges will perform a variety of functions required by health care reform, including certifying QHPs, determining eligibility for enrollments in QHPs, and for insurance affordability programs (e.g., premium tax credits), and responding to customer requests for assistance.
- In states without a state-based Exchange, HHS will establish a "Federally Facilitated Exchange" (FFE). FFE will perform all Exchange functions including plan management functions and consumer-assistance functions
- Insurers can only offer "Qualified Health Plans" on the FFE. Four "Metal Levels" – Bronze(60%), Silver(70%), Gold(80%), Platinum(90%)

Establishment of the Exchanges

Michigan

- Michigan House did NOT pass "Exchange" legislation in 2012 therefore, no State Exchange in Michigan for 2014
- The Legislature could NOT agree to terms to participate in State/federal partnership (joint administration)
- Michigan will use the Federal Exchange in 2014

Establishment of the Exchanges

Participation in the Exchange?

- Individuals and Small employers can buy health insurance in the Exchange
 - Effective January 1, 2014 (Open enrollment begins October 1, 2013)
 - First year, SHOP Exchange functionality will be limited
 - ✓ Multiple plan options not available
 - ✓ Premium aggregation not ready
- Small employer is 100 or less full time employees
 - Feds limit to 50 or less FT's for 2014 and 2015
 - States can allow employers with more than 100 in 2017

What are the responsibilities under the Employer Mandate?



Responsibility

Employer Responsibilities

$$28. \int \frac{\sqrt{a+bx}}{x} dx = 2\sqrt{a+bx} + a \int \frac{dx}{x\sqrt{a+bx}} + C.$$

$$29. \int x^n \sqrt{ax+b} dx = \frac{2}{a(2n+3)} \left(x^n (ax+b)^{3/2} - nb \int x^{n-1} \sqrt{ax+b} dx \right) + C \quad (n \neq -\frac{3}{2}).$$

$$30. \int \frac{x^m}{\sqrt{a+bx}} dx = \frac{2}{(2m+1)b} \left(x^m \sqrt{a+bx} - ma \int \frac{x^{m-1}}{\sqrt{a+bx}} dx \right) + C \quad (m \neq -\frac{1}{2}).$$

$$31. \int \frac{dx}{x^n \sqrt{ax+b}} = -\frac{\sqrt{ax+b}}{(n-1)bx^{n-1}} - \frac{(2n-3)a}{(2n-2)b} \int \frac{dx}{x^{n-1} \sqrt{ax+b}} + C \quad (n \neq 1).$$

$$32. \int \frac{\cos^n x}{\sin^n x} dx = \frac{\cos^{m-1} x}{(m-n) \sin^{n-1} x} + \frac{m-1}{m-n} \int \frac{\cos^{m-2} x}{\sin^n x} dx + C \quad (m \neq n).$$

$$33. \int \frac{\cos^n x}{\sin^n x} dx = -\frac{\cos^{m+1} x}{(n-1) \sin^{n-1} x} - \frac{m-n+2}{n-1} \int \frac{\cos^n x}{\sin^{n-2} x} dx + C \quad (n \neq 1).$$

Pay or Play- What Does This Mean To Collective Bargaining

- IRC 4980- Employer Shared Responsibility Rules (Eff 1/1/14)
 - ✓ Commonly referred to as "Pay or Play" but IRS calls it the "Shared Responsibility" requirement
 - ✓ Applicable Large Employers ("ALE") must offer a plan that
 1. Is "affordable";
 2. Provides "minimum essential coverage" (Sec. 5000A); and
 3. Provides "minimum value" (Sec. 1302(d)(2)(C))
- ALE is 50 or more full time employees and equivalents

Affordability

"Affordable" means that an employee contribution for **employee only** coverage of no more than 9.5% of the employee's household income

- How can employers be expected to know their employee's household income?
 - ✓ IRS Safe Harbor permits an employer to make a determination using the federal taxable wages in Box 1 of the W-2
 - ✓ *NEW W-2 Safe Harbor choices (IRS Notice issued 12/28/12)*
 - *Rate of pay calculation using a 130 hours per month (based on rate of pay at the beginning of the year); this creates a uniform calculation in cases where hours may vary on a monthly basis)*
 - *FPL for single person*

Minimum Plan Coverage and Plan Value

Plan actuarial value – minimum 60% value (plan covers at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan)

What will a 60% plan look like?

- i. \$6,350 deductible & 0% coinsurance (Actuarial Research Corporation)
- ii. \$4,350 deductible & 20% coinsurance (Aon Hewitt)
- iii. \$2,750 deductible & 30% coinsurance (Towers Watson)

Minimum essential health benefits

- i. Ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventive and wellness services for chronic disease management, and pediatric services, including oral and vision care

Employer Shared Responsibility Requirements

\$2,000 per year per FTE (Less 30)

This Section 4980(H)(a) penalty may occur because:

The employer:

1. DOES NOT offer health coverage;
2. Offers health insurance plan(s) that DO NOT meet the minimum essential coverage (MEC) requirement
3. Offers qualifying coverage to less than 95% of it's full-time employees (as now defined under PPACA) and *at least one full-time employee receives a premium tax credit on an Exchange.*

Determined on a monthly basis during the employer's "plan year"

Employer Shared Responsibility Requirements

\$3,000 per year; or \$250 per month Penalty

This 4980(H)(b) penalty may occur because:

1. The coverage under the plan is unaffordable
2. The coverage under the plan does not provide minimum value, or
3. The employer offers coverage to at least 95 percent (or, if greater, five) but less than 100 percent of its full-time employees (and to those employees' dependents) and one or more of those employees who are not offered coverage receive a premium tax credit

NEW!- the proposed regulations confirms that the offer be made to the employee and their dependents, not spouses. Dependents are defined as children under age 26.

Pay or Play- What Does This Mean To Collective Bargaining

- Eliminate healthcare plans, pay the penalties, increase employee compensation and have employees buy plans on the Exchange
 - Factors influencing this decision:
 - ✓ Healthcare benefits are still tax-free; additional compensation is taxable
 - ✓ Will plans on the Exchange be affordable?
 - ✓ Is plan choice perceived as positive or negative?
 - ✓ Will younger employees forgo coverage?
- Plans negotiated must meet "minimum value" or provide "minimum essential coverage" or employer may be subject to significant penalties.
 - ✓ We are seeing insurance carriers begin to narrow the number of plan options
- PA 152 premium cost sharing mandates and "affordability" limits under PPACA could intersect

Private Exchanges and Defined Contribution Plans

- Negotiating an annual stipend to be credited into a "401k" like account
 - ✓ Employees are given an annual dollar amount, deposited to or credited to an account. The dollars credited to this account can be used to pay for a health insurance plan---at the individual level--- or be used to buy ancillary products
 - ✓ Companies in the marketplace are establishing Private Exchanges to support multiple product offerings to employer groups and their employees
- BCBSM- Glide Path (Bloom Health)
- Towers Watson- OneExchange (Extend Health)
- HAP/Alliance- iSelect

Right to Work/ State Mandates

Right to Work:

- Employee groups under one entity may become more fractured
- Internal comparables may be more difficult to measure

PA 152/PA 54:

- Collision of "affordability" mandate and required employee premium cost sharing under PA 152/54
- Mid-year plan changes and tracking compliance under PPACA

Other Considerations

- **Who is the reporting entity and who will be accountable for reporting to the IRS ?**
 - For-profit corporations follow the IRS "controlled group" rules of aggregation (414(b), (c), (m) and (o)); tax exempt organizations (Sec 4980H(c)(2)(C)(i))
 - Courts, library's, golf courses, pay-for-duty firefighters etc.
 - A municipality acts a the common paymaster and plan sponsor of the existing health insurance plans
 - Separate federal taxpayer identification number?
 - Who controls the employment policies?

Employee Status

- All W-2 employees NOT offered "qualifying" coverage today need to be considered and tracked
- Independent Contractor status vs. Employee status is important

Common Example:

- Employees who retire, are retained under an independent contractor agreement but work solely for the employer they retired from and receive healthcare plan coverage under that employer's retiree plan (Medicare eligible?)

Employer Recordkeeping is Critical!

How will employers avoid paying penalties?

- *IRS will contact employers* to inform them when it's employees attempt certification for a premium tax credit to purchase health insurance on the Exchange (1411 Certification).
- After they file their Sec 6056 information return required beginning with their 2014 plan year (identifying their FT employees and describing the coverage offered), *employers may be contacted to substantiate information reported*
- *Upon audit, if a discrepancy is found, an employer will be provided an opportunity to respond before any liability is assessed or notice of demand for payment is made.*

Employers need to have accurate records to support that they offered their eligible FT employee's an "affordable" and "minimum coverage" plan

**Who Does the IRS Define As
Full-time Employees?**

**The Look-back Safe Harbor
Rules/Measurement Periods**

Variable Hour Employees

Establishing A Tracking Program For Employee Hours

- Look-back "safe-harbor" rule
- Standard Measurement Period
- Initial Measurement Period
- Administrative Protection Period
- Stability (or Coverage) Period

Variable Hour Employees

IRS and HHS Guidance (Proposed Regs. issued 12/28/12)

- The proposed regulations permit employers to utilize a *look-back measurement period* with a corresponding stability (coverage) period to determine full-time status of their ongoing employees'; and an *initial measurement period* for new hires employees
- The statute defines a full-time employee as an individual employed on average *at least 30 hours per week; 130 hours per month during the employer's chosen "measurement" periods*

Variable Hour- New Employees

- If a new variable hour or seasonal employee *is reasonably expected to work*, on average, more than 30 hours per week at their start date, they are considered a Full-Time Employee and would be offered coverage no later than the end of the 90-day waiting period;
- For new *hires NOT reasonably expected to work*, on average, more than 30 hours per week at their start date, the employer can exclude them from coverage until they make a determination of FT status using the "hours counting" rules;
- If a new hire experiences a *"material change in their position of employment"* during their "initial measurement period" and it's determined that had the employee begun in that job position they would have been reasonably expected to work more than 30 hours/week, the employee must be treated as full-time and must be offered coverage on the 1st day of the 4th month following the change in status.

ACTION ITEM: *Review your employment policies and job descriptions!!!*

Case Study- Measurement Periods

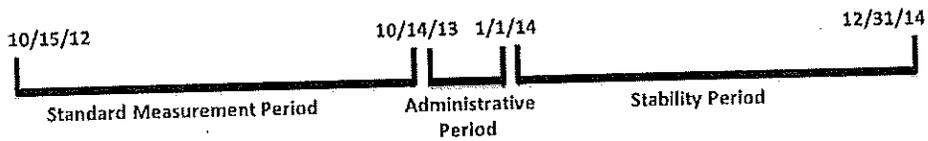
Betty is hired on May 10, 2013 by the City of ABC, and begins working a variable hour schedule of over 30 hours/week. In the fall of 2013 Betty's hours are reduced and her hours are less consistent from week to week and month to month through the fall of 2014.

Facts:

1. The City of ABC has a group health insurance plan coverage year that runs January to December each year
2. The City chooses a "standard measurement period" (SMP) of October 15 to October 14 every year to track the hours of "ongoing" variable hour employees
3. The City allows for an "administrative protection period" of 2 ½ months to compile and review data and to prepare for "open enrollment"; with coverage effective on January 1 of each year
4. The City chooses an "initial measurement period" (IMP) of 12 months for new hires to coincide with their SMP
5. Betty's IMP runs from June 1, 2013 to May 31, 2014.

Ongoing Employees

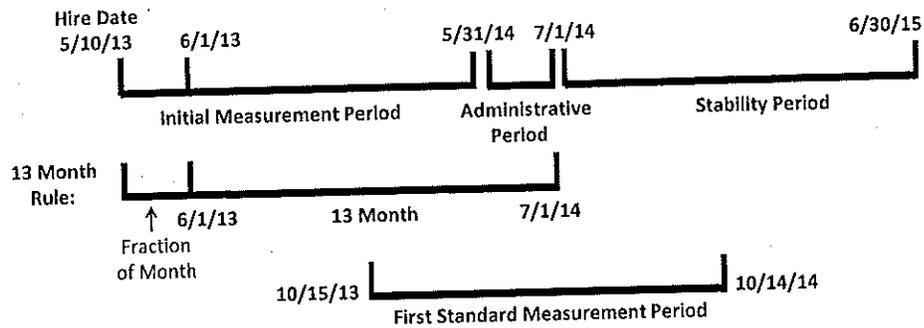
Ongoing Employees Standard Measurement



NOTE: Under the NEW rules published on 12/28/12, the SMP can be shorter for the 2014 coverage year; no less than 6 months

New Employees

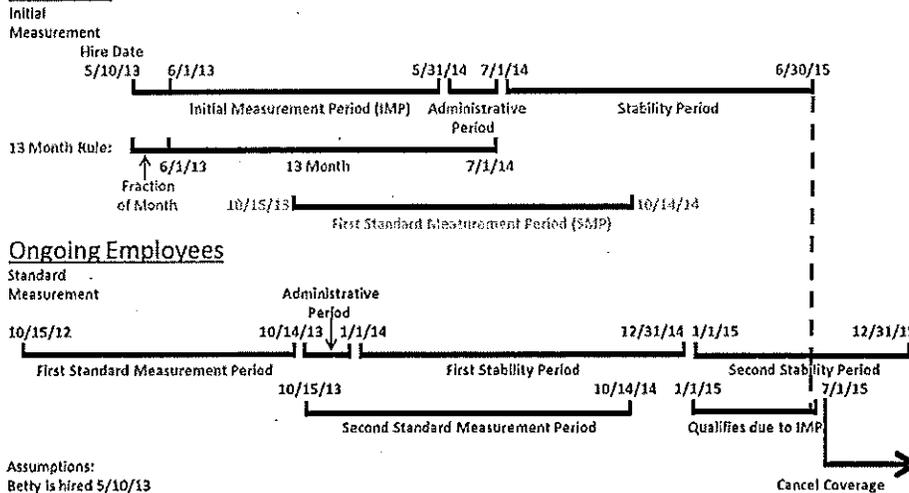
New Hire Initial Measurement



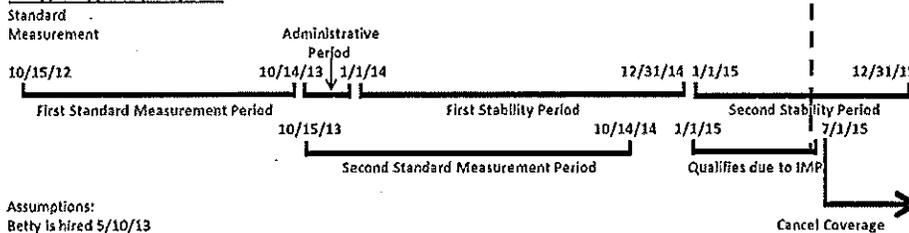
Assumptions:
 Betty is hired 5/10/13
 Betty works in average 30 hrs/wk during her IMP (6/1/13 – 5/31/14)
 Betty works an average 28 hrs/wk during her first SMP (10/15/13 – 10/14/14)

New Hire and Ongoing Employee Timeline

New Hire



Ongoing Employees



Assumptions:

- Betty is hired 5/10/13
- Betty works on average 30 hrs/wk during her IMP (6/1/13 – 5/31/14)
- Betty works on average 28 hrs/wk during her first SMP (10/15/13 – 10/14/14)

Action Items to Avoid Non-Compliance/Penalties

1. Determine ALE status for 2014
2. Identify your "permitted employee categories", if more than one.
 - a) Hourly and salary
 - b) Union v. non-union
3. If applicable, choose a "standard measurement" period for 2013; coordinate with your Open Enrollment period
4. Establish a system to track "initial measurement" period for new hires
5. Be ready to respond to IRS inquiries
6. Find a program to track hours for variable hour employees; and a program to maintain employee records, perform affordability calculations and compile the information required to be filed with the IRS