

Health and Welfare Seminar

Health Care Reform Q&A

Presented by:

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Today's Topics

- Discuss Audience Questions
- If no questions, then we will cover frequently asked questions by clients on:
 - Determining FTEs
 - Information Reporting

Abbreviations/Terms

- **ALE** = Applicable large employer
- **Exchange** = Public exchange/marketplace
- **Federal subsidy** = Premium tax credit/cost-sharing reductions on Exchanges
- **FTE** = Full time employee
- **FTEQ** = Full time equivalent
- **GHP** = Group health plan
- **MEC** = Minimum essential coverage
- **MV** = Minimum value
- **VHSPT** = Variable hour, seasonal, or part-time employee

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Determining FTEs

- Two measurement methods
 - Monthly: Hours of service per month
 - Look-back: Hours of service per measurement period of up to 12 months

Note: These measuring methods apply only for determining an ALE's penalty liability, not for determining an employer's status as an ALE.

Issue: Look-Back for New Hires

- Only if variable hour (including part-time) or seasonal.
 - Variable hour: Not clear at date of hire if reasonably expected to work 30 hours/week.
 - Seasonal: Customary annual employment of 6 months or less tied to season.
- Not available for FTEs.
 - If reasonably expected as of date of hire to work full-time, offer coverage by first of month following three full months of employment to avoid penalty.

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Issue: Temporary Workers

- Short-term or temporary workers are not necessarily seasonal.
 - Not seasonal:
 - Hired for 4 months to clear filing backlog.
 - Hired to fill in for FTE on paternal leave.
 - Seasonal:
 - Hired every year as ski instructor during ski season.
 - Hired every year for agricultural picking season.
 - Hired during school break for summer internship.

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Issue: Worker Misclassification

- Pay-or-play applies to an ALE's common-law employees who work full-time.
- Be careful when categorizing workers as independent contractors, leased, or staffed workers instead of common-law employees.
- IRS very active in this area: IRS Pub. 15-A
 - Right to control where and how person does tasks.
 - Right to control business aspects of the work
 - Right of person to work for other businesses
 - Payment for the work
 - Permanency of the position

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Issue: Leasing or Staffing Arrangements

- Temporary worker staffed or leased through third-party agency may be considered to be ALE's common-law employee.
 - Agency may offer GHP coverage to worker on behalf of service recipient (ALE).
 - Service recipient (ALE) must pay higher fee to agency if worker accepts offer of coverage.

Issue: Counting Hours of Service

- Count every hour for which employee is paid or entitled to payment:
 - Vacation, holiday, sick day, jury duty, other paid leave
 - Payments for on-call hours
 - Can use equivalency for non-hourly employees (8 hours/day for salaried employees if at least 1 hour is credited)

Issue: Special Leaves of Absence

- Employees on unpaid FMLA, USERRA or jury duty
 - Calculate average weekly hours disregarding period of leave; or
 - Impute same number of hours to leave period as averaged in the rest of the applicable measurement period.

Example: Special Leaves of Absence

- Employee on unpaid FMLA leave for 12 weeks beginning March 1
- Calendar-year standard measurement period
 - 1,400 hours of service during 9 months at work (40 weeks). Zero hours during FMLA.
 - $1,400/40 = 35$ hours a week on average
 - Employee qualifies as full-time for next stability period

Issue: Rehires

- Rehires generally can be treated as new employees if they had 0 hours of service for 13 consecutive weeks* prior to rehire
 - If rehired within 13 weeks* and resume full-time status, must be offered coverage by 1st day of month following date of rehire.

* 26 weeks if educational organization

Issue: Stability Periods

- If employee qualifies as FTE during stability period, coverage must continue through end of stability period regardless of hours worked.
 - Inability to pay premium not COBRA qualifying event.
 - New cafeteria plan election change for reduction in hours.

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IRS Returns: Forms

- IRS released final forms and instructions in September.
- 1094-B and 1095-B: Non-ALE plan sponsors of self-insured coverage
- 1094-C and 1095-C: ALEs, regardless of whether health coverage is insured or self-insured

ALEs: Fully-Insured Coverage

- 1095-C for each FTE
 - Complete Parts I and II
 - Leave Part III blank
- Submit 1095-Cs to IRS with at least one Form 1094-C providing aggregate info
 - “Authoritative Transmittal”
- Copy of 1095-C to each FTE

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ALEs: Self-Insured Coverage

- 1095-C for each FTE and each primary covered individual enrolled in self-insured coverage.
 - Complete Parts I, II and III
- Submit 1095-Cs to IRS with at least one Form 1094-C providing aggregate information
 - “Authoritative Transmittal”
- Copy of 1095-C to each FTE and to each primary covered individual (policyholder)

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Non-ALEs: Plan Sponsor of Self-Insured Coverage

- 1095-B for each primary covered individual enrolled in self-insured coverage
- Submit 1095-Bs to IRS with at least one Form 1094-B (transmittal)
- Copy of 1095-B to each primary covered individual (policyholder)

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Issue: Multiemployer coverage

- ALEs required to contribute to multiemployer coverage on behalf of employee per collective bargaining agreement.
 - Issue: Obtaining eligibility, offer, and affordability info from multiemployer plan.
 - Relief: For 2015 coverage, may use special codes in Part II of 1095-C to report reliance on interim multiemployer relief. May not be available for future years.

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Issue: COBRA coverage

- An employer must report on COBRA coverage only if it is self-insured.
 - Non-ALEs must use 1095-B.
 - ALEs could use 1095-B, but many prefer 1095-C.
- New IRS guidance:
 - COBRA offer due to termination is not offer for info reporting—even if COBRA is elected.
 - COBRA offer to active employee due to reduction in hours reported in same manner as if offer were made to active employees.

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Issue: Coverage for Retirees and Other Non-Employees

- An employer must report on non-employees only if they enroll in self-insured coverage.
 - Non-ALE employer must use 1095-B.
 - ALE could use 1095-B, but most prefer 1095-C.
- For individuals not employed on any day of the reported calendar year, such as:
 - Employee retired in 2014 or earlier with retiree coverage in 2015.
 - Employee terminated in 2014 or earlier with COBRA in 2015.
 - Dependent who separately elected COBRA in 2015 (divorced spouse, aged out dependent child).

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Issue: HRA coverage

- Self-insured medical + HRA: Can report only one coverage in 1095-C Part III (likely, medical).
- Insured medical + HRA: Not required to report HRA in 1095-C Part III if individual eligible for HRA due to enrollment in insured medical.
- ALE with HRA must report coverage in 1095-C Part III if individual with HRA is not enrolled in ALE's major medical (e.g., spouse's medical).

Issue: Controlled groups

- Entities in the same controlled group under Code §§ 414(b), (c), (m), or (o) are each a member of ALE and must pay-or-play.
 - Called “Aggregated ALE Group” on forms.
 - Information reporting on EIN-basis.
 - Each EIN reports on its respective employees.
 - EIN reports on Part IV of 1094-C the name and average FTE count for each other EIN in controlled group.

Penalty Provisions

- Penalty for failure to file: \$250 per return, capped at \$3M per calendar year.
 - Applies to returns and employee statements separately!
 - Increased if intentional failure to provide employee statements.
 - First year relief if good faith effort to comply
 - Standard relief upon showing reasonable cause (i.e., undue hardship)

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Questions?

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