Healthcare Reform

The Employer Mandate

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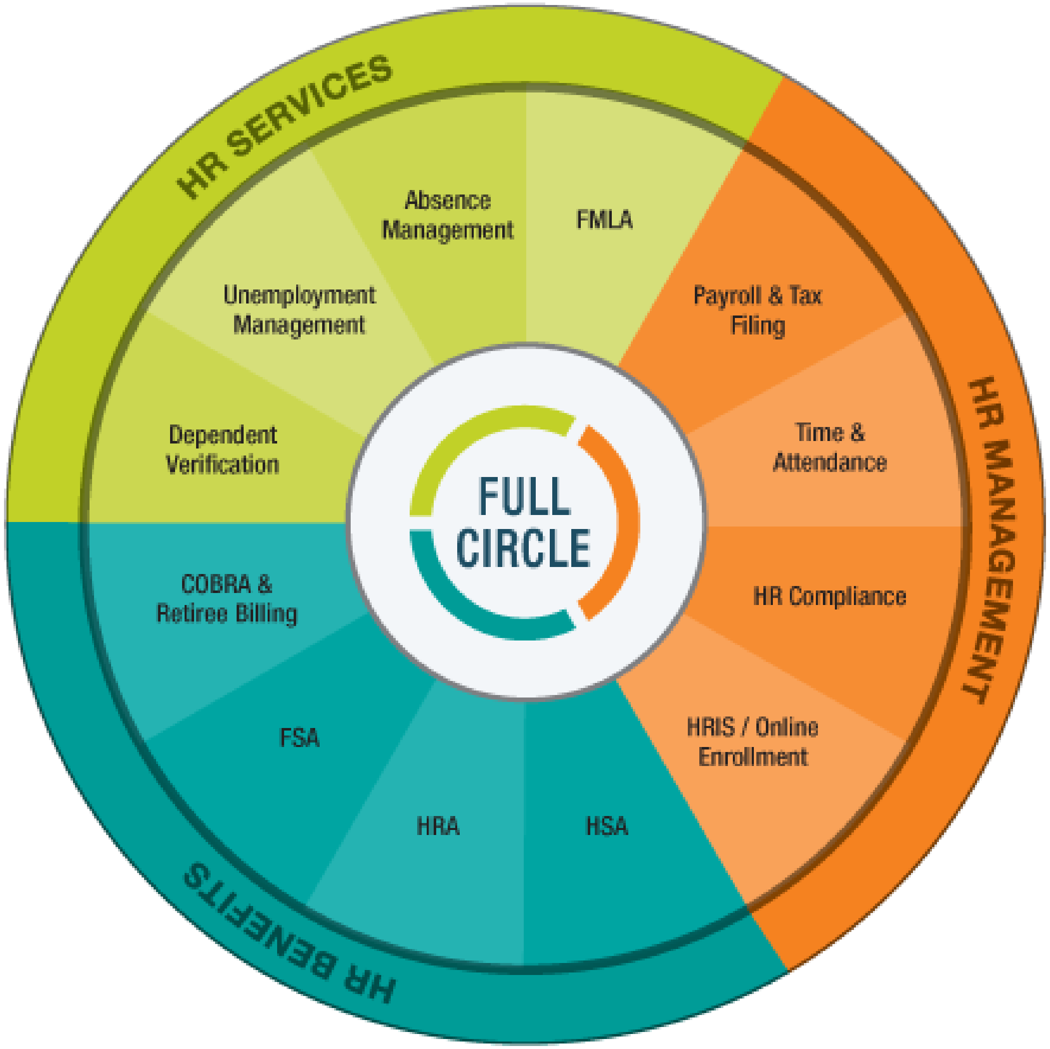

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Introduction

- Beginning in 2015, certain large employers may be subject to penalty taxes for failing to offer health care coverage for all full-time employees (and their dependents), offering minimum essential coverage that is unaffordable, or offering minimum essential coverage under which the plan's share of the total allowed cost of benefits is less than 60%.

- The penalty tax is due if any full-time employee is certified to the employer as having purchased health insurance through an Exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee.

Introduction

- The Employer Mandate is effective on January 1,2015, but the IRS has provided three transition rules for noncalendar-year plans:
  - **Relief for employees eligible on February 9, 2014**. An employer will not face penalties for full-time employees who were eligible for coverage as of February 9, 2014, as long as the employer offers them affordable coverage with a minimum 60% value by the first day of the plan year that starts in 2015, as long it is same plan year as of December 27,2012.
  - **Relief if coverage offered to at least one-third (one half) of employees**. For employees not eligible for the above plan as of February 9, 2014, the same penalty relief applies if the employer offered at least one-third or more of its employees (one-half of fulltime employees) coverage during the most recent open enrollment period before February 9, 2014
  - **Relief if at least one-quarter (one- third) of employees covered**. The penalty relief also would apply if at least one-quarter (one-third of full-time employees) of employees were covered form an open enrollment before February 9, 2014 under one or more noncalendar-year plans that had the same plan year on Dec. 27, 2012.

Introduction

– The last two safe harbors would be available for employees who are offered affordable coverage with a minimum 60% value by the first day of the plan year that starts in 2015 and were not – or would not have been – eligible for coverage under any calendar-year plan operating on February 9, 2014.

– In all cases, an employer could determine the percentage of covered employees as of the end of the most recent enrollment period before February 9 2014.

Who is the Employer?

- This determination is done on the controlled group test, meaning that all entities treated as a single employer under Code 414(b), (c), (m), or (o) are treated as a single employer for purposes of employer mandate.

- The employees of all employers within the controlled group are taken into account in determining whether any member of the controlled group is an applicable large employer.

Who is a Large Employer?

- An employer is large if it employed an average of at least 100 full-time employees on business days during the preceding calendar year for 2015.
- In determining the number of full-time employees, an employer must add up the total number of hours worked in a month by part-time employees, divide by 120, and add that number to the number of full-time employees.
- A “full-time employee” for any month is an employee who is employed for an average of at least 30 hours of service per week.

Who is a Large Employer?

- For 2015, the final regulations provide an important new transition relief for employers with less than 100 employees. If the following conditions are met, no penalty tax will apply until 2016 for employers with 50 to 99 employees:
  - Limited Workforce Size.
  - Maintenance of Workforce and Aggregate Hours of Service
  - Maintenance of Previously Offered Health Coverage
  - Certification of Eligibility for Transition Relief.

Determining Who is a Large Employer

- An employer must take part-time employees into account to determine whether it is an applicable large employer.
- The number of full-time equivalents the employer employed during the preceding calendar year are taken into account.
- All employees (including seasonal workers) who were not employed on an average of at least 30 hours of service per week for a calendar month in the preceding calendar year are included in calculating the number of full-time equivalents for that calendar month.

Who is a Large Employer?

- The approach for converting part-time employees to full-time equivalents includes two steps:
  - Step 1: Calculate the aggregate hours of service in a month for employees who are not full-time employees for that month. (Do not include more than 120 hours of service for any employee.)
  - Step 2: Divide the total hours of service from Step 1 by 120.

- The result is the number of full-time equivalent employees for the month.

Who is a Large Employer?

- Status as an applicable large employer is based on the number of full-time employees on "business days" during the preceding calendar year.
- The reference to "business days" is not explained. For example, must an employer have the requisite number of full-time employees on all of the business days of the prior year, or on at least half of those days? Is passing the threshold on just one business day enough to make the employer an applicable large employer
- The IRS has provided a multi-step method for calculating the number of full-time employees during the preceding calendar year that does not distinguish between business days and non-business days.

Who is a Large Employer?

- Specifically, the method entails the following steps:
  - Step 1: Calculate the number of full-time employees (including seasonal employees) for each calendar month in the preceding calendar year.
  - Step 2: Calculate the number of full-time equivalents (including seasonal employees) for each calendar month in the preceding calendar year
  - Step 3: Add the number of full-time employees and full-time equivalents obtained in Steps 1 and 2 for each month of the preceding calendar year.
  - Step 4: Add up the 12 monthly numbers from Step 3 and divide the sum by 12. This is the average number of full-time employees for the preceding calendar year.
  - Step 5: If the number obtained in Step 4 is less than 100, then the employer is not an applicable large employer for the current calendar year.

Who is a Large Employer?

- There is transition relief for purposes of the applicable large employer determination for the 2015 calendar year that allows an employer the option to determine its status as an applicable large employer by reference to a period of at least six consecutive calendar months, as chosen by the employer, in the 2014 calendar year (rather than the entire 2014 calendar year).

- An employer may determine whether it is an applicable large employer for 2014 by determining whether it employed an average of at least 100 full-time employees on business days during any consecutive six month period in 2014.

Who is a Large Employer?

- A special rule enables an employer that has more than 100 full-time employees solely as a result of seasonal employment to avoid being treated as an applicable employer.

- Under this rule, an employer will not be considered to employ more than 100 full-time employees if (a) the employer's workforce only exceeds 100 full-time employees for 120 days, or fewer, during the calendar year; and (b) the employees in excess of 100 who were employed during that 120-day (or fewer) period were seasonal workers.

- A “seasonal worker” means a worker who performs labor or services on a seasonal basis as defined by the DOL, including agricultural workers covered by 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons.

The Penalty Taxes

- The play or pay penalty tax actually consists of two separate taxes.
- The first applies when the employer fails to offer full-time employees the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan.
- The second applies when the employer offers minimum essential coverage under an eligible employer-sponsored plan to full-time employees, but the coverage is not affordable or does not provide minimum value.

Who is a Full-Time Employee?

- For determining the penalty, a full-time employee is anyone who works on average at least 30 hours per week or – under expected regulations – 130 hours per month (sometimes referred to as the "minimum-hours threshold").
- Full-time status is easy enough to determine when an employee is hired to work a regular number of hours each week on an ongoing basis.
- But for variable-hour employees, such as part-time or seasonal staff, the task is more challenging.

Who is a Full-Time Employee

- **Who are considered employees?**
  – Use common law standard, control
- **How are hours of service counted?**
  – Hourly employees. To determine the full-time status of employees paid on an hourly basis, employers must use actual hours of service (including leave) for which payment is made or due.
  – Nonhourly employees. Employers may choose from three methods to determine the full-time status of nonhourly employees:
    - Actual hours of service. Count actual hours of service worked for which payment is made or due.
    - Days-worked equivalency. Credit an employee working at least one hour of service in a day with eight hours of service for that day.
    - Weeks-worked equivalency. Credit an employee working at least one hour of service in a week with 40 hours of service for that week.

Who is a Full-Time Employee?

- Hours of service include paid leave.

- Employers must count all of the hours of service for which an employee is paid or is entitled to payment, including paid leaves of absence such as:
  - Vacations
  - Holidays
  - Leave for illness, disability or other incapacity
  - Layoffs
  - Jury or military duty leave

Safe Harbors

- There are three safe harbors that employers can use to decide if an employee has averaged 30 or more hours per week.
- One applies on a monthly basis.
- The others apply a “look back” measurement period of 3 to 12 months for to ongoing employees and to new employees.
- The safe harbors are complex, but both rely on some defined time periods that generally must be measured in a uniform fashion for all employees.

Safe Harbors

- Under the monthly measurement method, employees will be identified as a full-time employee of initial eligibility using their hours of service of each calendar month and not based on averaging over a prior look back measurement period.
- These employees must be offered coverage at the beginning of the month after three full calendar months of employment.

Safe Harbors

- **Look Back Defined time periods.** The look back safe harbors allow employers to use these time periods to predict whether an employee will qualify as full-time for shared-responsibility purposes:
    - **Look Back Measurement period.** Employers select a fixed three- to 12-month look back measurement period for determining whether an employee has averaged at least 30 hours of service per week.

Safe Harbors

- **Stability period**. After meeting the minimum-hours threshold during the look back measurement period, employees must be treated as full-time – regardless of actual hours worked – during a subsequent "stability period," provided they remain employed.
- Employees who fail to meet the minimum-hours threshold during the look back measurement period do not have full-time status during the stability period and will not trigger shared-responsibility penalties.

Safe Harbors

- The stability period can't be shorter in duration (number of months) than its associated prior look back measurement period.
- If an employee meets the minimum-hours threshold during the look back measurement period, then the ensuing stability period for coverage availability must last at least six full, consecutive calendar months.
- If the employee did not meet the minimum-hours threshold, the stability period cannot be longer than the look back measurement period.

Safe Harbor

- **Optional administrative period.** Employers may need time after the look back measurement period ends to decide which employees must be offered coverage during the ensuing stability period.
- The safe harbor allows an optional “administrative period” between the look back measurement and stability periods so employers can notify employees qualifying for coverage and handle enrollment tasks.
- The administrative period can’t exceed 90 days or be applied in a way that imposes a gap in employees’ coverage.

Safe Harbors

- **Uniform periods, except between certain employee groups.** An employer generally must apply its selected look back measurement and stability periods on a consistent basis to employees.

- But an employer's look back measurement and stability periods can vary in length and/or in starting and ending dates for different specified categories of employees:
  - Collectively bargained versus noncollectively bargained employees,
  - Each group of collectively bargained employee covered by separate collectively bargaining agreement
  - Salaried versus hourly employees
  - Employees located in different US states.

Safe Harbor for Ongoing Employees

- One of two main look back safe harbors for determining full-time status applies to “ongoing employees”: those who have worked for the employer throughout at least one “standard” look back measurement period.
- **Standard look back measurement and stability periods**. The look back measurement and stability periods that an employer selects to apply to its ongoing employees are called its “standard” look back measurement and stability periods.
- **Optional administrative period**. Where employers decide to use this option, the administrative period adopted can’t reduce or increase the length of the standard look back measurement or standard stability period.
- To prevent the administrative period from causing any gaps in a person’s coverage (once the periods have completed a full cycle), the administrative period must overlap with the prior standard stability period.

Safe Harbor for Ongoing Employees

Example of ongoing employee safe harbor and calendar-year plan:

- Standard Look Back Measurement Period:
  - 10/15/2013 - 10-14-2014
- Administration Period:
  - 10/15/2014 - 12/31-14
- Standard Stability Period:
  - 1/1/15 - 12/31/2015

Safe Harbor for New Employees

- A second safe harbor applies for determining which new employees must be treated as meeting the minimum-hours threshold.
- This safe harbor has a simple rule for new hires expected to meet the threshold from their start dates, plus a series of more complex rules for new variable-hour and seasonal employees.
- In addition, an employer must establish separate “initial” look back measurement and stability periods for new hires that may overlap with its “standard” look back measurement and stability periods for ongoing employees.

Safe Harbor for New Employees

- **New hires expected to work full time:** If a new employee in an eligible class is reasonably expected to average at least 30 hours of service per week, offering qualifying coverage that takes effect by the end of the employee's initial three full calendar months of employment satisfies the shared-responsibility mandate.
- But that may not satisfy the 90-day cap on waiting periods.
- Interaction with 90-day maximum waiting period.
  - The waiting-period guidance sets stricter timelines than the shared-responsibility safe harbor for these new employees.
  - Coverage for new hires expected to meet the minimum-hours threshold must become effective by the first of the month after the employee becomes eligible (assuming the employee timely completes any enrollment steps).

Safe Harbor for New Employees

- Effective as of plan years beginning on or after January 1, 2014, group health plans and insurers are prohibited from applying a waiting period that exceeds 90 days.

- This prohibition applies to group health plans and insurers but not to certain “excepted benefits.”

- Grandfathered health plans must also comply with the waiting period requirements.

Safe Harbor for New Employees

- **Definition of “Waiting period”**
  The period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective.

- **Cumulative service requirement**

  If a group health plan or health issuer conditions eligibility on an employee having a completed a number of cumulative hours of service, up to 1,200 hours may be required; more than 1,200 hours would be considered designed to avoid compliance with the 90-day waiting period limitation.

- **Counting days**

  All calendar days are counted beginning on the enrollment date, including weekends and holidays.

Safe Harbor for New Employees

- Employer can impose up to a 30 day orientation period before imposing a 90 waiting period.

- That means an employee can wait 121 days before being eligible to participant

Safe Harbor for New Employees

- **Initial look back measurement and stability periods**. The initial look back measurement and stability periods are unique to each new variable-hour or seasonal employee, reflecting the individual's actual start date or, alternatively, the start of the first calendar month after that date.

- Many employers might want to have all look back initial measurement periods start on the first of a calendar month; otherwise, every day of the year potentially could start a new look back measurement period.

Applicable Rules

- Several limitations, however, must be considered in setting these periods and measuring variable-hour and seasonal employees' status for shared-responsibility purposes.
- These restrictions are highlighted below, followed by examples illustrating the key principles:

  – The initial look back measurement period and administrative period, combined, can't extend beyond 13 months, plus a fraction of a month. Specifically, the combined periods must end by the last day of the calendar month that starts on or immediately after the first anniversary of an employee's start date.

  – New employees' initial stability periods can't be shorter than the standard stability period for ongoing employees.

  – In operation, this restriction will generally require a 12-month initial stability period for new employees if an employer uses a 12-month standard stability period.

Applicable Rules

- Once a new employee has completed an initial look back measurement period and stability period, the employee must be tested for full-time status using the standard look back measurement period.

- Starting with that standard look back measurement period, the employee's full-time status is determined at the same time and using the same conditions applied to other ongoing employees.
  - An employee who meets full-time status during the initial look back measurement period must be treated as full-time for the entire initial stability period.
  - This is so even if the employee's hours drop below the full-time threshold during the overlapping or immediately following standard look back measurement period.

Important Conditions

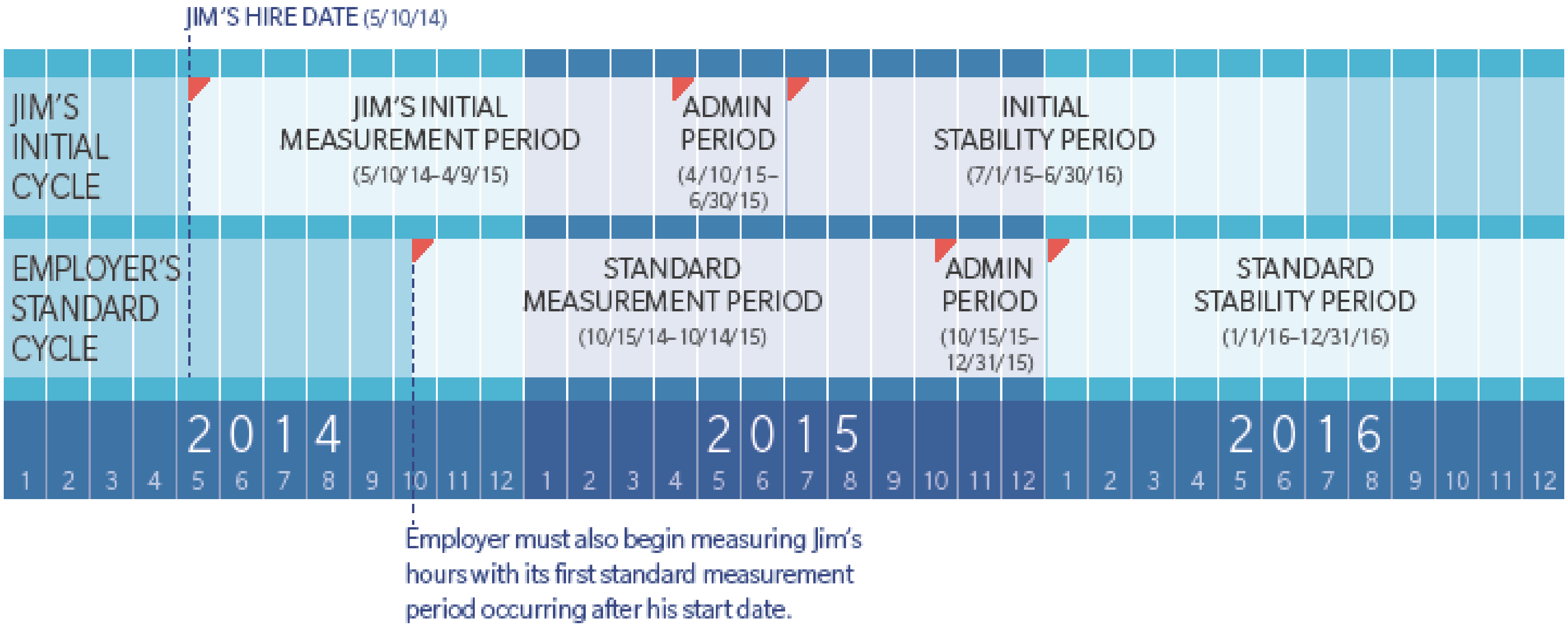
- If an employee fails to meet full-time status during the initial measurement period, then both of these conditions apply:
  - The initial stability period can't be more than one month longer than the employee's initial measurement period and can't extend beyond the standard look back measurement period (plus any administrative period) in which the employee's initial Look back measurement period ends.
  - If the employee meets full-time status during the overlapping or immediately ensuing standard look back measurement period, the employee must be treated as full-time for the entire stability period associated with that standard look back measurement period.
  - This is so even if that stability period starts before the close of the employee's initial stability period.

90 Day Waiting Period

- For a new variable-hour or seasonal employee, calculating the 90-day limit on any administrative period uses total days between the start date and the date the employee is first offered coverage, reduced by the number of days in the initial look back measurement period.
- This means an employer choosing to simplify tracking by starting all initial look back measurement periods on the first of a month will have fewer days after the initial look back measurement period ends to handle the enrollment process before the employee's stability period must begin.

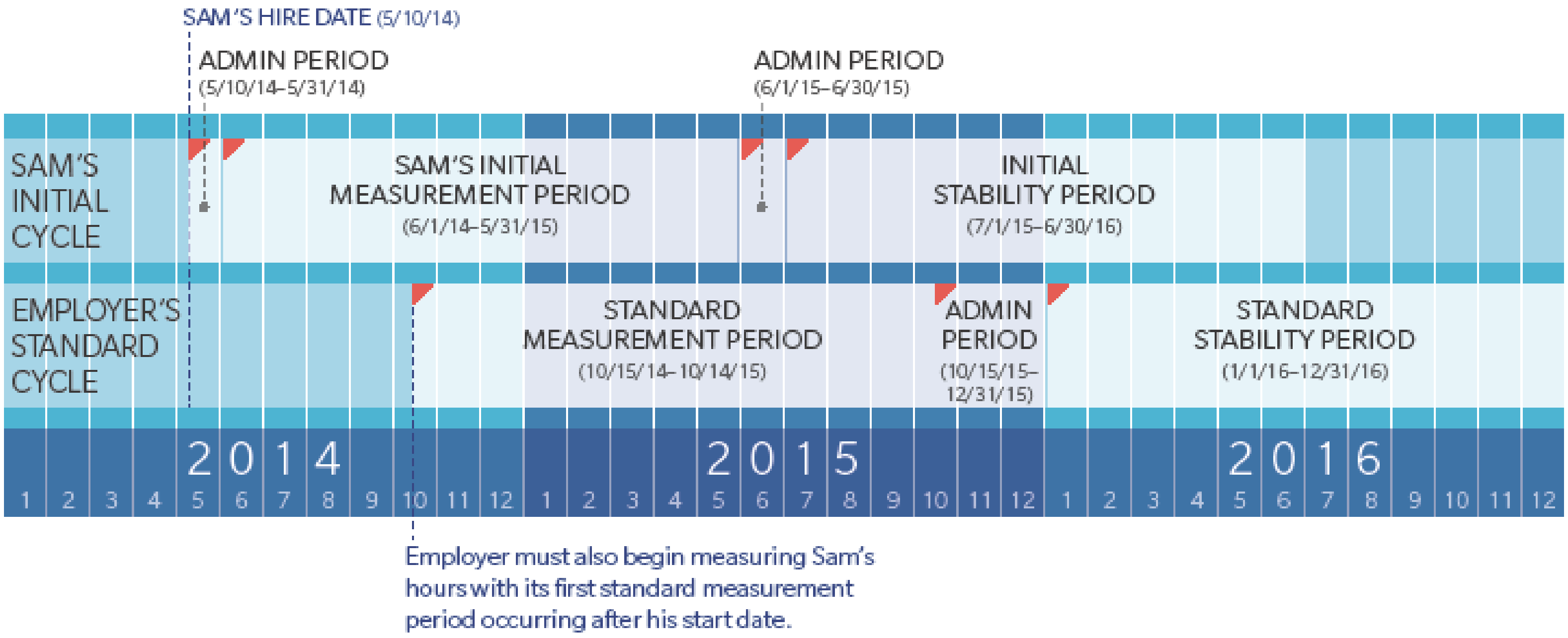
Example

- Example of variable-hour employee safe harbor and calendar-year plan: 11-month initial measurement period followed by single administrative period:



Example

- Example of variable-hour employee safe harbor and calendar-year plan: 12-month initial measurement period using split administrative period



Special Rules for Educational Employers

- IRS has released special rules to help educational employers – including governmental, for-profit and nonprofit employers – determine employees' full-time status.

- 501-hour limit. For most periods of absence with zero hours of service, educational employers would need to take into account no more than 501 hours in a calendar year.

Special Rules for Educational Employers

- Employees returning from breaks. Educational employers could use one of two averaging methods for employees treated as continuously employed (rather than terminated and rehired) after an "employment break period."

- An employment break period is a period of at least four consecutive weeks (disregarding unpaid FMLA, military service or jury duty leave) during which an employee has no hours of service.

Special rules for Educational Employers

- Under these rules, an educational employer may either:
  - Determine the employee’s average hours of service per week during the measurement period after excluding the employment break period, and use that average for the entire measurement period
  - Credit employees with hours of service for the employment break period at a rate equal to the employee’s average weekly rate during the weeks that weren’t part of an employment break period.

Special Rules for Unpaid Absences

- New rules to prevent certain unpaid absences from inappropriately restarting an employee's initial measurement period or triggering a new 90-day waiting period for coverage.
- Absences of 13 or more weeks. If the period with no hours of service is at least 13 consecutive weeks, the employer may treat the employee as having been terminated and then rehired as a new employee.
- For educational employers, the period is still 26 weeks.

Special Rules for Unpaid Absences

- Rule of parity for absences shorter than 13 (26) weeks. An employer may choose to apply a "rule of parity" for periods of no service lasting less than 13 (26) weeks.

- An employee rehired after terminating employment may be treated as a new employee if the break in service is at least four weeks long and exceeds the employee's period of employment immediately preceding the absence.

Special Rules for Unpaid leave

- IRS has released two methods for averaging hours when lookback measurement periods include certain types of unpaid leave – that is, unpaid Family and Medical Leave Act (FMLA) leave, jury duty leave, or military leave under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

- Under the proposal, employers may choose to apply one of these methods:
  - Exclude leave. Exclude the period of special unpaid leave to determine the average hours of service per week during the entire measurement period.
  - Credit hours. Credit an employee's special unpaid leave with hours of service at a rate equal to the employee's average weekly rate during weeks when no special unpaid leave is taken.

Establishing Safe-Harbor Time Periods

- **When to start measuring hours worked**. Some employers may want to impose a 12-month look back measurement period followed by an administrative period, with a stability period matching the calendar year.
- To do so, employers need to begin tracking hours of service by **Oct. 15, 2013**, to set the first stability period equal to calendar-year 2015.
- For employers that currently record hours of service, this may simply involve sharing already-captured payroll or workforce management data with benefit staff and enrollment vendors.
- For other employers, however, settling on a strategy and beginning to track needed data this autumn may prove more daunting.

Establishing Safe-Harbor Time Periods

- For employers with large numbers of short-term employees, shorter look back measurement and stability periods may be optimal, at least for certain permitted categories of employees.

- But when designing a health benefit strategy to minimize shared-responsibility penalties, a 12-month stability period generally should be considered before alternative approaches to determine eligibility.

Transition Measurement Period

- Solely for purposes of stability periods beginning in 2015, employers may adopt a transition measurement period that is shorter than 12 months but that is no less than 6 months long and that begins no later than July 1, 2014 and ends no earlier than 90-days before the first day of the plan year beginning on or after January 1, 2015 (90- days being the maximum permissible administrative period).

Employer Next Steps

- Employers may want to consider the following actions:
  - Decide whether or how to adjust plan waiting periods.
  - Gather data to determine whether or how the safe harbors are relevant.
  - Consider safe-harbor approaches for offering 2015 health coverage.
  - If using safe harbors, determine optimal measurement, administrative and stability periods.
  - Amend plan documents and other related materials.

The Penalty Taxes

- Both taxes hinge on whether an employer offers eligible employer-sponsored health coverage to "full-time employees," but the nature of the penalty will depend on the cost to employees and the terms of coverage.

- The final regulations clarify that for a calendar year or plan year during which an employer is an applicable large employer, the employer mandate standards generally are applied separately to each person that is a member of the controlled group comprising the employer (with each person referred to as an "applicable large employer member") in determining liability for, and the amount of, any assessable payment.

Large Employers Who do not Offer Coverage

- Large employers who do not offer “minimum essential coverage” to substantial all of its full-time employees and have at least one full-time employee who receives premium tax credits would be assessed a fee of $2,000 for every full-time employee beyond the first 80 employees.
- The “applicable payment amount” for 2014 is $166.67 with respect to any month (that is, 1/12 of $2,000).
- The amount will be adjusted for inflation after 2014.
- **80-Employee Reduction for 2015**
  - The number of individuals employed by an applicable large employer as full-time employees during any month is reduced by 80 for purposes of calculating the penalty tax on large employers not offering a health care plan.
  - While this reduction may decrease the amount of the penalty tax that may otherwise be due, it does not change the employer's status as an applicable employer.
  - Application to controlled groups on a pro rata basis.

Large Employers Who do not Offer Coverage

- The determination of whether an employer is subject to an assessable payment and the amount of any such payment is determined on a member-by-member basis.
- The liability for, and the amount of, any assessable payment is computed and assessed separately for each applicable large-employer member, taking into account that member's offer of coverage (or lack thereof) and based on that member's number of full-time employees.
- An applicable large-employer member will be treated as offering coverage to its full-time employees (and their dependents) for a calendar month if, for that month, it offers coverage to all but 30% of its full-time employees (provided that an employee is treated as having been offered coverage only if the employer also has offered coverage to that employee's dependents).

Large Employers Who do not Offer Coverage

- Coverage must be offered to the full-time employees and their dependents .
- The final regulations define an employee’s dependents for purposes of Code 4980H as an employee’s child (as defined in Code 152(f)(1)) who is under 26 years of age.
- A child attains age 26 on the 26th anniversary of the date the child was born.
- The term “dependent,” for purposes of Code 4980H, does not include any individual other than children, including an employee's spouse.

Large Employers Who do not Offer Coverage

- Even though an applicable large employer offers minimum essential coverage to all full-time employees, a large-employer member may still be liable for a penalty.

- Employees eligible for minimum essential coverage under an employer-sponsored plan may still qualify for the premium tax credit if the plan fails the minimum value or affordability requirement.

Large Employers Who do Offer Coverage

- The penalty tax (assessable payment) is equal to $250 (1/12 of $3,000, adjusted for inflation after 2014) times the number of full-time employees for any month who receive premium tax credits or cost-sharing assistance (this number is not reduced by 80).

- This penalty tax (assessable payment) is capped at an overall limitation equal to the “applicable payment amount” (1/12 of $2,000, adjusted for inflation after 2014) times the employer's total number of full-time employees, reduced by 80.

Large Employers Who do Offer Coverage

- The liability for penalty for a calendar month with respect to a full-time employee applies solely to the applicable large-employer member that was the employer of that employee for that calendar month.

- If the employee was an employee of more than one applicable large-employer member during that calendar month, the liability for the assessable payment is allocated among the different members in accordance with the number of hours of service the employee had from each such member for that calendar month.

Large Employers Who do Offer Coverage

- Coverage must be offered to the full-time employees and their dependents.
- The final regulations define an employee's dependents for purposes of Code   4980H as an employee's child (as defined in Code   152(f)(1)) who is under 26 years of age.
- A child attains age 26 on the 26th anniversary of the date the child was born.
- The term "dependent," for purposes of Code   4980H, does not include any individual other than children, including an employee's spouse.

Large Employers Who do Offer Coverage

- Employees eligible for minimum essential coverage under an employer-sponsored plan may still qualify for the premium tax credit if the plan fails either of the following tests:
  - Minimum Value Test. The plan's share of the total allowed costs of benefits provided under the plan is less than 60% of those costs.
  - Affordability Test. The premium exceeds 9.5% of the employee's household income.

Affordability

- Three are three affordability safe harbors to determine whether an employer's coverage satisfies the 9.5 percent affordability for purposes of the penalty tax.

- These safe harbors include:
  – the Form W-2 wages safe harbor,
  – the rate of pay affordability safe harbor
  – the Federal poverty line safe harbor.

Minimum Value

- An employer-sponsored plan provides minimum value if the plan's share of the total allowed costs of benefits provided under the plan is at least 60% of such costs.
- Both the IRS and HHS have provided preliminary guidance on how minimum value will be determined and anticipate allowing three separate approaches.
- The three potential approaches for determining minimum value have been provided.

Special Rules for Multiemployer Plans

- An employer participating in a multiemployer plan will not be subject to penalties if three conditions are met:
  - A collective bargaining agreement requires the employer to contribute toward full-time employees' coverage under the multiemployer plan.
  - Full-time employees (and dependents) are offered coverage under the multiemployer plan.
  - The coverage is affordable and has a minimum 60% value.

Special Rules for Multiemployer Plans

- Each participating employer is responsible for identifying its full-time employees (based on hours of service for that employer) and paying any penalties related to multiemployer plan coverage.
- In determining whether a multiemployer plan's coverage is affordable, the final regulations give participating employers a fourth safe harbor in addition to the three described:
  - Coverage will be affordable if the employee's required contribution for self-only coverage does not exceed 9.5% of the wages – either actual wages or the hourly wage rate under the applicable collective bargaining agreement – reported to the plan.

Notice to Employer of Premium Assistance

- The penalty tax is triggered, in part, by the employer receiving a certification that one of its employees is determined to be eligible for a premium assistance credit or a cost-sharing reduction.
- The employee may be eligible because the employer does not provide minimal essential coverage through an employer-sponsored plan.
- Or the employee may not be eligible because the coverage the employer offers either is not affordable, or the plan's share of the total allowed cost of benefits is less than 60%.
- The employer must also receive notification of the appeals process established for employers notified of potential liability for penalty taxes.

Notice to Employer of Premium Assistance

- When the Exchange determines an applicant is eligible to receive advance payments of the premium tax credit or cost-sharing reductions based in part on a finding that his or her employer does not provide minimum essential coverage, or provides coverage that is not affordable, or does not meet the minimum value standard, the Exchange is required to notify the employer and identify the employee.

- This notice include the employee's identity, that the employee has been determined eligible for advance payments of the premium tax credit, that the employer may be liable or a shared responsibility payment, and that there is an opportunity to appeal.

Making Employer Mandate Payment

- The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made.
- The contact for a given calendar year will not occur until after employees' individual tax returns are due for that year claiming premium tax credits and after the due date for employers that meet the 100 full-time employee (plus full-time equivalents) for 2015 threshold to file the information returns identifying their full-time employees and describing the coverage that was offered (if any).

Making Employer Mandate Payment

- If it is determined that an employer is liable for a penalty payment after the employer has responded to the initial IRS contact, the IRS will send a notice and demand for payment.
- That notice will instruct the employer on how to make the payment.
- Employers will not be required to include the payment on any tax return that they file.

Reporting of Health Insurance Coverage

– Certain employers are required to report to the IRS whether they offer their full-time employees and their employees' dependents the opportunity to enroll in “minimum essential coverage” under an eligible employer-sponsored plan and to provide certain other information.

– Reporting employers must also provide a related written statement to their full-time employees.

Reporting of Health Insurance Coverage

- The reporting and statement requirements apply to coverage provided on or after January 1, 2015.
- The first information returns will be filed in early 2016.
- The IRS will use the information that employers report to verify employer-sponsored coverage and to administer the employer mandate provisions.

Which Employers Are Subject to This Reporting Requirement?

- This requirement applies to “applicable large employers,” which are specifically defined under health care reform.
- An employer is an “applicable large employer” for a calendar year if it employed an average of at least 50 full-time employees on business days during the preceding calendar year.

What Information Must Be Reported to the IRS?

The employer's return, which must in the form be set out by the IRS, must contain the following information—

- the employer's name, date, and employer identification number (EIN);
- a certification of whether the employer offers its full-time employees and their dependents the opportunity to enroll in “minimum essential coverage” under an eligible employer-sponsored plan (as defined in Code 5000A(f)(2));
- the number of full-time employees the employer has for each month during the calendar year;
- the name, address, and taxpayer identification number (TIN) of each full-time employee employed by the employer during the calendar year and the months (if any) during which the employee and any dependents were covered under a health benefit plan sponsored by the employer during the calendar year; and
- any other information required by the IRS.

What Information Must Be Reported to the IRS?

- According to the IRS these forms will be available in draft form in the near future. A return will include filing of Form 1094-C (a transmittal form)

- Annual returns must be filed with the IRS by February 28 (March 31, if filed electronically) of the year following the year to which the return relates.

- This is the same filing schedule that applies for Forms W-2 and 1099.

What Information Must Be Reported to the IRS?

- Employers required to submit a report of health insurance coverage to the IRS must also furnish a written statement to each of their full-time employees whose name was required to be in the report, including:
  - The name, address, and contact info of the reporting employer
  - The info required to be show on the return with respect to the individual
  - The written statement must be furnished to full-time employees on or before January 31 of the year following the calendar year for which the info was required to be reported to the IRS
  - Form 1095-C (an employee statement that will permit combined reporting)

Questions

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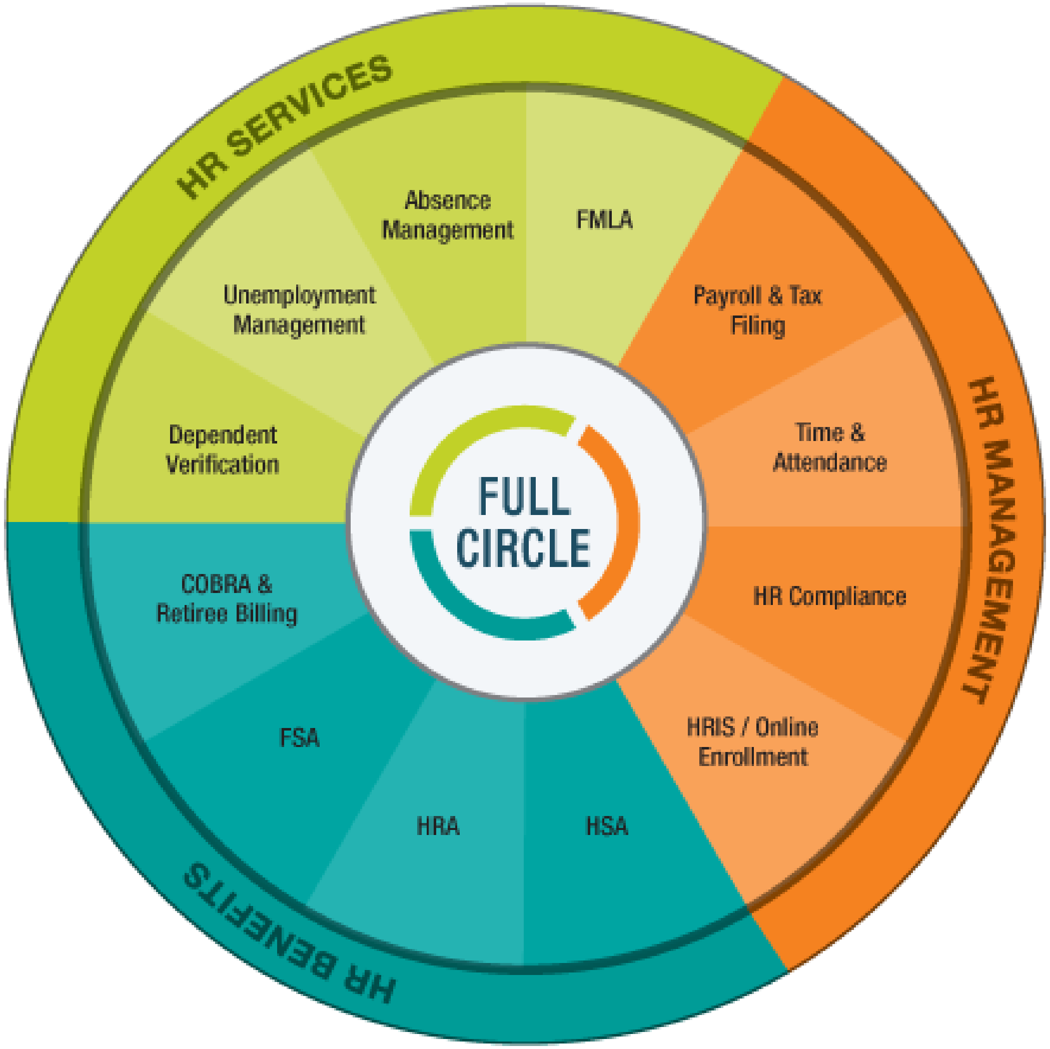

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