

# National Grain and Feed Association

## Affordable Care Act

### Dung Heap or Fertilizer?

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# Introduction

Close to 3,000 pages in length, plus tens of thousands more in guidance, employees and practitioners continue to try to understand the Affordable Care Act.

This discussion covers common issues/questions and offers practical guidance.

# What is the Exchange Notice?

- ▶ Required to be distributed by October 1, 2013
- ▶ Pay or Play delay does not delay notice
- ▶ DOL has issued model notice
- ▶ Notice must indicate if plan provides minimum value and is affordable
- ▶ “To Complete or Not to Complete” Optional Information – that is the question

POSITIVE: Modifications to COBRA notice

# What Was Delayed?

- ▶ The Obama Administration delayed the Play or Pay Mandate
- ▶ Applicable Large Employers not required to Play or Pay until 2015
  - ▶ Fiscal 2015 versus calendar year 2015?
- ▶ Exchanges/marketplaces still being implemented
- ▶ Individual mandate still required

# 2015 Planning

- ▶ Counting to 50 full-time equivalents
- ▶ Reliance on sub-30 hour per week employees
- ▶ Good faith definition of seasonal

# What is an Applicable Large Employer?

- ▶ At least 50 full-time equivalents
- ▶ Look back to prior year
- ▶ Controlled Group Members Treated As One Employer
  - ▶ Churches and non-profits are subject to similar rules
- ▶ Beware leased employees and independent contractors

# We are an applicable large employer (ALE). Who must we offer coverage?

- ▶ ALEs must offer health care coverage to 95% of full-time employees and dependent children.
  - ▶ Spouses excluded
- ▶ Offer of coverage requires open enrollment of at least once per year.
- ▶ “Offer” also requires 30-day grace period to pay premiums.
  - ▶ Change for many plans

# Who Must Be Offered Coverage?

- ▶ THREE categories of employees
  - ▶ Full time
  - ▶ Variable
  - ▶ Seasonal



# Who Must Be Offered Coverage? (cont'd)

## ▶ Full-time

- ▶ Will work at least 30 hours per week
- ▶ No measurement period
- ▶ Must offer coverage within 90 days of commencement of employment
- ▶ Beware -- inadvertent eligibility for other benefits (i.e., dental, life insurance, vacation, disability, etc.)

# Who Must Be Offered Coverage? (cont'd)

- ▶ Variable Hour Employee (aka part time)
  - ▶ In good faith, not expected to work 30 hours during initial or standard measurement period

# Who Must Be Offered Coverage? (cont'd)

## ▶ Seasonal

- ▶ Regulations do not define “seasonal employee”
- ▶ Good faith of employer to classify
- ▶ Think beyond four seasons
  - ▶ Sports
  - ▶ Agricultural (planting, harvesting)
  - ▶ Entertainment (i.e., amusement park)
  - ▶ Holidays

# How Do We Determine Eligibility?

Use measurement period to evaluate whether variable hour or seasonal work on average of 30 hours per week.

- ▶ At least three months, but not longer than 12 months
- ▶ Initial measurement period used new employees
- ▶ Standard measurement period used for ongoing employees
- ▶ May change measurement period (but only at beginning of new period)

# MJN's views on Measurement Periods

## ▶ Longer is Preferable

Pros:

- ▶ Less work for employer
- ▶ Less chance for mistake

Con:

- ▶ If a person works an average of 30 hours per week, must offer coverage for longer of six months or measurement period (this is called stability period).

# MJN's views on Measurement Periods (cont'd)

- ▶ Eleven-Month Measurement Period with 60-day administrative period
  - ▶ Match with plan year (last day of administrative is day before new plan year)
  - ▶ Allow time to complete analysis and mail necessary enrollment materials
  - ▶ Employers with fewer variable hour or seasonal employees might use 12-month measurement period

# What Coverage Must I Offer to Avoid \$2,000 Per Full-Time Employee Penalty?

Group health care that provides Minimum Essential Coverage

- ▶ All self-funded plans meet this standard

# What Coverage Must I Offer to Avoid \$3,000 Per Full-Time Employee Penalty? (cont'd)

## Group health care that provides Minimum Essential Coverage

- ▶ Provide Minimum Value
  - ▶ Plan must cover at least 60% of expected benefits of typical plan (known as bronze plan)
- ▶ Is Affordable
  - ▶ Employee-only premium cannot exceed 9.5% of household income



## ▶ Transitional Reinsurance

- ▶ Applies in 2014, 2015 and 2016
- ▶ \$63.00 in 2014 per covered person
- ▶ TPA will collect on behalf of employer

## ▶ Auto Enroll

- ▶ Given the time of expected regulations, plan for 2015 implementation

# What Other Changes Are Effective in 2014?

- ▶ No pre-existing limitation
  - ▶ Post 2013 plan year
- ▶ Out-of-Pocket Limit
  - ▶ Applies to self-funded plans
  - ▶ HSA Limits (2014)
    - ▶ Single -- \$6,350
    - ▶ Family -- \$12,700

# What Other Changes Are Effective in 2014? (cont'd)

- ▶ Can no longer exclude dependents with other available coverage
- ▶ Non-grandfathered plans must cover routine cost of clinic studies
- ▶ No Annual Dollar Limit
  - ▶ May still exclude essential health benefits
  - ▶ May cap non-essential
  - ▶ May limit by treatment
    - ▶ QUERY: Issues with out-of-pocket limit
  - ▶ Day limit (but not day and dollar)

# Recruiting and Retention Strategies

- ▶ Sign-on bonus/relocation with claw back
  - ▶ Contingent, deferred bonus
- ▶ Limited non-competes, non-solicitation agreements
  - ▶ Enforceability varies by state
  - ▶ Evaluate protection needs:
    - ▶ Customers
    - ▶ Vendors
    - ▶ Employees
    - ▶ Geographic scope
    - ▶ Duration

# Recruiting and Retention Strategies (cont'd)

- ▶ Non-qualified Deferred Compensation
  - ▶ Link with non-compete
  - ▶ Forfeiture/claw back
  - ▶ Use of life insurance
  - ▶ Phantom stock
    - ▶ Align key employees' interests with owners
- ▶ Gradually Improving Benefits