ACA Mandates

• Individual Mandate – individual tax penalty for not having health coverage

• Employer Mandate (Shared Responsibility Payment) – employer tax penalty for not offering health coverage
Employer Mandate:
Large Employer Penalties

• Effective January 1, 2015 (was 2014)
• Large Employers
• Trigger: FT employee purchases subsidized coverage in exchange

(Penalty A) Employer does not offer “minimum essential coverage” to “substantially all” FT employees & dependents; or

(Penalty B) Coverage is “unaffordable” or doesn’t provide “minimum value”
Penalty Trigger: Subsidized Coverage

**Premium Tax Credit** – eligibility:
Employer Plan does not provide **minimum value**; or
Employer Plan requires employee to contribute over 9.5% of household income (**not affordable**)

Eligibility based on household income of insured (up to 400% of FPL (federal poverty line)).
Penalty (A) “No Coverage”
Employer Mandate: Large Employer Penalties

- Effective January 1, 2015 (was 2014)
- Large Employers
- Trigger: FT employee purchases subsidized coverage in exchange
  (A) Employer does not offer “minimum essential coverage” to “substantially all” FT employees & dependents; or
  (B) Coverage is “unaffordable” or doesn’t provide “minimum value”
What must be offered?
To whom?

• To Avoid Penalty A

• Minimum essential coverage = group health plan offered by an employer to employee

• “Substantially All” FT Employees = 95%  
  – Intended to account for small margin of error  
  – Do not intentionally exclude 5%

• Full-Time Employees & their Dependents
How Much is Penalty A (Failure to Offer Coverage)?

Penalty A = $166.67 x (# of FT employees employed during that month – 30)

• $166.67 = Applicable Payment Amount per month in 2014
• Amount adjusts annually
### Ex. Penalty A Calculation – Fails To Offer Coverage

<table>
<thead>
<tr>
<th>No. of FT Employees</th>
<th>Assessable Payment '14</th>
<th>Formula</th>
<th>Monthly Penalty</th>
<th>Penalty Annualized</th>
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<tbody>
<tr>
<td>100</td>
<td>$166.67</td>
<td>$166.67 x (100 - 30)</td>
<td>$11,667</td>
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Penalty (B)
“Unaffordable Coverage”
Employer Mandate: Large Employer Penalties

- Effective January 1, 2015 (was 2014)
- Large Employers
- Trigger: FT employee purchases subsidized coverage in exchange
  (A) Employer does not offer “minimum essential coverage” to “substantially all” FT employees & dependents; or
  (B) Coverage is “unaffordable” or doesn’t provide “minimum value”
Penalty B – Minimum Value

Providing Minimum Value Means:

• Employers must cover 60% of cost of total allowed costs of benefits
• Actuarial determination

3 Methods:
1. Use HHS calculator;
2. Safe Harbor plan designs; or
3. Actuarial Certification
Penalty B - Affordability

Coverage is affordable where:
• Employee’s share of the premium for the employer’s lowest cost, self-only plan is no more than 9.5% of household income

Safe Harbors for determining 9.5% of household income:
1. Form W-2
2. Rate of Pay
3. Federal Poverty Line
Affordability Safe Harbor Form W-2

**Employer will not be subject to unaffordable coverage penalty if:**

Employee’s portion of the premium for the lowest cost self-only coverage does NOT exceed 9.5% of the employee’s Form W-2 wages reported in Box 1.
Affordability Safe Harbor
Rate of Pay

Not subject to unaffordable penalty if:

• Employee’s portion of the premium for the lowest cost self-only coverage does NOT exceed 9.5% of monthly amount

• Monthly amount = Hourly rate of pay x 130 hrs./mo.
Affordability Safe Harbor
Federal Poverty Line

Not subject to unaffordable penalty if:

• Employee’s portion of the premium for the lowest cost self-only coverage does NOT exceed 9.5% of the monthly FPL
  • FPL in 2013 was $1,091.55 per month
  • 9.5% of $1,091.55 = $90.96/mo.

Thus, if employee contribution is lower than $90.96, it will automatically be affordable based on this safe harbor.
How much is Penalty B (Unaffordable Coverage)?

Monthly penalty is *lesser of*:

- Penalty A = $166.67 \times (\# \text{ of FT employees employed during that month} - 30)

OR

- Penalty B = $250 \times \# \text{ of FT employees receiving subsidy during that month}
Ex. Penalty B Calculation – Offers Unaffordable Coverage

Monthly penalty is *lesser* of two penalties:

<table>
<thead>
<tr>
<th>No. of FT EEs</th>
<th>No. who enroll in subsidized coverage (here 2%)</th>
<th>Penalty B ($250 x No. subsidized)</th>
<th>Penalty A</th>
<th>Monthly Penalty (Penalty B is lesser)</th>
<th>Penalty Annualized</th>
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</thead>
<tbody>
<tr>
<td>100</td>
<td>2</td>
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</table>
Penalty Trigger: Full-Time Employee

• Full-Time Employee

• Basic Definition
  – Average 30 hours of service per week in any given month

• Look Back Measurement Method Safe Harbor
  – Average 30 hours of service per week over a Standard Measurement Period (up to 12 mo)
Calculating Hours of Service

• Hourly – hours of service

• Non-hourly – 3 methods:
  1. Hours of service
  2. Days worked equivalency (8hr/day for each day entitled to pay/req’d to be credited with an hour of service)
  3. Weeks worked equivalency (40hr/wk for each week entitled to pay/req’d to be credited with an hour of service)
Adjunct Faculty Members

- Reasonable Method to Credit hours of service
- Not reasonable to only account for class time
- Should include hours necessary to perform duties (i.e., class preparation time)
American Council on Education’s Comments to Proposed Regs.

1) Proposed Comment re: Safe Harbor Based on Percentage of Full-Time Course Load

Full-time = course load $\frac{3}{4}$ or more of course load for full-time non-tenure-track (NTT) teaching faculty member in that academic dept. (not in CA)

Note: If use 75% of full time faculty will likely be underestimating - Do Not Recommend
American Council on Education’s Comments to Proposed Regs.

2) Proposed comment re: Safe Harbor Based on One-to-One Ratio of Hours Teaching to Non-Classroom Work.

Credit one hour of work outside classroom for each hour teaching in classroom.

Recommended Approach
1:1 Ratio
Option for Reasonable Calculation

Teaching Units + Prep/Grading + Stipend Load Factor + Mandatory Office Hours + Other Hourly Work
= Total Reasonable Hours

\[
\frac{\text{Adjunct's number of class units}}{\text{Full-Time LHE}} \times (5 \text{ or } 10 \text{ Hours})
\]
= stipend load factor
Non-Instructional Adjuncts
Option for Reasonable Calculation

Load multiplied by Full-Time Faculty
(i.e. load of 0.5 x 40 hours = 20 hours)

+ Stipend Work (load x 5 or 10 hours) (if any)
  5 or 10 hours = reasonable approx. of ancillary
duties/office hours for full-time

+ Other Hourly Work (if any)

= Total Reasonable Hours
American Council on Education’s Comments to Proposed Regs.

- Propose Safe Harbors for Student Workers (Institution of Higher Education)
  2. Work-Study Safe Harbor – Exclude hours worked by student enrolled in classes at least half time & receives wages as part of work-study program
American Council on Education’s Comments to Proposed Regs.

- Students Working as Part of Internship or Cooperative Educational Programs
  - Alternate semesters of academic study with semesters of intern/co-op full-time employment
- Proposed to Exempt These Students
Purpose of the Safe Harbor

• Determining who is full-time
• Distinguished from determining FTE for Large Employer determination
• This safe harbor determines who is full-time for purposes of the assessable payment
How It Works

• **Basic Concept:**
  Measure employee for time period to determine full/part time – treat them as such during associated stability period

• **Two main parts to Safe Harbor:**
  1) Ongoing Employees
  2) New Variable Hour Employees
Ongoing Employees

• Ongoing Employees
  – Standard Measurement Period
  – Administrative Period (optional)
  – Stability Period

• If employee averages at least 30 hrs/week during “Standard Measurement Period”, employee treated as full-time during “Stability Period”
Ongoing Employees

• Standard Measurement Period (SMP)
  – Employer Determines Length (3-12 mos.)
  – Must be consecutive calendar months.
  – Consistent and uniform for all employees in same category

• Administrative Period
  – Time between SMP and Stability Period
  – Up to 90 days (60 due to CA waiting period)
Ongoing Employees

- **Ongoing Employees’ Stability Period (SP)**
  - At least 6 consecutive calendar months
  - At least as long as the Standard Measurement Period (SMP)
Ongoing Employees

Standard Measurement Period #1

AP #1

Stability Period #1

Ongoing Employees

Standard Measurement
Period #1

AP #1

Stability Period #1

Standard Measurement
Period #2

AP #2

Stability Period #2

New Employees

New Employee @ Start Date, Ask:
Is it reasonably expected he/she will average 30 or more service hours/week over the entire initial measurement period?

• If yes – treat as full-time
• If no – “New Variable Hour” employee - start measuring
Safe Harbor for New Employees - Variable Hour & Seasonal

- **Initial Measurement Period (IMP)**
  - 3 to 12 mo. (employer determines)

- **Optional Administrative Period**
  - 90 days max. (60 – CA law)
  - Time between start date and start of IMP counts toward the 90 days
  - Time between end of IMP and date offered coverage also counts toward the 90 days

- **IMP + Admin. period must not extend beyond last day of first calendar mo. beginning on/after first anniversary of start date.**
Safe Harbor for New Employees - Variable Hour & Seasonal (cont.)

- **Stability Period**
  - Must be same length as it is for ongoing employees

- **Special rules for length of stability period** depending on how employee measures during initial measurement period
  - If full – 6 mo or same as SMP (whichever longer)
  - If not full – cuts off at end SMP+AP
New Variable Hour


Standard Measurement
Period #1

AP
#1
Stability Period
#1

Standard Measurement
Period #2

AP
#2
Stability Period
#2

Initial Measurement Period
May 15
(Bob)

June 31 End
Stability
(Bob)
Transition from New to Ongoing

• Double Testing
  – Initial Measurement Period
  – First Standard Measurement Period
• IMP qualified as FT
  – Treated as FT during entire Stability Period that is related to IMP
• IMP qualified as PT, SMP qualified as FT
  – Treated as FT during entire Stability Period related to SMP
Rehires as New Employees?

- A rehire may be treated as a new EE if
  - 26 consecutive wks. of no qualifying hours, OR
  - Parity Rule: The break in service is at least 4 wks. long and the break is longer than the preceding period of service

- Not a new EE
  - If cannot qualify as new hire under above calculation, then the individual’s previously used SMP and SP continue to apply, as if there were no break in service
Special Unpaid Leave

Averaging Method:

1. Exclude special unpaid leave/break period and apply average over entire measurement period; or

2. Impute hours of service for the special unpaid leave/break period at a rate equal to average weekly hours of service for weeks.
Employment Break Period

- At least 4 consecutive weeks (not incl. special unpaid leave) –
- Averaging Method:
  (1) exclude the employment break period and apply average over entire measurement period; or
  (2) credit with hours of service for the employment break period at a rate equal to the average weekly rate.
- 501 hours max./calendar year (of time excluded/credited, depending on method used)
Ohlone 2013/2014

- Fall Semester – 16 weeks
- Winter Break – 6 weeks
- Spring Semester – 16 weeks
- Spring Break – 1 week
- Summer Break – 13 weeks
- Ex. Bob Averages 32 hours during Fall & Spring Semesters & 0 hours for 21 weeks
Exclusion Method

- 20 week break period
- If apply 32 hour average, get 640 hours
- But, no more than 501 hours can be excluded from the average
- Average 32 hours means 15.6 weeks can be excluded (501 divided by 32 – 15.6 weeks)
# Exclusion Method

<table>
<thead>
<tr>
<th></th>
<th>Fall Semester</th>
<th>Spring Semester</th>
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</thead>
<tbody>
<tr>
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<td>16 weeks</td>
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</tr>
<tr>
<td></td>
<td>Winter break</td>
<td>Spring break</td>
</tr>
<tr>
<td></td>
<td>6 weeks</td>
<td>1 week</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summer break</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13 weeks</td>
</tr>
<tr>
<td>Total Break</td>
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<td>20 weeks</td>
</tr>
<tr>
<td>Exclude</td>
<td></td>
<td>15.6 weeks</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4.4 include at 0 hours</td>
</tr>
</tbody>
</table>

**Average 32 hours over 32 weeks & 0 hours over 4.4 weeks**

\[(32 \times 32 = 1,024 \div 36.4 \text{ wk} = 28.1 \text{ hr/wk})\]
Credit Method

- If credit 32 hours for 20 week break = 640 hours
- But only required to credit 501 hours
- Average 32 hours divided by 501 = 15.6 weeks
### Credit Method

#### 52 Weeks

<table>
<thead>
<tr>
<th>Fall Semester</th>
<th>Spring Semester</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 weeks</td>
<td>16 weeks</td>
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</tr>
<tr>
<td></td>
<td>Summer break</td>
</tr>
<tr>
<td></td>
<td>13 weeks</td>
</tr>
</tbody>
</table>

**20 weeks of break**

Credit 15.6 weeks @ 32 hours = 499.2

Hours of services during semesters

32 weeks @ 32 hours = 1,024

1,523.2 hours

Average over measurement period = 29.2 hours per week

\[(1.523.2 \div 52)\]
Employer Appeal Opportunities

• **Appeal:** Exchange’s Determination of Employee Eligibility for Subsidy
  – Exchange notifies employer
  – 90 days to appeal
  – Employer submits evidence
  – Review of appeal
  – Notice of decision within 90 days

• **Appeal:** IRS’ Penalty Determination
  – Appeal Process expected in future guidance
Questions?

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