“Full-time” employees eligible for coverage include:

- Employees regularly scheduled to work at least 30 hours per week or 130 hours per month
  - Including new employees reasonably expected to work at least 30 hours per week or 130 hours per month
- All other employees – part time, temporary, substitute, variable hour, seasonal – based on their hours of service during a “standard measurement period,” otherwise referred to as a “look-back period”
  - If employee’s hours of service averaged at least 30 per week or 130 per month during the standard measurement period
  - Then the employee is eligible for benefits during the coming “stability period”
Measurement Periods and More

- Standard measurement period is determined by employer
  - Can be anywhere from 3 to 12 consecutive months
- Stability period must be at least six months and no shorter than the standard measurement period
- In recognition of the administrative time required to look back and measure employee hours and then get eligible employees enrolled in benefits, an “administrative period” of up to 90 days is allowed
  - In between the standard measurement period and the stability period

Measurement Periods and More

- Standard measurement, administrative, and stability periods can vary by employee category:
  - Represented vs. nonrepresented
    - And by bargaining unit within represented
  - Salaried vs. hourly
- Employers can change these periods in subsequent years
  - But not after the standard measurement period for that year has begun
- When counting hours of service, be sure to include all assignments for that employee
  - Especially classified employees – instructional assistant, noon duty, etc.
Measurement Periods and More

There are two distinctions for these temporary, seasonal, variable hour, part-time, substitute employees:

- An “ongoing employee” is an employee that has been employed for at least an initial measurement period, whether or not having qualified for benefits
- Otherwise, the individual is a “new employee”

Subsequent references to “new employee” refer specifically to temporary, seasonal, variable hour, part-time, substitute employees

Specifically excluding:

- Employees that are found to be full time, whether ongoing or new
- Ongoing temporary, seasonal, variable hour, part-time, substitute employees

For new employees, the stability period must be at least as long as for ongoing employees

- But the measurement period and administrative period may be shorter for the first year – the initial measurement and administrative periods do not have to follow the calendar for ongoing employees
- Must be completed by the end of the month following the one-year anniversary of the hire date

Example: Hired on May 10 of year 1 – the combined initial measurement and administrative periods cannot go past June 30 of year 2

This is shorter than what is allowed for ongoing employees – up to 12 months for measurement and 90 days for administration
Sample timeline for ongoing employees

Assuming a plan year (stability period) of January through December, a 12-month measurement period, and a 2-month administrative period:

Sample timeline for new employees

Assuming a plan year (standard stability period) of January through December, a 12-month measurement period, and a 2-month administrative period:

*Can start administrative period earlier if needed (can shorten initial measurement period up to one month less than stability period)

**Maximum initial measurement and administrative periods end last day of month following one-year anniversary of hire date
Measurement Periods and More

Special rules for educational institutions

- Employees are not “seasonal” because of school breaks
- Hours must be averaged over employment breaks
  - Employment break is defined as a period of at least four consecutive weeks
- Must give credit for hours during employment break(s) commensurate with the weekly average hours during the measurement period minus the employment break(s)
  - Up to a maximum of 501 hours of credit per calendar year (awaiting clarification if per employment break)
- Only applies to ongoing employees – not employees terminated and rehired

Adjunct faculty at community colleges:

- Must use a “reasonable method for crediting hours of service” relative to that of full-time faculty
  - Must include not only credit hours of instruction but also other expected hours – office hours, preparation time, etc.
- Reality check: Certificated staff on the 39-month reemployment list get first right to substitute and can earn their daily rate
  - May also qualify for benefits now!
- The Internal Revenue Service guidance can be relied upon for now
  - Until final regulations or additional guidance is issued
Potential Penalties

There are three potential penalties:

- A penalty for not offering coverage to more than 5% of employees (for smaller employers, more than five employees) that qualify as full time.
- A penalty for offering coverage that does not meet the “minimum value” test.
- A penalty for providing coverage that does not meet the “affordable” test.

Penalties only apply if at least one of your employees purchases coverage through the Exchange and receives a subsidy or tax credit.

To qualify for a subsidy, the employee’s household income cannot exceed 400% of the federal poverty level.

- Depends on the size of the family.

Potential Penalties

2013 Poverty Guidelines (48 Contiguous States)

<table>
<thead>
<tr>
<th>Number in Family</th>
<th>Poverty Guideline</th>
<th>400% of Poverty Guideline</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,490</td>
<td>$45,960</td>
</tr>
<tr>
<td>2</td>
<td>$15,510</td>
<td>$62,040</td>
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<tr>
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<td>$19,530</td>
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<td>$142,440</td>
</tr>
<tr>
<td>8</td>
<td>$39,630</td>
<td>$158,520</td>
</tr>
</tbody>
</table>

(add $4,020 for each additional person beyond 8)
Potential Penalties

- Penalties are determined and assessed on a monthly basis:

- Over 5% of full-time employees not offered coverage → Employee goes to Exchange and receives subsidy or tax credit → Employer assessed $2,000 (annualized) times all full-time employees minus the first 30.

- Full-time employee offered coverage that is not of “minimum value” → Employer assessed $3,000 (annualized) per employee receiving the subsidy or credit (to a maximum of $2,000 times full-time employee minus the first 30).

- Full-time employee offered coverage that is not “affordable” → Employee goes to Exchange and receives subsidy or tax credit.

Collective Bargaining and the ACA

- While employers get a “pass” on the Affordable Care Act (ACA) penalties for 2014, we would advise against a delay in:
  - Determining if you are an “applicable large employer”
  - Ensuring that your group plan provides coverage of “minimum value”
  - Implementing a system for tracking hours of part time and temporary employees to ensure you are able to identify and offer “affordable coverage” to eligible employees
  - Working with employee groups to increase their understanding of the ACA
  - Evaluating your workforce and analyzing the potential financial impact of the employer mandate on your organization in 2015
  - Weigh the cost of negotiating affordable coverage against the cost of potential penalties in 2015 should employees go to the health benefits exchange and receive a subsidy.
The individual mandate was not affected by the delay in implementation of the employer “pay or play” mandate

Premium tax credits, or subsidies, will still be available in 2014

Individuals can start signing up for health coverage through California’s Exchange

“Covered California”: www.CoveredCA.com

Open enrollment starts October 1, 2013

Employers must provide notices to all employees by then

Individual coverage starts as soon as January 1, 2014

Review health benefit language in collective bargaining contracts to ensure compliance with the ACA:

Is coverage offered to employees working at least 30 hours per week or 130 per month?

Is coverage also offered to dependents?

Is there a plan offered that meets the “minimum value” test?

And do employee contributions for individual coverage under that plan meet the “affordable” test?
Collective Bargaining and the ACA

- Use the answers to prepare your strategy for the next opportunity to negotiate health benefits
- Are the measurement, administrative, and stability periods negotiable?
  - The regulations say that the employer decides
- The bottom line:
  - Do the cost/benefit analysis of coming into compliance and develop your strategy early
  - Initial measurement periods may need to begin sometime this year!

Thank You!