

# What Employers Need to Know ...

- About the Affordable Care Act
- About State Marijuana Laws

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Western Grocers Trust

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# The Affordable Care Act (ACA)

- ACA = “Obamacare”
- ACA = “Always Changing Act”



# ACA: Compliance Challenges

- The law is incredibly complex
- Key deadlines keep moving
- Regulations and guidance still evolving
- Multiple Regulators
  - Department of Labor, IRS, Center for Medicaid Services, state authorities





## ACA Overview – primary components

- Medicare expansion
- Individual requirements
  - Coverage vs. penalty
- State health benefit exchanges
  - States can opt in/out
- Employer requirements
  - “pay or play” penalty
- Health plan requirements



## State Exchanges – Employer SHOP Programs

SHOP = “Small Business Health Options Program”  
where small employers can find group plans through  
the Exchange.

- **Washington** – available only in Clark & Cowlitz counties
- **Oregon** - Federal only available
- **Alaska** - Federal only available



## Overview of Employer Requirements by Size (number of FTEs)

- Under 50
  - *no obligation to provide health insurance*
- 50-99
  - Mandate effective **2016**
- 100+
  - Mandate effective **2015**
- 200+
  - Automatic enrollment delayed pending guidance
- 250+
  - W-2 reporting of cost of coverage (informational)



## Requirements for ALL employers

- 90-day waiting period
- Employers prohibited from requiring eligible workers from waiting more than 90 days for coverage to be effective



# Health Plan Requirements

- Limitations on out-of-pocket maximum
  - Employee's out-of-pocket medical expenses capped at \$6350 (individual) or \$12,700 (family) per year for in-network essential health benefits
- No annual or lifetime maximum
  - This is what the plan pays
- No exclusions for pre-existing conditions
- Dependents covered to age 26



## Individual requirements

- Absent certain exceptions, all individuals must purchase qualified health insurance – or pay a penalty
- Health insurance can be obtained through state exchanges or employer-provided plans
- Deadline to sign up April 30, 2014
  - Next open enrollment November 2014 for 2015



## Employer Mandate “Pay or Play Penalty”

- Requires large employers to offer *affordable health coverage* to *full-time employees* and their *dependents* or pay a penalty
  - 2015 – employers with 100+ must comply
  - 2016 – employers with 50+ must comply
  - Small employers (under 50 employees) are *exempt*



# Mandate Applies Only to Large Employers

- Determined by number of FTEs (full-time equivalents)
- Under 50 FTEs
  - NOT required to provide insurance
  - NOT subject to penalty
  - Incentive tax credits for small employers (under 25 FTEs)
- 50 or more FTEs
  - Required to provide minimum coverage for full time employees (not part time employees)
  - Penalty if coverage not provided or if insufficient



# How to Calculate FTEs

- FTE = full-time equivalent
- Includes:
  - Full time employees: 30+ hours/week
  - Part-time employees: hours of service per month/120 hours
- Calculation based on previous year's average
- Business under common ownership aggregate their employees



# FTE Example #1

- 40 full time employees
- 30 part-time employees
  - Work between 10-29 hours/week
  - Total monthly hours 720
  - Divided by 120
  - 6 full time equivalents (FTEs)
- Total FTEs: 40 full-time +6 FTE = **46 FTE**
- Employer is exempt from providing insurance



## FTE Example #2

- Same as before, except employer hires 30 extra part-time seasonal employees for the summer months
- 40 full-time employees
- 60 part-time employees (June, July, August)
  - Total monthly hours 1440
  - Divided by 120
  - 12 full-time equivalents
- Total FTEs: 40 full time +12 FTEs = 52\* FTEs
- \***SAFE HARBOR**: if the seasonal employees worked fewer than 120 days, then they can be excluded from the calculation



# Under 50 FTEs



< 50

- No requirement to provide insurance
- No penalty
- Employer mandate provisions do not apply
  - No requirement to provide dependent coverage
  - No requirement to define full-time as 30 hours per week



<25

## Small Employer Tax Credits

- Small employers who obtain insurance through the exchange are eligible for a tax credit of 50% of their contribution to the employee's premium, provided that the employer contributes at least 50% of the premium



**50+ FTEs**  
**“Large Employer”**



50+ (2016)

100+ (2015)

Large employers must offer *affordable minimum essential coverage* to all *full-time employees* and their *dependents*

- Full time = 30+ hours/week
- Dependents generally do not include spouse

OR

Pay a penalty



50+

What's "minimum essential coverage"?

- Based on a percentage of actuarial cost sharing
- Minimum coverage requires 60% - i.e. 60% of health care expenses are paid by the plan, 40% are paid by the employee
- These equate to "metal levels" on the exchange (bronze, silver, platinum)



50+

Coverage must also be “affordable”

- Coverage is affordable if the employee’s portion of the employee-only premium is less than 9.5% of their household income



## Determining “Affordability”

- Three methods:
  - W-2 reported wages
  - Hourly rate x 130
  - Federal poverty line

What the employee would pay for employee-only coverage must be less than 9.5% of these benchmarks.



## Affordability Example

- Employee makes \$9.10/hour and W-2 reported earnings were \$16,652. Employee-only coverage is \$200/month, for which employer pays half. Employee therefore pays \$100/month or \$1200/year
- Any additional amount of premium paid for dependent coverage is not included in the calculation



## Affordability Calculation

- Based on the foregoing, the coverage is affordable under all three calculations.
  - W-2 calculation:  $\$16,562 \times 9.5\% = \$1573.39$
  - Hourly rate calculation:  $\$9.10 \times 130 = \$1235$
  - Federal poverty level calculation:  $\$15,282 \times 9.5\% = \$1451.79$
- Employee's portion (\$1200) is below each of these markers



50+

## When does the penalty apply?

- Employer does not offer minimum essential coverage
- OR
- If an employee receives a premium tax credit or cost-sharing subsidy through the exchange and the coverage provided is
  - Not affordable (employee-only premium is  $> 9.5\%$  of income)
  - or
  - Insufficient (covers less than 60% of plan costs)



50+

## Penalty calculation

- If no coverage provided:
  - \$2000 x total number of full-time employees (less 30)
- If coverage is insufficient, penalty is the lesser of:
  - \$3000 x each full-time employee who receives a tax credit or cost-sharing subsidy through the exchange
  - Or
  - The penalty assessed if no coverage is provided



50+

## Pay or play?

- Dropping insurance in favor of paying the penalty does not necessarily result in cost-savings
- Impact of choosing to drop coverage:
  - Loss of the 35% tax deduction for employee health expenses
  - Loss of 7.65% in FICA tax deduction for employee health expenses
  - Penalty payment is not deductible as a business expense



# Summary

- All employers are required to comply with prohibition on 90-day waiting period
- Small employers (<50) exempt from employer mandate
- Large employers must comply with employer mandate in future –
  - 2015 (100+)
  - 2016 (50+)



# State Marijuana Laws: What's an Employer To Do?



## Medical Marijuana is Legal in 20 States

- In the western states, medical marijuana is legal in:
  - California, Hawai'i, Oregon, Washington, Alaska, Arizona, Colorado, Nevada, New Mexico
- Recreational marijuana is legal in Washington and Colorado
- Utah, Texas have NOT legalized marijuana use



Marijuana is **ILLEGAL**  
under federal law



## Because marijuana remains illegal under federal law ...

- Employers can retain zero-tolerance policies
- Employers can continue to enforce drug testing
- Employers are **REQUIRED** to enforce prohibition under Federal Motor Carrier Law, 49 CFR Section 40.151(e)



## So what's the impact of these state laws?

- Employers are NOT required to tolerate
  - Smoking on the job
  - Employees impaired by marijuana use
- Employers can be a little more flexible in their policies where employees use marijuana away from the workplace
  - Can decline to enforce drug test for employees with state-issued medical marijuana cards



## Making your position clear to your employees

- Update your employee handbook or drug testing policy
- Make sure you have a written policy setting forth guidelines and expectations