



2013 Employment Law Update

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Houma, LA*

Presented by

FISHER & PHILLIPS LLP

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THE AFFORDABLE CARE ACT

Where are we now, and where are we going

Presented by:

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The Future is Hazy



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But Employers Should Plan Now

- Notice of Exchange
- Insurance Marketplace
- Requirements still effective for 2014
- “Look back” period for 2015
- SBCs
- Employer Return



Employer's Notice of Exchange

The FLSA now requires all employers to provide a Notice of Exchange to all employees.

- Employers may use DOL model Notices
- Employers must provide Notice to existing employees by October 1, 2013
- New hires must receive Notice within 14 days of start date
- No penalty for failure to distribute

HealthCare.gov

HealthCare.gov Learn Get Insurance Español

Individuals & Families Small Businesses All Topics

The Health Insurance Marketplace is coming soon

A new way to get affordable coverage launches October 1.

Answer a few questions to learn if you qualify for lower costs.

START NOW

GET IMPORTANT NEWS & UPDATES SIGN UP

What is the Health What is the

Plan Requirements Still Effective in 2014

- Out-of-Pocket Maximum
- Annual Limits prohibited on Essential Health Benefits
- Excessive Waiting Periods prohibited
- Coverage for Approved Clinical Trials required
- Exclusions for Pre-Existing Conditions prohibited
- FSA limits effective in 2013

New Summary Of Benefits And Coverage (SBC)

- 4 “page” disclosure
- Deadline is first open enrollment or plan year on or after September 23, 2012
- Model templates – New format for 2014
- Very detailed requirements
- Coordinate with carriers, TPAs and/or counsel

Employer Return

- Subject of Employer Mandate postponement
- No regulations yet
- But for 2015, employers will need to capture and report data including:
 - number of full-time employees by month
 - the name, address, and taxpayer identification number of each full-time employee employed by the employer during the calendar year and the months (if any) during which the employee and any dependents were covered under an employer-sponsored plan

Employer “Play Or Pay” Mandate

- Effective January 1, 2015
- Waiting for regulation regarding postponement
- Applies to “large employers”
 - Control group
 - Equivalent of 50+ full-time employees
 - “Full-time” means 30 or more hours per week (130 per month)

Employer “Play Or Pay” Mandate

To Play:

Offer adequate and affordable coverage to employees and their dependents

- Adequate is “minimum value”
- What is “affordable”?



Employer “Play Or Pay” Mandate

Safe Harbors for Affordability

- 9.5% of W2 Box1 (annual)
- 9.5% of 130 x hourly rate (monthly)
- 9.5% of individual federal poverty level divided by 12 (monthly)

Full-Time Employees Who Must Be Offered Coverage

Hours of Service

Hourly Employees

- Count actual hours

Non-Hourly Employees

- Count actual hours or
- Use equivalencies
 - Credit 8 hours for each day worked
 - Credit 40 hours for each week worked

Full-Time Employees Who Must Be Offered Coverage – Ongoing Employees

- Definition of “ongoing”
- Standard lookback measurement period 3-12 months
- Stability period 6-12 months
- Optional administrative period of 90 days

Full-Time Employees Who Must Be Offered Coverage – New Employees

If expected to work 30+ hours per week, “full-time”

- Must offer coverage by end of third calendar month

For new variable hour and seasonal employees

- Initial measurement period 3-12 months
- Stability period length same as for ongoing employees

Optional administrative period of 90 days allowed

Employer “Play or Pay” Mandate



Employer “Play or Pay” Mandate

The Supersize Penalty is \$2,000 per year per full time employee, excluding the first 30 full-time employees. It will be assessed if:

- Employer fails to offer *minimum essential coverage* to at least 95% of its full-time employees (and their dependents)
- and any full-time employee qualifies for premium assistance.

Employer “Play or Pay” Mandate

The Value Meal Penalty is \$3,000 per year per full-time employee receiving assistance for the Exchange, up to a *limit*. It will be assessed if:

- Employer is not subject to the Supersize Penalty
- But an employee qualifies for premium assistance because he is not offered coverage or coverage is *unaffordable* or *fails to provide minimum value*.

To Play or Not to Play



Other “Big Ticket” Items

Nondiscrimination Requirements for Fully-Insured Plans

- Relates to “highly paid employees” (similar to retirement plan and self-insured plan nondiscrimination requirements)
- Implementation delayed thus far
- Restrictions could impose strict penalties and civil liability

Other “Big Ticket” Items

Automatic Enrollment

- Applies to “large employers” of more than 200 full-time employees
- Implementation delayed

Keep Up With The “Moving Target”

- Monitor developments in guidance
 - Automatic enrollment
 - Nondiscrimination rules for insured plans
- Address immediate compliance issues
- Plan for recordkeeping
- Cadillac tax



Clear As Mud



Final Questions?

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Thank You

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