

# Affordable Care Act:

## *Introduction and Summary of Issues for Staffing Companies*



*The Affordable Care Act (ACA) enacted sweeping changes to our nation's health care system. Some of these changes could have a substantial impact on the staffing industry and the way it delivers health benefits to its employees.*

The staffing industry consists of a highly mobile workforce with a high turnover rate. Most staffing agencies only have a small number of employees who perform services for the agency itself, rather than being staffed at other employers. As a result, many staffing companies do not offer health benefits to their employees, and those that do often require employees to first satisfy a lengthy waiting period before becoming eligible for benefits. Further, staffing agencies will often offer coverage through “mini-med plans,” which only cover benefits up to a certain dollar threshold (most mini-med plans usually cut off benefits at \$10,000 or less).

Starting in 2014, all companies with 50 or more full-time equivalent employees in their controlled group must either offer affordable coverage to all full-time employees or pay a penalty. Further, no company offering a group health plan may impose a waiting period in excess of 90 days. Finally, group health plans will be prohibited from imposing annual dollar limits in 2014.

### Requirement to Offer Coverage or Pay a Penalty

Beginning in 2014, large employers (those employing 50 or more full-time equivalent employees) will be subject to a penalty if:

- (a) the employer doesn't offer coverage
- (b) the coverage offered by the employer is unaffordable to the employee.

*Failure to Offer Coverage.* A large employer that fails to offer coverage to all full-time employees must pay an excise tax of \$2,000 per full-time employee.

*Failure to Offer Affordable Coverage.* A large employer that offers “unaffordable” coverage will be subject to an excise tax of \$3,000 per employee who receives a tax credit through the state-based health insurance exchanges. While this is a larger dollar amount than the tax for failure to offer coverage, this tax is only multiplied by the number of employees who receive a tax credit, rather than by all full-time employees. Coverage is “unaffordable” if the employer's contribution amounts to less than 60% of the actuarial value of the coverage or if the employee's premium for the coverage exceeds 9.5% of the employee's W-2 income.

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*Calculating the 50 Full-Time Equivalent Threshold.* The penalty applies to any employer with an average of at least 50 full-time equivalent employees during the preceding calendar year, unless the workforce exceeded 50 full-time employees for 120 days or less. Employers should add the number of full-time employees with the number of full-time equivalents to determine whether they exceed the threshold. A full-time employee is an employee who works, on average, at least 30 hours per week. The number of full-time equivalents are determined by dividing the aggregate number of hours of service of employees who are not full-time by 120.

Please note that in many instances workers will be considered to be employees of the staffing company rather than employees of the outside employer. This means a staffing agency that would otherwise be considered a “small employer” for purposes of the penalty may be pushed over the 50-employee penalty threshold due to the large number of outside “employees” staffed at other employers.

### 90-Day Limit on Waiting Period

Previously, federal regulations imposed no limits on the length of group health plan waiting periods. Starting in 2014, however, no group health plan may impose a waiting period for health benefit coverage in excess of 90 days (regardless of company size).

### No Annual Dollar Limits on Health Benefits

Starting in 2011, the Affordable Care Act required group health plans to either phase out or eliminate annual dollar limits on health benefits. Between 2011 and 2014, however, certain mini-med plans could apply for a waiver from this requirement. Starting in 2014, all such annual limits must be removed.

### Staffing Strategies for Dealing with ACA Changes

*Drop Coverage.* Many employers are considering simply not offering coverage and instead paying the penalty. The rationale here is that the cost of paying the penalty is still substantially less than the cost of providing coverage. The government may increase the penalty if this trend catches on though.

*Restructure Workforce.* Employers are also considering limiting group health plan eligibility to full-time employees, and capping employee hours at a level that would prevent them from attaining full-time status. While part-time employees may still be aggregated to determine if an employer exceeds the 50 employee threshold, part-time employees are not required to be offered coverage (and no penalty applies if they are not offered coverage).

*Consider Lower-Cost Benefit Offerings.* Studies indicate that high-deductible health plans (i.e., those plans where employees pay all medical costs until they reach a certain deductible threshold) can significantly reduce employer medical costs. Further, the employer-funded portion of most high-deductible health plans is around 65% of the actuarial value of the coverage. As a result, assuming the plan sponsor sets the employee-only premium at an affordable level, offering a high-deductible health plan should allow employers to avoid any tax penalty.

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*Restructure Annual Dollar Limits.* While the Affordable Care Act prohibits annual dollar limits on visits, it does not prohibit visit limits or dollar-per-visit limits (although the two cannot be combined for any given benefit). Employers may consider restructuring annual dollar limits into either visit limits or per-visit dollar limits to offset any upside health cost liabilities.

## Supreme Court Update & Key Applications for Staffing Firms

*Large Employer Status.* The requirement to offer coverage and the requirement for the coverage to meet certain minimum guidelines both apply only to large employers – small employers are exempt from these provisions. However, the law does not distinguish between temporary employees and permanent employees. Therefore, many staffing firms will be considered to be large employers under the law. Most employees of all size firms will still be required to be covered under some qualified health insurance or pay a penalty – this is the Individual Mandate that is the heart of the ACA.

*Limited Benefit Medical Plans.* There are two types of limited benefit medical plans: “mini-med” plans – those that mimic major medical plans but with annual and lifetime limits and hospital indemnity plans which pay cash to the insured. Under the law, mini-med plans will no longer be allowed to exist. Hospital indemnity plans will still be permitted but it is important to note that they will NOT meet the requirements of the ACA.

*Excise Taxes/Penalties.* The \$2,000 per employee excise tax levied against large employers that do not offer health coverage to its employees, and the \$3,000 excise tax levied against employers for not offering affordable coverage are both non-deductible taxes. Thus, the economic impact of these taxes must be grossed up to understand their P&L implications. Also, these taxes will be calculated monthly based on each month’s work force counts for the employer. Unfortunately, it is impossible to do any predictive modeling for budgetary or financial planning purposes regarding which, if either option is less than providing coverage. However, Assurance can help you project some health plan costs on an hourly basis for your workforce.

*Supreme Court Ruling.* In June, the U.S. Supreme Court issued its decision regarding the various legal challenges to the ACA. The Court upheld the Individual Mandate as constitutional and only found it necessary to modify the rules regarding the extension of Medicaid benefits, which is mainly a state-based issue and not applicable to employers. Regardless of this outcome, health care continues to be a significant political issue for the November 2012 elections. To keep abreast of legal developments regarding this important topic, please visit [www.assuranceagency.com](http://www.assuranceagency.com) or click the “University” link at the bottom of the page for information on scheduled webinars and other Assurance educational forums.



Written by:

### John Rutledge

John is a Vice President at Assurance who specializes in employee benefit offerings for a variety of industries.

With over 25 years of experience, John focuses on reducing health care costs to improve the functional capacity of an organization. He is a frequent speaker on health and productivity management, workforce optimization, self-insurance and reducing medical claims, among others.