


**8th Annual GMA SHRM
Human Capital Conference**

**Separating Fact From Fiction
With The Affordable Care Act:**

**What HR Professionals
Really Need to Know**


Madison, Wisconsin
May 14, 2013



Goals for Today

- Most employers and business owners have been inundated with various ACA/HCR checklists, implementation timelines and seminar invitations.
- HCR is so expansive that is nearly impossible for the HR function not to feel buried in regulations, minutia and, at times, conflicting advice and priorities.
- We will separate fact from fiction, identify the most significant HCR issues and provide some guiding principles to direct your organization's approach to HCR.

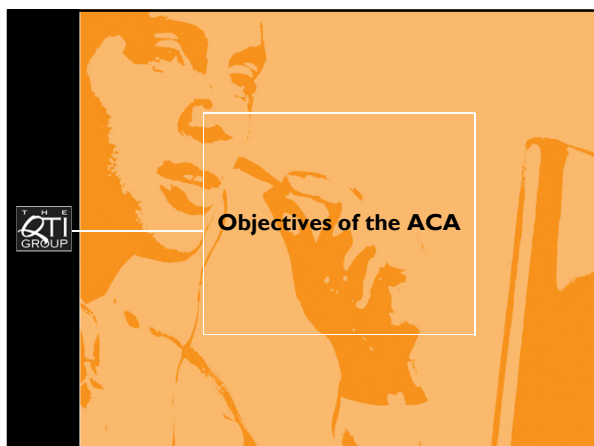
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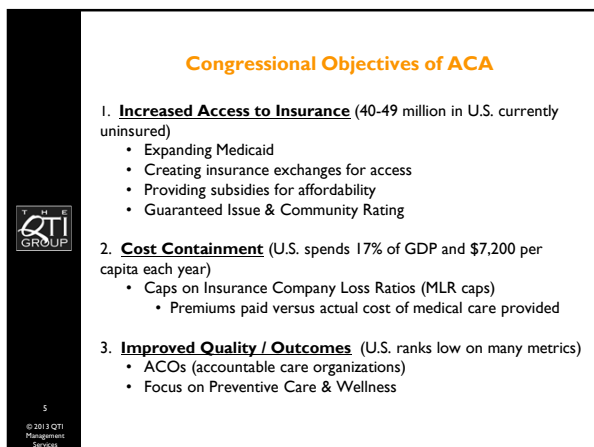


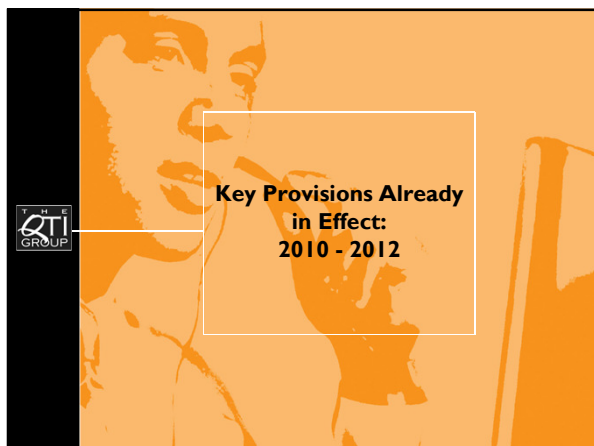
Outline

- Overview and Objectives of ACA
- Key Provisions Already in Effect
- Key Upcoming Changes By Year
- The Great Unknowns for Employers
- Employer Awareness
- Anticipated Employer Actions
- QTI's Recommendations for Employers

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Key ACA Provisions – 2010 and 2011

- **Restriction on Over-The-Counter Medications Coverage on Flex**
 - Must have medical provider prescription
- **Elimination of Lifetime Benefit Limits Paid by Insurance Provider**
 - Plans can no longer cap lifetime costs for individual or family
- **Raising of Annual Benefit Limits Paid by Insurance Provider**
 - In 2014, insurance providers can no longer restrict ABL
- **Elimination of pre-existing condition exclusions for dependents under age 19**
 - Cannot restrict cover for conditions such as asthma, cancer, diabetes, etc.

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Key ACA Provisions – 2010 and 2011

- **Dependent adult coverage on parent's policy up to age 26**
 - Check your plan – through date of birth (DOB) or end of month following DOB
- **Preventive care services with no cost-sharing**
 - All covered 100%: well-child visits and annual exams
- **No rescission of coverage**
 - Plans cannot retroactively terminate coverage on technicalities

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Key Provision That Is Not Yet Implemented

Non-Discrimination Rules

- Under the ACA, fully-insured health plans may not discriminate in favor of highly-compensated employees (5 highest paid officers, 10% shareholders and top 25% by pay) with respect to eligibility or benefit level. Similar provisions have existed for self-insured plans for decades. ACA rules only relate to **health** insurance plans.
 - **Significant Penalty:** \$100 per day per disadvantaged employee.
- Final implementing rules have **not** been issued and these ACA provisions have been delayed until the first plan year **after** the rules are issued. These rules will likely be rather detailed and complicated, but employers have very little reliable guidance right now.
- ACA non-discrimination rules do **not** apply to Grandfathered Plans.

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Key ACA Provisions – 2010 and 2011

Grandfathered Plans

- To encourage employers to maintain any existing plans, the law grants significant advantages to Grandfathered Plans (GF Plan). To maintain GF status, any existing plan as of March 2010 must not: (1) make significant plan design changes or (2) shift more than a minimum amount of additional cost to employees.
- **QTIHR-sponsored health plan is grand-fathered.**
 - QTIHR worked diligently, and closely with its partners, to maintain GF status for its plan.
 - Retaining GF plan status reduces cost and maintains client flexibility.

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Key ACA Provisions – 2012

- **First MLR Rebates issued**
 - Employers that receive MLR rebates must follow process for returning/crediting premiums paid by employees. DOL has issued technical release with detailed instructions.
- **W-2 Reporting**
 - Beginning with tax year 2012, the value of employer-sponsored health insurance must be reported on the W-2, but will not be taxed – informational only. Employer-provided health insurance is still tax free to employee. Detailed rules on which benefits get reported and which ones don't. Reporting is optional for small employers (fewer than 250 employees).
- **Summary of Benefits and Coverage (SBC)**
 - For plan years renewing or beginning on or after September 23, 2012, the ACA requires health plans to issue SBCs to new hires and enrollees describing basic plan benefits and coverage in a uniform fashion. Significant penalties apply. Fully-insured employers should work with their health insurance provider to ensure compliance.

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Key ACA Provisions – 2012

New W-2 Reporting

- **Who is Covered**
 - Mandatory for employers filing 250+ W-2s for 2011
- **What Gets Reported**
 - The aggregate reportable cost includes both the ER and EE portions of benefits premium, regardless of whether the EE paid through pre-tax or after-tax contributions. Please see the IRS' detailed reference: <http://www.irs.gov/uac/Form-W-2-Informational-Reporting-of-the-Cost-of-Employer-Sponsored-Group-Health-Plan-Coverage>
- **What Does Not Get Reported**
 - Contributions to a multi-employer plan are not reported.
 - Cost of coverage under a stand-alone dental or vision plan
 - HSA contributions and salary reduction contributions to health FSA
 - EAP, Wellness Programs and onsite clinics (if employer does not charge a COBRA premium for continued coverage of these benefits)

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Key ACA Provisions – 2012

Summary of Benefits & Coverage (SBC)

- **Content:** Notice must describe: (1) the benefits and coverage under a plan including cost sharing requirements and any information regarding exceptions, reductions or limitations of coverage; (2) examples of cost sharing situations; and (3) a uniform glossary of terms.
- **Sample:** <http://www.dol.gov/ebsa/pdf/CorrectedSampleCompletedSBC.pdf>
- **Distribution:** SBC must be distributed (plan sponsor responsibility)
 - During any enrollment period
 - Open Enrollment
 - New Hires
 - Within 90 days of any special enrollment
 - Upon participant request (within 7 business days)
 - Following any changes to the SBC
- **Penalties:** \$1,000 per willful failure; possible additional penalties of \$100 per day per affected participant
- **Employer "To Do":** Confirm with your insurer who will distribute!

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Key Provisions: 2013

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Key ACA Provisions – 2013

- **Health Flexible Spending Account (FSA) Limits**
 - Health FSA contributions are limited to \$2500/year with annual increases based on cost of living adjustments.
- **New Medicare Taxes**
 - To help fund the ACA, new taxes take effect on high-income earners (Single: \$200,000; Joint: \$250,000) (See slide "Funding the ACA" for more info)
- **Comparative Effectiveness Fees (PCIOR)**
 - New fees on health insurance policies and self-insured plans. First payments due in July 2013. Approximately \$1 per covered life in 2013 and \$2 per life through 2019.
- **Medicare Part D "Donut Hole" Continues to be Gradually Closed**
 - Relevant only to employers with retiree health benefits that include prescription drug coverage.

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Key ACA Provisions – 2013

- **Exchange Notices**
 - All employers must issue “Exchange Notices” to employees advising them of: existence of and services available on Exchange, coverage opportunities, possible subsidy eligibility, and contact information.
 - Must be provided to all current employees and to all new hires, regardless of FT/PT status or enrollment status
 - To all current EEs no later than 10/1/13
 - To all new hires starting 10/1/13
 - Initial distribution date of 3/1/13 was postponed.
 - On 5/8/13, the DOL released temporary guidance and model/template notices:
 - Guidance: <http://www.dol.gov/ebsa/newsroom/tr-13-02.html>
 - Model Notice for ERs offering health insurance: <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>
 - Model Notice for ERs not offering insurance: <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>
 - Model COBRA Notice: <http://www.dol.gov/ebsa/modelectionnotice.doc>

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Key Upcoming Provisions: 2014:
“The Big 5”

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Key Upcoming ACA Provisions – 2014

The Big Five

1. **State Insurance Exchanges**
 - Online marketplace for individuals and “small” employers to compare and obtain coverage
2. **Individual Mandate & Subsidies** (“Personal Responsibility Rules”)
 - Individuals must obtain insurance coverage or pay a tax penalty
 - Significant federal subsidies to help with cost of exchange coverage for those between 138% - 400% of federal poverty level
3. **(Large) Employer “Pay or Play” Rules** (“Shared Responsibility Rules”)
 - Elaborate provisions and calculations for employers to consider as part of their decision whether or not to offer health insurance coverage to “full-time” employees and their dependents, the nature of that coverage (“play”) and/or face penalties (“pay”)

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Key Upcoming ACA Provisions – 2014

The Big Five

4. Guaranteed Issue & Community Rating

- Insurers must generally accept every individual or group that applies for coverage and must renew coverage. This includes expanding the no pre-existing condition exclusions to all ages.
- Insurance companies can only vary rates based on age, geographic location, smoking status and family size – and only to a certain extent
 - Insurance companies will be prohibited from setting or increasing premiums based on health status, gender or occupation

5. Medicaid Expansion

- Individuals and families between 0% -138% of the federal poverty level ("poorest of the poor") will be granted Medicaid coverage (assuming state accepts).
 - In 2012, the Federal Poverty Level was \$11,170 for an individual or \$23,050 for a family of four. 138% of FPL is \$15,415 for an individual or \$31,809 for a family of four.

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Key Upcoming Provisions: 2014:

The Big 5: #1 State Insurance Exchanges

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Key Upcoming ACA Provisions – 2014

State Insurance Exchanges

- **Online Marketplace:** Effective 2014, an insurance exchange will operate in each state, providing an online marketplace to compare and purchase health insurance from private insurance companies (no "public option"). There will be 2 options:
 - 1) For individuals
 - 2) For small employers (50 EEs or less or 100 EEs or less). This is called a "SHOP" exchange.
 - In 2017, states may open SHOP exchange to all employers.
- **Purpose:** Exchanges are intended to promote competition for health insurance by standardizing information to facilitate plan comparisons.
- **Operational function:** Among other things, exchanges will need to:
 - Certify which health plans qualify to be offered on exchange
 - Determine an individual's eligibility for subsidies (or Medicaid)
 - Apply any subsidies and process plan enrollment (including into public programs)

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Key Upcoming ACA Provisions – 2014

State Insurance Exchanges

- **Minimum Essential Coverage:** All exchange policies must provide "minimum essential coverage." Insurance companies that want to offer exchange coverage must apply in that state. State reviews the offering and decides whether it qualifies.
- **4 Tiers of Coverage:** Four tiers of plans offered in each state based on actuarial value with varying levels of coverage, co-pays, deductibles, etc.
 - **Bronze** – 60% of plan costs covered
 - **Silver** – 70% of plan costs covered
 - **Gold** – 80% of plan costs covered
 - **Platinum** – 90% of plan costs covered
- **Affordability Through Subsidies:** The ACA provides subsidies and credits to individuals to make coverage more affordable through the exchanges.

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Key Upcoming ACA Provisions – 2014

Wisconsin – State Insurance Exchange

2010

- WI passed a law authorizing creation of a state exchange and granting oversight to OCI (Office of Commissioner of Insurance).
- OCI created an exchange prototype to simulate eligibility determinations and the consumer enrollment process. The prototype was launched in December 2010, with much of the functionality required of an exchange website.

2011

- Governor Walker issued an executive order to create the Office of Free Market Health Care to develop a plan for a WI health benefit exchange, but he closed the Office a few months later.

2012

- In November 2012, the Governor elected to have the federal government run Wisconsin's state insurance exchange.

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**Key Upcoming Provisions:
2014:**

**The Big 5: #2:
Individual Mandate**

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Key Upcoming ACA Provisions – 2014

Individual Mandate

- Starting in 2014, most Americans will be required to obtain health insurance or pay a tax penalty. Individuals without access to affordable health care coverage can purchase it through the exchange.
- Individuals who do not obtain coverage** (via employer, Medicaid, Medicare, other government program, or exchange) **will face penalty:**
 - 2014:** \$ 95 or 1% of income, whichever is higher
 - 2015:** \$325 or 2% of income, whichever is higher
 - 2016:** \$695 or 2.5% of household income, whichever is higher
 - 2017 and Beyond:** Cost of living adjustments made to penalties annually
- Groups of people who are exempt from Individual Mandate:** Prisoners, members of federally-recognized Native American tribes, religious objectors, and those who qualify for financial hardship exemptions

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Key Upcoming ACA Provisions – 2014

Individual Mandate & Exchange Subsidies

- Purpose:** Subsidies are designed to assist in making coverage through the exchange "affordable" (less than 9.5% of employee's household income)
 - Tricky:** Household income = all adults living in home
- Yes Subsidy:** If an employee is offered coverage from an employer, but employee's portion of single premium is not affordable the employee will be eligible for federal subsidy to help cover the cost of coverage on the exchange.
- No Subsidy:** If employer's coverage is affordable, employee can still obtain exchange coverage, but won't receive subsidy.

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Key Upcoming ACA Provisions – 2014

Individual Mandate & Exchange Subsidies

Two kinds of subsidies for those who purchase exchange insurance:

- Premium Tax Credits.** Credits that immediately reduce cost of premiums for insurance purchased through an exchange.
 - Available on a sliding scale for those that fall between 138-400 % of FPL.
 - Can be used to purchase any tier of exchange coverage.
 - Estimated Beneficiary Group:** Approximately 80 million people
 - About 18 million uninsured
 - Close to 5 million people with individual insurance would qualify for Premium Tax Credits
 - Another 55 million with employer-sponsored insurance have incomes within eligible range if their employer offers coverage deemed unaffordable.

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Individual Mandate & Exchange Subsidies

2. **Cost-sharing Subsidies.** These exchange subsidies can be used to:

- (a) discount out-of-pocket costs at point of care (co-pay, co-insurance, deductible) for those under 250% of FPL
- (b) cap total out-of-pockets costs for those under 400% of FPL.
 - Only applies to Silver-tier level exchange products (70% of plan costs covered)
 - Can be in addition to premium tax credits.
 - Average annual subsidy is estimated to be about \$4,500 per person.

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Key Upcoming ACA Provisions – 2014

“Affordability” of Employer-Offered Insurance

• **“Affordability” defined:** Measured only with respect to the cost of the Employee’s share of the single premium (EE-only coverage).

• **Calculation:** If the employee’s share of the single premium exceeds 9.5% of household income, then the employee is eligible for exchange subsidies.

- Since employer will not know employee’s household income, the IRS created a **“W-2 Safe Harbor”** so that employers will not incur a penalty for lack of “affordability” as long as employee’s portion of single premium does not exceed 9.5% of employee’s W-2 wages. (Employer penalties are discussed in detail later.)
- **Two additional affordability safe harbors:**
 - Using FPL for single person (\$11,490 in 2013) not W-2 wages
 - Using employee’s rate of pay X 130 to make monthly determination


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“Affordability” of Employer-Offered Insurance


- **Likely result:** It is expected that many employers will set premium cost-sharing so that single coverage is affordable as defined under the ACA.
- **Unintended result:** The ACA does not address the EE’s share of the family premium relative to household income, thus it is unlikely that the EE share of that coverage will be as affordable.
 - EE’s share of the family premium could greatly exceed 9.5% of income and the EE would not be eligible for **any** exchange subsidy because the single coverage is affordable.
 - **Example:** If the premium for ER-sponsored insurance is \$5,430/yr for Single and \$15,070/yr for Family, EE’s share of the premium is \$920/yr for Single and \$4,130/yr for Family. Under ACA, this is “affordable” for a family making \$35,000 – with no exchange subsidy available to the employee, despite Family premiums being 12% of income.

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**Key Upcoming Provisions:
2014:**

**The Big 5: #3:
Large Employer
"Pay or Play" Rules**




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Large Employers Must "Pay or Play"

"Pay or Play" defined: Large Employers will need to either offer their full-time employees minimum essential coverage that provides minimum value ("play") or pay a penalty ("pay"). Even if Large Employer "plays", it might still face penalty if it is not affordable insurance.

- IRS controlled groups rules (§414) apply to prevent gaming the 50 FTE threshold (i.e., using multiple entities, each employing 49 FTEs).
- Also, be mindful of affiliated service group rules (integrated entities that may be viewed as one by IRS despite no common ownership)
- All "Pay or Play" penalties will be calculated monthly and paid/due annually.
- An employer's penalty tax will not be tax-deductible.

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Large Employer "Pay or Play" Analysis


- **Step 1:** Are you a "Large Employer"?
- **Step 2:** Do you have an Employer Plan that offers "minimum essential coverage" and provides "minimum value"?
 - **Step 2(a)** – If so, is your Employer Plan "affordable"?
- **Step 3:** Will any of your employees receive subsidized exchange coverage? See prior "affordability" slides.
- **Step 4:** Determine how many "Full-Time" Employees you have
- **Step 5:** Scenario Planning & Penalty Estimates
- **Step 6:** Strategic Decision-Making

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Step 1: Are you a Large Employer for “Pay or Play”?


- **Large Employer defined:**
 - **Employers with an average of 50 or more Full-time Equivalent (FTE) employees in the previous calendar year.**
 - An employer could be considered a covered “Large Employer” even if it does not have a single employee working full-time (30 hours per week).
 - This is a month-to-month determination with the individual monthly **FTE Employee** totals added together and then divided by 12, resulting in the **average number of FTE Employees for the year.**


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Step 1: Are you a Large Employer for “Pay or Play”?


- **Formula for Calculating** the number of FTE Employees for “Pay or Play”
 - **=(Average # of Full-time Employees) + (Average # of FTE Employees)**
 - **Formula explained:** For each month, divide the total aggregate hours worked by **FTE Employees** (i.e., non Full-time Employees) by 120, and then add this to total of **Full-time Employees**. Max hours considered worked by a **FTE Employee** is 120. The individual monthly totals are added together and then divided by 12.


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Examples of Calculating # of FTE Employees

- **Example 1:** ABC Co. has 35 employees working full-time and 30 working part-time. In January, the part-timers worked 2,400 total hours. Calculation: $35 + (2,400 / 120 = 20) = 55$ FTE employees for that month.
- **Note:** The max hours considered “worked” by a **FTE Employee** is 120 hours per month. Thus, if any FTE Employee works more than 120 hours in a month, their # of hours worked are capped at 120 for the purposes of this calculation.
- **Example 1a:** ABC Co. has 35 employees working full-time, 29 working 80hrs/mo and 1 working 140 hrs/mo. The 140 hrs/mo are reduced to 120 hrs/mo for the purposes of this calculation. Thus, in January, the part-timers actually worked 2,460 total hours but only 2,440 hours are considered. Calculation: $35 + (2,440 / 120 = 20) = 55$ FTE employees for that month.


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**ACA Overview:
Key Upcoming ACA Provisions – 2014**

Examples of Calculating # of FTE Employees

- **Seasonal Worker Exception.** If employer's workforce exceeds 50 FTE employees, but only for 120 days or less during calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal employees, then not a Large Employer.
- **Example 2:** ABC Co. has 40 employees working full-time year round. From May through July, ABC Co. employs an extra 30 seasonal employees working 40 hours per week, none of whom were employed for more than 120 calendar days. Calculation: 40 + (0 FTE employees) = 40 FTE employees for that month – due to seasonal employee exception.

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Step 2: Does plan offer "MEC" and provide "MV"?

- To be considered as offering coverage under the ACA, an employer's plan must provide "**minimum essential coverage**" and "**minimum value**" to "full-time" employees and dependents, but need not to spouses.
- "**Minimum essential coverage**" ("MEC"): Any employer-sponsored major medical health plan will meet the "minimum essential coverage" requirement.
 - The following do not provide MEC: coverage only for accident, or disability income insurance, workers' compensation insurance, stand-alone dental or vision plans, stand-alone coverage for specified disease or illness
- "**Minimum value**" ("MV"): A plan provides "minimum value" if it covers at least 60% of the cost for medical services received.
 - The following do not provide MV: "Mini-med" and other high ded, catastrophic type plans; HRAs used to purchase individual health plans
 - Offering such plans = not offering coverage, subject to "pay" penalties

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Step 4: Determining Who is a Full-time Employee - Overview

Why This Matters: Whether a Large Employer decides to "pay" (not offer coverage) or "play" (offer coverage), the number of "Full-time Employees" drives any "Pay or Play" penalties. In fact, a Large Employer with no Full-time Employees will face no "Pay or Play" penalty.

- ** This is a **different** definition and analysis used to determine whether an employer is a Large Employer that is subject to "Pay or Play" rules.**
- ACA defines a Full-time Employee as working an average of 30 hours / week. Subsequent regulations clarified that to 30 hours of service / week, which includes hours worked and any paid time off (vacation, holiday, disability, etc.).
- Under the January 2013 "Pay or Play" proposed regulations, employers have considerable discretion and flexibility to define full-time status under a "Safe Harbor" which uses different "measurement periods" for different types of employees.


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Determining Who is a Full-time Employee - Overview

The January 2013 "Pay or Play" proposed regulations created a system of determining "full-time" status using the following groups of employees:

- **"Ongoing Employee"**: EE who has been employed for at least one "standard measurement period" (see subsequent slide)
- **"Newly Hired – Reasonably Expected to Work Full-Time"**: Self-evident
- **"Newly Hired – Variable Hour Employee"**: When employer cannot, as of hire date, determine whether EE is "reasonably expected to average at least 30 hours of service per week.
- **"Newly Hired – Seasonal Employee"**: Not specifically defined. ER can use a reasonable good faith interpretation through at least 2014.
- **"Part-Time Employee"**: Any employee that is not one of the above. ER would not face any "Pay or Play" penalty for them.




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Ongoing Employees

- To be considered a **Full-time Employee**, an Ongoing Employee must average 30 hours of service per week during the employer's "**standard measurement period**" (**Standard MP**).
 - If so, then the employer must treat the worker as **Full-Time Employee** during a subsequent "**stability period**" that is at least 6 months long, but no shorter than the **Standard MP** – regardless of actual hours worked during the stability period. The **Standard MP** is the same for every employee.
 - If not, then this employee is not treated as a **Full-time Employee** and the employer would not be penalized even if the employee obtains exchange coverage and receives exchange subsidies.
- For Ongoing Employees, employers select a backward-looking **Standard MP** ranging between 3 to 12 months. The employer determines when it starts and ends, but it applies to all Ongoing Employees.
- Best to select a longer **Standard MP**?




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Newly Hired Employees

- **Newly-Hired "Reasonably Expected to be Full-Time" Employee.** An employee that the employer reasonably expects to work full-time as of start date will be treated as a Full-time Employee upon hire.
- **Newly-Hired Variable Hour Employee.** As with "ongoing employees", employers have some discretion and flexibility to define full-time status for newly hired employees. So, an employer can use a 3 – 12 month "**initial measurement period**" (**Initial MP**) during which to determine whether the worker averages 30 hours of service per week. The **Initial MP** is employee specific, the **Standard MP** is not.
- **Newly-Hired Seasonal Employee.** Although the term is not specifically defined in the IRS Guidance, an employer would use the same safe harbor measurement process that is used with a Newly-Hired Variable Hour Employee.



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Newly Hired Employees

Transition from New to Ongoing Employee. Once a new, variable hour or seasonal employee who has been employed for an **Initial MP** has also remained employed for an entire **Standard MP**, the employer must re-test the employee for full-time status, beginning with that **Standard MP**, at the same time and under the same conditions as other ongoing employees. In other words, while the **Initial MP** and **Standard MP** are different periods, there will be overlap.

- Example:** an employer whose **Standard MP** is the calendar year, and who uses a 12-month **Initial MP** beginning on the date of hire, would evaluate a new variable hour employee hired February 12, 2013 over the 12-month **Initial MP** ending February 11, 2014, and again based on the calendar year **Standard MP** running from January 1 – December 31, 2014. The length of the **stability period** depends upon whether the employee is determined to be full-time based on the **Initial MP** or **Standard MP**.

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Key Upcoming ACA Provisions – 2014

Other Key Concepts in Determining Full Time Employee

- Different Measurement & Stability Periods for Different Categories of Employees.** IRS guidance allows ERs to use **measurement periods** and **stability periods** that differ either in length or in their starting and ending dates for the following categories of employees: (1) collectively bargained and non-collectively bargained employees; (2) salaried and hourly employees; (3) employees of different entities; and (4) employees located in different states.
- Optional Administrative Period.** An **administrative period** is an interval, not to exceed 90 days, between the end of a **measurement period** and the beginning of a **stability period**. ERs may use this time to identify Full-time EEs, notify them of eligibility, and enroll them in coverage. The **administrative period** may not add to or subtract from **measurement** or **stability periods** (thus may be required to run concurrently with **stability periods**). Nor may a combined **initial measurement period** and **administrative period** extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the EE's date of hire. This 13+ partial month period is meant to allow ERs to combine a 12-month **initial stability period** for variable hour and seasonal EEs, with a 1+ partial month **administrative period** (or, for instance, an 11-month **initial stability period** with a two-month **administrative period**).

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Key Upcoming Provisions: 2014:

Implications for Large Employers: Scenarios and Results

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Key Upcoming ACA Provisions – 2014

Step 5: Large Employer Scenarios and Associated Results

Scenario #1: Large Employer does not offer any insurance coverage so employee goes to state exchange for coverage and employee receives a subsidy because his income is between 100% - 400% of FPL.

Result: If any one FT Employee obtains subsidized exchange coverage, then Large Employer will pay a penalty of \$2,000/year per every FT Employee (excluding first 30 FT Employees) – **even if** some of those FT Employees do not obtain a subsidy.

Reminder: The definition of "Full-time Employee" for "Pay or Play" penalty purposes is defined as someone who averages 30 or more hours of service per week.




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Key Upcoming ACA Provisions – 2014

Scenario #2: Large Employer offers insurance, but it is not "qualifying coverage" (it is not "affordable", and/or not "minimum essential coverage", and/or doesn't provide "minimum value") so employee rejects it and goes to state exchange for coverage and gets subsidy.

Result: Large Employer will pay a penalty of \$3,000/year per FT Employee receiving subsidized exchange coverage, but not more than they would pay had they not offered any insurance ("penalty cap").




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Key Upcoming ACA Provisions – 2014

Scenario #3: Large Employer offers minimum essential coverage insurance, but it is not "affordable" to a particular Full-time Employee, but that Full-time Employee still accepts the employer's coverage rather than obtain exchange coverage.

Result: Large Employer will NOT pay a penalty for this Full-time Employee because he/she did not ultimately obtain exchange coverage.




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Scenario #4: Large Employer offers insurance, and it is “qualifying coverage” (is “affordable” and provides “minimum essential coverage” – see preceding, pertinent slides), but employee rejects employer-offered coverage and goes to the state exchange for coverage.

Result: Large Employer will NOT pay a penalty and Employee will not get subsidy.




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Scenario #5: Large Employer offers insurance, and it is qualifying coverage (is “affordable” and provides “minimum essential coverage” – see preceding, pertinent slides) and employee rejects coverage but does not go to the state exchange.

- Employee may reject coverage for no reason or because s/he has coverage through a parent, spouse or domestic partner

Result: Large Employer will NOT pay a penalty.




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Key Upcoming ACA Provisions – 2014

Scenario # 6: Large Employer offers insurance, and it is qualifying coverage (is “affordable” and provides “minimum essential coverage” – see preceding, pertinent slides) and employee accepts coverage.

Result: Large Employer will NOT pay a penalty and employee is engaged with employer.



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Key Upcoming ACA Provisions – 2014

Large Employers pay penalties only if:

1) They do not offer any insurance or offer insurance that is not qualifying coverage (i.e., minimum essential coverage that provides minimum value)

- Annual penalty of \$2,000 per Full-time Employee (excluding first 30 Full-time Employees) **but only** if at least one Full-time EE receives subsidized exchange coverage (meaning, the ER pays a penalty for ALL Full-time Employees, minus the first 30)

2) They offer minimum essential coverage that provides minimum value, but it is not affordable, and a Full-time Employee rejects coverage and goes to the exchange for coverage and gets a subsidy

- Annual penalty of \$3,000 per such Full-time Employee (limited by "penalty cap")

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Employer "Pay or Play" - 2014

Why Controlled Groups Matter Under The ACA

- Importance of "Controlled Group" under ACA:** The number of employees, Full-time Employees and other types of employees play a key role with the following:
 - Whether Large Employer "Pay or Play" rules apply
 - Non-Discrimination Rules – all entities reviewed together
 - Access to SHOP Exchanges – must have 100 or fewer EEs (2014-16)
 - Small Employer Health Tax Credit – must have 25 or fewer EEs
- Determining ACA "Employer" Through Ownership and Control.** "Controlled Group" is a bit of a misnomer: the emphasis is on direct ownership or overlapping (i.e., "common") ownership rather than on actual, hands-on control. The IRS controlled group rules generally provide that organizations in a parent-subsidiary relationship (a controlled group of corporations) are to be treated as a single employer under ACA.
 - In addition, businesses which meet a certain level of common ownership are treated as a single "employer" under ACA – even if the trades or businesses are not linked to each other by direct ownership ("brother-sister" rule).
 - Affiliated service groups are also be viewed as single employer under ACA.

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**Key Upcoming Provisions:
2014:
Implications for Small Employers**

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Key Upcoming ACA Provisions – 2014

Small Employers Pay NO "Pay or Play" penalties – NO MATTER WHAT

- **"Small Employer" Defined:** Employers with fewer than 50 FTE Employees in previous calendar year.
- Just as before the ACA, Small Employers are not compelled to offer their employees insurance and will not be penalized for not offering insurance coverage.
- Just as before the ACA, many Small Employers offer their employee insurance because it enhances their employment brand. It connects their employees to them and serves as a recruiting tool for prospective employees.

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Key Upcoming Provisions: 2014:

The Big 5 #4: Guaranteed Issue and Community Rating

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Key Upcoming ACA Provisions – 2014

Guaranteed Issue and Community Rating


- **Guaranteed Issue:** Insurers must generally accept every individual or group that applies for coverage and must renew coverage. This includes expanding the no pre-existing condition exclusions from the current under 19 to all ages.
- **Community Rating:** Insurers can only vary rates based on age, geographic location, family size and smoking status - and only to a certain extent for each.
 - Insurers will be prohibited from setting or increasing premiums based on health status, gender or occupation
 - Insurers will only be able to charge older people 3 times more than younger people, and smokers 1.5 times more than non-smokers.
- **Good News, Bad News:** More covered, but higher premiums for many.

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Key Upcoming Provisions: 2014:

The Big 5 #5: Medicaid Expansion




Key Upcoming ACA Provisions – 2014

Medicaid Expansion: Recall Medicaid vs. Medicare

- **Purpose and Participants:**
 - **Medicaid:** Federal-state program that provides health insurance to low-income parents, children, seniors and disabled persons.
 - **Medicare:** Federal-state program that provides health insurance to persons age 65 or older, without regard to income level.
- **Eligibility:**
 - **Medicaid:** There is a federal core minimum eligibility that states must cover to participate in the program. After that, states have much discretion to set eligibility levels based on income and so eligibility varies greatly state-by-state.
 - **Medicare:** Eligibility is uniform in every state based on age, not income level.

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Key Upcoming ACA Provisions – 2014

Medicaid Expansion

- **Funding.** Under the Medicaid expansion, the federal government provides 100% of the funding from 2014 – 2016, between 96 – 92 % of the cost from 2017-2019, and then 90% from 2020 going forward. States that accept the Medicaid expansion provide the remaining 10% funding.
- **Extending Coverage & Reducing The Uninsured.** As drafted by Congress, the Medicaid expansion would extend insurance coverage to almost half of all adult Americans who are currently uninsured (about 17 million of the 41 million uninsured adults). Of the 49 million childless adults currently below 138% of FPL, 44% were uninsured in 2010.
- **Effect of Rejecting Medicaid Expansion.** Exchange subsidies are only available to those between 100% – 400% of FPL, not available to those under 100% of FPL. As a result, in those states that reject the Medicaid expansion, many of those under 100% of FPL that are currently uninsured will remain uninsured.

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Key Upcoming ACA Provisions – 2014

- Wisconsin's Medicaid program** was expanded under Gov. Thompson's BadgerCare program. In 2010, nearly 1.1 million WI residents received benefits.
 - With relatively generous Medicaid eligibility levels, Wisconsin has one of the highest insured rates at 91% of all residents.
 - Parents up to 200% of FPL are eligible for BadgerCare.
 - Childless adults up to 200% of FPL are eligible for more limited coverage, but enrollment in this program has recently closed.
- Expansion of Medicaid in WI:** Under the ACA, and following the Supreme Court ruling, WI has the option of expanding Medicaid / BadgerCare to adults below 138% of the federal poverty level (\$26,344 for a family of three in 2012) who do not currently qualify. This expansion would provide coverage to about 194,000 residents that do not currently qualify.
 - Hospitals and other medical providers give nearly \$1 billion in uncompensated care each year in Wisconsin to the uninsured.
 - WI opted to not expand Medicaid.

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Key Upcoming ACA Provisions – 2014

Medicaid Expansion: Why Employers Should Care

If a state elects not to accept the Medicaid expansion, the primary impact to employers in that state will be:

- Continued Subsidization of Cost of Unreimbursed Care.** Providers that are obligated to provide emergency care to the uninsured will need to recoup the cost of those services from the insured – most of whom are on employer-sponsored insurance.
- Universe of Those Receiving Coverage Through State Exchange Will Grow.** The ACA provides Medicaid coverage to those at or below 138% of FPL in states that accept expansion. Without Medicaid coverage, those in the 100%-138% of FPL group will likely seek exchange coverage.
- More Large Employer "Pay or Play" Penalties.** In most states, the group of Full-time Employees for whom "Pay or Play" penalties must be paid will increase as the 100% - 138% of FPL group is driven to state exchanges or coverage – where many may receive subsidies. Extent of this effect will vary in each state because states have different pre-ACA Medicaid eligibility rules.

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Key Upcoming Provisions: 2014:

Employer Reporting

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Key Upcoming ACA Provisions – 2014

New Employer Reporting Requirements

- **Prepare For Employer Reporting.** Beginning in 2014, large employers will need to report and/or provide a wide range of information to different agencies at different time intervals – some monthly, some annually.
- Beginning in 2014, for example, large employers will also have to annually report employee information to the federal government to help ascertain employer "Pay or Play" and individual mandate compliance.
 - Reports will certify whether the employer offers "minimum essential coverage" to employees and dependents.
 - Reports will include information about plan design (waiting period, cost-sharing of insurance premiums, minimum value of coverage, etc.) and coverage details.
 - As of May, 2013, little IRS guidance has been issued.

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Key Upcoming Provisions: 2014:

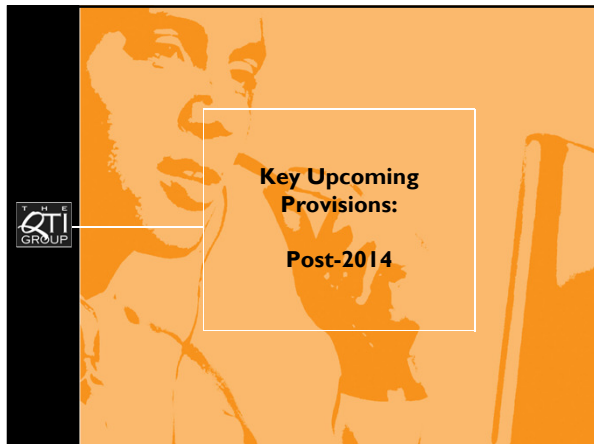
Other Key Developments

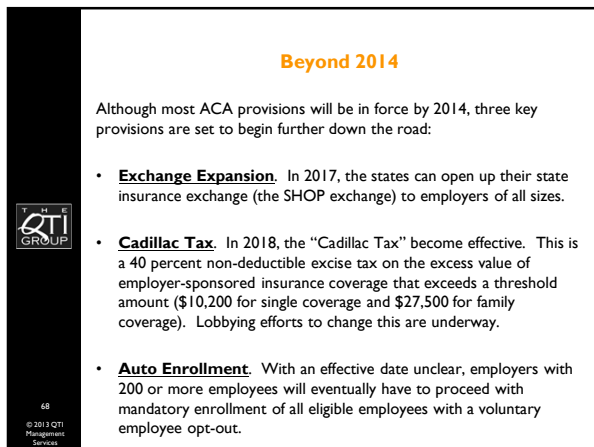
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Key Upcoming ACA Provisions – 2014

- **Plan Design Changes – Individual, Small and Large Group**
 - Will be required to limit in-network out-of-pocket expenses ("MOOP") to \$6,250 single
 - Cannot have deductibles higher than \$2000 Single or \$4000 Family
- **Brokers' Role on State Exchange**
 - Brokers and insurance agents are not necessary to obtain individual or small group coverage on the exchanges
 - If used, insurers are still required to pay commissions
- **WI Small Employer Exchange ("SHOP Exchange")**
 - 2014 and 2015: Limited to employers with 2-50 EEs
 - 2016 +: Limited to employers with 2-100 EEs

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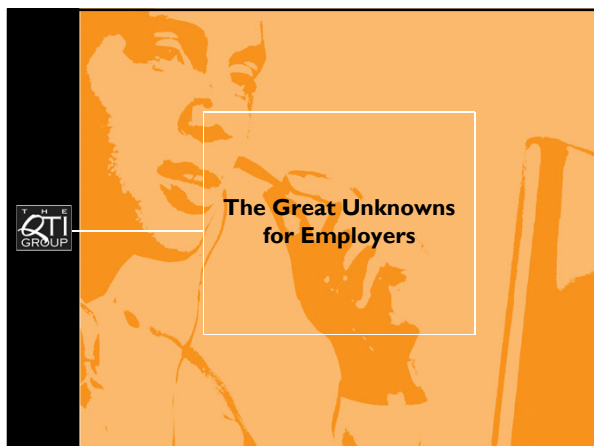


Beyond 2014

Although most ACA provisions will be in force by 2014, three key provisions are set to begin further down the road:

- **Exchange Expansion.** In 2017, the states can open up their state insurance exchange (the SHOP exchange) to employers of all sizes.
- **Cadillac Tax.** In 2018, the "Cadillac Tax" become effective. This is a 40 percent non-deductible excise tax on the excess value of employer-sponsored insurance coverage that exceeds a threshold amount (\$10,200 for single coverage and \$27,500 for family coverage). Lobbying efforts to change this are underway.
- **Auto Enrollment.** With an effective date unclear, employers with 200 or more employees will eventually have to proceed with mandatory enrollment of all eligible employees with a voluntary employee opt-out.

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The Great Unknowns for All Employers

- **Large Employer Response: Maintain Coverage or Drop in 2014?**
- **Non-Discrimination Rules (for fully insured plans)**
 - When will guidance be issued? Time to cure?
- **Impact on premiums for individuals and small groups (<50 EEs)**
 - In WI, estimated to have 30-100% increases at 2014 renewal
- **How will employees respond to the receipt of Exchange Notices?**
 - See slides regarding model Exchange Notices, released 5/8/13

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The Great Unknowns for All Employers

- **State Exchange Unknowns:**
 - Which insurance providers will participate?
 - Cost of premiums? Breadth of plans offered?
 - Quality of administration?
 - Adverse selection (current uninsured, employers "off-loading" higher risk groups, "pent up" demand in short term)
 - Readiness of exchanges by October, 2013?
- **Association Health Plans (AHP)**
 - Most AHPs will likely be treated as "small group" plans in 2014, as opposed to a single plan, dramatically affecting their economic viability. As small groups, they will be subject to small group reform.

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The Great Unknowns for All Employers

- **New ACA Fees: Impact on Premiums for ALL PLANS**
 - **Federal Exchange User Fee:** to cover costs of federal exchange
 - **Risk Adjustment Administration Fee:** to cover administrative expense of running federal risk adjustment program to stabilize premiums
 - **Reinsurance Assessment Fee:** to fund a program to reimburse companies that insure high-cost individuals on individual market
 - **Patient Centered Outcomes Research Institute Fee (PCORI):** to fund the comparative effectiveness research conducted by PCORI
 - **Health Insurer Fee:** to fund the cost of implementing provisions of the ACA

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The Great Unknowns for All Employers

Helpful Resources for WI Employers

- State of Wisconsin Office of the Commissioner of Insurance: Federal Health Care Law: FAQ for Employers -- http://oci.wi.gov/healthcare_ref/healthcarereform_employerfaq.pdf
- Kaiser Family Foundation: <http://kff.org/health-reform/>
- The Commonwealth Fund: <http://www.commonwealthfund.org/>
- U.S. Dept of Health & Human Services: <http://www.healthcare.gov/>

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Employer Awareness & Readiness

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Employer Awareness & Readiness

- **QTI Survey – Wisconsin.** A September 2012 survey by The QTI Group of about 200 Wisconsin employers found that 57% felt the ACA preparation presents either a “moderate” or “significant” challenge, about 3rd or 4th highest on a list of 17 HR issues.
- **Deloitte Survey – Large National Employers.** A July 2012 survey found that most employers said they were “not well prepared” to implement the 2014 provisions of the ACA. 40% of mid-sized and larger firms felt “well-prepared” to implement the provisions of the ACA and only 25% of the smaller firms did.
- **Mercer Survey – Large National Employers.** A survey of 4,000 large employers, taken just after the Supreme Court ruling in late June 2012, found that 44% of employers had begun planning prior to the ruling, 40% would now begin and the remaining 16% planned to wait until after the November elections.

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**Historical Trend of
Employer-Sponsored Insurance (ESI)**

- **Frequency of ESI continues to decline.** In 2000, 68% of all non-elderly Americans were insured through ESI. By 2009, it was down to 59%. Currently, 56% of those under age 65 receive ESI.
- **Cost of ESI Continues to Shift More Towards Employees.** Employers have continued to push more of health insurance costs to employees between 2000-2009. The employees' share of the total cost of ESI has increased 147%.
- **With Decreasing Prevalence of ESI, Big Growth in Uninsured.** According to the Urban Institute, 36 million Americans were uninsured in 2000 and by 2010 that number had grown to approximately 49 million.

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Anticipated Employer Response

- **Most Employers Will NOT Drop Health Insurance in 2014.**
 - **QTI Group** survey of 200 Wisconsin employers in September 2012 found that less than 8% plan on dropping coverage in 2014.
 - **Towers Watson** August 2012 survey of 440 large employers found that 88% have no plans to terminate coverage, 1% anticipate dropping coverage in 2014, and 11% were not sure.
 - **Deloitte** July 2012 survey of 560 employers with 50 or more FTE employees found that 9% of companies anticipate dropping coverage in the next 1-3 years, 81% of companies plan to continue, and 10% of companies are not sure.

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Anticipated Employer Response

- **Recruitment & Retention / Employer Perception of Value of Insurance.**
 - **QTI Group** survey of Wisconsin employers found
 - 75% believe ESI is very important to their employment brand
 - 78% believe ESI is very important to their total rewards strategy
- **Employer Strategies for Managing Health Care Costs.** Over 70% of all employers are already using the following means to manage costs and plan to continue doing so:
 - Increased deductibles and co-pays
 - Increased employee premium contributions
 - Increased incentives & disease management behaviors

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**HCR Impact on
Talent Recruitment & Retention**

Increased Labor Mobility

- Increasingly over the last 10 years, more employees have remained with employers out of fear of not being able to obtain replacement health insurance.
- With the market for individual insurance policies so unfavorable for consumers, some employees have likely "felt stuck" and turned down new opportunities.
- Some evidence that more experienced professional and executive talent might have remained with current employers to ensure that they could "bridge the gap" until Medicare eligibility at age 65.
- With HCR's state exchanges opening in 2014 and insurers having to follow "guaranteed issue" rules, talent will likely feel much more mobile.

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What HCR Means to Workforce Planning

Considerations for Minimizing "Pay or Play" Penalties

- Under the "Pay or Play" rules for Large Employers, all penalties are based on the number of Full-time Employees, which may encourage those employers to use third-party workers (from staffing agencies, independent contractors, etc.).
- Employers could partner with staffing companies to manage employees' hours worked to remain below the Large Employer threshold.

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**QTI Group
Recommendations for
Employers**

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QTI's Recommendations for Employers

QTI recommends a four-part process for employers to respond to the ACA:

1. **Ensure compliance now**
2. **Define your employment brand**
3. **Analyze whether to offer coverage or not**
4. **Monitor continuing developments**



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QTI's Recommendation #1 Ensure Compliance Now

The ACA is a detailed and broad-reaching law with a 10-year implementation cycle. To ensure compliance, an employer should:

• **Review your compliance and your plan's compliance with rules already in effect.** Plan disclosure rules, no cost-sharing preventive services, no pre-existing condition exclusions for under 19, non-discrimination rules, etc.

• **Prepare "Pay or Play" Cost Estimates.** Large employers should model a range of difference scenarios.

• **Prepare for the Exchange Notices.** Prepare your staff to issue and respond to questions related to the Exchange Notices, effective 10/1/13.

• **Prepare For Employer Reporting.** Beginning in 2014, large employers will have to report employee information to help ascertain employer "Pay or Play" and individual mandate compliance. Do you have staff to handle this?

• **Seek Expert HR Advice and Guidance.** Design and selection of full range of benefit plans, as well as employee communication.



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QTI's Recommendation #2 Define Your Employment Brand

The ACA and the many HR decisions it requires presents an opportune time for employers to look beyond just health insurance and ask broader organizational questions:

- **What is your employer identity**
 - Is it what you want it to be? What needs to change?
 - Are employees engaged? How do you engage them?
 - What do your employees get from you: your culture, your work environment, and rewards/compensation?
 - How does it impact your ability to recruit new talent and retain existing?
- **Determine the value of the benefits**
 - How do these rewards compare/benchmark with your competition?
 - What is the total value proposition that you offer to your employees?
- **Understand what your employees value**
 - Do your employees know all of the benefits they currently have?
 - Which benefits do they value most? What else do they want?
 - What do your most valuable employees value?



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QTI's Recommendation #3
Analyze Decision to Maintain Coverage or Drop

Consider the significant implications tied to this decision:

- **Impact on Employment Brand**
 - How will employees respond to an employer dropping coverage?
 - How does this impact the employee's connection to the employer? affect your organization's ability to attract and retain key talent?
 - How will employees view the quality of coverage through the insurance exchanges?
- **Impact on Employer**
 - Penalties paid are not tax-deductible, but premiums paid are tax-deductible
 - What will the employee expect in return to offset the loss? Increased pay or other benefits?
 - Number of "Full-time" Employees eligible for federal subsidies through the exchange? This determines possible "pay or play" penalty. Run the numbers.
- **Impact on Employee**
 - Insurance exchange premiums are not paid with pre-tax dollars, but ESI premiums are paid with pre-tax dollars
 - Will there be high deductible health plans that are Health Savings Account compatible on the insurance exchanges?

QTI's Recommendation #4
Monitor Continuing Developments

While the Supreme Court decision provided some certainty about the ACA, much remains to be determined through the formal rule-making process, decisions at the state level, and upcoming elections. Here are just a handful of critical issues yet to be determined:

- See "The Great Unknowns"
- WI exchange ready to start open enrollment in October 2013?
- How many insurers will offer plans in the state exchange?
- When will the non-discrimination rules be issued and take effect?
- What will be the impact on premiums for small employers?

Pop Quiz

True or False

1. Effective January 1, 2014, every employer, regardless of size, has to offer health insurance or pay a penalty. **FALSE**
2. Effective January 1, 2014, every individual will have to obtain health insurance coverage or pay a penalty. **TRUE**
3. Effective January 1, 2014, a state health insurance exchange will be made available to all individuals to obtain health insurance. **TRUE**
4. Effective January 1, 2014, it will always be less expensive for every employer to drop coverage than maintain their employer sponsored group health plan. **TRUE**
5. Health Care reform is a straight-forward and easily understood set of laws. **FALSE**

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Conclusion

Any questions?

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Presenter Biography

Michael Gotzler, J.D.
General Counsel

Mike is General Counsel of The QTI Group, providing legal and business advice to all QTI affiliated companies. Mike has 15+ years of experience in providing both legal and human resources advice to employees on a wide range of matters. Prior to joining QTI, he was an attorney at one of the nation's leading labor and employment law firms and later at the world's largest law firm, where he represented employers in a wide range of employment matters and focused on employment litigation, labor relations, wage & hour compliance, mergers and acquisitions, and preventive HR training. He has given hundreds of presentations and authored numerous articles on HR-related issues.

Mike graduated from the University of Wisconsin Law School with honors and from the University of Wisconsin-Milwaukee's Honors Program with Phi Beta Kappa distinction. He serves on the Board of Directors of the Wisconsin Association of Staffing Services, the Wisconsin Historical Foundation, and on the Government Affairs and Legal Advisory Committees of the National Association of PEOs (NAPEO). In 2011, he was appointed to the State of Wisconsin Unemployment Insurance Advisory Council. He is a member of the Association of Corporate Counsel, Society for Human Resource Management (SHRM), the Wisconsin Bar Association and the Downtown Madison Rotary Club. Mike is a Leadership Greater Madison (LGM) and Civitas alumnus and was an InBusiness Madison "40 Under 40" recipient.

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Jane Clark, J.D.
Chief Operating Officer

Jane Clark is Chief Operating Officer of QTI Human Resources. She has extensive human resources experience, in addition to private law firm practice experience. At QTI Human Resources, Jane works with established and start-up companies and organizations in various industries throughout Wisconsin to provide stand-alone human resources services, as well as integrated human resources, payroll and benefits services.

Jane graduated from Amherst College cum laude and the University of Wisconsin Law School. She is a member of the Wisconsin Bar Association, TEHPO, and Greater Madison Area Society for Human Resource Management (GMASHRM). She was an InBusiness Madison "40 Under 40" recipient and is an active statewide volunteer on educational, political, preservation, women's and children's issues.

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About The QTI Group

The QTI Group has been an active member of the business community since 1957. Our key service areas of staffing, recruiting, HR Consulting and HR Partnerships help businesses compete, gain ground, lead and succeed.



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who **understands, advises** and **connects**
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can **adapt, grow** and **succeed**.



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