The Affordable Care Act: Employer Shared Responsibilities (Play or Pay)

March 14, 2014
9:00 a.m. – 10:30 a.m.

Presented by:
Beth Ritchie, Benefit Analyst
UWSA Office of Human Resources
and Workforce Diversity
Call-In Information

- You may join the session up to 30 minutes in advance of the start time. To join the session, please click on the link below:
  - https://sas.elluminate.com/m.jnlp?password=M.3C422261A42F8474B52D
    DFDF635AD2&sid=1304
- To connect the audio for this conference:
  1. Login to the Blackboard Collaborate meeting using the URL provided above and follow the on-screen instructions to join either phone or VoIP audio
  2. If you are using phone audio, be sure to turn off your computer speakers to avoid audio feedback and echo.
- The phone numbers for this meeting are:
  - Toll: 630-424-2356
  - Toll Free: 855-947-8255
  - Passcode: 57275#
The Affordable Care Act: Employer Shared Responsibilities

Purpose
- Bring you up to date on the implementation of the Affordable Care Act (ACA)
- Explain employer penalties under the ACA
- Share what we know and discuss what is yet to be determined
- Alleviate concerns about institutional responsibility/role in ACA process
The Affordable Care Act: Employer Shared Responsibilities

Topics
- What is the Affordable Care Act?
- Health Insurance Marketplace
- Current Status
- Definition of Full-time Employee Under ACA
- ACA Play or Pay Provisions
- Penalties under ACA
- Employee Eligibility for ACA Premium Subsidy
- ACA Compliance Issues for:
  - Variable Hour Employees
  - LTEs
  - Student Employees
- Summary of Outstanding Issues
- What’s Coming
- Questions
What is the Affordable Care Act (ACA)?

- The Affordable Care Act (ACA), also known as “Obamacare” or “Health Insurance Reform,” is a sweeping piece of legislation that will be enacted over a multi-year period.
- Starting in 2010, the ACA made significant changes to employer-provided health insurance (removal of annual limits and pre-existing condition clauses, full coverage of preventive care, reduced flex spending limits, coverage for adult children until age 26...).
- Established the Health Insurance Marketplace (1-1-14)
  - Requires employer distribution of Health Insurance Marketplace Notice
- Requires that most U.S. citizens have health coverage or pay a penalty (Individual Responsibility Mandate).
- Provisions that will be implemented over the next few years include:
  - Employer penalties
  - IRS tax reporting requirements
Health Insurance Marketplace

- Most Americans may purchase health insurance through the Marketplace even if their employer provides health insurance.

- **Individuals who buy insurance through the Marketplace, rather than enrolling in an employer’s plan will:**
  - Only eligible for a premium subsidy through the Marketplace if employer coverage is considered “not affordable” under the ACA.
  - Not be eligible for any employer contribution toward the premium.
  - Generally pay their premiums on an after-tax basis.
  - Lose access to sick leave credits for conversion to pay for health insurance as an annuitant.
Current Status – UWSA

UWSA Office of Human Resources & Workforce Development (OHRWD)

- UWSA OHRWD established a work group in May 2013 to address the Affordable Care Act (ACA).

- Representatives include cross-institutional/functional staff representing Benefits, HR, Legal, Risk Management and Accounting, as well representatives from OSER, ETF, DOA Payroll and UWHC. Meet bi-weekly.

- Subgroups established to focus on queries to determine areas of potential penalties and new IRS reporting requirements.
Institutions

◦ Provide Health Insurance Marketplace Notice to all new employees, regardless of whether they are eligible for State Group Health Insurance (for materials and policy see [http://www.uwsa.edu/ohrwd/admin/aca/](http://www.uwsa.edu/ohrwd/admin/aca/))
◦ You may be contacted by a member of work group for input
◦ Send questions to: Beth Ritchie ([britchie@uwsa.edu](mailto:britchie@uwsa.edu))
◦ No additional action is needed at this time.
State Group Health Insurance

- The ACA does not extend eligibility for State Group Health (SGH) Insurance to employees who are not eligible for the coverage under state statutes.
- Different eligibility criteria apply to SGH and the person’s ability to qualify for a subsidy through the Marketplace.
- The following classifications of employees are not eligible for SGH but may qualify for a subsidy through the Marketplace:
  - Classified employees not eligible for SGH (not covered by WRS)
  - Student employees
What is a Full-Time Employee under the ACA?

- Whether or not an employee is considered “full-time” under the ACA is a main driver in the determination of employer penalties.

- Under the ACA, an employee is a full-time employee if he/she works:
  - 1560 hours in a year (defined as a rolling 12-month period)
    - 130 hours of service in a calendar month
    - Average of 30 hours of service in a week
ACA: Play or Pay Provisions

- Employers may be penalized under the ACA under certain circumstances
  - The employer does not offer health insurance to 95% of all “full-time” employees (only need to offer coverage to 70% for 2015); or
  - Health insurance is not “affordable” to the employee; or
  - The employee has a waiting period of more than three months before coverage is effective; AND
  - The employee enrolls in a health plan through the Marketplace and receives a premium subsidy.

- Penalties delayed until 2016 (based on 2015 coverage), except for waiting period requirement.
Penalties under ACA “Pay or Play Penalty”

- If the employer does not offer coverage or offers coverage to fewer than 95% of its full-time employees (and their dependents):
  - It will owe an Employer Shared Responsibility payment equal to the number of full-time employees the employer employed for the year (minus up to 30) multiplied by $2,000, as long as at least one full-time employee receives the premium subsidy (penalty could be assessed on monthly basis – prorated).
  - This is reduced to 70% of full-time employees (and their dependents) for 2015.
  - We are in compliance for 2015. Will need to evaluate compliance for 2016.
Penalties under ACA
“Inadequate Coverage Penalty”

- If “full-time” under ACA and are either not eligible for coverage or coverage is not affordable AND employee gets coverage through the Marketplace AND a premium subsidy, the employer will be assessed a penalty
  - $3000 per “full-time” employee who receives the subsidy (prorated penalty can be assessed on monthly basis)
  - Maximum employer penalty amount can not exceed maximum penalty amount under “Pay or Play” provisions.
  - The cap ensures that the payment for an employer that offers coverage can never exceed the payment that employer would owe if it did not offer coverage.
Employee Eligibility for Premium Subsidy

- Employees are eligible for a premium subsidy if:
  - The employee works an average of 30 hours per week and is not eligible for the employer health insurance; or
  - The employee is eligible for health insurance but the premium for the least expensive plan for single coverage is “unaffordable” to the employee.

- **Employer subject to penalty only if employee enrolls in coverage through the Marketplace AND receives a premium subsidy.**
Play or Pay Provisions - Affordability

- In order for employer-sponsored health insurance to be affordable under the ACA, the employee’s cost for the least expensive plan (single coverage) cannot exceed 9.5% of the employee’s household income.

- Employer may use one of the following “safe harbors” to determine affordability:
  - The amount reported in Box 1 of employee’s Form W-2
  - 400% of the federal poverty level for a single person ($46,680 in 2014)
  - For hourly employees, multiple hourly rate by 130 hours per month.

- Penalty if employer coverage is not “affordable” and employee receives coverage through the Marketplace and subsidy.
Affordability Risks

- If employee is eligible for full employer contribution towards premium, potential for affordability penalty very small
- Potential risks
  - Employees who pay the total premium
    - Craftsmen
    - LTEs who elect coverage before employer contribution begins (after 6 months of state service)
  - “Full-time” LTEs who pay the less than half-time rates (half of total premium)
  - Employees paid on a lump-sum basis whose hours aren’t accurately represented in HRS
Certain Employee Groups and ACA Compliance

- There are 3 employee groups/appointment types that may present ACA compliance issues as well as a risk for employer penalties
  - Variable hour employees (no set FTE)
  - Limited-term employees (LTEs)
  - Student employees
Variable–Hour Employees

- Variable hour employees are those who do not have a fixed FTE/appointment percentage (LTEs, student, academic hourlies, ad hocs...)
- The employer may use a 3-12 month “look-back period” to determine average hours worked
  - Likely recommendation: 12-month look-back period
  - Preference is for all state agencies and the UWS to align look-back period.
Determining “Full-Time” Employee under ACA

- If an employee has a cumulative appointment percentage of at least 75%, the employee is a “full-time” employee under the ACA.
- If the employee’s FTE is unknown/variable, it gets complicated.
- To determine whether a variable hour employee is full-time under the ACA, use look-back measurement period.
  - Use of look-back period also requires the designation of a stability period and measurement period.
ACA Definitions

- **Look-back period**
  - Rolling period of 3-12 months used to assess full-time status under ACA based on hours worked in all UW jobs.
  - This is not the WRS look-back period – completely separate process and rules

- **Administrative period**
  - Immediately follows look-back period; may last up to 90 days
  - Period to determine employee eligibility for coverage, notify them of their eligibility, and enroll them in the plan
  - Even though ACA requires coverage must be offered if “full-time,” bound by statutory eligibility requirement ands may not be able to offer coverage – puts UW in potential penalty situation

- **Stability period**
  - Begins immediately after administrative period
  - The period during which eligibility from the look-back period is maintained. Ex. if determined to be “full-time”, remain “full-time” during stability period.
Establishing Eligibility under ACA: Variable Hour Employees

- UWSA will need to determine the following:
  - Length of look-back and stabilization periods
  - How to convert lump sum payments to hours worked
    - Instructional academic staff paid on lump sum - Credit X hours per hours or credits taught?
    - Non-teaching lump sum payments – creation of consistent conversion method and/or assign hours at time of appointment
    - Additional guidance on the use of lump sums may be developed.
  - Potential for penalties is moderate due to difficulty determining conversion rate.
ACAO Compliance Issue: LTEs

- Under ACA, health insurance waiting period must not exceed 90 days – current health insurance eligibility statutes for LTEs do not comply with this provision
  - LTEs not eligible for SGH if not eligible for WRS (typically LTEs are not covered by the WRS until they work for 1 year).
  - Once WRS-eligible, employee must complete six months of WRS service to receive the employer premium contribution under Wis. Stats. 40.05 (4)(a)(2).
- OSER and ETF are reviewing the statutory issues relating to ACA. Likely no changes will be made for the 2015 plan year.
Establishing Eligibility under ACA: LTEs

- LTEs are typically “variable hour employees” so they will be evaluated during the ACA “look-back period.”

- If the ACA “look-back period” is 12 months, this may coordinate with the WRS look-back period. If an employee is “full-time” under the ACA, they may also meet the hours threshold for WRS eligibility.
  - Reminder – all hours work count toward ACA look-back period but only hours worked in WRS-eligible appointment types (FA, AS, LI, CP, CL, CJ) count towards WRS look-back

- LTEs are not eligible for the employer contribution toward health insurance until they have 6 months of WRS service. If employee goes to the Marketplace and receives a subsidy before eligible for the employer contribution, potential for employer penalties.

- May also have affordability issue if paying less-than-half-time rates.
Establishing Eligibility under ACA: Student Employees

- Statutorily prohibited from offering student employees coverage under SGH.
- Federal work-study hours are not considered when determining if student is a “full-time” employee under ACA. Other work hours are counted to determine eligibility. Working on how to track and identify.
- Less than 80 SH exceeded working an average of 30 hours of per week in 2013. Could implement a hour maximum per week, month or year to reduce potential liability – leaning towards annual cap. Concerns?
- Students under age 26 may have access to health insurance through a parent.
- If student is “full-time” employee under ACA, gets coverage through Marketplace and receives a subsidy, UW will receive a penalty but current risk is small.
Establishing Eligibility under ACA: Student Employees

- There is no need to limit student hours worked at this time.

- Once full analysis of potential liability is complete, it will be determined if a policy limiting student hours needs to be in place.

- Difficult to estimate risk because employers will not be assessed any penalties until employees file their 2015 tax returns in early 2016 and indicate that they received a subsidy.

- Working to create a cumulative hours worked report for SH that indicates when the student is bumping up against “full-time” status under the ACA (based on whatever look-back period is implemented).
Summary of Outstanding Issues:

- Complete queries to estimate potential for penalties
- Establish look-back and stabilization periods
- Determine method to be used to determine affordability
- Determine how to convert lump sum appointments to establish hours worked and affordability
- Determine need to track federal student work study hours
- Determine need to limit student employees’ hours
- If/when OSER or ETF will initiate statutory changes for LTEs eligibility or effective date of SGH coverage
- Employee cost for the least expensive SGH plan in 2015 to determine affordability for low-wage earners
- New IRS Reporting Requirements (2016)
Summary of Outstanding Issues, con’t:

- Awaiting guidance on what the employer will be required to provide to the IRS when an employee receives a subsidy through the Marketplace
- Awaiting policy from DOA regarding funding of penalties
- UWSA will work with ETF to determine the impact of employment changes during the stabilization period.
  
  - For example, an LTE is a WRS participant, has concurrent appointments and enrolls in SGH with the full employer share. One of the LTE appointment ends. While the employee remains eligible for SGH during the stabilization period, confirmation is needed as to whether the employer contribution is reduced to the less-than-half-time rate.
What’s Coming

- In the future (2016 or later), may need to assist in responding to federal verification that the individual who enrolled in a health plan through the Marketplace and received a premium subsidy was indeed eligible for a subsidy (retrospective review based on 2015 tax filing).
- Except for penalties relating to waiting periods in excess of 90 days, penalties will not be assessed until 2016 based on violations that occur in 2015.
Resources for you and employees:

- Federal Website - healthcare.gov
- UWSA Employee Website – http://www.uwsa.edu/ohrwd/benefits/med/marketplace/
- UWSA Admin Website - http://www.uwsa.edu/ohrwd/admin/aca/
- OSER Website - http://oser.state.wi.us/category.asp?linkcatid=696
- OCI Website - http://www.oci.wi.gov/oci_home.htm
Questions