HEALTH CARE LAW PRIMER

WHAT YOU NEED TO KNOW NOW

WHAT YOU NEED TO DO NOW

Restaurant.org/Healthcare

NATIONAL RESTAURANT ASSOCIATION

July 18, 2013, Edition

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Industry Colleagues:

It looks as though implementation of the 2010 health care law will be one of the greatest challenges restaurant operators will ever face.

The Obama Administration's decision in early July to make 2014 a year of transition relief and voluntary compliance for some employer requirements — specifically, the employer mandate and some reporting rules — comes amid widespread concern among employers over the lack of final regulatory guidance on how to implement the law, and uncertainty over the law's impact on hiring and jobs.

The National Restaurant Association has been working for more than three years to address the challenges the restaurant industry faces in implementing this law by actively participating in the regulatory process, advocating for flexibility, and asking Congress to make changes to the law before the employer requirements take effect.

We are focusing our efforts on addressing the major pieces of the law that most directly affect the restaurant industry. Our efforts to educate regulators at the Treasury, Health and Human Services and Labor Departments are squarely focused on making impact. The decision to make 2014 a transition year for the employer reporting requirements and mandate reflects our success in moving the needle. Our work with regulatory agencies and Congress will continue.

You'll find important information here on the current status of the law. More than 20,000 pages of regulations have been released to explain the law — so far. That's staggering. Some of the most significant proposals for America's employers are still in the works.

We encourage you to actively engage with this issue through the National Restaurant Association's online Health Care Knowledge Center, Restaurant.org/Healthcare. Sign up for our e-newsletters, get as much information as possible so you can make good business decisions, and join us in advocating for change.

Sincerely,

Phil Hickey
Chairman
National Restaurant Association

Dawn Sweeney
President & CEO
National Restaurant Association

IMPORTANT NOTE

The National Restaurant Association provides the following information on the 2010 health care law and federal agencies' evolving regulatory guidance as a service to members. This information is not intended as legal advice and is not meant to be a substitute for the reader's seeking legal counsel. We have taken every step to ensure accuracy, but can provide no guarantees. Employers are advised to consult with legal counsel on all matters related to the law. The Association's Health Care Knowledge Center at Restaurant.org/Healthcare offers links to relevant regulatory guidance.

HEALTH CARE LAW PRIMER:

What You Need to Know Now
What You Need to Do Now

Health Care Law:

Key Dates and Deadlines

The health care law kicks into high gear in 2014, but states and the federal government are rolling out parts of the law in the lead-up to full implementation. Here's a look at some key dates and deadlines.

2013

- **[Jan. 1] New Medicare payroll / investment income taxes.** New 3.8 percent tax on investment income and extra 0.9 percent tax on wages above a certain level hit taxpayers at income levels above $200,000 (single filers)/$250,000 (married, filing jointly).
- **[April-May] Application forms finalized.** HHS finalized the application forms that individuals and small businesses can use to apply for health care coverage through exchanges.
- **[July] Plans approved for sale on exchanges.** HHS plans to begin announcing which qualified health plans have been approved for sale through exchanges.
- **[July 31] First Patient-Centered Outcomes Research Institute annual fee due** to IRS from health insurers and plan sponsors (see Page 23).
- **[Oct. 1] Employee-notification mandate.** Employers must provide notice to new and existing employees about exchanges. DOL provides model language and templates (see Page 24).
- **[Oct. 1] Exchanges begin open enrollment.** Individuals and small businesses can begin enrolling in health care coverage through exchanges for 2014.

2014

- **[Jan. 1] Individual mandate.** Most individuals are required to obtain health insurance coverage — through their employers, state exchanges, Medicaid/Medicare or elsewhere — or face an annual individual mandate tax penalty (see Page 27).
- **[Jan. 1] Exchanges officially open.** Exchanges must be up and running in all states to let individuals and small employers enroll in private health care plans sold through exchanges.
- **[Jan. 1] 90-day maximum waiting period.** Rule on maximum 90-day waiting period takes effect for all group health plans.
- **[Jan. 1] New Health Insurance Tax (HIT) assessed on health insurers** based on premiums written in the fully insured market; tax likely to be passed along to many employers and individuals (see Page 23).
- **Reinsurance fee starts.** Estimated fee for health insurers and plan sponsors in 2014: $63 per person in a group health plan (see Page 23).

2015

- **[Jan. 1] Employer mandate.** Employers who employed an average of 50 or more full-time-equivalent employees in 2014 must offer "minimum essential coverage" to full-time employees (those who average at least 30 hours of service a week in a given month), or face potential penalties.

2016

- **[Jan. 31] Applicable large employers required to file first annual information return with the IRS** about health-care coverage offers in 2015, premium costs, information on full-time employees, more (see Page 20).
- **Exchanges grow.** Starting in 2016, exchange coverage must be available to small groups with up to 100 employees.

2017

- **States may elect to allow large group plans** (those with 100 or more participants) to be sold on exchanges.

2018

- **"Cadillac" plan tax.** Beginning in 2018, the law imposes a new 40 percent excise tax on the value of coverage that exceeds certain dollar thresholds. For 2018, the dollar thresholds for the excise tax are $10,200 for individual coverage and $27,500 for family coverage.

No date yet for implementation: Automatic enrollment mandate, nondiscrimination rules (see Page 23).

Overview of the Health Care Law

Big health care changes are headed your way – soon

The biggest changes hit businesses in 2015, but all employers need to prepare now

Big health care changes are right around the corner for U.S. employers and their employees, with some of the most significant provisions of the 2010 health care law starting to unfold in the fall of 2013.

Even with the Obama Administration's decision to make 2014 a "transition year" for the health care law's employer reporting rules and mandate, all other parts of the law are moving forward. For example, individuals are still required to obtain health coverage starting Jan. 1, 2014, or face penalties. Employee-notification rules still take effect Oct. 1, 2013, requiring all employers covered by the Fair Labor Standards Act to provide employees with written notice about the new state exchanges. A 90-day maximum waiting period applies to all group health plans starting in 2014. All employers must report the value of health benefits on employees' W-2 forms starting in tax year 2013. And exchanges are still expected to open for business on Oct. 1 to begin enrolling millions of Americans in 2014 coverage.

Whether you're a large or small employer, now's the time to get familiar with the fine print of the law and the thousands of pages of regulations the federal government has issued to explain the law. Your employees will be asking questions, and you need to be prepared for what's ahead.

This Health Care Law Primer covers the basics of the law for employers, and will be updated as new developments occur. Most immediately, employers may want to focus on a few areas:

- **Start counting your employees.** Your restaurant's employment levels in 2014 determine whether you're subject to the law's employer mandate in 2015. Employers who average 50 or more full-time-equivalent employees over the 12 months of 2014 are considered "applicable large employers" for 2015 and will be required to offer full-time employees and their dependents the opportunity to enroll in a qualifying health plan starting in 2015, or face possible penalties. The calculation isn't easy (see Pages 5 to 8). If you're near or above the 50-FTE employee threshold, start running the numbers to think through your options for implementing the law. Whether you choose to offer coverage in 2015 or face penalties, getting ready takes a lot of advance planning.

- **Understand which employees are full-time.** Applicable large employers who want to avoid penalties must make offers of health care coverage to full-time employees starting Jan. 1, 2015. The health care law defines full time as an employee who averages 30 or more hours of service a week in a month. Knowing who's full-time as of Jan. 1, 2015, may be tricky, especially with employees whose hours vary from month to month. The Treasury Department and IRS outlined a "look-back measurement method" (see Pages 12 to 15) that gives applicable large employers the option of determining a variable-hour or seasonal employee's full- or part-time status by measuring their hours of service over a period of three to 12 months. Since employers who choose this option can choose a measurement period that starts in 2014, this is another good reason to get familiar with the law and regulations today.

The National Restaurant Association remains your advocate in pressing regulatory agencies for answers and maximum flexibility for employers as rules are written to implement the law. The NRA also continues to urge Congress and the White House to address the provisions that have the greatest impact on employers' ability to create jobs. Stay updated at Restaurant.org/Healthcare.

10 Steps to Take Now

1. **DON'T ASSUME YOU'RE TOO SMALL TO BE COVERED.** Most restaurant operators understand the law requires employers with 50 or more full-time-equivalent employees to offer "minimum essential coverage" to their full-time employees (and their dependents) starting in 2015 or face potential penalties. However, many employers with more than one business entity don't realize that they might need to consider all of their employees as one group. That could push you over the 50-FTE threshold. (See Page 5.)

2. **CONSULT YOUR TAX ADVISER.** If you're part of a business with multiple entities, contact your tax attorney or accountant to ask whether you need to combine all employees to figure out whether you're covered by the employer mandate.

3. **KNOW YOUR WORKFORCE.** The new law requires a series of calculations to see whether you're covered by the law's employer mandate in 2015 — and if you are, which employees must be offered health care coverage. Take time to understand the law's new definitions for full-time employment. Gather the right data: How many full-time employees do you have, including seasonal employees? What are the hours of service for your non-full-time employees, including seasonal employees? The answers to these questions will help you better understand the potential impact of the law on your business.

4. **CONSULT YOUR INSURANCE BROKER.** Consider whether you should make any changes to your current health plan(s), either to save costs or to come in line with the law's new requirements. "Applicable large employers" who want to avoid penalties starting in 2015 must offer plans that meet minimum-value and affordability standards. Your broker or agent can help you with designing plans that meet the new requirements. Ask them about the new "Summary of Benefits and Coverage" and to let you know about upcoming nondiscrimination rules for fully insured plans.

5. **LEARN WHAT THE LAW WILL REQUIRE OF EMPLOYEES.** The law requires almost all Americans to obtain "minimum essential coverage" starting in 2014. Tax penalties for individuals who fail to obtain coverage for 2014 start at $95 a year, or 1 percent of a person's taxable income, whichever is greater. Employees with incomes between 100 percent and 400 percent of the federal poverty level may qualify for federal subsidies to buy coverage on exchanges in their states. If a full-time employee qualifies for tax subsidies to buy a plan on an exchange because the employee can't get affordable coverage at work, large employers may face penalties starting in 2015.

6. **DEVELOP A STRATEGY TO TALK ABOUT THE HEALTH CARE LAW WITH EMPLOYEES.** Employers subject to the Fair Labor Standards Act must issue written notices to employees that tell them about the exchange in their state, how to access it and more. This requirement takes effect Oct. 1, 2013. Your employees might look to you for answers to their questions about the health care exchanges and the coverage you offer. It is wise to think about who will be the point person(s) within your company to answer these questions, and about how you will explain the impact of the law on your business. Page 27 answers some common employee questions.

7. **EVALUATE YOUR INFORMATION TECHNOLOGY CAPABILITIES.** Employers with 50 or more full-time-equivalent employees will be required to comply with complex new reporting rules. Every Jan. 31, beginning in 2016, those employers must report information to the IRS about individual full-time employees and their dependents. That could include information from your payroll system, health benefit plans and other sources. Consider what information will need to come from which system or third-party vendor. How will you set up a process to aggregate this information to then report it to the IRS and your employees? Consider how much lead time you might need before reporting begins in 2016, based on data tracked in 2015.

8. **UNDERSTAND YOUR STATE EXCHANGE.** Exchanges will have a major impact on both employers and employees. States had the option for 2014 of operating their own exchange, partnering with the federal government, or having the federal government run the state's exchange. As of late June 2013, it appears that the federal government will operate 26 state exchanges, while 17 states and the District of Columbia will run their own exchanges. Seven state exchanges will be run through state-federal partnerships. Exchanges will be contacting employers when *any* employee receives a subsidy. Be prepared by knowing who will handle any inquiries.

9. **TELL YOUR STORY: LET YOUR ELECTED OFFICIALS KNOW HOW THE LAW AFFECTS YOU.** The law affects the restaurant industry as it does no other because of the unique characteristics of the restaurant workforce. Explaining the business decisions you face will help lawmakers understand the urgent need to mitigate the law's impact on employers' ability to create jobs.

10. **STAY UP TO DATE ON NEW DEVELOPMENTS AT RESTAURANT.ORG/HEALTHCARE.** The National Restaurant Association's Health Care Knowledge Center is your one-stop shop for information about the law and related regulations.

Calculating Whether You Are an "Applicable Large Employer"

Calculating whether you are an "applicable large employer" isn't easy

Calculation must be done annually, requires significant data

All businesses will be affected by the 2010 health care law, but "applicable large employers" (those that employed an average of at least 50 full-time-equivalent employees on business days during the preceding calendar year, and hereafter referred to as large employers) face a more daunting challenge. Starting in 2015, these employers must offer full-time employees (and their dependents) the opportunity to enroll in health care coverage or face potential penalties. Additional requirements apply to large employers starting in 2016, including new reporting rules.

Calculate whether you're above or below the 50-FTE employee threshold as a starting point to understand how the law affects your business. The Treasury Department/Internal Revenue Service published proposed regulations Jan. 2, 2013, in the *Federal Register* that detail how the calculation works. The agencies said employers can rely on the proposal until further rules or guidance are issued. Find the proposed rules at Restaurant.org/Healthcare.

The National Restaurant Association recommends employers refer to the proposed regulations for questions and examples, but here are some broad guidelines on what you need to know as you calculate:

- **You may need to combine employees for businesses under "common control."** Consult with your tax adviser about your particular circumstances. If you are part of a business that has multiple entities and/or multiple partners, you may need to consider your employees as one group for the purposes of the requirements of the health care law. This could push you over the 50-FTE employee threshold. The IRS will apply its longstanding common control standard of who is the employer — found at Internal Revenue Code § 414(b), (c), (m) and (o) — in these situations. Under this standard, companies that have a common owner or are otherwise related sometimes must be considered as one employer for purposes of determining whether or not they employ at least 50 full-time-equivalent employees. If the combined total meets the 50-FTE threshold, then each commonly controlled entity must comply with the law's employer mandate, even companies that individually do not employ enough employees to meet the threshold. Each entity is called an "applicable large employer member" subject to the employer mandate.

- **Calculations are based on employment data from the prior calendar year.** Whether a business is covered by the employer mandate and associated employer reporting requirements for a calendar year depends on employment levels during the previous calendar year. Applicable large employers are those who employed an average of 50 or more FTE employees on business days in the previous calendar year. For 2015 status, you will use Jan.-Dec. 2014 to make the determination.

- **You'll need to know the number of full-time employees and part-time employees' hours of service.** As defined by the statute, a full-time employee is an individual employed on average for at least 30 hours of service per week in a month, or at least 130 hours of service in a calendar month. This includes seasonal employees too. You'll also need to consider your part-time employees' hours of service in determining whether your business is above or below the 50-FTE employee threshold. Hours of service includes both hours worked as well as hours for which an employee is to be paid, such as vacation, sick days, jury duty, disability leave, etc.

Some employers may qualify for a "seasonal worker exception." If your workforce exceeded 50 FTE employees for fewer than 120 days or four calendar months (not necessarily consecutive), and if the employees in excess of 50 during those months were seasonal employees, you may qualify for a "seasonal worker exception" from large employer status for the following year. "Seasonal employee" has not been fully defined, but the Treasury Department said employers can use a "reasonable, good-faith interpretation of the statutory definition of seasonal worker" until the agency releases further guidance.

THE CALCULATION

Employers must perform this specific calculation annually to determine whether they are applicable large employers and thus covered by the law's employer mandate and employer reporting requirements for the following calendar year:

Step 1: For each of the 12 calendar months in the preceding calendar year, an employer must determine how many employees (including seasonal employees) averaged at least 30 hours of service a week over the month, or 130 hours or more hours of service in a calendar month. That will be the number of full-time employees you employed during that calendar month.

Step 2: Add the hours of service of all other non-full-time employees (including part-time seasonal employees), but do not count more than 120 hours per person per calendar month.

Step 3: Divide the total hours of service for non-full-time employees by 120. That determines a full-time-equivalent number for non-full-time employees.

Step 4: Next, add the number of full-time employees to the number of equivalents, to get the total number of full-time-equivalent employees for that calendar month.

Finally:

- Repeat the process for each of the remaining 11 months.
- Add each of the 12 numbers together.
- Divide by 12 for the average annual full-time-employee-equivalent number. That is the number employers must use to determine whether they are considered applicable large employers.
  - >> **If the total number of full-time-equivalent employees in the previous calendar year is 50 or higher**, the employer is considered an applicable large employer for the current calendar year and is subject to the employer mandate and additional reporting requirements (see Pages 11-18).
  - >> **If the total number of full-time-equivalent employees in the previous calendar year is below 50**, the employer is considered a small employer under the health care law for the current calendar year and is not subject to the employer mandate. However, small employers are subject to other provisions of the law (see Pages 9-10).

Q & A

2015 COMPLIANCE

Q: How will I know if I'm considered an applicable large employer for 2015?

A: The IRS requires you to average employment data for 12 months of the prior calendar year to see if you're an applicable large employer for the current year. Thus, your status for 2015 is based on employees' hours of service in 2014.

HITTING THE 50-FTE THRESHOLD

Q: I have 35 full-time-equivalent employees now, but expect to grow to 55 FTE employees in 2015. Will I be covered by the employer mandate as soon as I cross the 50-FTE employee threshold?

A: No. Hitting the 50-FTE employee mark doesn't mean you're automatically covered by the employer mandate at that time. Employers determine each year, based on the hours of service for employees each calendar month, whether they will be considered a large employer for the next year. If you reach the 50-FTE employee threshold in 2015, you would not be considered an "applicable large employer" under the health care law until calendar year 2016 at the earliest — and you would be considered an "applicable large employer" for 2016 only if you averaged 50-plus FTE employees over the 12 months of 2015.

WHICH EMPLOYEES TO INCLUDE

Q: Is a sole proprietor, a partner or a 2-percent S corporate shareholder counted as an employee in measuring whether a business is an applicable large employer?

A: Generally, no. However, an individual who provides services both as an employee and non-employee is an employee with respect to his or her hours of service as an employee.

NEW EMPLOYERS

Q: If I open a new business, how will I know whether I'm considered an applicable large employer?

A: A business that didn't exist the entire preceding calendar year is an applicable large employer for the current calendar year if it reasonably is expected to employ an average of at least 50 full-time-equivalent employees on business days in the current calendar year. The IRS is weighing whether to include more specific guidance in final regulations to help new businesses determine whether they're applicable large employers.

Examples

The following examples of the "applicable large employer" calculation are drawn from examples provided in Treasury/IRS proposed regulations, "Shared Responsibility for Employers Regarding Health Care Coverage," *Federal Register*, Jan. 2, 2013.

EXAMPLE 1: Employer with full-time and part-time employees

FACTS: During each calendar month of 2015, Restaurant A has 20 full-time employees each of whom averages 35 hours of service per week, 40 employees each of whom averages 90 hours of service per month, and no seasonal workers.

CONCLUSION: Each of the 20 employees who average 35 hours of service per week count as one full-time employee for each month. To determine the full-time-equivalent for employees who are not full-time employees, the total hours of service of the employees who are not full-time (but not more than 120 hours of service per employee) are aggregated and divided by 120. The full-time-equivalent number for the part-time employees is 30 for each month (40 part-time employees averaging 90 hours of service per month = 3,600, and 3,600 ÷ 120 = 30). **So Restaurant A is an applicable large employer for 2016, since it averaged 50 FTEs during 2015.**

		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Add 12 months to get total FTEs/year	Divide by 12 to get average FTEs per month
1	Total full-time[1] employees (including seasonal[2] full-time employees)	20	20	20	20	20	20	20	20	20	20	20	20		
2	Total monthly hours of service[3] for all part-time[4] employees (including seasonal part-time employees)	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600	3,600		
	DIVIDE LINE 2 BY 120														
3	= Full-time equivalent (FTE) number for part-time employees	30	30	30	30	30	30	30	30	30	30	30	30		
4	ADD LINES 1 & 3 FOR TOTAL FTEs	50	50	50	50	50	50	50	50	50	50	50	50	600	50

50+ **If your average # of FTEs over a year = 50+, you are considered an "applicable large employer" under the health care law for the next calendar year. (Seasonal worker exception may apply.*)**

<50 **If your average # of FTEs over a year = <50, you are not considered an "applicable large employer" under the health care law for the next calendar year.**

*Seasonal worker exception: If your workforce exceeded 50 FTEs for 120 days (or 4 months) or fewer in the previous calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, you are not considered an applicable large employer in the current calendar year.

Because Restaurant A has 50 FTEs during each month in 2015, Restaurant A *is* an applicable large employer for 2016.

1 **Full-time:** The health care law defines "full time" as any employee who averages at least 30 hours of service a week over a calendar month (or at least 130 hours in a calendar month).

2 **Seasonal employee:** Until further guidance is issued, employers may apply a "reasonable, good-faith interpretation of the statutory definition of seasonal worker," the Treasury Department says. For further details, see Jan. 2, 2013, Treasury/IRS proposed regulations.

3 **Hours of service** includes hours worked and also hours for which the employee is paid or entitled to payment even when no work is performed (vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.)

4 **Part-time:** The health care law defines "part time" as an employee who averages less than 30 hours of service a week over a calendar month, or fewer than 130 hours in a calendar month. (Note: Include no more than 120 hours for any one part-time employee in the above equation.)

EXAMPLE 2: Seasonal worker exception

FACTS: During 2015, Restaurant B has 40 full-time employees for the entire calendar year, none of whom are seasonal workers. In addition, Restaurant B also has 80 seasonal full-time employees who work for Restaurant B from September through December, 2015. Restaurant B has no part-time employees during 2015.

CONCLUSION: Restaurant B has 40 full-time employees during each of eight calendar months of 2015, and 120 full-time employees during each of four calendar months of 2015, resulting in an average of 66 full-time employees for the year (figure is rounded down).

However, Restaurant B's workforce equaled or exceeded 50 full-time employees (counting seasonal workers) for no more than four calendar months (treated as the equivalent of 120 days) in calendar year 2015, and the number of full-time employees would be less than 50 during those months if seasonal workers were disregarded. So, because of the seasonal worker exception*, Restaurant B is not an applicable large employer for 2016.

		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Add 12 months to get total FTEs/year	Divide by 12 to get average FTEs per month
1	Total full-time[1] employees (including seasonal[2] full-time employees)	40	40	40	40	40	40	40	40	40 REGULAR 80 SEASONAL	40 REGULAR 80 SEASONAL	40 REGULAR 80 SEASONAL	40 REGULAR 80 SEASONAL		
2	Total monthly hours of service[3] for all part-time[4] employees (including seasonal part-time employees)	0	0	0	0	0	0	0	0	0	0	0	0		
	DIVIDE LINE 2 BY 120														
3	= Full-time equivalent (FTE) number for part-time employees	0	0	0	0	0	0	0	0	0	0	0	0		
4	ADD LINES 1 & 3 FOR TOTAL FTEs	40	40	40	40	40	40	40	40	120	120	120	120	800	66

50+ **If your average # of FTEs over a year = 50+, you are considered an "applicable large employer" under the health care law for the next calendar year. (Seasonal worker exception may apply.*)**

<50 **If your average # of FTEs over a year = <50, you are not considered an "applicable large employer" under the health care law for the next calendar year.**

Because after application of the "seasonal worker exception"* Restaurant B is not considered to employ more than 50 FTEs in 2015, Restaurant B *is not* an applicable large employer for 2016

*Seasonal worker exception: If your workforce exceeded 50 FTEs for 120 days (or 4 months) or fewer in the previous calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, you are not considered an applicable large employer in the current calendar year.

1 **Full-time:** The health care law defines "full time" as any employee who averages at least 30 hours of service a week over a calendar month (or at least 130 hours in a calendar month).

2 **Seasonal employee:** Until further guidance is issued, employers may apply a "reasonable, good-faith interpretation of the statutory definition of seasonal worker," the Treasury Department says. For further details, see Jan. 2, 2013, Treasury/IRS proposed regulations.

3 **Hours of service** includes hours worked and also hours for which the employee is paid or entitled to payment even when no work is performed (vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.)

4 **Part-time:** The health care law defines "part time" as an employee who averages less than 30 hours of service a week over a calendar month, or fewer than 130 hours in a calendar month. (Note: Include no more than 120 hours for any one part-time employee in the above equation.)

The Health Care Law's Impact:

Employers with Fewer than 50 Full-Time-Equivalent Employees

Employers with fewer than 50 full-time-equivalent employees need to understand the law's impact

Employer mandate may not apply, but other parts of the law will

If your business averages fewer than 50 full-time-equivalent employees in a calendar year, you are considered a small employer under the 2010 health care law for the following calendar year. Small employers aren't required to offer employees health benefits, and won't face tax penalties if any employees get federal subsidies to help them buy private health insurance through government-run exchanges.

The health care law's employer mandate takes effect in 2015, covering employers who averaged 50 or more full-time-equivalent employees over business days in 2014. Running the annual calculation to see if you meet the law's definition of large employer isn't easy; Pages 5 to 8 include details and examples. Keep in mind that you might need to talk to your tax adviser to find out whether you might need to combine employees in separate businesses that are under "common control," according to Internal Revenue Code provisions.

Small employers: Taking steps to prepare

Small employers should take these steps to prepare for the impact of the health care law:

- **MAKE SURE YOUR SYSTEMS ARE UP TO SPEED.** If you average more than 50 FTE employees over a calendar year, you move into the "applicable large employer" category for the next year, triggering significant new responsibilities under the health care law starting in 2015. So if you're close to the 50-FTE employee threshold, make sure to work with your payroll, scheduling, IT and other teams/vendors to ensure you have systems in place to track the data you need to determine your large vs. small-employer status each year. This includes tracking detailed hours-of-service data for full- and part-time employees by calendar month.

- **PREPARE FOR THE OCT. 1, 2013, DEADLINE TO PROVIDE WRITTEN NOTICE TO EMPLOYEES ABOUT EXCHANGES.** All employers covered by the federal Fair Labor Standards Act are required to provide employees with written notice about how to access the public exchange in their state, along with other information. The requirement goes into effect in October. For more information, see Page 24.

- **GEAR UP FOR EMPLOYEES' QUESTIONS.** Most Americans face a first-time requirement in 2014 to obtain "minimum essential coverage" for themselves and their dependents or pay tax penalties. Employers of all sizes are likely to serve as a starting point for employees' questions about the law. Employees will want to know whether you intend to offer benefits, who is eligible, and at what cost. Employers should get familiar with exchanges, employee requirements, and more as they prepare for the law.

Investigating health insurance options

Small employers on the fence about providing benefits should investigate their health insurance options. The health care law may give small employers new options for buying coverage for themselves and their employees starting in 2014. Insurance brokers and agents can help small employers weigh the costs and benefits of different coverage options. In doing their homework, small employers might want to:

- **SHOP THE SHOP EXCHANGES.** The federal government and many states are scrambling to get new exchanges off the ground by Oct. 1 to start enrolling individuals and small businesses in coverage for 2014. Small employers may want to check out new Small Business Health Insurance Options Program (SHOP) exchanges, which may operate as stand-alone exchanges or be combined with individual exchanges. SHOP exchanges are designed to increase transparency and competition in the small-group market, making it easier for small business owners or their brokers to compare plans and prices and choose from a range of plans to offer employees. By pooling together, small employers may get some of the buying power that's more typically been available only to larger businesses. The SHOP exchanges will be available through online and other options.

SHOP exchanges generally will be open to employers with up to 50 employees in 2014 and 2015, although states have the option of broadening coverage to employers of up to 100 employees. The logistics of SHOP exchanges are still being defined. The idea is that once an employer signs up, employees can enroll in coverage directly through SHOPs. The law requires SHOP exchanges to let employers sign up for an array of health plans, so employees have multiple plans to choose from. Federally facilitated exchanges — at least for the law's first year — will limit employers to signing up for a single health plan. State SHOP exchanges will have the option to limit employers to a single choice in the first year as well.

- **SEE IF YOU QUALIFY FOR A SMALL BUSINESS TAX CREDIT.** If you employ fewer than 25 full-time-equivalent employees (based on a 40-hour workweek), your average wages are below $50,000, and you pay for at least 50 percent of your employees' premiums, you may be eligible for a federal tax credit of up to 50 percent of the cost of providing coverage — but only if you buy your coverage through a SHOP exchange starting in 2014. The IRS website offers details on the small business tax credit.

- **LEARN ABOUT YOUR EMPLOYEES' OPTIONS FOR GETTING COVERAGE.** In deciding whether to offer health benefits, small employers should learn more about their employees' coverage options, which will broaden in 2014. Millions of Americans who don't get coverage through their employers are expected to buy individual coverage through exchanges starting in 2014, and many could qualify for federal tax subsidies for coverage they buy on exchanges. Sliding-scale subsidies generally are available to people with household incomes between 100 percent and 400 percent of the federal poverty level (currently $11,490 to $45,960 for an individual, or $23,550 to $94,200 for a family of four). Individuals with incomes below 100 percent of poverty (or up to 138 percent of the federal poverty level, in states that expand Medicaid eligibility in 2014) may qualify for Medicaid at little to no cost. See Page 19.

Even people with access to employer-based benefits may go to exchanges to shop for coverage, lower prices or tax subsidies. (However, employees won't be eligible for tax subsidies if they are offered an employer plan that meets the law's requirements. And if they opt for exchange coverage instead of an employer's qualifying plan, they'll have to pay for such coverage on an after-tax basis. Currently, employers and employees are generally not liable for federal or state income taxes on the value of employer and employee premium contributions.)

Details on the qualified health plans that will be offered through exchanges (and the price of such plans) should be available starting in the summer of 2013. That could help small employers answer questions such as: How does the price of employer-provided insurance compare to what employees can buy on an exchange or elsewhere, factoring in potential federal subsidies for those with incomes between 100 percent and 400 percent of the federal poverty level? And what additional benefits could a small employer offer to attract and retain employees and remain competitive with larger employers who face penalties if they fail to offer coverage under the law starting in 2015?

- **IF YOU OFFER HEALTH CARE COVERAGE, CERTAIN RULES APPLY, AND YOU MIGHT FEEL THE IMPACT OF HIGHER TAXES AND FEES.** Employers with fewer than 50 full-time-equivalent employees who decide to offer health benefits should be aware of the following:

  - **Make sure your plans comply with new insurance rules.** Any employer who offers health benefits is covered by the 2010 health care law's insurance reforms, including new nondiscrimination rules (not yet in effect), a 90-day limit on waiting periods that starts in 2014, and restrictions on flexible savings accounts, health savings accounts and health reimbursement accounts. Like any employer that offers health plans, small employers also must offer a plain-English "Summary of Benefits and Coverage" to employees. Your broker and health insurance carrier should be able to help ensure your plan meets the new requirements.
  - **Report health care coverage data on W-2 forms.** All businesses must report the value of health coverage in Box 12 of the W-2. The rule affected larger businesses for W-2s filed for tax year 2012; however, all employers who provide benefits must comply for W-2s filed for tax year 2013 and beyond. The data is for information purposes only. Neither employers nor employees will owe taxes on the value of coverage. The IRS offers details on the W-2 requirement on its website, including a list of the types of health care coverage that must be included.
  - **Be aware that you could be hit with some new taxes and fees.** Employers in the small-group market might be especially vulnerable to some new taxes and fees in the 2010 health care law. Health insurers are likely to pass along some of the new fees and taxes in the form of higher premiums for employers with fully insured plans. See pages 22-23 for a description of some of these changes, including the new HIT (Health Insurance Tax) on health insurers that takes effect in 2014.

The Health Care Law's Impact: Employers with 50 or More Full-Time-Equivalent Employees

Overview: Health care law requires "applicable large employers"[1] to offer coverage or face possible penalties

Businesses have little time to get ready for 2015 requirements

Employers with more than 50 full-time-equivalent employees face some of the health care law's most challenging requirements.

Starting in 2015, "applicable large employers"[1] — employers with 50 or more full-time-equivalent employees — must "offer"[2] "minimum essential coverage"[3] to full-time employees and their dependents or face possible penalties. (Hereafter, "applicable large employers" are referred to as "large employers.")

Large employers can face two types of penalties beginning in 2015: (a) if they fail to offer minimum essential coverage to at least 95 percent of their full-time employees (and their dependents), or (b) if they offer a plan but the plan is not "affordable" or doesn't meet a "minimum value" standard.

Penalties for large employers will be triggered in 2015 if one or more full-time employees use a federal premium tax credit[4] or cost-sharing reduction[5] to buy private insurance through a public exchange because they don't have access to coverage through their employer, or because the coverage they are offered is not affordable or does not provide minimum value.

Businesses don't have much time to get ready for 2015, and some holes in guidance remain.

Employers can rely on proposed regulations that the Treasury Department/Internal Revenue Service published in the *Federal Register* Jan. 2, 2013, until further guidance is available. The regulations explain the law's so-called "employer shared responsibility," or employer mandate, provisions. But businesses are still waiting for explanations on many other provisions of the law, including new reporting rules that will play a central role in how the IRS calculates and assesses penalties against large employers.

Visit Restaurant.org/Healthcare to read more about the law and the National Restaurant Association's efforts on behalf of the restaurant industry.

1 **"Applicable large employers"** (hereafter referred to as "large employers") are defined under the 2010 health care law as employers who employed an average of at least 50 full-time-equivalent employees on business days during the preceding calendar year.

2 **"Offer":** IRS regulations say that to satisfy the requirement to offer coverage an applicable large employer must give full-time employees "an effective opportunity" to accept or decline coverage. Employees are not required to accept an employer's offer of health coverage for the employer to comply with the law.

3 **"Minimum essential coverage"** has multiple meanings under the health care law and has not been fully defined in the context of employer-sponsored coverage. For a large employer to avoid the subsection (b) penalty (see page 18), the employer's minimum essential coverage must be affordable and of minimum value.

4 **Premium tax credits** are government subsidies aimed at reducing premium costs for lower- to middle-income individuals who buy private health plans on exchanges. The credits will generally be available to people with incomes between 100 percent and 400 percent of the federal poverty level who don't have access to affordable, minimum-value coverage through their employer, a government program or another source. If an individual is approved for a premium tax credit, the exchange will pay the credit directly to the exchange health plan in which the employee is enrolled.

5 **Cost-sharing reductions** are government subsidies to help limit out-of-pocket costs and other cost-sharing amounts (such as deductibles and co-payments) for people who purchase health plans on exchanges. These cost-sharing reductions are available to people with incomes up to 250 percent of the federal poverty level.

To Whom Must Coverage be Offered?

Large employers must offer coverage to full-time employees and their dependents starting in 2015

Understanding who is full-time isn't so easy

To avoid penalties, applicable large employers must offer health care coverage to full-time employees and their dependents starting in 2015.

The health care law creates a new, bright-line distinction between part-time and full-time employment. Large employers that want to avoid monthly penalties under the law likely will need to closely track each employee's hours of service. They also will need to track full- and part-time status. That will ensure sure they offer eligible employees and their dependents the opportunity to enroll in health plans beginning in 2015.

Who is full-time?

The health care law defines full-time as an average of at least 30 hours of service[5] a week in any given month. For administrative simplicity, Treasury/IRS regulations indicate that 130 hours of service in a calendar month will be considered the monthly equivalent of 30 hours of service per week.

New employees are considered to be full-time if on their start date they are reasonably expected to average 30 hours of service a week or 130 hours of service per calendar month. To avoid Subsection A employer penalties (see Page 18), large employers must offer new full-time employees coverage that begins no later than 91 days after the employee's start date. (Note: Starting in 2014, the law prohibits all group health plans from making employees wait longer than 90 days for coverage.)

WHO'S A DEPENDENT?

Large employers who want to avoid penalties must offer health care coverage starting in 2015 not only to full-time employees but to these employees' dependents.

The regulations define dependents as full-time employees' children who have not reached the age of 26. Dependents don't include spouses. Treasury/IRS regulations state that absent information to the contrary, a large employer may rely on the employee's identification of their children and their ages.

The IRS acknowledges that adding dependent coverage to employer plans could mean significant changes in plan design and administration for employers who currently don't offer such coverage.

Also: While large employers are required to offer coverage to their full-time employees and their dependents to avoid penalties, there's no requirement that dependent coverage meets the same affordability test as single-only coverage. The affordability test (see Page 17) is based on what an employee is asked to contribute to single-only coverage, not what he or she pays for dependent coverage.

5 **Hours of service** includes hours worked and also hours for which the employee is paid or entitled to payment even when no work is performed (vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence).

Who is part-time?

Part-time employees are those who average fewer than 30 hours of service a week in a month or fewer than 130 hours of service per calendar month. **New employees** are treated as part-time if on their start date it is determined that the employee will not perform more than 30 hours of service per week in a given calendar month.

The health care law will require large employers to offer health coverage to part-time employees and does not impose penalties on employers who fail to offer coverage to part-time employees. However, employers are required to factor in part-time employees' hours of service to determine whether they are considered applicable large employers under the law. See Pages 5-8 for more.

Variable-hour and seasonal employees

In some businesses that meet the law's definition of "large," employers will be able to ensure that only employees in positions classified as full-time work full-time hours, and those employed in positions classified as part-time will stay below 30 hours a week over a month. In these cases, large employers clearly will know who works full- or part-time, for purposes of making offers of health care coverage to full-time employees when the law's employer mandate takes effect in 2015.

The distinction between full- and part-time employment could be more difficult in the restaurant and foodservice industry. While many restaurant employees clearly work either full- or part-time hours, the distinction might not be so clear for variable-hour and seasonal employees, whose hours and schedules fluctuate.

To help employers know who is eligible for health care coverage offers under the law starting in 2015, Treasury/IRS regulations give large employers an alternative to assess full- or part-time status of variable-hour or seasonal employees. The optional method — called the "Look-Back Measurement Method" — is complex but may be useful for restaurant operators.

The Look-Back Measurement Method can be used for:

- **Variable-hour employees:** These are employees for whom, based on the "facts and circumstances" at their start date, it can't be determined whether an employee can be "reasonably expected" to average at least 30 hours of service a week because their hours are variable or uncertain. A large employer can't take into account the likelihood that an employee might leave before the end of the measurement period.
- **Seasonal employees:** Treasury/IRS will fully define "seasonal employee" in final regulations, but through 2014, the agencies say employers may use a "reasonable, good-faith interpretation" of the definition of seasonal employee for purposes of the Look-Back Measurement Method. [Note: This definition of seasonal employment applies *only* for purposes of the Look-Back Measurement Method. A different definition applies when employers calculate whether they may qualify for the "seasonal-worker exception" from "applicable large employer" status; see Pages 5 to 8 for more details.]

OVERVIEW: HOW THE OPTIONAL LOOK-BACK MEASUREMENT METHOD WORKS

Large employers that need to identify their full-time employees for purposes of health care coverage offers starting in 2015 can use the optional Look-Back Measurement Method to determine the full- or part-time status of variable-hour and seasonal employees.

In brief, here's how the method works: Large employers can pick a measurement period of three to 12 months to assess a variable-hour or seasonal employee's status. Based on the employee's hours of service during the measurement period, the employee is treated as either full- or part-time (for purposes of health-care coverage offers) for a corresponding stability period — regardless of the employee's hours of service during the stability period. The stability period must be at least six consecutive months and no shorter than the length of the measurement period. With limitations, employers can pick an administrative period of up to 90 days between the measurement and stability periods to enroll eligible employees in coverage.

Measurement Period

- Employer can choose period of 3-12 months to measure employees' hours of service
- Applies to variable-hour and seasonal employees

Administrative Period

Employer has up to 90 days (with limitations) to:

- Calculate employee eligibility
- Conduct open enrollment/enrollment
- Do paperwork

Stability Period

- Employer applies variable-hour/seasonal employee's status from measurement period (i.e., full-time or part-time) during stability period
- Stability period is 6-12 months
- Health care coverage effective (if full-time)

NOTE: This illustration shows how the Look-Back Measurement Method works generally. Pages 14 and 15 provide employers with details and examples on how the method applies to **new** versus **current** variable-hour and seasonal employees. *Large employers that are considering using the optional Look-Back Measurement Method should consult the proposed regulations published by Treasury/IRS in the Jan. 2, 2013, Federal Register.*

The Look-Back Measurement Method: Ongoing vs. New Employees

Regulations proposed by Treasury/IRS give large employers the option of using a Look-Back Measurement Method to measure the full- or part-time status of variable-hour and seasonal employees. This method can give both employers and variable-hour/seasonal employees more stability and predictability in knowing which employees are eligible for health care coverage offers under the law, starting in 2015.

The illustration on Page 13 explains the Look-Back Measurement Method. Because the method differs slightly for new hires vs. current employees, Pages 14 and 15 take a more detailed look at how large employers can use the method for **current (or "ongoing")** variable-hour and seasonal employees and for **newly hired** variable-hour and seasonal employees.

Employers that consider using the Look-Back Measurement Method should consult the Jan. 2, 2013, proposed regulations for further examples and details. The regulations include information on how new variable-hour or seasonal employees transition to "ongoing" employees, as well as how to evaluate employees with breaks in service. A link to the regulations is available at Restaurant.org/Healthcare.

"ONGOING" variable-hour or seasonal employees

Large employers measure the full- or part-time status of an **"ongoing"** variable-hour or seasonal employee by looking back at the employee's hours of service during a look-back period, called a **"standard measurement period."**

An ongoing employee, according to the proposed Treasury/IRS regulations, is generally an employee who has been employed by the employer for at least one standard measurement period.

The employer can choose a measurement period between three and 12 consecutive months. The employer can choose start and end dates for the measurement period that coincide with calendar months or payroll periods.

If a variable-hour or seasonal employee is determined to be full-time during the standard measurement period, he or she must be treated as a full-time employee during the associated subsequent **"standard stability period,"** no matter how many hours the employee works during the stability period. If the employee averaged fewer than 30 hours a week (or less than 130 hours of service per calendar month) in the standard measurement period, he or she would be considered part-time for the standard stability period, regardless of hours of service during the stability period.

The standard stability period must be at least six months or the same length as the standard measurement period, whichever is longer. In many cases, large employers that use this method may choose to make the first day of the standard stability period coincide with the first day of an employer's plan year.

Large employers are allowed to apply an administrative period of up to 90 days between the standard measurement period and standard stability period. During the administrative period, a large employer will assess an employee's status, make an offer of health care coverage to eligible employees, conduct open enrollment, complete necessary paperwork and communicate with their insurance carrier and/or broker to enroll employees who accept the offer of coverage.

The administrative period will overlap with the employer's previous standard stability period so there is no gap in coverage for ongoing, variable-hour employees who qualify for offers of coverage.

Employers must generally apply uniform standard measurement, administrative and standard stability periods for all employees. Some exceptions apply. For example, an employer can make distinctions between salaried and hourly employees. See the Treasury/IRS proposed rule for more details.

NEW variable-hour or seasonal employees

If an employer uses a look-back period to measure the full-time status of *ongoing* variable-hour and seasonal employees, the employer must use a similar process to determine the status of *new* variable-hour and seasonal employees.

The employer can set an **"initial measurement period"** of three to 12 months to assess whether the new variable-hour or seasonal employee logs full- or part-time hours. A large employer can start measuring the hours of service for a newly hired variable-hour or seasonal employee either on the employee's start date or the first of the month following an employee's start date.

As with ongoing employees, the employer applies the employee's status to a subsequent **"initial stability period"** that's as long as the initial measurement period or six months, whichever is longer.

The initial stability period used for new variable-hour and seasonal employees must be the same length as the standard stability period used with ongoing employees.

With some limitations, the employer can add an administrative period of up to 90 days after the initial measurement period and before the initial stability period to notify the variable-hour and seasonal employees of their status, process paperwork and enroll them in coverage, as needed. However, the initial stability period and associated administrative period cannot be more than 13 months plus a fraction of a month, depending on the employee's start date.

SEE EXAMPLES NEXT PAGE:
IRS regulations outline multiple examples of how large employers can use the optional Look-Back Measurement Method.

ILLUSTRATION 1: Ongoing employees (variable-hour and seasonal)

The IRS offers examples of how the Look-Back Measurement Method works in its Jan. 2, 2013, proposed regulations. In this example, Large Employer W:

- Chooses a **12-month standard measurement period** that starts Oct. 15 to measure the hours of service for **ongoing** variable-hour and seasonal employees.
- Applies the employee's full- or part-time status during the measurement period to a corresponding **12-month standard stability period** that begins Jan. 1.
- Chooses to use the period from Oct. 15 and Dec. 31 as an **administrative period** to determine which employees were full-time during the one-year measurement period, notify them of their eligibility for coverage, and enroll them in plans for the stability period.

STANDARD MEASUREMENT PERIOD (Can be 3 to 12 months)	ADMINISTRATIVE PERIOD (Open enrollment process / 90 days max)	STANDARD STABILITY PERIOD (At least 6 months or same as meas. period)
Oct. 15, 2014 – Oct. 14, 2015	**Oct. 15, 2015 – Dec. 31, 2015**	**Jan. 1, 2016 – Dec. 31, 2016**
Oct. 15, 2015 – Oct. 14, 2016	**Oct. 15, 2016 – Dec. 31, 2016**	**Jan. 1, 2017 – Dec. 31, 2017**

FACTS: EMPLOYEE A has been continuously employed by Employer W for several years. Employee A averaged 30 hours of service per week over the 12-month measurement period that ran from Oct. 15, 2014, through Oct. 14, 2015, and again during the 12-month measurement period that ran from Oct. 15, 2015, through Oct. 15, 2016.

CONCLUSION: Because Employee A met the definition of a full-time employee during both standard measurement periods, **Employee A was eligible for an offer of health care coverage for the entire 2016 standard stability period**, including the administrative period from Oct. 15, 2016, through Dec. 31, 2016, **and for the entire 2017 standard stability period**, including the administrative period from Oct. 15, 2017, through Dec. 31, 2017.

FACTS: EMPLOYEE B has been continuously employed by Employer W for several years. Employee B averaged 30 hours of service a week for the standard measurement period that ran from Oct. 15, 2014, through Oct. 14, 2015, and was eligible to enroll in health care coverage for the entire 2016 standard stability period. However, Employee B averaged less than 30 hours of service per week over the 12-month measurement period that ran from Oct. 15, 2015, through Oct. 14, 2016.

CONCLUSION: Employee B was full-time for the standard measurement period from Oct. 15, 2014, through Oct. 14, 2015, and was **offered coverage in the 2016 standard stability period** of Jan. 1 – Dec. 31, 2016. Because Employee B did not meet the definition of a full-time employee during the Oct. 15, 2015, through Oct. 14, 2016, standard measurement period, **Employee B is considered part-time and not eligible to receive an offer of health care coverage for the 2017 standard stability period**, which runs from Jan. 1 through Dec. 31, 2017.

ILLUSTRATION 2: New hires (variable-hour and seasonal)

	EXAMPLE 1:	EXAMPLE 2:
START DATE	May 10, 2015	May 10, 2015
12 MONTH INITIAL MEASUREMENT PERIOD	May 10, 2015 to May 9, 2016	Jun. 1, 2015 to May 31, 2016
ADMINISTRATIVE PERIOD	May 10, 2016 to Jun. 30, 2016	Jun. 1, 2016 to Jun. 30, 2016
INITIAL STABILITY PERIOD	Jul. 1, 2016 to Jun. 30, 2017	Jul. 1, 2016 to Jun. 30, 2016

Large employers who choose to use the Look-Back Measurement Method can begin measuring the hours of service for **new** variable-hour and seasonal employees either on the employee's start date or the first of the month following an employee's start date.

FACTS: EXAMPLE 1: Measurement period begins on employee's start date. Large Employer B hires Employee Y, a variable-hour employee, on May 10, 2015. Employer B chooses a 12-month initial measurement period that begins on an employee's date of hire. During the initial measurement period (May 10, 2015, through May 9, 2016), Employee Y averages 30 hours of service per week. This gives Employee Y full-time status — and an opportunity to enroll in Employer B's health plan — during the subsequent 12-month initial stability period that runs from July 1, 2016, through June 30, 2017. Employer B uses the period from May 10, 2016, through June 30, 2016, as an administrative period to enroll Employee Y in coverage.

FACTS: EXAMPLE 2: Measurement period begins the first of the month following the employee's start date. Large Employer B hires Employee Y, a variable-hour employee, on May 10, 2015, and starts the 12-month initial measurement period on the first day of the first month following Employee Y's start date. The initial measurement period would thus run from June 1, 2015, through May 31, 2016. Employee Y averages 30 hours of service per week during this period. In this case, Employer B would have to limit the administrative period for enrolling Employee Y in coverage to no longer than June 1, 2016, through June 30, 2016, in order to ensure that the combined initial measurement period and administrative period does not go beyond the last day of the first calendar month (June 2016) that begins on or after the one-year anniversary of Employee Y's May 10, 2015, start date.

CONCLUSION: In both examples, Employer B will face no penalties with regard to Employee Y, since Employer B has met all the conditions for properly using the IRS's "Look-Back Measurement Method" to assess the status of a new variable-hour or seasonal employee. Specifically:

- The initial measurement period does not exceed 12 months;
- The administrative period is under 90 days; and
- The combined initial measurement period and administrative period does not go beyond the last day of the first calendar month (June 2016) that begins on or after the one-year anniversary of Employee Y's May 10, 2015, start date.

Source: Treasury/IRS proposed regulations, *Federal Register*, Jan. 2, 2013

What Kind of Coverage Must be Offered?

Employers must look at how they design and price their health plans for full-time employees

Employers could face penalties if coverage doesn't provide minimum value or isn't affordable

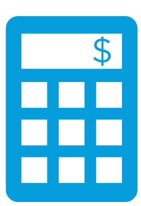
Large employers who choose to offer benefits in 2015 and beyond need to pay close attention to how they design and price their plans for full-time employees.

Starting in 2015, employers can face penalties if any full-time employee uses premium tax credits or cost-sharing reductions to buy private insurance through a public exchange either because their large employer did not offer coverage or because the coverage their employer offered was not affordable or of minimum value.

Does your plan provide minimum value?

Your broker or agent can help you figure out whether your plan meets the law's minimum-value standard. To provide minimum value, an employer's plan must pay for at least 60 percent of total allowed costs by the plan.

The federal government has proposed four options to help employers determine whether employer-sponsored health plans meet the law's minimum-value requirement.



According to the Treasury/IRS proposed rule, published in the *Federal Register* May 3, employers with standard plan designs should first use HHS's Minimum Value (MV) calculator or "safe harbor" to determine their plan's minimum value. The **MV calculator** (at http://cciio.cms.gov/resources/regulations/#pm) can be used to measure standard plan features, unless a safe harbor applies. As a second option, employers can compare their plans against "safe harbor" designs; Treasury/IRS are soliciting comments on three commonly used designs. Visit Restaurant.org/Healthcare for a link to the proposed rule.

Employers who do not have a standard plan design and thus cannot use the MV calculator or safe harbor can use the third option: actuarial certification. Under this method, an actuary who meets certain professional standards can use generally accepted actuarial principles and methodologies to certify a plan's minimum value by using the MV calculator on the plan's standard features and an actuarial analysis on nonstandard features.

Finally, for plans in the small-group market, any plan that meets one of the four levels (bronze, silver, gold, platinum) for coverage available in the SHOP exchanges will be considered as meeting minimum value.

In addition to helping employers design plans that provide minimum value, brokers and agents can also work with large employers to make sure plans meet new federal insurance requirements and that plan documents are in line with the law.

Is your plan affordable?

Employer plans generally are considered unaffordable if employees are asked to pay more than 9.5 percent of their household income for self-only coverage in the employer's lowest-cost plan. The IRS offers a few other ways to measure affordability, based on wages. See next page.

Affordability

How do I know whether the plans I offer my full-time employees are affordable?

If a full-time employee who works for a large employer is asked to pay more than 9.5 percent of his or her household income for individual coverage under an employer's plan starting in 2015, the health care law considers the employer's health plan unaffordable for that employee. (The affordability test applies to the employer's lowest-cost health plan, not all health plans offered.)

Failing the affordability test can be costly for an employer. Starting in 2015, if the employee goes to an exchange and the exchange certifies that an employer's plan is unaffordable for a particular employee and that the employee qualifies for a federal subsidy to help them buy insurance on an exchange, a large employer can be assessed $3,000 a year for each full-time employee who receives a subsidy.

Because employers generally won't know their employees' household incomes, the IRS gives employers a few other ways to test affordability. These wage-based tests can give employers more certainty about affordability so they can plan accordingly. The agency outlined three "affordability safe harbors" in its Jan. 2, 2013, proposed regulations.

9.5%

If a full-time employee who works for a large employer is asked to pay more than 9.5 percent of his or her household income for individual coverage under an employer's plan starting in 2015, the health care law will deem the employer's health plan unaffordable for that employee.

1 **W-2 SAFE HARBOR:** Under this test, a health plan is considered affordable if a full-time employee's share of the premium for self-only coverage during a year is less than 9.5 percent of the wages the employer pays the employee that year, as reported in Box 1 of Form W-2. This is a retroactive test: The employer determines at the end of a calendar year, and on an employee-by-employee basis, whether coverage was affordable for each employee in the previous calendar year. For example, an employer would look at an employee's 2015 Form W-2 (generally furnished to an employee in January 2016) to see if the employee contributed more or less than 9.5 percent of their W-2 wages to premiums in 2015. The test is retroactive but the IRS notes that an employer could also use the W-2 safe harbor prospectively, by deciding at the beginning of a year to set each employee's premium contribution at a level not to exceed 9.5 percent of the employee's W-2 wages for the year. For example, the employer could automatically deduct 9.5 percent, or a lower percentage, from an employee's Form W-2 wages.

2 **RATE-OF-PAY SAFE HARBOR:** Under this test, a health plan is considered affordable if a full-time employee's share of premiums for self-only coverage is less than 9.5 percent of the employee's rate of pay. This method is to be used prospectively. Employers may choose to apply the rate-of-pay safe harbor broadly, not just on an employee-by-employee basis. For example, a large employer could set premiums for all employees based on the rate of pay for the lowest-paid employee. This would ensure premiums are affordable for all employees. This safe harbor can also be applied on an employee-by-employee basis.

3 **FEDERAL POVERTY LEVEL SAFE HARBOR:** Under this test, a health plan is considered affordable if a full-time employee's share of the premium for self-only coverage is less than 9.5 percent of the federal poverty level. Using 2013 federal poverty guidelines, this means the employee's share of the premium for self-only coverage could not exceed $1,091.55 for the year (9.5 percent of $11,490, the federal poverty level for an individual in 2013), or not more than $90.96 per month.

WHAT WILL INSURANCE COST IN 2014?

Employers of all sizes are waiting to see what will happen to health insurance costs in 2014. Many experts predict premiums will rise because the law sets higher standards for health plans and includes new taxes and fees. The possibility of "rate shock" — at least for individuals and small employers — will become clearer by mid-summer. That's when federal and state governments begin to announce the "qualifying health plans" that have been approved for sale through online exchanges to small businesses and individuals for 2014.

Costs for large employers who choose to offer coverage also will depend on how many full-time employees (and their dependents) accept an employer's offer of coverage. That's hard to predict. Employees could turn down coverage for any number of reasons. They might decide to pay an individual-mandate tax penalty instead of obtaining coverage. They might buy coverage on an exchange if they find better coverage or cheaper rates. They might choose coverage through a parent's or spouse's employer. Or they might qualify for Medicaid if their income falls below a certain level.

Penalty Scenarios and Triggers

Coverage vs. penalties: What's your choice?

Collecting the right data is critical for business decisions

Large employers should run the numbers to assess the cost of offering coverage vs. their potential liability for penalties starting in 2015. Some employers may conclude it's more workable to offer coverage than pay penalties. Others might find the law's cost and administrative burdens make it easier to pay penalties.

A variety of factors will affect the decision, including the role benefits may play in recruiting and retaining employees. Tax considerations may also be important. Health benefits are tax-deductible for employers, and employees don't pay income or payroll taxes on health benefits. Employer penalties are not tax-deductible.

Large employers face two possible penalties under the health care law starting in 2015. Both are indexed to inflation after the law's first year.

Subsection (a) penalty — coverage not offered

Section 4980H(a) of the Internal Revenue Code will apply a penalty to large employers that don't offer minimum essential coverage to at least 95 percent of their full-time employees (and dependents). The penalty is triggered if *any* full-time employee uses a premium tax credit or cost-sharing reduction for coverage through an exchange starting in 2015.

$ **Under the subsection (a) penalty**, the employer will be liable for a $2,000 annual ($166.67 monthly) penalty multiplied by the *total number of full-time employees*, minus the first 30 full-time employees.

PENALTY MATH

If a large employer does not offer coverage to at least 95 percent of full-time employees (and dependents), and any full-time employee gets a federal tax subsidy to buy a plan on a public exchange, the employer will be liable for a subsection (a) penalty:

$2K per year x (# full-time employees - 1st 30 full-time employees) = Subsection (a) PENALTY

Subsection (b) penalty — coverage generally offered

Section 4980H(b) of the Internal Revenue Code will apply a penalty to large employers that offer minimum essential coverage to at least 95 percent of their full-time employees (and dependents). The penalty is triggered starting in 2015 when one or more full-time employees receives federal subsidies to buy coverage through an exchange because (1) the employer's coverage wasn't affordable, (2) the employer's coverage didn't provide minimum value, or (3) the employee was among the 5 percent of full-time employees who were not offered coverage.

$ **Under the subsection (b) penalty**, the large employer will be liable for a $3,000 annual ($250 monthly) penalty for *each full-time employee who receives a federal premium tax credit or cost-sharing reduction* for coverage on an exchange. The penalty is computed separately for each month. The amount of the penalty for the month equals the number of full-time employees who receive a premium tax credit for the month multiplied by $250. An employer's liability in this scenario can never exceed the total penalty that would be paid for not offering coverage at all.

Tax Subsidies Trigger Employer Penalties

Large employers face possible penalties starting in 2015 **only when one or more full time-employees gets a federal subsidy** to purchase a private health plan on a public exchange. Understanding which employees will be eligible for subsidies can help a large employer assess the law's impact on their business, including their potential liability for penalties.

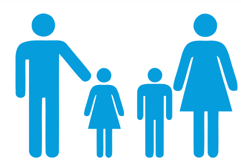
WHO QUALIFIES FOR TAX SUBSIDIES

THE TRIGGER: Starting in 2015, penalties for large employers will be triggered when one or more full-time employees uses a federal premium tax credit or cost-sharing reduction to buy private insurance on an exchange. Generally, federal premium tax credits and cost-sharing reductions will be available to people with household income between 100 percent and 400 percent of the federal poverty level (currently $11,490 to $45,960 for a single person, or $23,550 to $94,200 for a family of four).

Federal tax subsidies will generally be available to people between **100 percent** and **400 percent** of the federal poverty level (FPL).

SINGLE PERSON

100% of FPL	400% of FPL
$11,490	**$45,960**



FAMILY OF FOUR

100% of FPL	400% of FPL
$23,550	**$94,200**

MEDICAID-ELIGIBLE EMPLOYEES DON'T QUALIFY FOR TAX SUBSIDIES: Employees who are eligible for Medicaid or a program such as CHIP (Children's Health Insurance Program) will not be eligible for tax subsidies to buy coverage on an exchange. Thus, no employer penalties will be triggered when a full-time employee qualifies for Medicaid or CHIP.

The current Medicaid program covers certain people with incomes below 100 percent of the federal poverty level. The health care law gives states some incentives to expand Medicaid in 2014 to cover most people with incomes up to 138 percent of the federal poverty level.

- **In states that expand Medicaid in 2014**, employees may qualify for Medicaid with incomes up to $15,718 (138 percent of the federal poverty level for a single person) or $32,499 (138 percent of the federal poverty level for a family of four), based on 2013 federal poverty guidelines. As of late June governors in about half the states indicated that they favor expanding Medicaid.
- **In states that choose not to expand Medicaid**, large employers could face more penalties starting in 2015 as lower-income employees without access to Medicaid (i.e., those with incomes between 100 percent and 138 percent of the federal poverty level) apply for federal subsidies to buy coverage on exchanges instead — thus triggering employer penalties. Large employers who offer health care coverage in non-Medicaid-expansion states may also find their total health care costs are higher because employers must pick up a larger share of health-plan costs to keep premiums affordable for lower-income employees.

HOW EMPLOYEES GET TAX SUBSIDIES: HHS in April released the application forms individuals will use to apply for Medicaid or federal subsidies through the exchange in their state. The form asks employees for income data and information about whether they have access to affordable, minimum-value coverage through their employer.

EMPLOYEES WHO REJECT PLANS ARE NOT ELIGIBLE FOR TAX SUBSIDIES

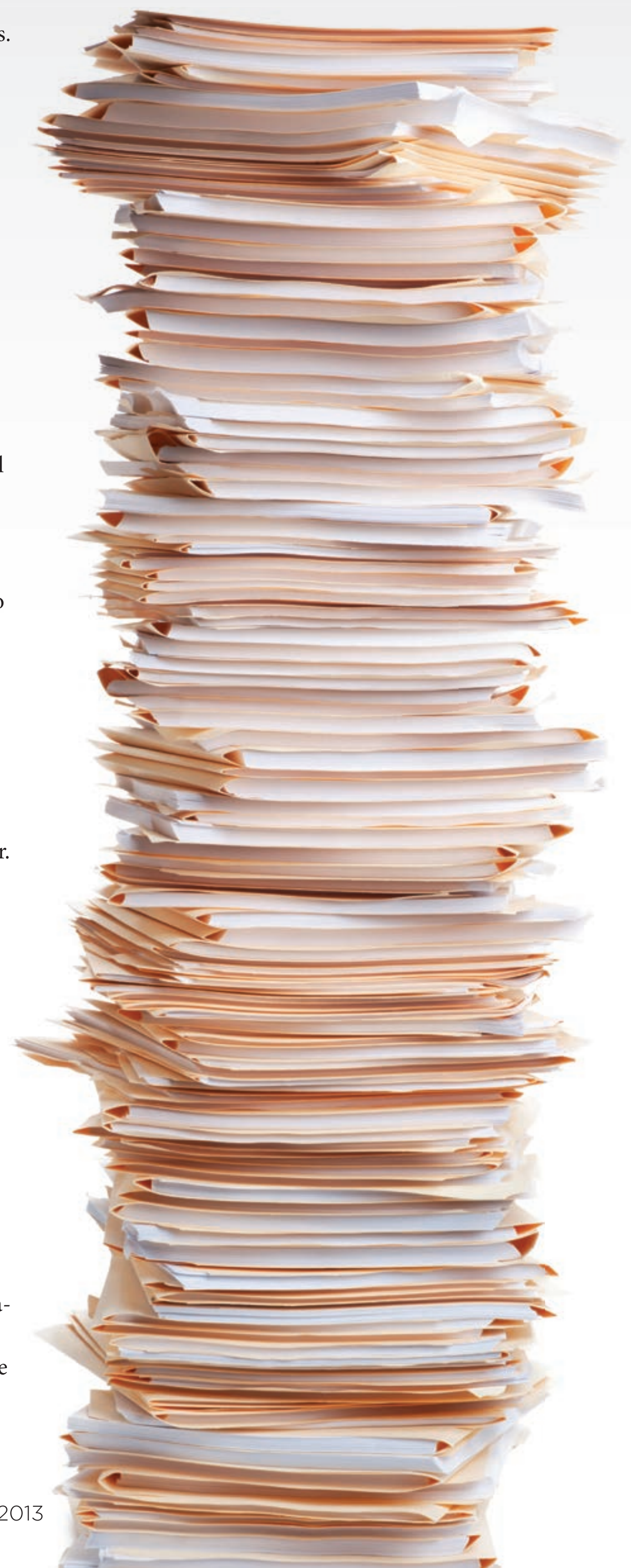
EMPLOYERS WON'T BE PENALIZED IF FULL-TIME EMPLOYEES DON'T SIGN UP: If a large employer offers a full-time employee the opportunity to enroll in affordable, minimum-value coverage in 2015 and beyond and the employee turns it down, the employee does not qualify for government subsidies to buy a plan on an exchange. If a full-time employee rejects a large employer's offer of affordable, minimum-value coverage, the employer will not be liable for penalties.

Large employers wait for word on new reporting rules

Substantial new reporting requirements under the health care law are on their way for employers, particularly "applicable large employers" with 50 or more full-time-equivalent employees.

In Internal Revenue Service Notice 2013-45, issued July 9, the IRS said that 2014 will be a year of transition and voluntary compliance for large employers on the reporting requirements. The first annual information reports will be due Jan. 31, 2016, rather than Jan. 31, 2015, as the law originally required. Reports filed by employers and insurers in January 2016 will cover health-care coverage offered (or not) in 2015.

The goal of the new reports is to help the IRS figure out which large employers offered health care and which full-time employees (and their dependents) received coverage. Employer reports are expected to play a key role in how the IRS calculates and assesses penalties against individuals who fail to obtain minimum essential coverage and large employers who failed to offer affordable, minimum-value health care coverage to full-time employees and their dependents.



SECTION 6056 REPORTING

The new reporting rule for large employers is contained in Section 6056 of the Internal Revenue Code. The Section 6056 rules will require applicable large employers to file an annual statement with the IRS by Jan. 31, and provide the same information to each full-time employee whose information was reported to the IRS. The report to the IRS would include, among other information:

- Whether the employer offers full-time employees (and their dependents) the opportunity to enroll in minimum essential health care coverage.
- The waiting period for such coverage.
- Monthly premium costs for least-cost plans.
- The number of full-time employees for each month of the prior calendar year.
- Each employee's name, address, tax identification number and the months (if any) during which the full-time employee (or any dependents) were covered under the employer plan.
- Contact information for the person required to submit the return: name, address, phone number.

SECTION 6055 REPORTING

A separate reporting requirement, Section 6055 of the Internal Revenue Code, will apply to health insurers, self-insured employers, government programs, and others who provide minimum essential coverage. The Section 6055 report requires some of the same information provided under Section 6056. Among the information required:

- Information on each individual for whom the issuer provided coverage.
- Dates of coverage during the calendar year.
- The portion of the premium paid by the employer.

OTHER RULES

The new reporting rules come on top of other paperwork both large and small employers will be required to complete under the health care law, including the mandatory employee-notification rule about exchanges, health benefits data on employee W-2 forms, and paperwork employees may need their employer to complete in order to apply for health plans and possible federal subsidies through exchanges. (See Pages 21-22 for more.)

5 Other Ways the Health Care Law Could Affect Your Business

From paperwork to new fees, the law will hit employers hard

Employers are gearing up for an onslaught of regulations

Here's what employers can expect as implementation of the health care law moves forward.

1. Get ready to track and report new data.

To comply with the law, employers will likely need to track and report a voluminous amount of new information, often in ways that data has never been tracked or reported before. Large employers in particular might need to ramp up systems for tracking data, including employees' monthly hours of service, wage data to determine health-plan affordability, and which employees qualified for offers of health care coverage.

• **W-2 reporting:** Employers who provide benefits are required to provide data on the value of health care coverage on employees' W-2 forms, Box 12. The IRS website offers details on the W-2 requirement, including a list of which health coverage to include. All employers who offer coverage must include the value of health care coverage on W-2s beginning in tax year 2013.

• **Section 6055/6056 reporting:** More substantial reporting requirements are coming. Starting in January 2016, new Sections 6055 and 6056 of the Internal Revenue Code will require large employers and insurers to file annual reports with the IRS with individualized information on full-time employees and their dependents. (See Page 20.)

The IRS indicates it will cross-check employer reports against employees' tax returns and information provided by exchanges. The law requires a massive inflow of data from all players: individuals (starting with 2014 tax returns, taxpayers must declare whether they obtained health coverage for themselves and their dependents), exchanges (which will provide data on which employees used federal tax subsidies to buy exchange coverage), health insurers, employers, and others.

2. Prepare to communicate with employees — and exchanges.

Americans face a new mandate in 2014 to either obtain health care coverage or pay tax penalties. As the mandate approaches, employers may be a first source of information in educating employees about the health care law. The law is complex and confusing. Some people assume health care coverage will be free once the law takes effect. Large employers must be prepared to communicate with their employees on a range of topics:

• Employees will want to know if you plan to offer coverage. If so, they'll want to know to whom and at what cost.

• If you offer coverage, employees might want to compare the cost of your coverage to the cost of buying coverage on their own through an exchange.

• Employees will want information they can take to exchanges to see whether they qualify for federal subsidies to buy insurance on exchanges.

Mandatory FLSA employee-notification requirement for employers: The health care law requires nearly all employers to notify employees about how to access exchanges. The notice requirement applies to all employers covered by the federal Fair Labor Standards Act, and takes effect Oct. 1, 2013. Page 24 offers details on the notice requirement.

Employer interaction with exchanges: Employers might be in for a big surprise as they learn the extent of their interaction with exchanges. On Oct. 1, 2013, millions of individuals will begin turning to online public exchanges to learn about their insurance options for 2014. They could go to exchanges to learn if they qualify for a government program such as Medicaid. They could go to exchanges to shop for plans, enroll in coverage, and see if they qualify for subsidies if they don't have access to minimum essential coverage through their employer.

The process appears to be incredibly complex. One of the most challenging pieces of the puzzle: How exchanges will verify whether an employee has access to minimum essential coverage through a large employer. The process will involve determining whether the employer's plan is affordable for a particular employee and meets minimum-value standards. The stakes are high because beginning in 2015 large employers face penalties when an exchange determines that one or more of a large employer's full-time employees is eligible for federal subsidies to help pay for an exchange plan.

Details remain unclear and the process could vary by state. HHS in April released the application forms that individuals will take to exchanges to apply for Medicaid, health plans through exchanges, and federal subsidies for exchange coverage. HHS's forms would be the starting point for all individuals to go to exchanges, whether their employer is large or small and whether the employee works full-time, part-time or on a seasonal basis.

The forms require information from both employees and employers. It asks employees for information such as their average weekly hours, whether their employer offers coverage that's affordable and of minimum value, and a contact name for their employer. In many instances, employers will need to provide information for an employee's application. Exchanges will also "ping" employers to verify employees' attestation on the application.

Each time an exchange determines that an employee is eligible for federal premium tax credits or cost-sharing reductions to purchase coverage on an exchange, HHS has outlined a proposed process where the exchange will alert the employer and give employers up to 90 days to challenge the eligibility determination. The employer response is optional, not required.

The system is daunting, and the logistics are far from clear as federal and state governments inch closer to the Oct. 1 deadline to launch exchanges. The National Restaurant Association is among the employers who filed strong comments urging HHS to simplify the process.

Sticker Shock

The health care law carries a big price tag — $1.3 trillion over the next 10 years. The law includes a number of fees and taxes — some temporary, some permanent — to help defray the cost. Small and large businesses and their employees will feel the pain as taxes increase, as health insurers pass along costs and as self-insured businesses get hit with more direct fees.

What is it | How much | Who pays

MEDICARE PAYROLL TAX

- **What is it:** Additional Medicare payroll tax.
- **How much:** Extra .9% payroll tax imposed on wages over $200,000 (single)/$250,000 (married, filing jointly), starting Jan. 1, 2013.
- **Who pays:** Individual taxpayers, including business owners/partners/shareholders who pay at individual rates. Employer's portion of Medicare payroll tax does not increase.

"MEDICARE CONTRIBUTION" SURTAX ON INVESTMENT INCOME

- **What is it:** New surtax on net investment income.
- **How much:** Extra 3.8% "Medicare contribution" surtax imposed on net investment income (such as capital gains, rents, royalties and interest) for taxpayers in households with adjusted gross income over $200,000 (single) or $250,000 (married, filing jointly), starting Jan. 1, 2013.
- **Who pays:** Individual taxpayers, including business owners/partners/shareholders who pay at individual rates.

3. Beware the auto-enrollment mandate.

The health care law includes a controversial mandate that amends the Fair Labor Standards Act to insert a new Section 18A, "Automatic Enrollment for Employees of Large Employers." The provision requires that employers with more than 200 full-time employees automatically enroll new full-time employees in health care coverage by their 91st day of employment. The employer must provide adequate notice to employees about automatic enrollment and the opportunity to opt out.

The Department of Labor's Employee Benefits Security Administration is responsible for implementing Section 18A of the FLSA. In recognition of the significant complexities involved in implementing Section 18A, the DOL announced in 2012 that it will waive the automatic enrollment requirement until rules can be promulgated.

The National Restaurant Association is urging Congress to eliminate the requirement. The Association believes the automatic enrollment requirement is redundant and confusing, and can result in unnecessary hardship for employees who find themselves automatically enrolled in a plan in which they do not wish to participate.

4. Watch for nondiscrimination rules.

The health care law applies nondiscrimination rules to insured group health plans. However, regulations have not been issued to explain how this would work. Any employer — large or small — that offers management-only or tiered health-benefit plans should especially be on the lookout for the new nondiscrimination rules, which could be issued in 2013. Until the rules are released, it's unclear how these types of plans may be affected by the law.

5. Check out new fees and taxes.

Many businesses are likely to be affected by new taxes and fees in the health care law. Check out "Sticker Shock" for information on new fees and taxes, to see whether your plans will be affected and how much you could owe.

PCORI FEE

New annual fee to support research at the Patient Centered Outcomes Research Institute (PCORI) created by the health care law. Fee is in place for seven years; first fee is due to IRS July 31, 2013.

Insurers and plan sponsors pay $1 per covered life in a health plan in the first year the PCORI fee is assessed; $2 per covered life in the second year; and indexed amounts in years 3 through 7.

Health insurers pay for fully insured plans but will likely pass costs along to employers; for self-insured plans, sponsors (likely, employers) pay.

REINSURANCE FEE

Annual fee to help pay for "temporary reinsurance" programs to help exchanges stabilize premiums as more high-risk individuals get coverage through exchanges.

Fee is based on enrollment in group health plans. Estimated fee for 2014 is $63 per person in a group health plan, HHS says. First enrollment counts are due to HHS Nov. 15, 2013, with payments due to HHS soon after that. Effective 2014 through 2016.

Health insurers pay for fully insured plans, and plan sponsors pay for self-insured plans; fees are likely to be passed along to employers.

HIT (HEALTH INSURANCE TAX) ON HEALTH INSURERS

New excise tax on health insurance policies. Takes effect in 2014.

Annual fee is based on premiums that insurers write in the fully insured market. This could raise the cost of employer-sponsored insurance by 2 percent to 3 percent, one insurance association estimates.

Tax is paid by health insurers on fully insured health plans, but is likely to be passed along to employers and individuals in the form of higher premiums. Small businesses may be hit the hardest, since they're more likely to have fully insured plans in the small group market. Fully insured plans in the large group market are not impacted. Self-insured plans are not subject to this tax.

CADILLAC TAX

New tax on "Cadillac" health insurance plans valued above a certain level.

40 percent excise tax starting in 2018 on full health care premiums valued above $10,200 (single), $27,500 (family) (figures estimated for 2018). Employers will calculate the amount of excess benefit subject to the tax and report it to the Treasury Secretary and the health insurance issuer.

Depending on the plan, either the health insurance issuer or the employer or third party administrator.

FLSA Employee-Notice Requirement

Employers face Oct. 1 deadline to provide written notice to employees about exchanges

Mandate applies to employers covered by the Fair Labor Standards Act

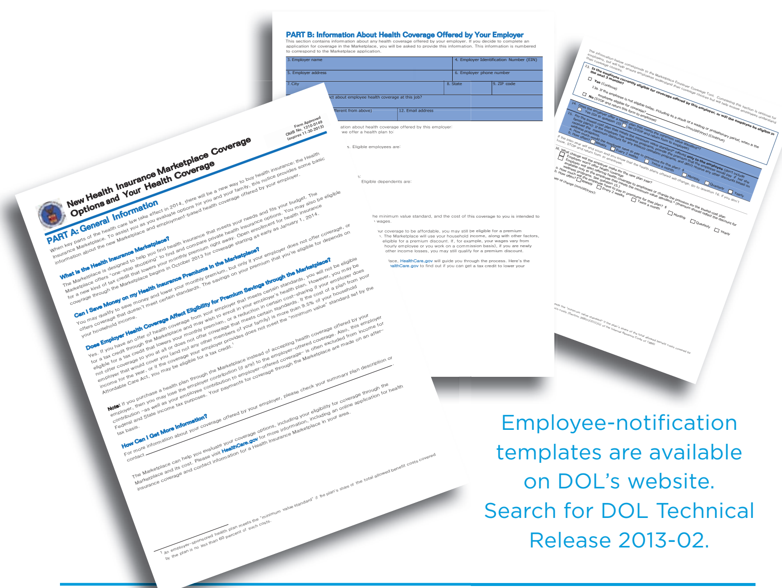
All employers covered by the Fair Labor Standards Act will be required to provide written notice to their employees by Oct. 1, 2013, about employees' coverage options through new health insurance marketplaces, or exchanges. The Department of Labor released temporary guidance, plus model language and templates, on the FLSA notification requirement May 8. Employers can rely on the temporary guidance until further guidance is issued, the DOL says.

WHO IS COVERED BY THE NOTICE REQUIREMENT? All employers covered by the FLSA must provide the notice to every employee, whether full-time, part-time, seasonal or temporary.

WHAT IS THE DEADLINE FOR PROVIDING THE NOTICE?
Employers must provide notice to existing employees by Oct. 1, 2013, and at the time of hiring for all employees hired starting Oct. 1, 2013. Starting in 2014, the notice must be provided within 14 days of the employee's start date.

WHAT MUST EMPLOYERS INCLUDE IN THE NOTICE?
Under the law, employers must:

- Provide information regarding the existence of the exchange in their state as well as contact information and description of the services provided by an exchange;
- Inform the employee that they may be eligible for a premium tax credit if the employee purchases a qualified health plan through the exchange; and


PART B: Information About Health Coverage Offered by Your Employer
New Health Insurance Marketplace Coverage Options and Your Health Coverage
PART A: General Information

Employee-notification templates are available on DOL's website. Search for DOL Technical Release 2013-02.

- Inform the employee that if they purchase a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution to employer coverage may be excludable from income for federal income tax purposes. This means plans bought on the exchange will not have the same tax benefits as employer-sponsored coverage.

DO EMPLOYERS HAVE TO USE DOL'S MODEL NOTICES TO SATISFY THE REQUIREMENT? No, but employers must provide the same information required to be included in the notice.

WHAT INFORMATION IS CONTAINED IN DOL'S MODEL NOTICES?

Part A of DOL's model notice includes general information:

- Basic information about exchanges, including how employees can contact the exchange in their state.
- Notice that employees may be eligible for federal subsidies to help buy coverage on an exchange if their employer does not offer coverage, or if the coverage their employer offers is not affordable or does not provide minimum value.
- A reminder that employees are not eligible for federal subsidies to buy a private plan on an exchange if their employer offers coverage that meets the law's affordability and minimum-value standards, and that employees who opt for exchange coverage rather than the employer's plan in these cases may lose their employer's contribution (if any) to employer-offered coverage.

Part B of DOL's model notice includes additional information employees can take to exchanges to apply for health care coverage (and subsidies, if applicable) on the exchange. Part B information includes:

- **For employers who do not offer health coverage:** The form asks for the employer's name, address, phone number, an employer contact (name, phone, email), and an Employer Identification Number.
- **For employers who offer health coverage:** In addition to the above information, the template asks for the following information about the employer's plan:
  - >> Whether the plan is offered to some or all employees, and the definition of eligible employees.
  - >> Whether the plan is offered to dependents, and the definition of eligible dependents.
  - >> Whether the coverage satisfies the minimum-value standard and whether the coverage is intended to be affordable.

  Employers have the option of providing further details, including whether the employee is currently eligible for coverage, or will be in the next three months; what the employee's share of the premium is; and any changes the employer plans for the new plan year. (This parallels information on the "Marketplace Employer Coverage Tool," part of the Health and Human Services application form individuals will use to apply for exchange coverage.)

HOW DOES INFORMATION NEED TO BE PROVIDED?

Employers must provide the FLSA notice in writing, "in a manner calculated to be understood by the average employee." The notice may be provided by first-class mail. It could also be provided electronically, if the electronic notice meets certain DOL standards.

WHERE CAN I GET THE SAMPLE TEMPLATES, MODEL LANGUAGE AND MORE INFORMATION? Search for DOL Technical Release 2013-02 or visit Restaurant.org/Healthcare for a link.

HEALTH CARE NOTIFICATION TOOL

The National Restaurant Association has developed an online solution to help restaurateurs comply with the new FLSA notification requirement and keep track of the employees whom they've notified. While the law doesn't require employers to track notifications, this tool gives employers an easy way to prove they've kept up with the law's requirements — similar to the way many employers track the notices they give to employees and others about COBRA continuing health care coverage.

What's the National Restaurant Association's solution?

- Website portal provides employees with the required FLSA notice.
- Your portal can be branded with your logo.
- Simple process for employees to learn about the exchange notice.
- Tools to help employees make health insurance decisions.
- Provides general information about the law for employees.

The benefits for your restaurant: simplified reporting and recordkeeping

- Provide the required written notice to your employees.
- Access the Department of Labor's notice templates.
- Track and report which employees received the notice.
- Create records to verify which employees received the notice, if proof is needed.

LEARN MORE: Employers can register for the National Restaurant Association's online solution and learn more about how to meet the Oct. 1, 2013, deadline for employee notification at HealthCareAdvice.com.

EMPLOYERS

EMPLOYER PREMIUM CONTRIBUTIONS

Q: Does the health care law require large employers that offer health care coverage to pay a certain percent of the premiums?

A: No, but large employers could face penalties starting in 2015 if they require full-time employees to pay more than 9.5 percent of their household income for self-only coverage. So the affordability test (see Page 17) could dictate the percentage of the employer contribution. Also, insurers that write group health plans usually require employers to contribute a certain percentage (usually at least 50 percent) toward the premium.

AFFORDABILITY

Q: Who verifies whether an employer's plan is affordable?

A: An exchange will make this determination at first, as part of deciding whether an employee is eligible for federal subsidies to buy exchange coverage because their employer's coverage wasn't affordable or didn't provide minimum value. Exchanges will obtain this information based on an employee's application to the exchange, and verify the information based on electronic databases. If it cannot be verified or the applicant's attestation is not compatible with the data, the exchange could "ping" the employer to verify if the employee was enrolled in or was eligible for employer-sponsored coverage. In the first year, the exchange may just rely on the employee's attestation in certain circumstances.

However, ultimately it will be the IRS that verifies an individual's eligibility for federal subsidies and if in fact an employee had an affordable offer of coverage of minimum value from their employer. This will be based on (1) the household income the individual reports on his or her tax return, and (2) information that large employers and their insurers are required to report to the IRS annually on full-time employees, health premiums and more. These reporting rules have been given transition relief and a year of voluntary compliance. Tracking will begin January 1, 2015 and the first report will be due to the IRS on or before January 31, 2016.

The IRS's process — not the exchange's process — will result in penalties for the employer if the IRS determines than an employer's offer of coverage was not affordable for a full-time employee based on household income.

TIP INCOME

Q: Are employees' tip earnings included when determining whether employees can afford employer-sponsored health coverage?

A: Yes. Tip income is considered part of an employee's wages and household income. For information about federal tip-reporting rules, consult the NRA's Legal Problem Solver at Restaurant.org/Legal.

EXCHANGES

Q: Can large employers buy insurance through exchanges?

A: Not yet. States will have the option in 2017 of opening up the exchanges to groups of 100 or more. However, each state will make the decision for itself.

DEPENDENT COVERAGE

Q: Does the coverage I offer dependents of my full-time employees need to be "affordable"?

A: While the law requires large employers to *offer* health care coverage to full-time employees and their dependents to avoid penalties starting in 2015, the law doesn't require dependent coverage to meet an affordability test. The affordability of an employer's lowest-cost plan is based on what the full-time employee pays for self-only coverage — not what he or she pays for dependent coverage.

SAYING NO TO COVERAGE

Q: If a full-time employee declines the health care coverage I offer, will I owe a penalty?

A: No. If you are a large employer and can show you offered that full-time employee the option of enrolling in an affordable, minimum-value health plan starting in 2015, you won't face penalties if he or she declines coverage. Full-time employees may turn down employers' coverage offers for any number of reasons, such as they don't want to pay for health insurance, they get insurance through a parent or spouse, or they qualify for Medicaid or another federal or state program. Full-time employees who reject employers' offers of affordable, minimum-value insurance aren't eligible for premium tax credits or cost-sharing reductions to help pay for insurance on exchanges. Because employer penalties are triggered only when a full-time employee receives a premium tax credit or cost-sharing reduction to pay for insurance on an exchange in 2015 and beyond, large employers won't face penalties in these cases.

PENALTY ASSESSMENT

Q: How will employer penalties be assessed starting in 2015?

A: We are waiting for regulations from the Treasury Department to know exactly how this process will work. According to information available so far, the IRS plans to evaluate large employers' required annual reports (first reports are due Jan. 31, 2016), employees' tax returns, and information from exchanges before it issues a "notice and demand" for an employer's tax liability. The agency says this will include a process for employers to appeal the IRS's determination of employer penalties.

But prior to the IRS's involvement, employers will have some interaction with the exchanges. This will occur as exchanges approve employees' applications to receive premium tax credits or cost-sharing reductions to help pay for health coverage on an exchange. In regulations issued in late January, the HHS outlined a proposed process whereby an exchange will notify an employer each time an employee obtained one of these subsidies, and inform the employer that this could trigger an employer penalty. Employers would not be required to respond, but would have the option of filing a response within 90 days to challenge the exchange's determination of the employee's eligibility for the subsidy.

EMPLOYEES

Q & A

IMPACT OF THE HEALTH CARE LAW ON EMPLOYEES: Many of the provisions of the 2010 health care law are set to take effect Jan. 1, 2014. With limited exceptions, this means all Americans will be required to have health care coverage for themselves and their dependents by that date or face potential tax penalties. The law and its requirements are complex. Here are some answers to common employee questions.

Q: When do I have to be covered?

A: January 1, 2014.

Q: How will I get this coverage?

A: There are many ways to meet what the law calls the "individual responsibility" requirement. You can accept coverage provided by your employer, purchase a policy on your own, buy a plan through a public exchange, or get coverage through Medicare, Medicaid or through other types of governmental programs.

Q: Is health insurance going to be free?

A: No. This is a common misconception. While starting in 2015 many employers will be required to offer full-time employees (and their dependents) the option of enrolling in coverage, in most cases employees will be required to cover a share of the costs. You may also be eligible for coverage through your state's exchange or Health Insurance Marketplace, but that option may also require individuals to pay a share. Go to www.healthcare.gov to learn more.

Q: How much is it going to cost me?

A: This is probably the most important question for all employees, but it also has a very complex answer.

The simple answer is that some "large" employers — defined under the law as those with 50 or more full-time-equivalent employees — are required to offer "affordable" health care coverage to their full-time employees (and their dependents) in 2015. That is defined as costing you no more than 9.5 percent of your family income for single-only coverage. Some employers may do better, but figure that 9.5 percent is the most the plan can cost you for single coverage. If your employer offers you coverage that costs more than that, your employer could face penalties if you qualify for federal tax subsidies to buy coverage on the exchanges, but you'll still likely have to pay a share for exchange coverage.

If you get your coverage through an exchange, all the costs aren't known yet. Exchanges begin announcing this summer which private health care plans they have approved for sale to individuals and small businesses for 2014. This will include information on the price tag for each plan.

Q: How is the government going to know if I have coverage or not?

Starting in 2014, you'll be required to state on your federal tax return that you have health care coverage and identify the source. If your employer is large enough, your employer will have to file separate paperwork to declare whether they offered you coverage and whether you accepted or rejected the offer.

Q: So what happens if I just don't get coverage?

A: In 2014, the penalty will be $95 per adult and $47.50 per child with a maximum of $285 for a family, or 1 percent of family income, whichever is greater. In 2015, the penalty goes up to $325 per adult and $162.50 per child with a maximum of up to $975 for a family, or 2 percent of family income, whichever is greater. In 2016, the penalty will be $695 per adult and $347.50 per child with a maximum of $2,085 for a family, or 2.5 percent of family income, whichever is greater.

Q: Do all employers have to offer health insurance, or just big businesses?

A: Beginning in 2015, businesses with 50 or more full-time-equivalent employees are required to either offer minimum essential coverage to their full-time employees and their dependents or face possible penalties. Smaller businesses have the option of offering coverage, of course, just as they always have.

Q: I only work part time. Is my employer required to offer me coverage?

A: No. The law doesn't require any employer to offer part-time employees health coverage, though some may do so voluntarily. The law defines part-time as anyone who averages under 30 hours a week.

Q: What are these exchanges I keep hearing about?

A: The public exchanges or "Health Insurance Marketplaces" are competitive marketplaces that will offer a variety of plans administered by private insurance companies. Exchanges are open to individuals and small businesses to purchase coverage. The exchanges will be a resource for employees who may not have access to affordable health insurance through their employer. The law envisioned these exchanges being set up by the states, but it appears that 33 states will either defer to the federal government or operate an exchange in partnership with the federal government. Either way, there will be an exchange operating in every state and the District of Columbia.

There will be multiple ways an individual can access an exchange: a website where you can learn about various insurance plans and select one that will help you meet the individual mandate; a phone option; and "navigators" within your community that can provide assistance in filing the necessary paperwork. Visit www.healthcare.gov for information.

Q: If I have to have coverage by Jan. 1, 2014, shouldn't the exchanges be open by now?

A: You'd think so, but they're not. Right now, the hope is that they will be operating by the fall. The opportunity to compare and shop for coverage in the exchanges begins on Oct. 1, 2013, with coverage first effective Jan. 1, 2014.

Q: What's this tax credit I've heard about?

A: For people with incomes between 100 percent and 400 percent of the federal poverty level that do not have access to an offer of affordable coverage through their jobs, the law offers a subsidy in the form of a "premium tax credit" that can be used to help pay for the purchase of insurance on the exchange. The exchanges will play a central role in determining if individuals are eligible to obtain the premium tax credit. Some individuals may also be eligible for "cost-sharing reductions" to help limit out-of-pocket costs for such costs as deductibles and co-pays. These government subsidies are for people who buy health plans on exchanges. Once an exchange determines an employee is eligible for a premium tax credit, the government will pay the tax credit amount directly to the health plan.

Pressing for Action in Congress

The National Restaurant Association is urging Congress and the White House to ensure that the health care law's mandates, taxes and penalties don't slow job creation. The law is likely to put significant cost and administrative pressures on employers. As labor-intensive businesses with narrow profit margins, restaurants are likely to feel the law's impact more than many other employers.

The Association is asking Congress to act on the following issues, which have significant implications for restaurant employers:

- **FULL-TIME EMPLOYEE DEFINITION:** The definition of full-time employee is of particular importance to restaurants because of the industry's unique reliance on large numbers of part-time and seasonal workers with fluctuating and unpredictable work hours, as well as unpredictable lengths of service. The law's definition of full time as 30 hours of service per week, per month on average is significantly below the standard most employers use today, based on other federal labor laws.

- **LARGE EMPLOYER DEFINITION:** The definition of a large employer under the health care law is based on a 12-month calculation to determine whether an employer has 50 or more "full-time-equivalent employees" — a definition not used in many businesses, especially those with large shift-work environments.

- **COMPLIANCE ISSUES SUCH AS AUTO-ENROLLMENT:** The law requires large employers to enroll full-time employees into coverage automatically if an employee does not opt out within a certain timeframe. This aspect of the law could result in unexpected payroll deductions and confusion for employees.

For more information on any of these issues visit Restaurant.org/Healthcare.

The health care law may be one of the toughest challenges your restaurant company has ever faced.

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Coming soon: Easy notification tool for employers

The National Restaurant Association will offer a comprehensive website to help restaurant and foodservice employers easily comply with the employee notification requirement in the health care law.

For details, visit Restaurant.org/Healthcare

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