

# PPACA Employer Mandate– A Brave New World of Tracking, Compliance and Penalty Avoidance



# Agenda

- Latest Development Review
- Step 1 – Does the Mandate Apply to My Organization?
- Step 2 – What Are the Penalties?
- Step 3 – What is an “Affordable” Plan?
- Step 4 – How Do Plans Meet “Minimum Value”?
- Step 5 – Who Should Be Offered Coverage?
- Step 6 – Reporting Requirements
- Employer Tool
- Adoption Agreement

# Is the Employer Mandate Going Away?



# The Administration Delays The Mandate

- ❏ The requirement to play or pay delayed until 2015
- ❏ Tracking hours of part time employees are also delayed; however, to be ready for 2015 employers need to begin tracking in late 2013 or early 2014
- ❏ The Administration is surveying business groups to consider other changes (i.e. increasing the 30 hr. threshold for FT EE status)
- ❏ Reporting Requirements Released in September
- ❏ Exchange Open on October 1. Application Released

# Step 1

- Determine if the Mandate Applies to My Organization



# Employer Mandate

## Large Employer Definition / Test

- ✓ Employers with 50 or more Full-Time employees (or the equivalent)

## Full Time Equivalent Calculation (“FTE”)

- ✓ Part-Time employee’s hours are counted to determine whether an employer has at least 50 full-time employee equivalents
  - Total number of monthly hours work by Part-Time employees, divide by 120 = Full-Time Equivalent Employees
  - Seasonal employee hours counted unless the “seasonal employee exception” applies (work less than 120 hours or 4 months during a calendar year)
  - Add this number to total number of existing Full-Time Employees

# Employer Mandate

***For employers close to the 50 full-time employee threshold there was transition relief to aid them in determining ALE status for 2014? Does this rule remain for 2015?***

**RULE:** Employer can use any consecutive six-month period in 2013 to measure employee counts (or an equivalent number of part-time or seasonal employees)

They will be an “applicable large employer” in 2014 if they employed an average of at least 50 FT employees (plus FTE) on “business days” during any consecutive six month period in 2013

**BEWARE:** Independent contractors re-classified by IRS as W-2 employees could trigger non-compliance, and potential penalties.

# Employer Mandate

## Seasonal Employees

- ✓ The law allows a “reasonable good faith” interpretation of the term seasonal employee (IRS Rule issued 12/28/12 suggests using the statutory definition of seasonal worker set forth under DOL regulations at 29 CFR 500.20(s)(1))
- ✓ **120 day rule, seasonal employee exception-** if an employer’s workforce exceeds 50 for no more than 120 days or four calendar months during a calendar year by virtue of its seasonal employees it employs, that employer is deemed NOT to be a large employer under the statute
- ✓ An employer must still use the “measurement and stability period” rules to classify seasonal employees as full-time or part-time



# Case Study for Applicable Large Employer

## Full Time Employees and FTE's

### Facts:

During 2015, Employer N has 20 FT employees each of whom averages 35 hours of service per week for the entire calendar year, plus 40 employees each of whom averages 90 hours of service per month, and no seasonal employees

### Result:

Employer N calculates its FTE's for the plan year by taking the total hours of service of the employees who are NOT full-time, aggregates their hours (but no more 120 hours per employee), divides by 120 and adds to the full time employee count. The result is that Employer N has 30 FTE's ( $40 \times 90 = 3,600 / 120 = 30$ ) plus 20 regular full-time employees for a total of 50 during each month of 2015.

### Conclusion:

Employer N is an “applicable large employer” for 2016.

# Step 2

- What Are the Penalties?



# Employer Mandate

***Don't PLAY? PAY \$2,000 per year per FT EE (Less 30)***

***You PAY if as an Employer you:***

DO NOT offer health coverage

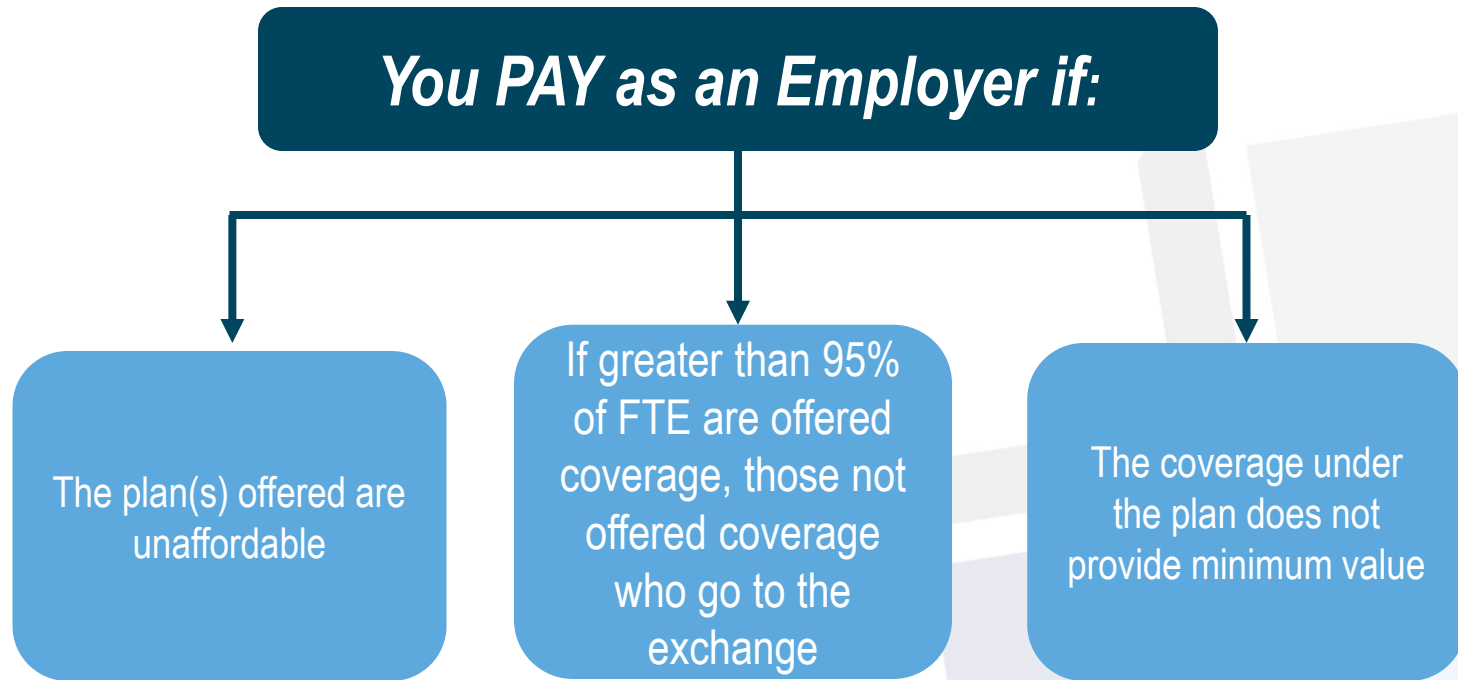
Offer health insurance plan(s) that DO NOT meet minimum essential coverage (MEC)

Offer qualifying coverage to less than 95% of your full-time employees and at least one full-time employee receives a premium tax credit

***Determined on a monthly basis during the employer's "plan year"***

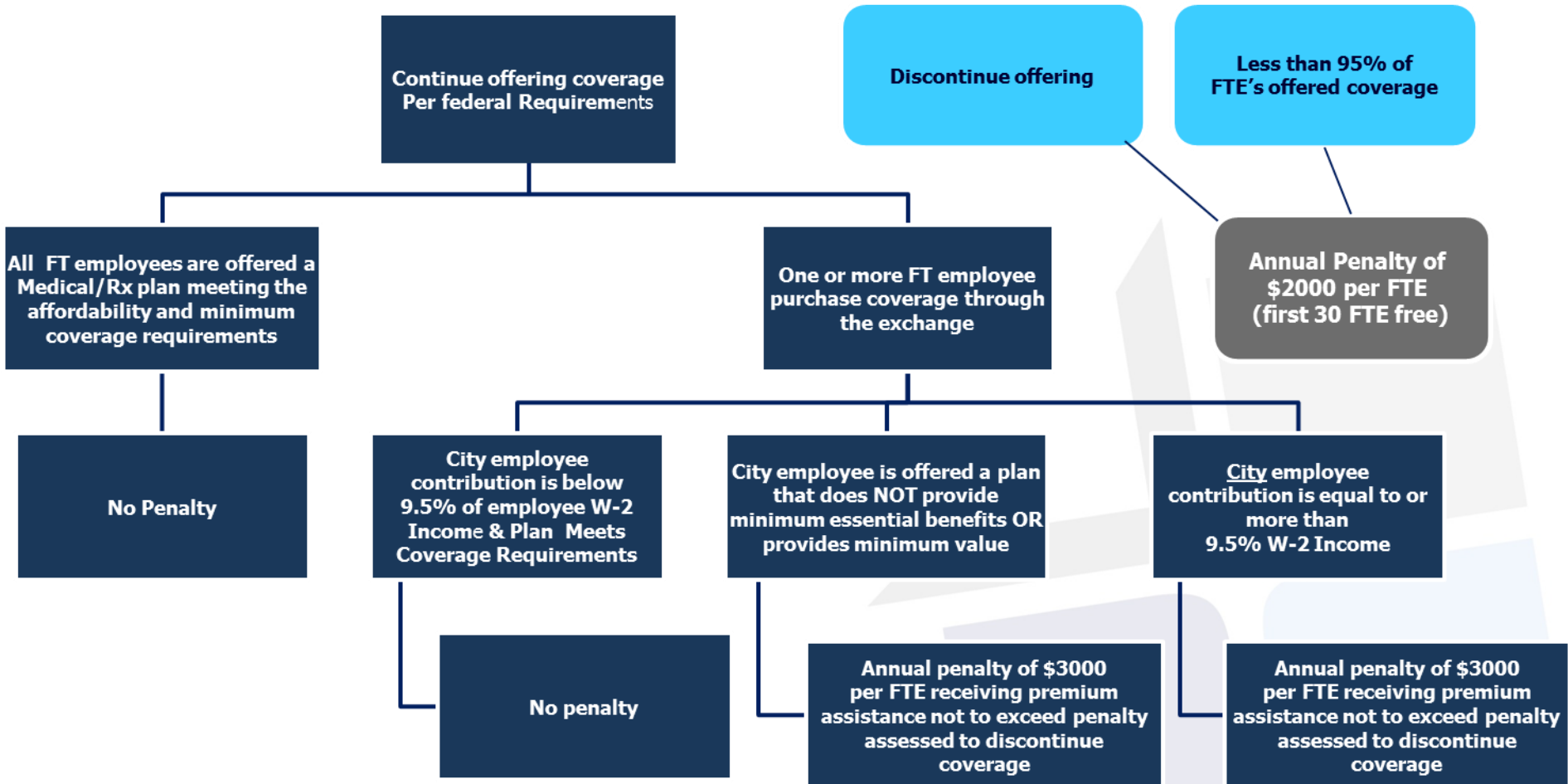
# Employer Mandate

***PLAY, but not all the way, then PAY  
\$3,000 per year; or \$250 per month Penalty***



***In any given month, an employer can never be liable for a penalty under both Sec 4980(H)(a) and (b)  
NEW!- the proposed regulations confirms that the offer must be made to the employee and their dependents, not spouses. Dependents are defined as children under age 26.***

# Penalty or No Penalty



# Step 3

- Are the Plans Affordable?



# Plan Affordability

## How is affordability determined?

- ❏ A plan is deemed “**affordable**” if an employer’s required employee contribution for “employee only” coverage DOES NOT exceed 9.5% of that employee’s total wages (only need to consider the contribution for the lowest cost plan that provides MEC)
- ❏ This is determined for every month an employee is covered under an employer plan
- ❏ IRS Safe Harbor rules permit an employer to make a determination using:
  - ✓ The federal taxable wages in Box 1 of the W-2; or
  - ✓ A rate of pay calculation using a 130 hours per month (based on rate of pay at the beginning of the year); this creates a uniform calculation in cases where hours may vary on a monthly basis); or
  - ✓ The published Federal Poverty Level (FPL) annual income amounts used for certain federal assistance programs such as Medicaid

# Case Study for Affordability Test

## Rate of Pay Safe Harbor

### Facts:

Employee E is employed by ALE V from May 15, 2015 through December 31, 2015.

In addition, V offers E and her dependents **MEC** from August 1, 2015 through December 31, 2015. ALE V offers 2 plans (\$300 and \$100 employee contribution for self-only coverage). Both meet the **MEV** requirements.

### Calculation:

- ✓ Employee's rate of pay is \$10/hr. from May 15 through October 31
- ✓ Employee's rate of pay moves to \$12/hr. from Nov. 1 through December 31
- ✓ Employee selects \$300 plan
- ✓ Employer may use \$100/mo. Contribution amount to determine affordability
- ✓ Employer can assume that Employee earned \$1,300/mo. (130 hours of service X lowest rate of pay for the plan year, or \$10)

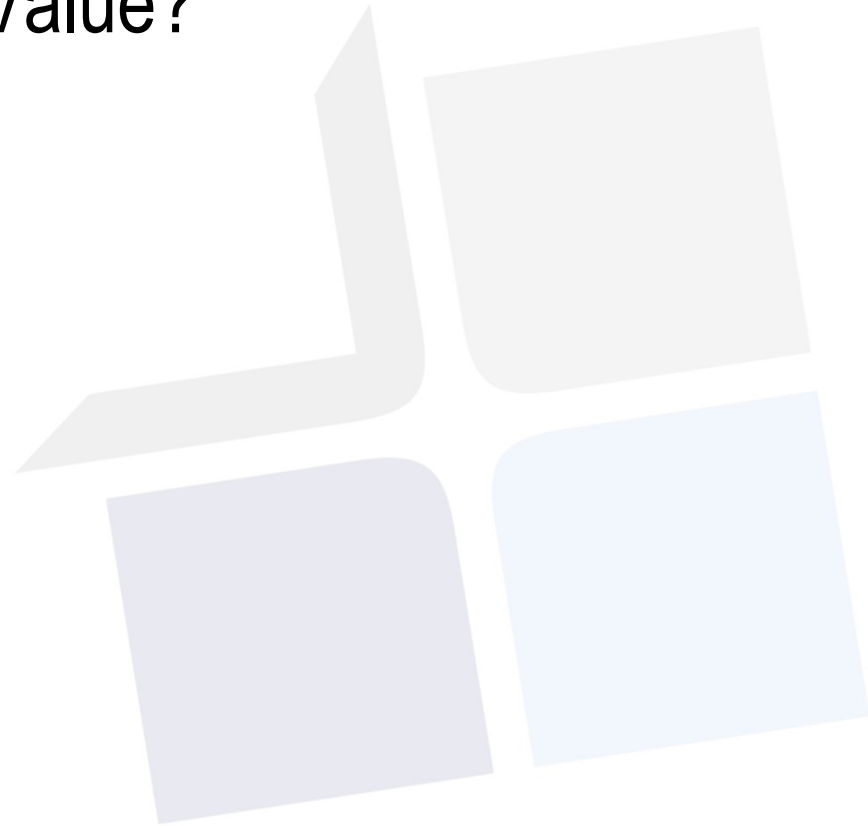
### Affordability Calculation

- ✓ \$100 mo./ \$1300/mo., or 7.69%, which is less than 9.5%= PASS, the plan is affordable!!!
  - ✓ (If Regulations had required use of plan Employee selected - \$300mo./\$1300 mo., or 23.0%, which is greater than 9.5%=FAIL)



# Step 4

- Do the Plans Meet Minimum Value?



# Minimum Plan Value

## How Do Employer's Determine plan "VALUE"?

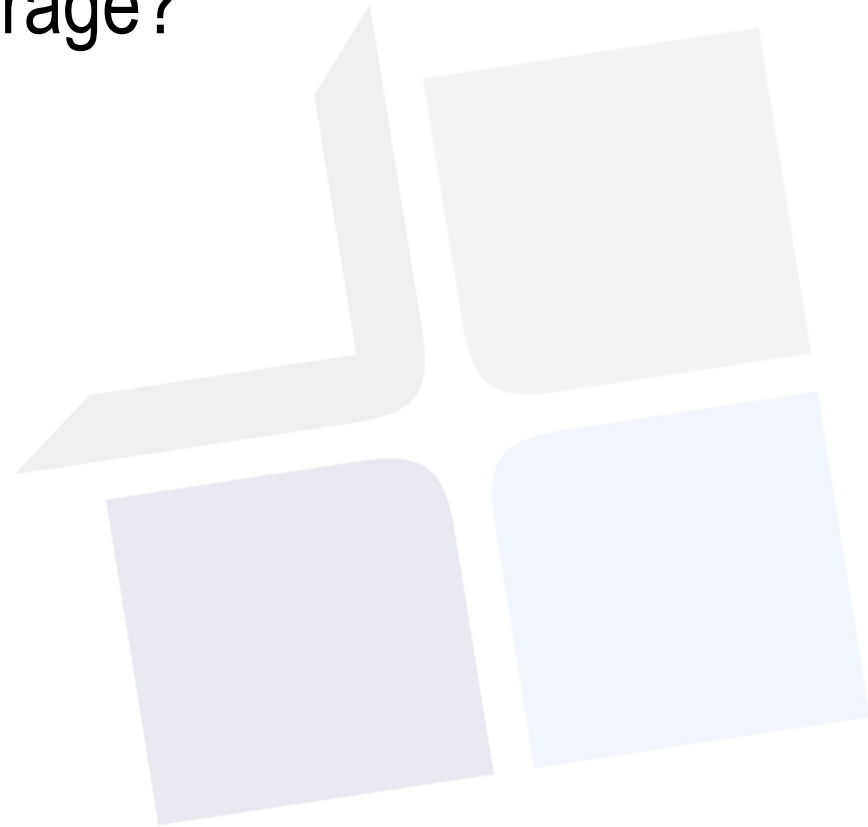
- ❏ HHS has provided an actuarial tool to determine the "value" attributed to your healthcare plans (<http://www.cms.gov/ccio/resources/regulations-and-guidance/index.html>)
- ❏ **Plan Actuarial Value – Minimum 60%** value (plan covers at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan)

### What will a 60% plan look like? Possibly:

- ✓ \$6,350 deductible & 0% coinsurance (Actuarial Research Corporation)
- ✓ \$4,350 deductible & 20% coinsurance (Aon Hewitt)
- ✓ \$2,750 deductible & 30% coinsurance (Towers Watson)

# Step 5

- Who Should Be Offered Coverage?



# Who Should be Offered Coverage?

## IRS and HHS Guidance (Proposed Regs. issued 12/28/12)

- Coverage must be offered to all “Full-Time Employees”
  - A full-time employee is defined as an individual employed on average ***at least 30 hours per week or 130 hours per month during the employer’s chosen “measurement” period***

# Determining Who Should Be Offered Coverage

- Identify all individuals who are in “full-time” job categories or who are offered coverage as part of their job category (Council Members, union agreements, etc.)
  - *These individuals do not need to be tracked!!!!*
- Employers can utilize a ***look-back measurement period*** with a corresponding stability (coverage) period to determine full-time status of on-going variable hour employees’ and an ***initial measurement period*** for new hire variable hour employees

# Variable Hour Employees (Part-timers)

## Look-back “Safe-Harbor” Rules

- ❏ Standard Measurement Period
- ❏ Initial Measurement Period
- ❏ Administrative Protection Period
- ❏ Stability (or Coverage) Period

**Establish A Program For Tracking Employee Hours**

# Variable Hour - Ongoing Employees

## Standard Measurement Period (SMP)

- ❏ Employer can determine Full-Time status by **looking back** at a defined period of three to 12 consecutive months, to determine whether an employee averaged at least 30 hours of service a week or 130 hours/month

## Stability Period (Coverage Period)

- ❏ Under the law, an employee that works the “minimum” average hours must be treated as a Full-Time employee during the following “Stability Period” (up to 12 months; or shorter, if the Standard Measurement Period was less than 12 months)
  - ❏ ***The above applies regardless of the employees actual hours worked during that Stability (Coverage) Period***
  - ❏ The length of the Stability Period must be at least the length of the Standard Measurement Period but no less than six months
- ❏ **Coordinate with Plan Year and Open Enrollment**

# Variable Hour - New Employees

- ❏ Employees *reasonably expected to work* on average more than 30 hours per week at their start date must be considered Full-Time Employees
- ❏ For new *hires NOT reasonably expected to work* on average more than 30 hours per week at their start date, the employer NEED NOT offer coverage until they make a determination of FT status using the “safe-harbor look-back” rules tracking hours over an “**initial measurement period**” and an “APP”
- ❏ Note, employees during this period of time are not considered eligible for employer coverage and therefore ARE eligible for a premium tax credit through the Exchange
- ❏ **Initial Measurement Period** can be between three and 12 months, as selected by the Employer, starting from the date of hire (or first of the month thereafter).



# Variable Hour - New Employees

- ❏ An “initial measurement period” covers a tracking period of up to 12 months commencing with a new employee’s start date and the total time elapsed between tracking and offer of coverage CANNOT exceed 13 months
- ❏ Employers must measure the hours of service completed by the new employee during this time period and determine if the employee completed an average of 30 hours of service per week or more (or 130 hours/calendar month)
- ❏ All “common law” employees, part-time, seasonal, temporary, intermittent etc. must be monitored. Review “employee” vs. “independent contractor” status’
- ❏ If a new hire experiences a **“material change in their position of employment”** during their “initial measurement period” and it’s determined that had the employee begun in that job position they would have been reasonably expected to work more than 30 hours/week, the employee must be treated as full-time

**ACTION ITEM: Review your employment policies and job descriptions!!!**

# Employee Status

- ❏ All W-2 employees NOT offered “qualifying” coverage today need to be considered and tracked
- ❏ Independent Contractor status vs. Employee status is important

## Common Scenario:

- ❏ Employees who retiree are retained under an independent contractor agreement, but work solely for the employer they retired from, and receive healthcare plan coverage under that employer’s retiree plan (Medicare eligible?)

# Employee Status

## What is an “Hour of Service”

- ❏ The concept of "hours of service" is relevant for purposes of determining applicable large employer status and in determining “average hours” for tracking variable hour employee eligibility
- ❏ Under PPACA regulations, ***"hours of service" include*** not only hours when work is performed, but also hours for which an employee is paid or entitled to payment even when no work is performed  
(e.g., vacation and sick time)

# Case Study- Measurement Periods

## Facts:

1. Betty is hired on May 10, 2014 by the City of ABC
2. The City of ABC has a group health insurance plan coverage year that runs January to December each year
3. The City chooses a “standard measurement period” (SMP) of October 15 to October 14 every year to track the hours of “ongoing” variable hour employees
4. The City allows for an “administrative protection period” of 2 ½ months to compile and review data and to prepare for “open enrollment”; with coverage effective on January 1 of each year
5. The City chooses an “initial measurement period” (IMP) of 12 months for new hires to coincide with their SMP
6. Betty’s IMP runs from June 1, 2014 to May 31, 2015
7. Betty begins working over 30 hours/week during her IMP; her hours are reduced in Jan., 2014 resulting in her average hours being below 30/week for her 1<sup>st</sup> SMP starting October 1, 2015

# Ongoing Employees

## Ongoing Employees

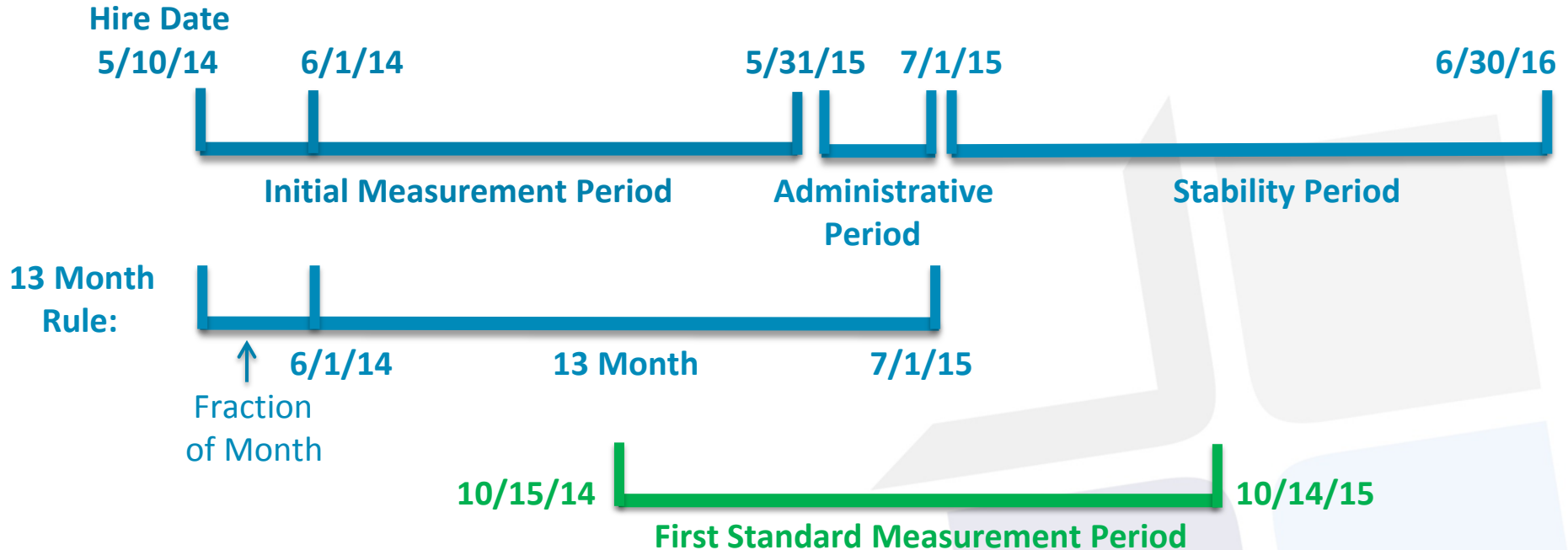
Standard Measurement



# New Employees

## New Hire

Initial  
Measurement



### Assumptions:

Betty is hired 5/10/14

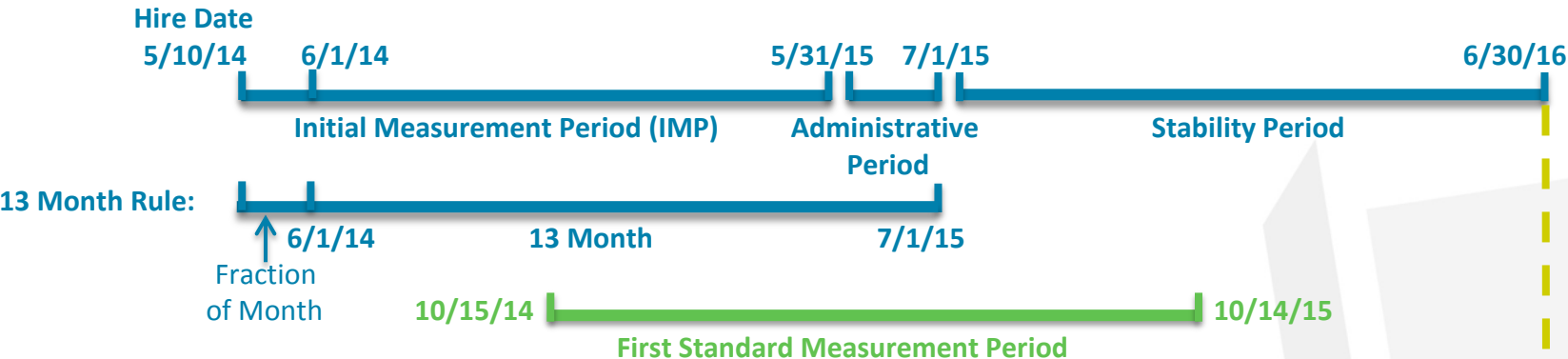
Betty works in average 30 hrs/wk during her IMP (6/1/14 – 5/31/15)

Betty works an average 28 hrs/wk during her first SMP (10/15/14 – 10/14/15)

# New Hire and Ongoing Employee Timeline

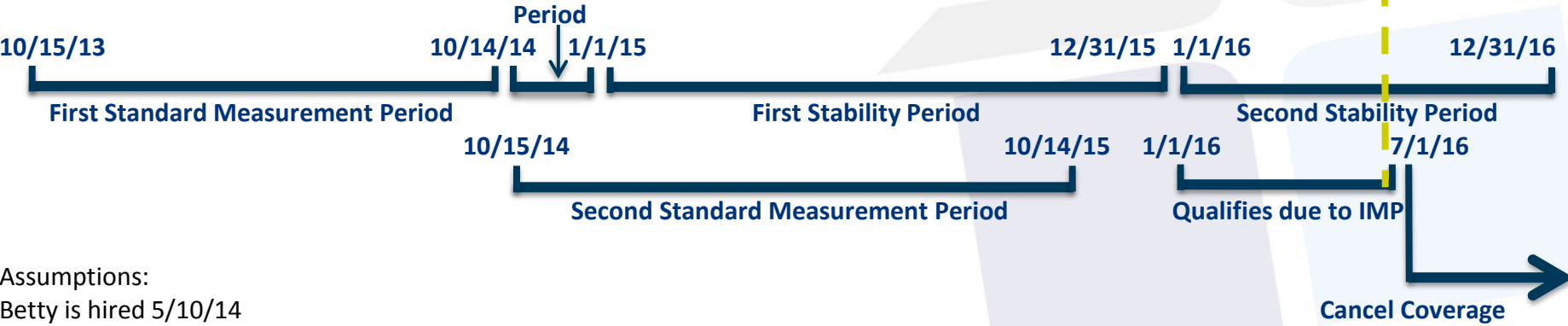
## New Hire

Initial Measurement



## Ongoing Employees

Standard Measurement



Assumptions:

- Betty is hired 5/10/14
- Betty works in average 30 hrs/wk during her IMP (6/1/14 – 5/31/15)
- Betty works an average 28 hrs/wk during her first SMP (10/15/14 – 10/14/15)

# Other Considerations

## Who is the reporting entity and who will be accountable for reporting to the IRS?

- ❏ For-profit corporations follow the IRS “controlled group” rules of aggregation (414(b), (c), (m) and (o)); tax exempt organizations follow the “common control” rules (Sec 4980H(c)(2)(C)(i):
  - ✓ Courts, library’s, golf courses, pay-for-duty firefighters etc.
  - ✓ A municipality acts a the common paymaster and plan sponsor of the existing health insurance plans
  - ✓ Separate federal taxpayer identification number
  - ✓ Who controls the employment policies



# Case Study- Measurement Periods

## Employees Rehired After Termination of Employment

### Facts:

As of April 1, 2015, Employee A has been an employee of Employer Z (not an educational organization) for 10 years. On that date Employee A terminates employment. On September 1st of that same year Employee A is re-hired and stays employed with Employer Z through December 31, 2015 which is the close of the measurement period used by employer Z.

### Rule:

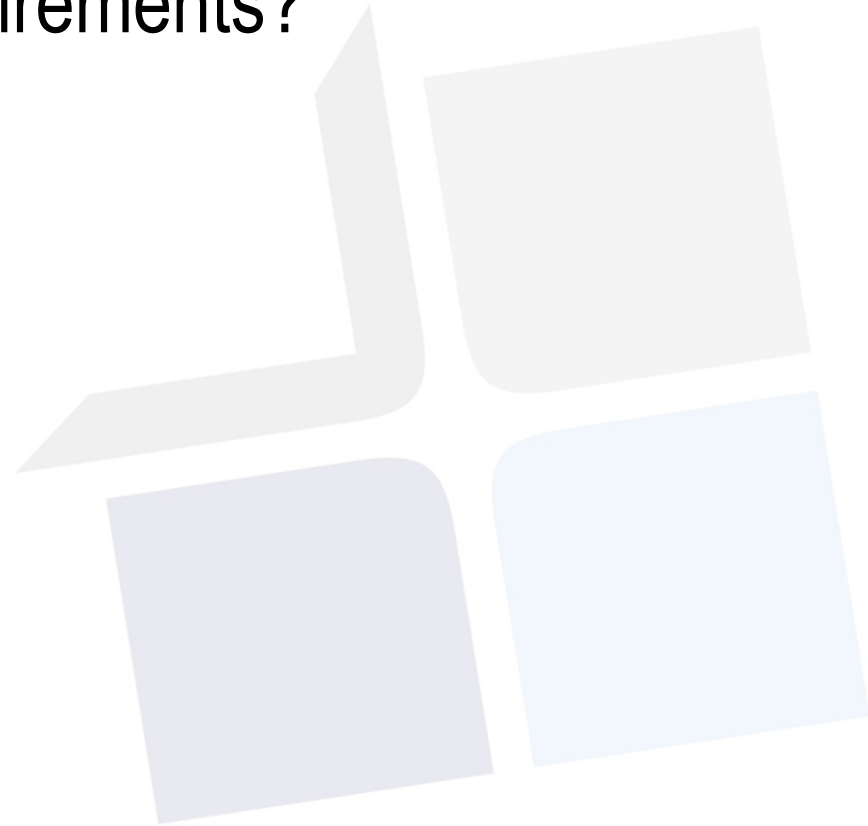
A re-hired employee is treated as a new employee only if the employee did not have an hour of service for a period of at least 26 consecutive weeks immediately preceding their return to work (or apply the alternative “parity rule” for shorter periods of absence).

### Result:

Employee A resumes work with employer Z five months after termination and is therefore **NOT** treated as having been terminated, nor a new hire, and his/her hours of service prior to termination and after re-hire are counted during the current measurement period; the period of zero hours is also counted when calculating “average hours” of service during the measurement period.

# Step 5

- What Are the Reporting Requirements?



# Employer Recordkeeping is Critical!

- ❏ Proposed Regulations released on 9/9/13 clarifies requirements for employers reporting of health coverage information
- ❏ Individual statements
  - ✓ similar to W-2 reporting
  - ✓ required for each full-time employee or former employee
  - ✓ Use IRS Forms 1094-C and 1095-C
  - ✓ Must be provided no later than January 31
- ❏ Single transmittal to IRS for all returns filed during the year
  - ✓ Must be filed electronically if 250 or more returns are filed during the year
  - ✓ Must be filed with IRS no later than February 28 (March 31 if filed electronically)

# Employer Recordkeeping is Critical!

## Who Must Report

Insurance Company	Applicable Large Employer (ALE)
MEC reporting for all insured plans administered (unless offered through the Exchange) (Form 6055)	Employer Responsibility Reporting (Form 6056)
	If self-funded, MEC reporting for all plans offered (Form 6055)

# Employer Recordkeeping is Critical!

## The Future of Employer Reporting Under PPACA?

- ✦ **IRS will require employers** to report certain information on employer-sponsored health coverage under Sec. 6056. Reporting will begin in 2016 for coverage provided on or after January 1, 2015. Below are the information requirements for Employers as reflected in 9/9/13 Proposed Regs:

### Initial Set of Requirements

- ✓ ALE's name, address, employer ID number (controlled group information) and a contact person
- ✓ A certification as to whether the ALE offers FT employees (and dependents) the opportunity to enroll in minimum essential coverage
- ✓ If the employer certifies that they offer FT employees (and dependents) to enroll in MEC enroll, then they must report:
  - The months during the calendar year for which coverage under the plan was available
- For each FT employee, The name, address, TIN and employee's share of premium for self only coverage providing minimum value during the calendar year and the months during which employee (and any dependents) were covered
- ✓ The total number of FT employees for each month during the calendar year
- ✓ Such other information as the Secretary may require

# Employer Recordkeeping is Critical!

- Certain information may be required by use of an “indicator code”
  - Information on whether minimum value coverage was offered to an employee and dependents, and whether that coverage was also offered to the employee’s spouse
  - The total number of employees, by calendar month
  - Whether an employee’s effective date of coverage was affected by a waiting period
  - Whether the employer was not conducting business in any given month
  - Whether the employer will no longer be an applicable large employer the following year
  - Whether the employer is a member of a control group or under common ownership, along with the EIN of each employer member of the group

# Employer Recordkeeping is Critical!

- Additional “indicator code” required information
  - The name, address, and identification number of the appropriately designated person reporting on behalf of an employer who is a governmental entity
  - Whether an employer is contributing towards coverage under a multi-employer plan, if that employer is part of a multi-employer plan
  - Including the name, address, and identification of the administrator, of the multi-employer plan, reporting on behalf of the employer
  - Whether MEC was offered to:
    - The employee only;
    - The employee and employee’s dependents only;
    - The employee and spouse only; or
    - The employee and the employee’s dependents and spouse

# Employer Recordkeeping is Critical!

- Additional information that may be required by use of an “indicator code”
  - The reasons that MEC may not have been offered to the employee, because:
    - The employee was in a waiting period;
    - The employee was not a full-time employee;
    - The employee was not employed for that specific month; or
    - No other code or exception applies
  - That coverage was offered to the employee, even though the employee was not a full-time employee during that month
  - That the employer met one of the affordability safe-harbors (i.e., the Form W-2 wages method, Rate of Pay method, or Federal Poverty Level method)



# Employer Recordkeeping is Critical!

## The Future of Employer Reporting Under PPACA?

- ❏ ***Although included in the original statute, the 9/9/13 Proposed Regs clarified that some items will not need to be reported:***
  - ❏ Length of waiting period
    - ✓ Employer will need to indicate if an employee's coverage is not effective due to a waiting period
  - ❏ Employer's share of the cost of benefits
  - ❏ The Employee contribution amount for family, two party or other coverage categories
    - ✓ Only the cost of self-only coverage for the lowest cost option must be reported
  - ❏ The months for which an employee's dependent's were covered on the plan
    - ✓ This information is required for MEC reporting (plan sponsors of self-funded plans will need to complete)

# Employer Recordkeeping is Critical!

## *How will employers avoid paying penalties?*

- ❏ **IRS will contact employers** to inform them when its employees attempt certification for a premium tax credit to purchase health insurance on the Exchange (1411 Certification Form)
- ❏ After they file their Sec 6056 information return required beginning in 2016 for coverage provided in 2015 calendar year (identifying their FT employees and describing the coverage offered) *employers may be contacted to substantiate information reported*
- ❏ Upon audit, if a discrepancy is found, an employer will be provided an opportunity to respond before any liability is assessed or notice of demand for payment is made

***Employers need to have accurate records to support that they offered their eligible FT employee's an "affordable" and "minimum coverage" plan***

# What Are Some Of Your Choices

- ❏ Create/Modify Variable-hour employee workplace policies to keep hours worked below 30 hours/week (1,560 hours/year)
- ❏ Establish an alternative plan offering with higher cost sharing and greater out of pocket costs
- ❏ Pay the \$3,000/ year penalty (as long as the number of FTE not offered coverage remains below 5% of the FTE total)

***What are the Advantages and Disadvantages of each approach??***

# Tracking Tool

- ❏ The new Employer recordkeeping and IRS reporting requirements **MUST** be understood and followed or employers could be subject to significant penalties
- ❏ Find an application and service that can be used independently or alongside an existing Payroll application to track and report all information required under PPACA, including:
  - ✓ **Tracking hours worked, new hire and ongoing employees determination, breaks in service requirements, per location per entity reporting, employee policy drafting**
  - ✓ **Calculate and record for every plan year, employee status, affordability, minimum value and potential penalty scenarios**
  - ✓ **Create Form reports to be ready for the first IRS reporting period in 2016 (Sec.6056)**

# Employer Tool

- ❏ Portion of individual's Exchange Application
- ❏ Completed by Employer.
- ❏ Individual responsible for completing Exchange Application
- ❏ Information required is identical to Notice of Exchange provided to employees in September 2013.
  - ❏ Most employers did not provide responses for Questions 14-16
  - ❏ Information must be provided specific to requesting employee

# Employer Tool

- ❏ Employer should be aware of Exchange filing deadlines
  - ✓ **Exchange Open Enrollment is 10/1/13 – 3/31/14**
  - ✓ **For coverage effective 1/1/14 application must be submitted by 12/15/13**
  - ✓ **After 12/15/13, coverage will be effective on the first of the following month if the application is returned by the 15<sup>th</sup> of the month**
  - ✓ **After 12/15/13, coverage will be effective on the first of the second following month if the application is returned on between 16<sup>th</sup> of the month and the end of the month**
- ✓ Individual Mandate (requirement that all Americans have coverage) delayed 6 weeks
  - ✓ Effective 4/1/14 rather than 2/15/14

# Action Items to Avoid Non-Compliance/Penalties

1. Modify waiting period for 2014
  1. (90 days)
2. Determine ALE status for 2015
3. If applicable, choose a “standard measurement” period for 2013/2014; coordinate with your Open Enrollment period
4. Identify employees that must be tracked and “permitted employee categories”, if more than one.
  - a) Hourly and salary
  - b) Union v. non-union
5. Establish a system to track “initial measurement” period for new hires

# Action Items to Avoid Non-Compliance/Penalties

6. Prepare to assist employees with Exchange applications (Employer Tool)
7. Implement processes to track hours for variable hour employees
8. Identify information needed for reporting; and a program to maintain employee records, perform affordability calculations and compile the information required to be filed with the IRS