Preparing for the Full-Time Employee Determination

Thursday, April 4, 2013
2:00 pm – 3:00 pm EST
Today’s Speakers

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Welcome and Agenda

- Conner Strong & Buckelew’s twelfth installment in an ongoing series of webinars on key issues dealing with national healthcare reform

- Focus is on the Full-Time Employee (FTE) determination required under the employer “Pay or Play” shared responsibility provisions set to take effect in 2014

- Will address what a “large employer” needs to know about the upcoming requirements
Major PPACA Milestones

- **March 23, 2010**: Patient Protection and Affordable Care Act (PPACA) was signed into law - implementation of PPACA begins

- **June 28, 2012**: US Supreme Court upholds the constitutionality of the law - implementation continues

- **November 6, 2012**: President Obama is re-elected along with a divided Congress - implementation continues

- **October 1, 2013**: Exchange enrollment begins (extended enrollment period through March 31, 2014)

- **January 1, 2014**: Exchanges take effect and individual and employer mandate begin
It’s Really Health Insurance Reform
Health Insurance Reform
Here to Stay

- Reform addressed access to coverage – not cost or quality
- Congressional repeal unlikely
- Major implications for:
  - Employers
  - Employees
  - Providers
  - Health Plans

2012
- Summary of Benefits Coverage Rules
- W-2 Reporting
- Comparative Effectiveness Fee

2013
- Increased Medicare Tax
- $2,500 FSA Limit
- Exchange Notice

2014
- Employer Penalties and Minimum Essential Plans
- Individual Mandate
- State Exchanges Open
- Re-Insurance Tax
- Wellness Incentives Move to 30% Differential
The Future of US Health Care

Expanding Coverage
- Government Health Insurance Exchanges
- Expansion of Medicaid
- Federal Coverage Subsidies
- Individual Mandate

Paying for It
- Medicare/Medicaid Payment Changes
- Taxation of High Income Individuals
- Employer Taxes and Pay or Play
- Other Industry Taxes
- High-Cost Employer Coverage Taxation

Colors:
- Light blue = Direct impact to employers
- Dark blue = Indirect impact to employers
- Medium blue = Direct and indirect impact to employers

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The “Bottom Line”

- Early tweaks intended to enhance coverage levels

- Most Americans must carry health insurance by 1/1/14 or pay a tax/penalty to the federal government - low income people get federal support to help pay premiums

- Employers with 50 or more FTEs have to offer benefits that meet coverage and cost levels or pay a penalty ($2,000 per FTE minus the first 30)

- “Exchanges” for individuals and for small businesses (2-99) to buy coverage on-line effective 1/1/14 (SHOP small business exchange now delayed until 2015)

- Substantial new taxes embedded in various elements of the law (to pay for it)
All group health plans must comply with certain mandates, some of which are phased in over time - start date was first plan year beginning on or after 9/23/10

- 2011 – Age 26 and other benefit mandates take effect
- 2011 – FSAs can no longer be used for over-the-counter medications
- 2013 – FSA contributions limited to $2,500 per year
- 2014 – Eliminate all remaining annual limits on coverage
- 2014 – Eliminate pre-existing condition limitations for everyone
- 2014 – Individual and employer mandates begin; exchanges go-live
- 2014 – Reinsurance tax on employer plans
- 2017 – States can permit larger groups on their exchanges
- 2018 – 40% excise tax for high-cost “Cadillac” plans
Participant Question

*Essential Health Benefits - does it include coverage for Infertility treatment?*

- It depends on whether infertility benefits are considered an EHB under the definition used by the employer. If so, then any annual or lifetime dollar limits on those benefits must be removed.

- As background, large employer plans, whether insured or self-funded, are not required to cover EHBs. However, if they cover EHBs, these plans are prohibited from imposing annual or lifetime dollar limits on covered EHBs. Until the agencies issue guidance that clarifies the scope of EHBs, group health plans are generally subject to a “good faith” compliance standard in how they define EHBs.

- Self-insured and large group plans will need to determine which definition of EHB they will utilize for 2014, review any annual or lifetime dollar limits that apply to any EHB in the plan, and make any needed modifications.
Major New Taxes

- Various taxes used to fund major pieces of the law:
  - 2010: Tax on Innovator Drug Companies: $22.2 billion per year
  - 2011: Elimination of OTC from FSA protection: $5 billion per year
  - 2011: 10% tax on Indoor Tanning: $2.7 billion per year
  - 2013: 2.3% Medical Device Manufacturing Tax: $20 billion per year
  - 2013: Increased Medicare Payroll Tax: $86 billion per year
  - 2013: Investment Income Surtax for $250,000+: $123 billion per year
  - 2013: Elimination of Medicare D Tax Deduction: $4.5 billion per year
  - 2014: Insurance Industry Tax: $60.1 billion per year until 2018
  - 2014: Insurance Mandate on Americans/Employers: $65 billion per year
  - 2018: Cadillac Tax on High Cost Plans: $32 billion per year
Substantial Questions Remain

- Many questions remain that must be resolved through rulemaking at federal level and through state legislative and regulatory action
- Many states resisting implementation
- Healthcare reform lawsuits continue, likely to result in opportunities for re-thinking of the law in some areas
- Backlog of regulations and guidance implementing key reform provisions – being released quickly and more to come in the short term and over time
- Uncertain political, legal, regulatory, operational environment continues - continued uncertainty and delays around 2014 implementation timeline
- Even without delays, it will still take several years for healthcare reform regulations and guidelines to be fully implemented
How will the Federal Exchange in NJ work? Will it be like the Massachusetts Connector Program with 3 levels of insurance to buy from?

- The exchanges in every state are intended to basically take the form of websites, designed to lead people through the process of selecting an insurance plan, based on price and coverage.
- In the process, users will be able to determine whether they qualify for subsidies or for Medicaid.
- The existing Massachusetts Health Connector is a model for what most exchanges are expected to look like.
Repealed

- CLASS Act (long term care provisions)
- Free-choice voucher provision (employer vouchers for exchange coverage)

Delayed

- Exchange notice requirements (rules to be released summer 2013)
- Insured plan nondiscrimination rules (likely to be 2014)
- SHOP small employer exchanges (2015)
- Automatic enrollment (likely to be 2015 or beyond)
- Claims/appeal (state external review related) requirements (2016)
Preparing for the Mandates
Individual Mandate (and the Exchange Application)

- In 2014, people who can afford to but do not purchase health insurance will pay tax penalty
- IRS will collect penalty via tax returns - in 2014, federal returns will include a new form to list source of health insurance
- Mandate “tax” will likely impact 7.3 million Americans or 2% of population
- Most Americans either already have insurance, are exempt under the law, would qualify for Medicaid, or would use tax credits to buy policies in the exchanges
- Draft 21 page “Application for Health Insurance” released - for individual access to exchange coverage and credits/subsidies
Large Employer Mandate 2014

- Large employers must understand the employer “Pay or Play” mandate rules
- Rules are complicated - lots of exceptions/transitional rules
- Businesses with 50 or more FTEs that do not offer coverage or that offer insurance that is too expensive or does not meet minimum federal standards may have to pay penalties
- The law does not require employers to offer health insurance to employees but if they don’t, they’ll pay a tax:
  - If **NO COVERAGE** offered to FTEs, penalty = $2,000 per FTE minus first 30 FTEs
  - If **SUBSTANDARD COVERAGE OFFERED** to FTEs, penalty = lesser of:
    - $3,000 per FTE on exchange plan receiving credits/subsidies, or
    - $2,000 per FTE minus first 30 FTEs
Conduct Pay or Play Analysis

- Determine potential costs of various courses of action in response to rules
- Conduct initial impact analysis - project planning/strategy for 2014 compliance with the “Pay or Play” requirements
- Need to count FTEs and report number to IRS
  - Penalty amounts depend on whether or not you offer health coverage to FTEs (generally those who work, with respect to any month, an average of at least 30 hours/week)
  - In calculating penalties, PTEs will not be taken into account
Count and Report FTEs

- If large employer and at least one FTE is potentially eligible for income-based assistance in the exchange, then may be subject to shared responsibility penalty

- Every large employer must count employees and measure hours to see if they are FT or PT

- Employers should begin anticipating makeup of workforce in ample time to plan for 2014

- Employers that employ or anticipate employing variable-hour or seasonal employees need to begin to count FTEs

- Employers will have to collect data, including hours worked, to identify and report to the IRS on FTEs
Full-Time Employee (FTE) Determination
Assist an “applicable large employer” in understanding the definition of FTE for purposes of the employer “Pay or Play” (shared responsibility) mandate penalty rules.

Follow up with your Conner Strong & Buckelew account team:

- Review our proprietary Pay or Play tools for more information on penalty calculations.
- Be prepared to change administrative and other processes to prove compliance.
- Establish procedures to accommodate interactions with health insurance exchanges, prepare new EE notices, and meet government disclosure obligations.
- Continue to monitor healthcare reform developments.
Employers Subject to Requirements

Are you a common-law employer ("ER"), including a for-profit, not-for-profit, tax-exempt, private, church, or governmental (federal, state or local) employer (whether or not you offer health coverage to employees)?

Yes ☐ No ☐

- If you answered "NO" then STOP. You are not subject to the shared responsibility requirements.
- If you answered "YES" then go to the next slide.

Beginning in 2014, a shared responsibility requirement will apply to all ERs – whether private, governmental, for-profit, or nonprofit.
Small Employers

Did you average less than 50 full-time employees (FTEs) in the preceding calendar year?

Yes □  No □

- If you answered “YES” then STOP. You are a small ER and are not subject to the shared responsibility requirements. Review analysis and rules on definition of FTEs and equivalents for purposes of small employer determination.

- If you answered “NO” then go to the next slide.
Large Employers

Did you average 50+ FTEs in the preceding calendar year?

Yes ☐ No ☐

A “large ER” is an ER with more than 50 FTEs during the preceding calendar year.

- If “NO”, then STOP.
- If “YES”, then you are subject to the penalty rules and you must go to the next slide.

**Action Step:** Determine if ER is a member of a controlled group of companies. If yes, each member company will be considered a “large ER” subject to testing and each separate ER must determine whether they owe a penalty payment. Determine if these controlled group rules apply and if so identify separate ERs within your group subject to testing. Each separate ER will have to determine FTE status and each ER should complete separate FTE analysis.
If you are a large ER and at least one of your FTEs is potentially eligible for income-based assistance in the exchange, then you may be subject to a shared responsibility penalty.

- The penalty is determined by reference to the number of FTEs employed by for a given calendar month.
- FTEs are generally those who work, with respect to any month, an average of at least 30 hours/week. In calculating penalties, part-time employees (“PTEs”) will not be taken into account.
- Every large ER will need to count EEs and measure their hours to see if they are FT or PT. ERs will have to collect data, including hours worked, to identify and report to the IRS on FTEs.

**Action Step:** Determine method for collecting data.
To run the penalty calculation, you must first determine effective date of testing which is dependent on plan year as of December 27, 2012.

- For calendar year plans, effective date for penalty testing is January 1, 2014.

- For non-calendar year plans, effective date for penalty testing is first day of the plan year beginning in 2014 and ending in 2015. Note: ERs should understand and apply the special transition rules for non-calendar year plans.

**Action Step:** Determine the effective date of penalty testing for the ER.
An applicable large ER will be required to report information on the FTE determination to the IRS for the entire 2014 calendar year.

- *If your effective date for testing purposes is 1/1/14, you will be required to report information on your FTE determination for the entire 2014 calendar year.*

- *If you are using the non-calendar year plan year transition relief for penalty testing purposes (because you have a non-calendar year plan year), you will still be required to report information on your FTE determination for the entire 2014 calendar year.*
The premium tax credits will first become available for the entire 2014 calendar year.

ER reporting is essential to administration of this credit, so reporting is required even if during some calendar months in 2014 the penalty will not apply due to application of transition rules for fiscal year plan years (e.g., ER with a 7/1/14 plan year effective date for penalty testing purposes must still report number of FTEs for period from 1/1/14 to 6/30/14).

ER may determine FTEs for the period in 2013 plan year that falls in 2014 (1/1/14 to 6/30/14 in the example above) for purposes of the reporting requirements after period has ended, using actual service data rather than the look-back measurement method, and use those determinations for the reporting required at the beginning of 2015 to cover the entire 2014 calendar year.
For purpose of FTE determination, the term EE means an individual who is an EE under common-law standard.

Therefore, for purposes of the FTE determination, a leased EE (as defined in Code section 414(n)(2)), a sole proprietor, a partner in a partnership, or a 2-percent S corporation shareholder is not counted as an EE.
ER must understand definition of “hours of service” (“HOS”) in order to determine whether EEs are PT (not subject to penalty calculation) or FT (subject to penalty calculation).

Some EEs may be clearly FT or clearly PT and should be tracked as such. Other EEs could fall into category of “variable hour” or “seasonal” and can be tracked using a look-back measurement method of counting HOS.

The term FTE means, with respect to a calendar month, an EE who is employed an average of at least 30 HOS/week with an ER. For this purpose, 130 HOS in a calendar month is treated as monthly equivalent of at least 30 HOS/week, provided ER applies this equivalency rule on a reasonable and consistent basis.

The HOS rules are very complicated. The following slides related to HOS rules will help you identify which of the rules apply to your EE population.
Hourly Employees

Do you have EEs paid on an hourly basis?

Yes ☐  No ☐

If “No”, then go on to the next slide.

If “Yes”, to determine the FT status of EEs paid on an hourly basis, you must calculate actual HOS (including leave) from records of hours worked and hours for which payment is made or due. *Note:* For EEs paid on an hourly basis, the term HOS means each hour for which an EE is paid, or entitled to payment, for performance of duties for ER; and each hour for which an EE is paid, or entitled to payment by ER for a period of time during which no duties are performed due to:

- Vacations
- Holidays
- Leave for illness, disability or other incapacity
- Layoffs
- Jury duty
- Military leave
Non-Hourly Employees

Do you have EEs paid on a non-hourly basis?

Yes ☐  No ☐

➢ If you answered “No” then go to the next slide.

➢ If “Yes” you may choose from 3 methods to determine FT status of non-hourly EEs.

  ▪ Actual HOS. Count actual HOS worked for which payment is made or due.

  ▪ Days-worked equivalency. Credit an EE working at least one HOS in a day with 8 HOS for that day.

  ▪ Weeks-worked equivalency. Credit an EE working at least one HOS in a week with 40 HOS for that week.
Different classifications allowed for non-hourly EEs as long as classifications are reasonable and consistently applied.

**Action Step:** Determine if you will consider applying different methods for different classifications of non-hourly EEs (must use one of 3 methods). But ER is not required to use same method for all non-hourly EEs, and may apply different methods for different classifications of non-hourly EEs, provided classifications are reasonable and consistently applied.

**Note:** A controlled group member is not required to apply same methods as other controlled group members of same applicable large ER for same or different classifications of non-hourly EEs, provided that in each case classifications are reasonable and consistently applied by controlled group member.
May change classification methods each year for non-hourly EEs

Action Step: Determine if you will consider changing the method of calculating non-hourly EEs' HOS for each calendar year. For example, for all non-hourly EEs, an ER may use actual hours worked method for the calendar year 2014, but may use days-worked equivalency method for counting HOS for calendar year 2015.

Anti-Abuse Rule: The number of HOS calculated using days-worked or weeks-worked equivalency must reflect generally hours actually worked and hours for which payment is made or due.

Example: ER may not use a days-worked equivalency in the case of an EE who generally works three 10-hour days/week, because that method would substantially understate EE’s HOS as 24 HOS/week, which would result in EE being treated as not a FTE.
Compensation Not Based on Hours

Do you have EEs who are compensated on a commission basis, or who are adjunct faculty, transportation EEs, or hold analogous employment positions?

Yes ☐  No ☐

➢ If you answered “No” then go to the next slide.

➢ If “Yes” until further guidance is issued, you must use rules for counting HOS under a reasonable method for crediting HOS.

Note: The agencies are considering how best to determine FT status of EEs whose compensation is not based primarily on hours (adjunct faculty), EEs whose active work hours may be subject to safety-related regulatory limits (salespeople/commission basis or airline pilots/flying hours are subject to limits), and EEs in other positions that raise similar issues with respect to crediting of HOS (e.g., per diem, stipend, etc.)

Example: It would not be reasonable to fail to take into account travel time for travelling salesperson compensated on a commission basis, or in the case of an instructor, such as an adjunct faculty member, to take into account only classroom or other instruction time and not other hours necessary to perform EE’s duties, such as class preparation time.
Related Entities

Do you have EEs who work some period of time for a related entity?

Yes □  No □

➢ If you answered “No” then go to the next slide.

➢ If “Yes” you must treat an HOS for one controlled group member as an HOS for all other controlled group members for all periods during which controlled group members are part of same group of ERs forming an applicable large ER.

Note: For purposes of identifying the EE as a FTE, all HOS performed for all entities treated as a single ER under Code section 414(b), (c), (m), or (o) must be taken into account.
**Work Outside US**

**Do you have EEs who work outside the United States?**

Yes □  No □

- If you answered “No” then go to the next slide.

- If “Yes” do not include HOS worked outside the US. *Note*: HOS do not include HOS to extent compensation for those HOS constitutes income from sources outside the US. Rule applies without regard to residency or citizenship status of individual.

  - EEs working overseas generally will not have HOS, and will not qualify as FTEs.

  - But all HOS for which an individual receives U.S. source income are HOS.
Are you an educational institution?

Yes □  No □

➢ If you answered “No” then go to the next slide.

➢ If “Yes” you may use an averaging method for employment break periods that generally would result in EE who works FT during active portions of academic year being treated as a FTE for penalty purposes.

➢ Note: For purposes of look-back measurement method, the rules limit the number of hours educational organization is required to take into account in a calendar year with respect to most periods of absence with no HOS. The limit is 501 hours (same as service crediting rules for retirement plans).
How does this effect higher education and part time faculty?

- The agencies are considering comments on many issues relating to teachers, other educational organization EEs, or industries with comparable circumstances.
- Many EEs of educational institutions will be tested as variable hour EEs under the look back measurement method.
- A part time EE is not subject to the penalty calculation.
Some EEs may be clearly FT or clearly PT and should be tracked as such.

Other EEs could fall into category of “variable hour” or “seasonal” and can be tracked using a look-back measurement method of counting HOS.
How does an employer calculate 30 hours for qualifying for healthcare? Is it the title Part Time Employee that's applicable or any employee consistently working more than 30 hours per week, i.e. Regular Temporary, that’s eligible?

An ER may still define who is eligible for healthcare according to their plan eligibility definitions (okay to offer coverage to PTE over 20 hours/week, can exclude seasonal, temporary, etc. from coverage)

An applicable large ER is now required to understand definition of HOS for penalty calculation purposes in order to determine whether EEs are PT (not subject to penalty calculation) or FT (subject to penalty calculation). For penalty calculation, the term FTE means generally averaging at least 30 HOS/week with an ER.
Will you have EEs (as of 1/1/14) who clearly are not FTEs as they consistently work less than 30 hours/week (no question that they fall into the category of a PTE who regularly works less than 30 hours/week)?

Yes ☐  No ☐

EE’s status under rules may be easy to determine when EE is hired to work regular number of hours each week on an ongoing basis.

If the answer is “NO” – you have no EEs (as of 1/1/14) who consistently work less than 30 hours/week - then go on to the next slide.

If “YES”, note that these PTEs who consistently work less than 30 hours/week DO NOT qualify as FTEs and no penalty is due for them.

Note: ER who offers coverage to PTE must offer coverage to EE at or before conclusion of EE’s initial 3 calendar months of employment.
ER is not subject to penalty for PTEs who are not reasonably expected to work a FT schedule upon their start dates and do not in fact work such a schedule.

**Observation:** If EEs that are not reasonably expected to work FT hours end up working FT hours and/or an ER cannot demonstrate that EE did not in fact work such hours, ER could be subject to penalty. Thus, it may make sound business practice for ERs to treat all EEs not characterized as FTEs as of their hire date as variable hour EEs on a going-forward basis.

**Action Step:** Determine whether to treat these EEs (who are not characterized as FTEs as of their hire date) as variable hour EEs. If so, track them as variable.
Do you have EEs (as of 1/1/14) who clearly satisfy the FTE per month hours rule as they consistently work at least 30 HOS (no question that they fall into the category of a FTE who works on average at least 30 hours/week)?

Yes ☐  No ☐

EE’s status under rules may be easy to determine when EE is hired to work a regular number of hours each week on an ongoing basis.

If the answer is “NO” - you have no EEs (as of 1/1/14) who clearly are FTEs - then go on to the next slide.

If yes, note that these EEs qualify as FTEs and you must test their coverage offer to determine if a penalty is due for them.

Note: With respect to a FTE (who is not a seasonal EE), an ER must offer coverage to the EE at or before conclusion of EE’s initial 3 calendar months of employment, or face a penalty.

Action Step: Record the status of these EEs as FTEs.
Count and Track Variable Hour Employees

Do you have EEs who work less than 30 hours/week, or are variable hour, non-hourly, short term, or seasonal EEs or any other category of EE where you are not sure if they would fall into the category of an EE who works on average more than 30 hours/week?

Yes ☐  No ☐

If you answered “NO” then STOP. You have no variable hour or seasonal EEs (so no need to consider a look-back measurement period). Confirm that you have counted all EEs in the previous steps as either clearly PT (not subject to a penalty) or clearly FT (subject to penalty testing).

If “YES” you must calculate the HOS for your variable hour and/or seasonal EEs (go on to the next slide).
New EE expected to be employed initially at least 30 hours/week may be a variable hour EE if, based on facts and circumstances at “start date”, the period of employment at more than 30 hours/week is reasonably expected to be of limited duration and it cannot be determined that EE is reasonably expected to be employed on average at least 30 hours/week over the initial MP.

Effective as of 1/1/15, and except in the case of seasonal EEs, ER will be required to assume that although EE’s HOS might be expected to vary, EE will continue to be employed by ER for entire initial MP; accordingly, ER will not be permitted to take into account likelihood that EE’s employment will terminate before end of the initial MP.

With respect to 2014, status of any individual EE as a variable hour EE cannot be based on ER expectations regarding aggregate turnover. Rather, there must be objective facts and circumstances specific to newly hired EE at start date demonstrating that individual EE’s employment is reasonably expected to be of limited duration within the initial MP.
Through at least 2014, ERs are permitted to use reasonable, good faith interpretation of the term “seasonal EE”.

**Seasonal workers defined:**

- EEs who perform services on a seasonal basis (including migrant and seasonal agricultural workers, and retail workers employed exclusively during holiday seasons).
- ERs may apply a reasonable, good faith interpretation -- e.g., may be reasonable for an accounting firm to determine that additional staff hired during months of February through April to prepare individual income tax returns are seasonal workers.
- However, according to the IRS, treating an educational EE who works during active portions of the academic year as a seasonal EE would not be reasonable.
Participant Question:

How does this legislation affect the seasonal (6 month) workforce who will be working more than 30 hours per week?

- Special rule applies for seasonal workers when making large employer determination - makes it easier to avoid large ER status where ER’s non-seasonal workforce, including FT equivalents for PT employees, is 50 or fewer.

- But if ER is subject to the shared-responsibility provisions, seasonal EEs working 30 or more hours/week must be included (and tested as variable hour EEs) when determining shared-responsibility penalties.
The remaining slides apply if you have determined that you have EEs who work less than 30 hours/week, are variable hour, non-hourly, short term, or seasonal EEs, or who are in any other category of EE where you are not sure if they would fall into the category of an EE who works on average more than 30 hours/week.

To address the concerns related to EEs who have varying hours or employment schedules, an ER may determine FTE status of these EEs by doing one of the following:

- use a month-by-month method of determining FTE status, or
- use an optional look-back measurement method to determine FTE status

**Action Step:** Determine if you will use a month-by-month method or the look-back measurement method.
If using a month-by-month method, then, STOP. You do not need to develop an optional look-back measurement method to determine FTE status. To use the month-by-month method, do the following:

- Calculate the total HOS for each “variable hour” EE for each month.
- Record the status of these EEs as either FT or PT for the month.

If using look-back/measurement method, go on to the next slide.
The remaining slides apply if you have determined that you will use the optional look-back measurement method to determine FTE status for variable hour and seasonal EEs.

- IRS guidance provides two *safe harbors* (one for ongoing EEs and another for new EEs) that ERs can use to decide if an EE has averaged 30 or more hours/week.

- The safe harbors both rely on some defined time periods that generally must be measured in a uniform fashion for all EEs.
Look Back Measurement Periods

Defined consecutive periods when using the look-back/measurement method:

- The *initial measurement period* (MP) - a time period of at least 3 but not more than 12 consecutive calendar months to determine whether certain new EEs are FTEs.
- The *standard MP* - a time period of at least 3 but not more than 12 consecutive calendar months to determine whether an ongoing EE is a FTE.
- The *stability period* (SP) - a time period that follows, and is associated with, an initial MP or a standard MP, to determine whether an EE is a FTE.
- The *optional administrative period* (AP) – additional time (up to 90 days), between the MP and the SP to determine which EEs are eligible for coverage and to notify and enroll EEs. The optional AP follows the MP. During the AP, ER tallies hours during MP and provides enrollment materials to any EEs determined to be FT.
Participant Question

*With Substitute Staff, i.e., Teachers, Aides, Custodians, etc. – What time frame should be utilized to determine eligibility for Health Benefits, prior year, quarter, open enrollment, etc.*

- It appears that ER’s risk for variable hour EEs being considered FTEs (subject to the penalty calculation) mainly depends on length of MPs.
  - ERs with longer MPs (such as 11 or 12 months) apparently will have less risk of having these folks included as FTEs during the SP.
  - ERs with shorter MPs will generally face greater risks with respect to these variable hour EEs.
For purposes of counting hours during the MP, FTE is an EE who works an average of at least 30 hours/week (130 hours/month) during the MP.

EE is credited with all hours for which he or she is entitled to payment (including vacation and sick time).

- Special rules for calculating hours during paid leaves of absence; unpaid FMLA and military leave; and gaps in normal work schedule for educational institutions.

Special rehire rules

- If EE terminates employment and is rehired 26 or more weeks later, EE may be treated as new EE.

- If EE terminates and is rehired fewer than 26 weeks later, must be treated as a continuing EE (e.g., if rehire is in same MP, rehired EE gets credit for hours before termination).
FTEs During the Stability Period

- SP follows the AP, or if no AP, the SP immediately follows MP.
- Any EE who was determined to be FT based on hours during MP must be treated as FT during SP.
- SP for EEs determined to be FT must be at least 6 months and no shorter than MP.

*Transitional rule:* If ER wants to have a 12-month standard SP starting in 2014, ER would normally need to have a 12-month standard MP starting in 2013 or even 2012. However, for 2014, ER may use 6 month transitional MP in 2013, even if they plan to use a 12-month standard SP in 2014. This transitional MP:

- may be shorter than 12 months but cannot be less than 6 months;
- must begin no later than 7/1/13; and
- must end no earlier than 90 days before first day of plan year beginning on or after 1/1/14.
Special Rule to Determine the First MP Starting in 2014

**Calendar year plan:** ER with calendar year plan could use MP from 4/15/13 - 10/14/13 (6 months), followed by AP ending on 12/31/13, and then use 12-month standard SP beginning 1/1/14.

**Non-calendar year plan (beginning before 7/1/14):** ER with fiscal plan year beginning 4/1 that also elected to implement a 90-day AP could use MP from 7/1/13 - 12/31/13 (6 months), followed by AP ending on 3/31/14.

**Non-calendar year plan (beginning on or after 7/1/14):** ER with fiscal plan year beginning on 7/1/14 must use MP that is longer than 6 months in order to comply with requirement that MP begins no later than 7/1/13 and ends no earlier than 90 days before SP. Example: ER could have 10-month MP from 6/15/13 - 4/14/14, followed by AP from 4/15/14 - 6/30/14. Transition relief is solely for application of an SP beginning in 2014 through end of that SP (including any portion of SP falling in 2015).

**Note:** ERs who use a full 12-month MP are not required to begin the MP by 7/1/13. Example: ER with fiscal plan year beginning on 11/1/14 could use a 12-month MP from 9/1/13 - 8/31/14, followed by AP from 9/1/14 - 10/31/14.
There are special rules on pay periods including the beginning and end dates of the MP.

ERs may begin and end MPs with beginning and ending of regular payroll periods if each of the payroll periods is one week, two weeks, or semi-monthly in duration.

Example: ER using calendar year as MP could exclude entire payroll period that included 1/1 if it included the entire payroll period that included 12/31, or, alternatively, could exclude the entire payroll period that included 12/31 if it included the entire payroll period that included 1/1.

**Action Step:** Determine if ER will adjust starting and ending dates of their MPs in order to avoid splitting EEs’ regular payroll periods.
Generally, standard MP and SP selected by applicable large ER member must be uniform for all EEs; however, the applicable large ER member may apply different MPs, SPs, and APs for the following categories of EEs:

- Salaried vs. hourly EEs
- Union versus nonunion EEs
- EEs covered under separate collective bargaining agreements
- EEs with primary places of business in different states
The applicable large ER member may change its standard MP and SP for subsequent years, but generally may not change the standard MP or SP once a standard MP/SP determination period has begun.
Different measurement periods (MPs) must be used for making the determination for “ongoing” EEs versus “new” EEs.

- A “standard” MP applies when determining FT status of ongoing EEs.
- For new hires, ERs use “initial” MPs, which are tied to new EE’s start date (first date EE has at least one HOS).

The following slides address the determinations that must be done separately for ongoing variable hour or seasonal EEs, and new variable hour or seasonal EEs.
This addresses the optional look-back measurement method to use to determine FTE status for variable hour or seasonal ongoing EEs.

- An ongoing EE is generally defined as an EE who has been employed by an ER for at least one standard MP.

- To determine the FT status of ongoing EEs, an ER may choose to measure an EE’s HOS by looking back over a period of 3 to 12 months, called the “standard” MP.

- If ER determines that an ongoing EE was employed on average at least 30 HOS/week during the MP, then ER must treat EE as a FTE during the subsequent SP, regardless of the EE’s number of HOS during the SP, so long as he or she remains an EE.
New Employees

This addresses the optional look-back measurement method to use to determine FTE status for variable hour or seasonal new EEs.

- If applicable large ER member uses the look-back measurement method for its ongoing EEs, ER may also use the optional method for new variable hour EEs and for seasonal EEs. The term new EE means an EE who has been employed for less than one complete standard MP.

- Special employment break period rules apply for treatment of an EE as a new EE or ongoing EE following a period for which no HOS are earned.

- There are special change in status rules for a new variable hour EE (e.g., if the EE becomes a FTE during the initial MP).

- ERs may need to begin an initial MP in 2013 to have corresponding SP for 2014 (e.g., if there are any new variable hour or seasonal employees who have been employed for less than the first complete standard MP set for the 2014 year).
The initial MP, between 3 and 12 consecutive months, may begin on any date between EE's start date and the first day of the first calendar month following the start date.

However, the initial MP and the AP combined may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the EE’s start date (totaling, at most, 13 months and a fraction of a month).

If ER determines that a new EE was employed on average at least 30 HOS/week during MP, then ER must treat new EE as a FTE during subsequent SP, regardless of the EE’s number of HOS during the SP, so long as he or she remains an EE.
Once a new variable hour or seasonal EE has been employed for an entire standard MP, ER will need to test EE again for FTE status.

ER will need to test EE for FT status beginning with ER's standard MP, at same time and under same conditions as apply to other ongoing employees.

If EE determined not to be FT during initial MP is determined to be FT during the overlapping or immediately following standard MP, he/she must be treated as FT for the entire SP corresponding to that standard MP (even if that SP begins before the end of the SP associated with the initial MP).
Records Needed

Full-Time EEs: EEs (as of 1/1/14) who clearly satisfy FTE per month hours rule as they consistently work at least 30 HOS (no question that they fall into the category of a FTE who works on average at least 30 hours/week)

- With respect to EE who is reasonably expected at his or her start date to work a FT schedule of 30 hours/week or 130 hours/month (and who is not a seasonal EE), ER must offer coverage to the EE at or before the conclusion of the EE’s initial 3 calendar months of employment, or face a penalty.
- Record the status of these EEs as FT.

Part-Time EEs: EEs (as of 1/1/14) who clearly are not FTEs as they consistently work less than 30 hours/week (no question that they fall into the category of a PTE who works on average less than 30 hours/week)

- Can treat these EEs (who are not characterized as FTEs as of their start date) as variable hour EEs, and tracking them as variable under the look-back measurement method.
- If not treating them as variable, to help ensure compliance, record the status of these EEs as PT.
**Variable hour EEs:** EEs who work less than 30 hours/week, or are variable hour, non-hourly, short term, or seasonal EEs or any other category of EE where you are not sure if they would fall into the category of an EE who works on average more than 30 hours/week.

- If using **month-by-month method** to track variable hour EE.
  - Calculate total HOS for each “variable hour” EE for each month.
  - Record status of these EEs as either FT or PT for the month.

- If using **look-back measurement method** to track variable hour EE.
  - Calculate total HOS for each “variable hour” ongoing EE for each MP.
  - Record status of these ongoing EEs as either FT or PT for the SP.
  - Calculate total HOS for each “variable hour” new EE for the initial MP.
  - Record status of these new EEs as either FT or PT for the SP.
  - Next calculate total HOS for each “variable hour” new EE as an ongoing EE under ER’s standard MP.
  - Record status of these new/ongoing EEs as either FT or PT for the SP.
Be Prepared
Employers who want to continue to offer benefits can do so and effectively navigate through cost pitfalls.

Affordable coverage “Penalties” can be avoided
- Offer at least one safe harbor plan providing 60% coverage
- Design cost share for the 60% plan to be less than 9.5% of W-2 income
- Adjust full time hours to be less than 30 hours (if desirable)

Offer higher cost plans on an optional basis alongside the 60% plan

Most major employers have indicated an interest in maintaining coverage come 2014

Things can change

Planning, cost calculating, and readiness is key

Be ready with employee communications
Health insurance reform is here to stay

The costs and risks of non-compliance are high

There are strategies available to manage through

Be ready – don’t wait

Assess and measure impact of strategic and health care reform changes

Understand the financial impact: identify costs and project through 2018

Create appropriate metrics and delivery mechanism

A compliance strategy is not a health care strategy

Health care reform does not solve two priority issues: rising costs and declining health
2013 Strategies

- Develop strategy to protect your business and your benefits
  - Reward health behavior -- in 2014, the law allows greater wellness incentives
  - Review FTE definition
  - Evaluate a 60% plan and 9.5% cost share as integrated option
  - Revise and focus your employee communications and engagement strategies

- Explore emerging solutions:
  - Network configurations (ACOs)
  - Local market delivery (new normal)
  - “Private Exchanges” using a defined contribution model
Large employers may be allowed into Exchanges

**Excise Tax on “Cadillac” Plans**
- 40% excise tax on employers that offer health care coverage costing more than
  - $10,200 individual (indexed)
  - $27,500 family (indexed)

**Increased threshold applies for retirees ages 55-65 and for selected high-risk occupations:**
- $11,850 individual
- $30,950 family
  > Adjusted for age and sex
What to Do Next?

- Establish a healthcare reform task force to ensure compliance and evaluate 2014 pay or play issue/track FTE status
- Develop communication strategy for employees and stakeholders
- Evaluate level of benefits provided – offer a lower-cost plan (like a CDHP) as core benefit and offer option to pay more for richer coverage
- Consider a private exchange
- Consider health management/wellness programs for long-term savings
- Rethink where and how care is delivered - consider ACOs, telemedicine, surgical centers of excellence, medical home, etc.
- Watch for and anticipate changes
- Have flexible decision making process
Agency Resources

Agency Healthcare Reform Sites:

Health and Human Services (HHS):
http://healthcare.gov/

Department of Labor (DOL):
http://www.dol.gov/ebsa/healthreform/

Internal Revenue Service (IRS):
Help from Conner Strong & Buckelew

Conner Strong & Buckelew
Healthcare Reform website page at:

http://www.connerstrong.com/healthcare_reform

- News updates
- Online library of client updates and alerts
- Summary of major provisions of the new law
- Detailed Year-by-Year timeline of changes
- Outline of all aspects of the new law

Check back for updates, news and analysis, and updated tools to help you navigate this complex process

Call Conner Strong & Buckelew at 877-861-3220
Other Resources from Conner Strong

Periodic Webinars
- Web-based presentations on health care legislation, regulations and innovative ideas

Email Alerts and Updates
- High level, quickly produced articles about emerging issues intended to alert clients to legislative and regulatory developments
- Historic library available on line

Perspectives
- Thought pieces intended to identify trends and issues, helping clients anticipate challenges
Thank you for your participation!