

THE MANUEL LUJAN AGENCIES

Legislative Health and Human Services Committee
Meeting: July 2, 2013

Large Employer Shared Responsibility
under the Patient Protection & Affordable Care Act (P.P.A.C.A.)



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Introduction to 2014

The main components of the Patient Protection and Affordable Care Act go into effect in 2014. As a result of the complexity and intertwining of numerous rules/regulations, we've provided a concise summary of the key topics listed below that are discussed in greater detail in succeeding slides.

2

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Today's Focus

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Premium Increases

- Influential Premium Factors
- Proposed Large Group Premium Increase

Employer Shared Responsibility ("Pay-or-Play" penalties)

- Large Employer Determination
 - 50+ Employees Threshold
 - Full Time Employee = Average of 30+ hours/week or 130 Hours/Month
 - Part-Time Employee = Variable Hour, Temporary, or Seasonal employees
 - Aggregate Ownership/Common Control
 - Employer Shared Responsibility ("Pay-or-Play" penalties)
- Minimum Essential Value/Affordability Requirements
- Safe Harbors
- Group Health Plan Transition Relief/Rule

3

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Applies to Individual and Small Group Health Insurance Plans

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Premium

Source: www.uhc.com 4



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Large Group Premium Increase

15%	20% - 25%	
Avg. Rate Increase 12%	Rating Rules / Product 100%+*	
Pre-Reform	Taxes / Fees 3.8%**	
	Avg. Rate Increase 12%	Post-Reform

Incremental Increase to rates beginning in 2013 to cover taxes, fees, and benefit changes

Source: www.uhc.com



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Determining Employee Status and/or Assessable Employer Payments/Penalties

- Generally, "full-time" employees of a "large employer" (large employer with 50+ Full-Time Equivalents (FTE); full-time employees must work 30+ hrs/wk) must be offered coverage
- Regulations proposed in January 2013 provide Safe Harbor methods for determining "full-time" status. The regulations require breaking employees into 3 groups: new variable, new non-variable, and ongoing.
- New non-variable employees must be treated as full-time if they are reasonably expected to work at least 30 hours/week.
- Employee Status explained in detail on following pages:
 - New variable Hour or Seasonal Employees
 - Ongoing Employees



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New Variable Hour or Seasonal Employees:

- The safe harbor for **new variable hour or seasonal** employees allows an employer to establish both:
 - An **Initial Measurement Period** (between 3-12 months) as selected by the employer
 - An **Administrative Period** (of up to 90 days), optional, as selected by employer
 - The combined measurement period and administrative period **cannot exceed 13 months**
 - The subsequent **Stability Period** cannot be less than 6 months and can be no shorter than the initial measurement period plus the administrative period
 - Employees averaging 30 hours per week during the measurement period are considered full time employees

Change in Employment Status in Initial Measurement Period:

- An employer must treat an employee as Full-Time if the employee would have been reasonably expected to work an average 30+ hours/week **AND:**
 - Begin employment in a new position, or
 - Attained new employment status
- When?
 - The 1st day of the 4th month following position/status change
 - The 1st day of the month following the end of the periods (IMP + Admin) if earlier and the employee averaged 30+ hours/week during the IMP.

7



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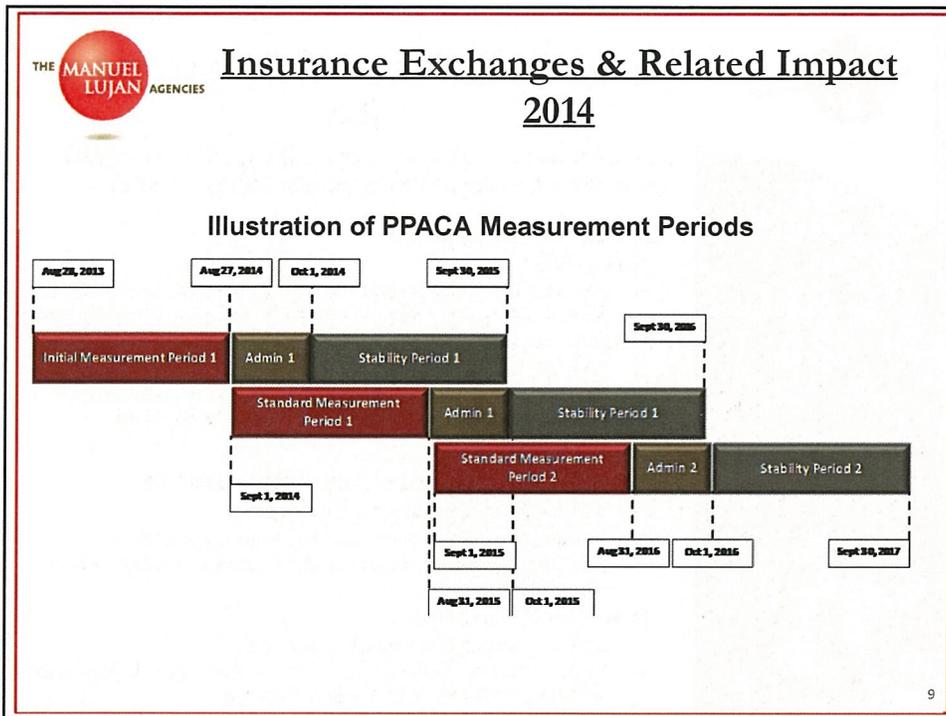
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Determining Employee Status and/or Assessable Employer Payments/Penalties, Cont'd:

Ongoing Employees:

- For **ongoing** employees, defined as employees employed for at least one standard measurement period, the safe harbor allows:
 - A look-back test for the period of the standard measurement period
 - The **Standard Measurement Period (SMP)** as selected by the employer must be between 3 months and 12 months
 - An **Administrative Period** (of up to 90 days), optional, as selected by employer
 - The **Stability Period** is a period during which all employees must be offered coverage if they worked on average 30+ hours per week during the associated measurement period.
- Standard Measurement Period (SMP) must be uniform for specific categories of employees
 - **Allowed Employee Categories**
 - Hourly versus Salary
 - Collectively Bargained versus Non-Collectively Bargained
 - Each group of collectively bargained employees covered by a separate collective bargaining agreement (employees of different entities)
 - Employees whose primary places of employment are in different states (employees located in different states)

8



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Special Rules for Determining Employee Status and/or Assessable Employer Payments/Penalties, cont'd:

Hours of Service – How to Calculate

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- Hours for which an employee is paid or entitled to payment
 - Includes: Disability, illness, holiday, jury duty, military duty, paid leave, and vacation.
- Hourly Employees → Measure actual number of hours worked
- Non-Hourly Employees – use the equivalencies of:
 - Use actual hours worked
 - Days-worked (8 hours/day worked)
 - Weeks-worked
 - *Can use different methods for different classifications of employees (reasonable and consistent).
- Awaiting further rules for:
 - Commissioned employees, personal assistants, transportation services, etc.
 - Until new rules are released, use a reasonable method for calculating/crediting their hours of service.

10



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Special Rules for Determining Employee Status and/or Assessable Employer Payments/Penalties, cont'd:

Hours of Service During Leaves:

- Special Rules for:
 - Jury Duty, Family and Medical Leave Act (FMLA), and Uniformed Services Employment and Reemployment Rights Act (USERRA) leaves
- Options for counting Hours:
 - Disregard special unpaid leave periods from calculation of hours, **OR**
 - Included credited hours for leave periods (credit the same hours for period of leave that the employee averaged in the rest of the measurement period).

Hours of Service During Leaves – Educational Institutions:

- Special Rules for Educational Institutions:
 - Educational institutions must credit hours during school breaks
 - School break period = period of at least 4 consecutive weeks with no hours of service.
- Options for counting Hours:
 - Disregard break period from calculation, **OR**
 - Include: (Credited hours for break period) – (Avg. hours for non-break period) which cannot be greater than 501 hours.

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Transition Rule – Setting Measurement Periods

- Employers can adopt a "transition" measurement period that is shorter than 12 months and is at least 6 months long and begins no later than July 1, 2013 and ends no earlier than 90 days before the first plan year beginning on or after January 1, 2014.

Apr. 15, 2013	Oct. 14, 2013	Dec. 31, 2013	Dec. 31, 2014
Transition Measurement Period	Administrative Period	Stability Period	

Transitional Rule – Large Employer Determination

- A critical rule for employers who may be close to the large employer threshold determination beginning 2014
- An employer may measure using any consecutive six-month period in 2013 to measure whether it has 50 FT/FTE (rather than being required to use the full 12 months of 2013).

Example:

An employer could use March 2013 – August 2013 as their six-consecutive month measuring period.

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6

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Transitional Relief for Fiscal Year Plans

- Beginning January 1, 2014
- The proposed regulations provide relief for employers that may have difficulty complying with the ACA's "Pay or Play" rules and whose health plans operate on a fiscal year (plans that operate on a non-calendar year basis) as of December 27, 2012.
- First, the transition relief applies to employees who would be eligible for employer-sponsored coverage from the first day of the fiscal plan year starting 2014.
 - If these employees are offered affordable coverage that is minimum essential value no later than the first day of the plan year starting in 2014, then the employer will not be assessed a play-or-pay penalty with respect to 2014
- Second, transition relief applies to employers that have a significant percentage of their employees who are eligible for or are already covered under one or more fiscal year plans with the same year
 - If an employer offers coverage under a fiscal year plan:
 - To at least 1/3 of its employees at the most recent enrollment period before December 27, 2012, or
 - If the plan covered at least 1/4 of the employer's employees
 - The employer will not be subject to the play-or-pay penalty with respect to the employers full-time employees until the first day of the plan year starting in 2014 (if the coverage offered is affordable and meets MEV requirements)
- For purposes of determining whether the plan covers at least 1/4 of employees, an employer may look at any day between Oct. 31, 2012 through Dec. 27, 2012. 13

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Group Health Plan Affordability

- Alternatives for Determining Affordability – If the employee's monthly contribution for the lowest cost self-only coverage that provides minimum value does not exceed:
 - 9.5% of the employee's W-2 income rather than household income (IRS W-2 Form, Box 1).
 - 9.5% of 130 hours x employee's hourly rate of pay at the beginning of the coverage period. For salaried employees use monthly salary.
 - 9.5% of the Federal poverty level for a single individual for the state where the individual is employed in the applicable year divided by 12. (ex. If FPL is \$11,490 x .095 ÷ 12 = \$90.96/month)

14



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Actuarial Value of Health Plans

- Non-GF health plans offered in the Individual and Small Group markets (both inside/outside exchange) must cover Essential Health Benefits (EHB), limit cost-sharing, and meet certain actuarial values.
- Actuarial Value/Metallic Level
 - Metallic Levels are intended to allow consumers to compare plans with similar levels of coverage in order to help consumers make an informed decision about their health insurance coverage
 - Calculated as the percentage of total average costs for covered benefits that a plan will cover
 - An employer may request a statement of actuarial value from the insurance company in which the insurer would determine value using one of the methods listed below
 - The AV Calculator was created by the HHS but is found on CMS's website (ccio.cms.gov/resources/files/av-calculator-final.xlsm)
 - According to HHS, most group health plans currently meet 60% actuarial value requirement.
- There are 3 methods to determine AV under consideration
 - 1) AV Calculator
 - 2) AV 'Safe Harbor Checklists' although they have not been issued by the HHS nor IRS yet.
 - 3) Actuarial Certification by a certified actuary

15



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Actuarial Value of Health Plans, Cont'd.

- Non-Grandfathered health plans must meet certain coverage levels
 - Platinum Plan – 90%
 - Gold Plan – 80%
 - Silver Plan – 70%
 - Bronze Plan – 60%
 - Plans < 59% – issuers may offer Catastrophic-Only coverage with for eligible individuals:
 - Young adults (under the age of 30 before the plan year begins)
 - For those person exempt from the individual mandate because no affordable coverage is available.
- For example, lets say a plan has an AV of 60%, then a covered individual will be responsible for 40% of the allowable cost and the employer will be responsible for 60% of allowable costs of all covered benefits.
- HSA/HRA Contributions
 - The final rule:
 - Permits employer contributions to an HSA to be taken into account when determining a health plan's minimum value.
 - Provides that amounts newly made available under an integrated health reimbursement arrangement that may be used only for cost-sharing are also taken into account in determining minimum essential value.

16



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When are Employers be responsible for the Employer Shared Responsibility (ESR) payment (Pay-or-Play Penalty)?

- If an employer meets the 50 full-time employee threshold, the employer may be responsible for ESR payment if:
 - (a) The employer ***does not offer*** health coverage or ***offers coverage to less than 95%*** of its full-time employees and their dependents*, and at least one of the full-time employees receives a premium tax credit to help pay for coverage on an Exchange.
 - (b) The employer ***offers*** health coverage to at least 95% of its full-time employees and their dependents, but at least one full-time employee receives a premium tax credit to help pay for coverage on an Exchange. This may occur because the coverage the employer offered that employee was either:
 - Unaffordable to the employee, or
 - Did not provide minimum value
- *Comments about Dependents
 - "Dependents" who must be offered coverage to avoid the excise tax is defined to mean the employee's child up to age 26. Dependent does not include the employee's spouse.
 - A transitional rule provides that for the 2014 Plan Year, no assessable payment/penalty will apply solely on account of a failure to offer coverage to the dependents if the employer "takes steps" toward satisfying the requirement to offer coverage to dependents.

17



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Large Employers are subject to "Pay or Play" Rule, cont'd.

- Applies to employers with 50+ full-time ***equivalent*** employees in prior calendar year
- They must offer coverage of a certain quality and that's is affordable or possibly pay a penalty
- NOTE: Employee ***eligibility*** will trigger employer penalties.
- **Penalties apply if:**
 - ***IRC 4980H(a)***: Employer ***DOES NOT*** provide coverage to all full-time employees and their dependents and any full-time employee receives subsidized coverage through an insurance exchange. Employees may be eligible for premium subsidies if:
 - Employees that are not eligible for government programs (like Medicaid)
 - Meet income requirements between 138%FPL – 400%FPL
 - In 2013, single FPL figures were: \$15,856 to \$45,960.
 - ***IRC 4980H(b)***: Employer ***DOES*** provide coverage and any full-time employee and their dependents receive subsidized coverage through an insurance exchange. Employees may be eligible for premium subsidies if:
 - They are not enrolled in an employer's plan
 - They're not eligible for government programs (like Medicaid)
 - They meet income requirements (between 138%FPL – 400%FPL)
 - Employer's coverage is unaffordable
 - Greater than 9.5% of employee's income.
 - Not of minimum value (less than Bronze Metallic Level – covers less than 60% of cost of benefits).

18



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Who is considered a Full-Time Employee?

- An individual who is an employee under the common law rules defined by the IRS.
- “Anyone who performs services for use is generally your employee if you have the right to control what will be done and how it will be done” – IRS
- An employee who is employed on an average of 30+ hours/week with respect to a calendar month
- NOTE: 130 hours of service in a calendar month = the monthly equivalent of 30+ hours/week.
- Who is **NOT** considered an employee
 - Independent Contractors
 - Leased Employees
 - Sole Proprietors
 - Partners in a Partnership
 - 2% of S-Corp Shareholders

19



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Employee Category – Calculate ER Status– Penalty

Employee Category	Used to determine “large employer” status?	Employer subject penalty if a premium credit received?
Full-time	Counted as one employee, based on a 30 hour or more work week	Yes
Part-time	Prorated (calculated by taking the hours worked by part-time employees in a month divided by 120)	No
Seasonal	Not counted, for those working less than 120 days in a year	Yes, for the month in which a seasonal worker is full-time
Temporary Agency	Generally, counted as working for the temporary agency (except for those workers who are independent contractors)	Yes, for those counted as working for the temporary agency

Source: www.zwave.com

20



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Different Scenarios for Employer Penalty Amounts

Not a large employer: Less than 50 full-time equivalent employees	Large employer: 50 or more full-time equivalent employees			
	Does not offer coverage		Offers coverage	
Scenario A No full-time employees receive credits for exchange coverage	Scenario B 1 or more full-time employees receive credits for exchange coverage	Scenario C No full-time employees receive credits for exchange coverage	Scenario D 1 or more full-time employees receive credits for exchange coverage	
No penalty	No penalty	Number of full-time employees minus 30 multiplied by \$2,000	No penalty	Lesser of: Number of full-time employees minus 30, multiplied by \$2,000. Number of full-time employees who receive credits for exchange coverage, multiplied by \$3,000. (Penalty is \$0 if employer has 30 or fewer full-time employees- because penalty is based on the lesser of the two calculations)

Source: www.zwave.com

21



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Employer Penalty Amounts

- Employers that **DO NOT** [IRC 4980H(a)] offer coverage to a full-time employee
 - \$2,000 per full-time employee (paid in monthly increments)
 - Excludes first 30 FT employees
 - Equation:

Penalty = (\$2,000 Annually) x (ALL Full-Time Employees – 30)

No FT employee(s) receive subsidy(s)

• No Penalty

Employer with 100 FT employees and at least one employee receives a subsidy

• **Penalty:** (\$2,000) x (100FT-30)
 = \$140,000
 Approx. \$11,667/mo

22

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Employer Penalty Amounts

- Employers that **DO** [IRC 4980H(b)] offer coverage
- Affordable & Minimum Essential Value... To Be Determined
 - The *lesser value* of the calculated penalty from the formulas below:

Penalty = \$2,000 Annually x (ALL Full-Time Employees – 30)
-or-
Penalty = \$3,000 Annually x (# of Employees Who Receive Subsidy)

Employer with 130FT employees of which 75 receive a subsidy. Employer DOES NOT contribute towards coverage premiums.

• **Penalty (lesser of):**
 $\$2,000 \times (130-30) = \$200,000$
 -or-
 $\$3,000 \times (75) = \$225,000$

Employer with 155FT employees DOES offer coverage and contributes \$200/month towards employee health coverage premiums. If 100FT ee's are covered by ESI and 25FT ee's receive tax-subsidy through an insurance exchange.

• **Penalty (lesser of):**
 $\$2,000 \times (155-30) = \$250,000$
 -or-
 $\$3,000 \times (25) = \$75,000$

23

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Aggregate Ownership

- Also being referred to as "Controlled Group"
- The emphasis is on direct ownership or overlapping (aka 'common') ownership rather than on actual, hands-on control.
- According to the IRC Code Sections 414(b) and 414(c):
 - "All employees of all corporations which are members of a controlled group of corporations" and "all employees of trade[s] or business[es] (whether or not incorporated) which are under common control" are to be treated as employed by a single employer.
 - This inherently means that organizations related in a parent-subsidiary relationship (a controlled group of corporations) are to be treated as a single employer.
- "These rules (of aggregate ownership) are intended to snuff out this type of abuse... You cannot get around the employer mandate", according to Christopher Condeluci, a Washington based attorney who helped draft the rule for the Senate Finance Committee.
 - Breaking your business into two business? Won't work.
 - Start a second company that was never a part of the first? Won't work.
 - Why? The employer mandate looks at who controls the companies and not what the companies do. That means that owners of two entirely separate firms will be assessed as one to determine if they (both companies as one) are a large employer.
 - Possible way to avoid penalty? Cut-off and switch full-time employees to part-time (<30hrs/wk)**
- Again, the proposed regulations are not final yet employers may rely on them until further guidance is issued.

24



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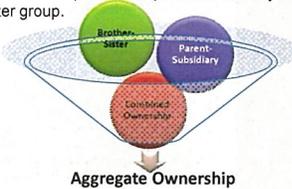
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Aggregate Ownership, cont'd.

- Three common types of "controlled groups" are:
 - Parent-Subsidiary Group
 - One business owns 80%+ of another business or businesses
 - Brother-Sister Groups
 - Five or fewer common owners
 - Ownership **include indirect ownership** through attribution (For example: One owner has the option of acquiring another owners interest in another business. Another example: Ownership between spouses)
 - Owners satisfy 80%+ common ownership test of each subsidiary
 - Combined/Identical ownership must be 50%+
 - Combined Ownership Groups
 - Each organization is a member of either a parent-subsubsidiary or a brother-sister group and at least one corporation is:
 - The common parent of a parent subsidiary and a member of a brother-sister group.



Aggregate Ownership

NOTE: It is recommended to consult with an attorney for additional information regarding your company's ownership classification.

25



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Employer Reporting

- Employers will have to report certain information about health coverage to the government and individuals
- Reporting applies to:
 - Large Employers who offer coverage after January 1, 2014
 - "Offering Employers" who are employers that provide coverage if employee costs exceeds 8% of income
 - First returns require filing in 2015
- Reporting Information Required:
 - Employer identifying information
 - Whether employer offers health coverage to FT employees and dependents
 - Number of FT employees for each month
 - Length of any waiting period
 - Monthly premium for lowest-cost option in each enrollment category
 - Employer's share of cost of benefits
 - Names and contact information of employees and months covered by employer's health plan

26



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End

I would like to take a moment and respond to any comments or questions you may have...

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www.dol.gov www.irs.gov www.healthcare.gov www.hhs.gov

27



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Thank You!

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28