

GCG FINANCIAL

Health Care Reform Webinar Series

Part II: Deep Dive Into Employer Mandate

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GCG Healthcare Reform Webinar Series

- > **February 19 (Recorded)**: Overview of 2013 & 2014 changes
- > **March 12 at 10am CST**: Dive deep into employer rules, penalties and potential strategies an employer may utilize
 - This webinar will focus on employers with more than 50 employees
- > **April 16 at 10am CST**: Focus on small employers; their potential options and small business tax credit
 - This webinar will focus on employers with less than 50 employees
- > As new information and updates arrive, GCG will be adding webinars

GCG 8th Annual Mid Market Benchmarking Survey

- > Survey to be launched no later than March 31, 2013
 - All webinar participants will be emailed a survey link
 - Survey is open to companies with 75 -3000 employees
 - Approx. 5,000 companies participated nationally
 - Each participant will receive a customized benefits benchmarking report that compares your individual results to local and national data
 - **Save the Date: Results seminar will be on June 4th**

2014 Brings Major Changes

- > Part I of this Webinar Series addressed:
 - 2013 Issues & 2014 Developments
 - Wellness Incentives
 - Employer Mandate Overview
- > Today's focus:
 - How Full-Time Employee is Defined
 - Special Rules for Rehires & Leaves of Absence
 - Calculating "Affordability"
 - Transition Rules (Fiscal Year Plans, 2014 Measurement Period)
 - Strategies for Avoiding Penalties

You Probably Have Lots of Questions

- > Do I have to offer coverage to temporary employees?
- > I have employees who occasionally work more than 30 hours/week, do I have to provide coverage to them?
- > How do I count hours of service for salaried employees?
- > Do I have to count hours when an employee is paid for vacation, “PTO,” disability or other leave of absence?
- > If someone changes to part-time status, do I have to continue to provide coverage?
- > If an employee is rehired, do I have to count prior service?
- > Can I make all of my employees part-time employees?
- > Do I have to pay for coverage offered to dependents and spouses?
- > How do I know if the coverage I offer is the “minimum value” required?
- > How will I know if I am required to pay a penalty?

Two Potential Penalties

- > **“No Coverage” Penalty:** (\$2,000/FTE/year)
 - Applies if employer fails to offer coverage to substantially all “full-time employees” (and their dependent children, but not spouses) and any FTE receives subsidized coverage on the public marketplace (exchange)
 - Penalty based on all FTEs (not just those obtaining coverage on the public marketplace (exchange))
 - No penalty for first 30 FTEs or for any non-FTEs
- > **“Unaffordable Coverage” Penalty:** (\$3,000/FTE/year)
 - Applies if employer offers health coverage that is unaffordable relative to the employee’s household income, or does not provide the required minimum value
 - Based only on the number of FTEs who actually receive subsidized coverage on the public marketplace (exchange)

Two Potential Penalties (Continued)

- > **No Coverage Penalty:** Limited relief if cover substantially all full-time employees
 - Must offer coverage to all but 5% (or, if greater, 5) of its full-time employees (and their dependent children)
- > But individuals in this 5% could still trigger the Unaffordable Coverage Penalty
 - If an employee is a full-time employee, but part of the 5% not offered coverage and obtains subsidized coverage on the public marketplace (exchange), then employer would be subject to Unaffordable Coverage Penalty

How Will Employers Know a Penalty is Due?

- > Penalties only triggered if employer fails to offer coverage (or offer the right kind of coverage) AND the employee receives subsidized coverage on the public marketplace (exchange)
- > IRS to issue guidance on reporting obligations and employee certification process
 - Likely will include some form of an “appeals” process
- > Penalty to be paid after IRS issues notice and demand (i.e., based on current guidance, not required to self-report)
- > Employers will need to keep good records to respond to IRS demand

Who is a Full-Time Employee?

Employee who works an average of 30 or more hours of service per week (130 hours/month)

Full-Time Employee Defined

- > Employee = common law employee
 - Employee does not include leased employees, sole proprietors, partners in a partnership, 2% S corporation shareholders
- > Hours of Service
 - Count each hour employee is paid or entitled to payment for the “performance of duties”
 - Count all paid leave (vacation, holiday, illness, incapacity, layoff, jury duty, military duty) [different from retirement plan rules]
 - Special rule for unpaid leave under FMLA or USERRA and for jury duty
 - Hourly workers = actual hours worked
 - Salaried workers = may use 8 hours/day or 40 hours/week equivalency (but note anti-abuse rule) [different from retirement plan rules]

Special Rules for Full-Time Employee Status

- > If reasonably expected to work full-time schedule, then treat as a full-time employee
- > If schedule uncertain, may use look-back/stability safe harbor for ongoing employees and new variable hour or seasonal employees
 - Variable hour employee: Based on facts and circumstances, cannot determine whether full-time
 - Seasonal employee: Good faith interpretation
- > To date, no special rule for short-term (temporary) employees who are reasonably expected to work a full-time schedule
 - Non-issue if employed less than 90 days

Overview of FTE Safe Harbors

- > Look at each employee's average hours over a "Measurement Period" (3-12 months)
- > Calculate the employee's hours for that period
- > Determine whether employee is full-time (i.e., averages 30 hours/week)
- > Apply that determination for the prospective "Stability Period"
- > Special transition rules for 2014

Overview of FTE Safe Harbors (Continued)

- > Can include an “Administrative Period” (up to 90 days) between Measurement Period and Stability Period to facilitate enrollment
- > Can use different calculation periods for:
 - Union/Non-Union
 - and for each group covered by a separate collective bargaining agreement
 - Salaried/Hourly
 - Employees in different states

FTE Safe Harbor & Ongoing Employees

- > Stability Period Rules for Ongoing Employees
 - If full-time employee, must have full-time status for a Stability Period of at least 6 months and at least as long as Measurement Period
 - If not full-time employee, Stability Period cannot be longer than Measurement Period
 - Status determined during Standard Measurement Period applies for entire Stability Period, even if employee changes employment status

Ongoing Employee Safe Harbor Short Measurement Period Examples

- > Employer uses a 4 month Measurement Period from January 1 to April 30, 2014 for coverage effective July 1, 2014
 - Andy works 600 hours during that 4 month period and is therefore a full-time employee ($600 \div 17.3 = 34.7$ hours/week); Andy must be given coverage from July 1 to December 31, 2014 (at least 6 months)
 - Liz works 400 hours during that 4 month period and is NOT a full-time employee ($400 \div 17.3 = 23.12$ hours/week); Liz must be re-tested at the end of the next 4 month period (for May to August 2014)

FTE Safe Harbor Recommendation

- > For administrative ease, use a 12 month period for both the Measurement and Stability Periods
 - Administrative Period should overlap with annual open enrollment period
- > Avoids multiple calculations in a single year
- > For 2014, may want to consider using special transition rule which allows for shorter Measurement Period (at least 6 months)
- > Rules permit adjusting the Measurement Period to coincide with payroll periods, but cannot create “gaps”

Ongoing Employee Safe Harbor One Year Period Example

- > Employer implements a one-year Measurement Period that runs from October 3, 2012 to October 2, 2013, with an Administrative Period of October 3, 2013 to December 31, 2013, and a Stability Period of January 1, 2014 to December 31, 2014
 - Sally works 1600 hours from October 3, 2012 to October 2, 2013
 - Sally is a full-time employee for all of 2014
 - This is true even if Sally moves to another type of job or employment classification during 2014

Special Safe Harbor Rules for New Variable Hour Employees

- > Initial Measurement Period must begin no later than first day of calendar month following start date
 - Example: Date of Hire is June 15, 2013; Measurement Period must begin by July 1, 2013
- > Maximum Combined Initial Measurement Period & New Hire Administrative Period: last day of the first calendar month beginning on or after first anniversary of start date
 - Example: Continuing from above...first anniversary is June 15, 2014; New Hire Administrative Period must end by July 31, 2014 and Initial Stability Period must start no later than August 1, 2014

Special Safe Harbor Rules for New Variable Hour Employees (Continued)

- > Must re-test the employee when that employee completes a Standard Measurement Period (i.e., the employee has been employed long enough to be considered an ongoing employee)
 - If status has changed, employee treated as full-time under whichever Stability Period is most favorable
 - If loses full-time status, then continues as full-time until end of original Stability Period
 - If gains full-time status, then treated as full-time beginning with new Stability Period even if original one has not ended
- > If new hire changes to position where reasonably expected to work 30 hours/week, must provide coverage on the earlier of:
 - First day of fourth month following date of change in status
 - Stability Period relating to the Initial Measurement Period

New Hire Safe Harbor Example

- > Background Assumptions:
 - Employer uses a calendar year Stability Period for ongoing employees, with a Standard Measurement Period of November 1 to October 31, and an Administrative Period covering November and December
 - For new hires, employer begins Initial Measurement Period on first day of the first calendar month after employee’s date of hire and uses a 1 + partial month New Hire Administrative Period
- > Steve hired on May 10, 2013
 - Initial Measurement Period is June 1, 2013 – May 30, 2014 when Steve works 1,650 hours (31.7 hours/week average)
 - Steve must be offered coverage for the entire stability period of July 1, 2014 through June 30, 2015
 - Steve must be retested for the November 1, 2013 to October 31, 2014 Standard Measurement Period

Rehires & Others with a Break in Service

> May disregard prior service (and treat as new employee) IF
EITHER:

– No hours of service for at least 26 consecutive weeks immediately preceding resumption of service

OR

– If period of less than 26 weeks, may apply a “Rule of Parity”

- Period of no credited service must be at least 4 weeks
- Period of no credited service must be longer than immediately preceding period of employment

Break in Service Example

- > Helen worked for XYZ Company for 10 years before she has a five month break in service beginning April 1, 2015. Helen returns to active service September 1, 2015. Because Helen's break in service period is not longer than her prior period of employment and is less than 26 weeks, Helen's prior hours of service must be taken into account
 - If instead, Helen returned to active service on December 1, 2015, she could be treated as having terminated employment on April 1st and her pre-April 1, 2015 service may be disregarded

Special Unpaid Leave Rule

- > If absent due to FMLA, USERRA or jury duty, must apply averaging rule to calculate hours of service
 - Exclude special unpaid leave time and use average of remaining Measurement Period
- OR
- Credit employee with hours during leave at a rate equal to average weekly rate worked when not on leave

Special Transition Rules for 2014

- > Large employer determination (50 full time equivalent employees) – may use any 6 (or more) consecutive months in 2013
- > Reduced measurement period (6 or more months) beginning before July 1, 2013 for 2014 stability period
- > If don't currently offer dependent coverage, not penalized for this failure for plan years beginning in 2014 as long as take steps to begin to offer

Special Transition Rules – Fiscal Year Plans

- > No penalty for any employees eligible to participate under the terms of the plan on December 27, 2012 (regardless of whether elected coverage)
- > No penalty until the first day of the first plan year beginning in 2014 **if**
 - At the most recent enrollment period prior to December 27, 2012, at least 1/3 of all employees (full-time and part-time) were offered coverage or at least 1/4 of all employees were covered as of December 27, 2012 and
 - All full-time employees offered affordable minimum value coverage for FY beginning in 2014

Special Transition Rules – Fiscal Year Plans (Continued)

- > Reporting obligation still applies to all of 2014
 - Remember: individuals still required to have minimum essential coverage (or pay a penalty) as of January 1, 2014
- > New IRS mid-year election change rules for cafeteria plans
 - May change 2013 fiscal year election once during the year, without regard to other IRS mid-year change rules
 - Must adopt plan amendment by December 31, 2014

When is Coverage Considered “Affordable”?

- > Problem: Employers won’t know employees “household” income
- > Unaffordable Coverage Penalty Safe Harbor:
 - Coverage is affordable if employee contribution for single coverage for lowest cost plan option that provides minimum value does not exceed 9.5% of:
 - Employee’s Box 1 Form W-2 wages OR
 - Box 1 does not include 401(k) deferrals or pre-tax premium contributions
 - Employee’s rate of pay for the month (either hourly rate x 130 or monthly salary) OR
 - Federal poverty line for a single individual (\$11,490 in 2013)
- > How do wellness incentives (penalties) count for purposes of determining the employee’s cost of coverage????

When is Coverage Considered “Affordable”?

Examples

> **W-2 Example:**

- Joe is employed by ABC Corp from January 1, 2015 through December 31, 2015 and his 2015 W-2 Box 1 Wages are \$24,000. ABC Corp offers Joe and his dependents minimum essential coverage that meets the minimum value rules. Joe’s required employee contribution for self-only coverage is \$1,500 for the calendar year. \$1,500 is 6.25% of \$24,000 = Affordable

When is Coverage Considered “Affordable”?

Examples

> **Rate of Pay Example:**

- Jill is paid \$8/hour by her employer, XYZ Inc. and offers her (and her dependents) minimum essential coverage that meets the minimum value rules. Jill is required to pay \$85/month for self-only coverage. $\$8 \times 130 = \$1,040$. \$85 is $< 8.2\%$ of \$1,040 = Affordable

> **FPL Example:**

- $\$11,490 \times 9.5\% = \$1,091.55$ annually
- Employee cost for single employee coverage cannot exceed \$90.96 per month

When Does a Plan Provide the “Minimum Value”?

- > “Percentage of the total allowed costs of benefits provided” is no less than 60%
 - Look at anticipated costs covered for essential health benefits for a standard population and compare to total anticipated charges...what does that mean???
- > Three Options for Determining Minimum Value:
 - Minimum Value Calculator:
<http://cciio.cms.gov/resources/regulations/index.html#pm>
 - Safe Harbor “Checklists” (still waiting for guidance)
 - Certification by Actuary

When Will an Employee be Eligible for Subsidized Coverage on the Public Marketplace (Exchange)?

- > Eligible for subsidized coverage if the employee is:
 - Between 100% and 400% of the federal poverty level and enrolls for coverage on the public marketplace (exchange),
 - Not eligible for coverage through a government-sponsored program (e.g., Medicaid or CHIP), AND
 - Not eligible for employer coverage or the employer coverage is unaffordable or does not provide the minimum value
- > NOTE: If employer offers affordable coverage that provides the minimum value, employee will not be able to get subsidized coverage and therefore employer will not be penalized

Strategies for Avoiding the Penalties

- > Focus on employees not currently eligible for coverage
 - If less than 5%, evaluate cost of providing the coverage vs. total potential “unaffordable coverage” penalty
- > Determine whether excluded employees are “full-time” under IRS rules
 - If so, consider reclassifying employees or amending plans to expand eligibility
 - Consider whether other employment policies can effectively minimize risk (e.g., part-time employees cannot work more than 25 hours/week)

Strategies for Avoiding the Penalties (Continued)

- > If some employees work “variable” schedules, establish process to implement the safe harbors
 - Capture hours data; keep good records
- > If currently provide coverage immediately (or after only one month), use a 90 day waiting period
 - Helps address “temporary” employees
- > Consider modifying premium structure
 - Make single (employee only) coverage “affordable” but require employee pay higher portion of other coverage levels (family, employee+spouse, employee+child(ren))

Strategies for Avoiding the Penalties (Continued)

- > Make sure sufficient coverage offered
 - Must be minimum essential coverage and pay for at least 60% of the covered health expenses
 - Plan may currently provide above 60% value...could modify cost-sharing provisions (shift more cost to employee) and still be above 60%
 - Consider eliminating benefits which are not “essential health benefits”
- > Defined contribution approach to coverage
 - Establish employer contribution amount and allow employees to pick coverage from a private exchange

Next Steps

- > Establish a working group (HR, finance, payroll)
- > Evaluate strategic options
 - Financial analysis
 - Cost of additional coverage
 - Options for offsetting that cost (e.g., changing cost sharing terms or premium contribution rates for family coverage)
 - Impact on employee relations (retention, unions, etc.)
- > Implement decisions (plan amendments, employee communications, record retention policy)
- > Ongoing administration (particularly if use safe harbors)

Questions?