

Overview of Health Care Reform and its Impact on Agricultural Employers¹ (as of October 2012)

This is an overview of the employer mandate contained in the Patient Protection and Affordable Care Act (PPACA), the health care reform law - and the applicability of the mandate to agricultural employers. This overview is based upon the language of the PPACA statute, and guidance documents issued by government agencies interpreting the law.

While government agencies have thus far provided several guidance documents, the guidance provides limited information about how several important requirements of the law, including the employer mandate to provide health care insurance coverage, will be implemented and interpreted. As a result, the information in this overview is subject to change based upon future guidance, interpretations and regulations. This analysis is based on what is known (and reasonably presumed) about the law as of October 2012.

In general, PPACA requires certain employers with more than 50 employees to provide health care insurance coverage for their full-time employees, or pay a penalty, beginning in 2014.

Determining whether the employer mandate applies to a specific agricultural employer is a complicated process that involves analyzing numerous technical definitions and multi-step tests. In addition, agricultural employers need to be mindful of the special consideration PPACA provides for seasonal workers, which make up a great deal of the agricultural workforce.

This overview focuses only on the PPACA mandate that employers provide health insurance coverage to their employees. The pages that follow explain:

- 1) Whether an employer is required to provide health insurance;
- 2) Which employees must be provided with health insurance;
- 3) What type of health insurance coverage must be provided;
- 4) When must the insurance coverage be provided;
- 5) What penalties employers face for not providing coverage; and
- 6) Which employers do not have to provide coverage

I. HOW TO DETERMINE WHETHER AN EMPLOYER MUST PROVIDE HEALTH CARE INSURANCE COVERAGE IN 2014

The first step in determining whether an employer must provide health insurance to its employees in 2014 is to determine whether the employer is an “Applicable Large Employer.” An Applicable Large Employer is the term PPACA uses to describe those employers that have an obligation to provide health care coverage to their full-time employees during that year.

¹ This document was prepared for the American Farm Bureau Federation by Leon R. Sequeira, Seyfarth Shaw LLP, 975 F Street NW, Washington DC 20024. The information in this memo is for general education purposes only. The information is not intended to provide legal or tax advice and cannot substitute for the advice of your own legal and tax professionals.

A. Applicable Large Employers are those that employed an average of 50 or more full-time and “full-time equivalent” (includes some part-time) employees per month in the prior year.

1. A full-time (FT) employee is one that works on average at least 30 hours per week or at least 130 hours per calendar month.
2. Full-time equivalent (FTE) employees are determined by adding together all of the hours of part-time employees in a month (with a maximum of 120 hours per employee) and dividing the total by 120.

Example: Employer Z has 27 full-time employees who each work 40 hours per week, and 30 part-time employees who each work 25 hours per week over 4 weeks.

- $30 \text{ part-time} \times 25 \text{ hours} \times 4 \text{ weeks} = 3000 \text{ hours for the month}$
 - $3000 \text{ hours} / 120 \text{ hours in a month} = 25 \text{ FTEs}$
 - $27 \text{ FT employees} + 25 \text{ FTE employees} = 52 \text{ total FT and FTEs}$
3. In calculating FT and FTEs, “seasonal workers” are to be included pursuant to the number of hours they worked per week (part-time or full-time).

B. Repeat the calculation for each of the 12 months in the prior year (2013). Add up the total FT and FTEs for all 12 months and divide by 12 to get the average number of FT and FTEs per month over the prior year. If that average number is 50 or larger, the employer is an Applicable Large Employer that must provide health care coverage to its full-time employees in the next year (2014).

C. But, there is an exception for the employment of “seasonal workers,” as that term is defined in PPACA. If the employer exceeds 50 or more monthly FT and FTEs during a 120 day period (4 months) or less, then any employee who performed seasonal labor for no more than those 120 days is not counted toward the total number of employees in those months. If the employer has any seasonal employee on the payroll after 120 days, and in that month also has more than 50 employees, the seasonal worker exemption is not applicable.

Example: Employer Z has 40 full-time employees from January - December, and 80 full-time seasonal employees October - December.

- $40 \text{ full-time employees} \times 9 \text{ months (Jan - Sept)} = 360$
- $120 \text{ full time employees} \times 3 \text{ months (Oct - Dec)} = 360$
- $(360 + 360 = 720) / 12 = 60 \text{ employees on average per month}$

Although the employer “averaged” 60 employees per month, the employer actually only exceeded 50 employees for the 3 months (Oct. - Dec.) that he employed seasonal workers. Thus, the seasonal workers are not counted and Employer Z is not an Applicable Large Employer.

II. HOW TO DETERMINE WHICH EMPLOYEES MUST BE PROVIDED HEALTH CARE INSURANCE COVERAGE IN 2014

Only an Applicable Large Employer’s full-time employees must be provided coverage. So, the second step in determining whether an employer must provide health insurance to its employees in 2014 is to determine whether the employer has any full-time employees.

- A. Full-time status means working on average at least 30 hours per week or at least 130 hours in a calendar month.
- B. If an Applicable Large Employer knows or expects that an employee will be full-time in the present year (2014), then that employee must be provided health care insurance.
- C. If, however, an Applicable Large Employer is not certain if the employee will be full-time in the current year (2014), the employer must look back at the hours worked by that employee over a certain measurement period in the prior year (2013).

The IRS permits an employer to use a “measurement period” of at least 3 months, but no more than 12 months, in the prior year when calculating full-time status.

The test for determining full-time status differs slightly depending on whether the employee is (1) a current employee or (2) a new hire, variable hour, or seasonal.

- 1. Test for Determining Full-time Status of Current Employees in 2014
 - a. An employee who worked full-time during the entire measurement period (from 3 to 12 months) in 2013 is a full-time employee and must be provided health insurance for at least the next 6 months going forward (called the “stability period”).
 - b. If the employer uses a measurement period of more than 6 months, the future stability period must be at least the same duration.
 - c. Employers are permitted to also utilize an “administrative period” of up to 90 days, between the measurement period and the stability period, during which employers can determine who is eligible for coverage and employees can enroll in coverage.
 - d. Note that coverage must be provided to current employees as of Jan. 1, 2014, so the measurement period and administrative period must conclude in time for the employee to have coverage on Jan. 1, 2014.

2. Test for Determining Full-time Status of New Hires, Variable Hour and Seasonal Employees in 2014

- a. New hires, variable hour, and seasonal employees are subject to the same test for full-time status, but with a minor modification. Because the employee did not work in the prior year, the measurement period begins when the employee begins employment. The measurement period can last from 3 to 12 months.
- b. For newly hired employees, the combined amount of time for the measurement period plus the administrative period cannot extend beyond the last day of first month beginning on or after the one-year anniversary of the employee's start date (for a maximum of 13 months and a few weeks).

Example: Employee B is hired on Feb. 15, 2014, and the employer is unsure if the employee will work enough hours to be considered full-time. The measurement period (up to 12 months) plus the administrative period (up to 90 days) cannot extend past March 31, 2015.

- D. An Applicable Large Employer that hires a new employee who is expected to immediately begin working full-time should be offered health insurance coverage within 3 calendar months of employment (90 day administrative period). This requirement does not apply if the employer reasonably expects that the new hire will not work full-time for the entirety of the measurement period (up to 12 months).

Example: Employee C is hired Jan. 1, 2014, to work 40 hours per week from January through March. From April through September, Employee C is expected to work 30 hours per week. From October through December, Employee C is expected to work 20 hours per week.

Whether Employee C is considered a full-time employee depends on the length of the measurement period.

- If the employer's measurement period is 9 months or less (ends before October), then Employee C is a full-time employee for purposes of PPACA and must be provided health care insurance coverage.
- But, if the measurement period is more than 9 months long (includes at least October), then Employee C is not full-time because of the reduced hours worked in October through December.

- E. Note that when determining if an employee is full-time and must be provided health care insurance coverage, the definition of "seasonal worker" is critical. The government agencies that administer PPACA have not (and may not) settle on a single definition of "seasonal worker" that will apply in all circumstances.

The IRS, however, has stated that an employer can, at least through 2014, utilize its own reasonable definition of “seasonal” and determine an employee’s full-time status by looking at a 12-month measurement period. Examining employment over a 12-month period leads to the conclusion that seasonal workers are not full-time employees that must be provided health care insurance coverage because although they may work more than 30 hours per week, they are not employed continuously for a 12-month period.

For purposes of determining which employees must be offered insurance coverage, H-2A foreign agricultural workers should be treated like other seasonal workers in determining full-time status.

III. WHAT TYPE OF HEALTH INSURANCE COVERAGE MUST BE PROVIDED

An Applicable Large Employer must provide to its full-time employees health care insurance that is both “affordable” and that meets “minimum essential coverage” standards.

- A. The government has not yet provided a definition of “minimum essential coverage,” but it is assumed that it will be major medical coverage.
- B. “Affordable” health care insurance coverage means:
 - 1. The plan must cover at least 60 percent of the value of benefits provided; and
 - 2. The employee’s share of the premium cost does not exceed 9.5 percent of the employee’s household income or 9.5 percent of the employee’s W-2 income.

IV. WHEN MUST THE HEALTH INSURANCE COVERAGE BE PROVIDED

The requirement for Applicable Large Employers to begin providing coverage to their full-time employees begins Jan. 1, 2014.

Therefore, employers will have to review employee hours for all 12 months of 2013 to determine whether the employer is an Applicable Large Employer on Jan. 1, 2014 (Step 1 above).

If an employer is an Applicable Large Employer, then for each employee in 2014 who has been employed since 2013, the employer will have to review the hours worked by that employee during a measurement period of between 3 and 12 months in 2013 to determine whether that employee has full-time status in 2014. (Step 2 above)

If the employer intends to utilize a 90-day administrative period following the conclusion of a 12-month measurement period, the employer would need to start reviewing hours of employees for the measurement period of October 2012 - September 2013. This would enable the employer to establish a 90-day administrative period from October 2013 - December 2013, and then begin providing health care insurance coverage on Jan. 1, 2014.

Applicable Large Employers that hire new employees who are expected to work full-time for at least the length of the employer’s measurement period must be provided coverage within 3

calendar months of their start date. If the employer reasonably expects that the new hire will not work full-time for the entirety of the measurement period, then health care insurance coverage does not have to be provided.

V. WHAT IS THE PENALTY FOR NON-COMPLIANCE

If an Applicable Large Employer (1) does not provide health insurance coverage or provides coverage that does not meet the minimum essential coverage requirements, or (2) provides health insurance coverage that is not affordable; and (3) at least one of the employer's full-time employees receives a tax credit or subsidy through a State Exchange, then the employer is subject to penalties levied by the IRS.

A. Failure to provide insurance or minimum essential coverage

If the employer does not provide health care insurance or does not provide insurance that meets the "minimum essential coverage" standard, and at least one of the employer's full-time employees receives a tax credit or subsidy through the State Exchange, then the employer is subject to a penalty of:

- \$2,000 for each of employer's full-time employees. But, in calculating the penalty, the first 30 full-time employees are not counted.

Example: Employer has 50 full-time employees and does not offer minimum essential coverage. Just one full-time employee obtains a subsidy through the State Exchange.

Penalty: $\$2,000 \times 20 \text{ full-time employees } (50 - 30) = \$40,000$

B. Failure to provide affordable coverage

If the employer provides minimum essential health care insurance coverage, but (1) the insurance does not cover 60 percent of the value of the benefits, or (2) the cost of the premium exceeds 9.5 percent of the employee's household or W-2 income; and (3) the employee receives a tax credit or subsidy to purchase health insurance through the State Exchange, then the employer is subject to a penalty equal to the lesser of:

- \$2,000 for each of the employer's full-time employees, but the first 30 full-time employees are not counted; or
- \$3,000 for each of the employer's full-time employees that obtain a tax credit or subsidy through the Exchange

Example: Employer has 50 full-time employees and provides insurance that only covers 40 percent of the value of benefits. Ten of the full-time employees obtain a tax credit through the exchange.

Penalty is the lesser of:

$\$2,000 \times 20 \text{ full-time employees } (50 - 30) = \$40,000$ or

\$3,000 x 10 full-time employees obtaining tax credit or subsidy = \$30,000
So, the employer pays penalty of \$30,000

VI. WHICH EMPLOYERS DO NOT HAVE TO COMPLY WITH THE MANDATE

Because of the complicated nature of determining whether an employer is subject to the mandate, it may be easier to first determine whether an employer falls into a category that would not subject it to the employer mandate to provide health care insurance coverage:

Employers not subject to the mandate (as of October 2012):

- Those that do not employ any full-time (30-hours per week) year-round workers.
- Those that do not have 50 or more employees in any month during the year.
- Those that have more than 50 employees a month, but only for 4 months (120 days) or less out of the year and employees number 50 and above perform seasonal work.

Employers that are Applicable Large Employers, but that employ 30 or fewer full-time workers are required to comply with the employer mandate to provide full-time workers with health care insurance coverage. The penalty provisions, however, exempt the first 30 full-time workers from the penalty calculation. So, even though an employer with only 30 full-time employees may not be in compliance with the law, it would appear that the employer will not actually pay a penalty for failing to provide health care insurance that meets the minimum essential or affordable coverage requirements.

Employers that average close to 50 employees or more per month over the course of a year, especially employers with any full-time year-round workers, will need to closely monitor their labor usage to ensure that they do not inadvertently trigger the requirement to provide health care insurance coverage to full-time employees.