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The Fine Art of Employment Law: From Compliance to the Courtroom

**Preparing Your Palette:
Covering the Latest in Employee Benefits**

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Affordable Care Act

Today's agenda:

- Recent Changes and Legal Updates
- Implementation Issues with Full-Time EE Definitions

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Affordable Care Act

RECENT CHANGES AND LEGAL UPDATES

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Affordable Care Act

The ACA is still a bit of a moving target...

- Legislative updates:
 - Continuing efforts to repeal...
 - July 2015 amendment permitting exclusion of individuals covered by uniformed service plans (including TRICARE) or Veterans' Affairs (VA) programs for purposes of the "50 or more" / "large employer" test

Affordable Care Act

The ACA is still a bit of a moving target...

- Legislative updates (continued):
 - November 2015 amendment repealing "automatic enrollment" requirement
 - December 2015 amendment delaying "Cadillac tax" from 2018 to 2020
- Regulatory updates:
 - Initial IRS Form 1095 furnishing deadline delayed two months from January 31, 2016 to March 31, 2016
 - Initial IRS Form 1094 and 1095 filing deadline delayed three months from February 29, 2016 to May 31, 2016 (March 31, 2016 to June 30, 2016 if filing electronically)

Affordable Care Act

The ACA is still a bit of a moving target...

- Regulatory updates (continued):
 - IRS Notice 2015-87 (released on December 16, 2015)
 - Year-end "grab bag" of "clarifying" guidance and transitional relief...
 - Statutory cost-of-living adjustments to 9.5% affordability factor will be extended to ACA employer mandate regulatory safe harbors: 9.56% for 2015 and 9.66% for 2016
 - Statutory inflation adjustments to ACA employer mandate \$2,000 / \$3,000 penalties: \$2,080 / \$3,120 in 2015 and \$2,160 / \$3,240 in 2016
 - "Hours of service" do not include legally required workers' compensation, unemployment or state disability payments

Affordable Care Act

The ACA is still a bit of a moving target...

- Regulatory updates (continued):
 - IRS Notice 2015-87 (released on December 16, 2015)
 - "Hours of service" do include payments from employer-provided STD or LTD coverage, even if from a carrier or other third party
 - Certain HRA amounts will be treated as reducing an employee's cost of coverage for ACA employer mandate affordability purposes
 - Reiterates that only "health flex contributions" under a cafeteria plan (or 125 plan) will be treated as reducing an employee's cost of coverage for ACA employer mandate affordability purposes
 - 2016 plan year relief for other "non-health" flex contributions already in place by December 16, 2015

Affordable Care Act

The ACA is still a bit of a moving target...

- Regulatory updates (continued):
 - IRS Notice 2015-87 (released on December 16, 2015)
 - Reiterates IRS view that "opt-out payments" or "waiver payments" should be treated as increasing an employee's cost of coverage for ACA employer mandate affordability purposes
 - IRS will soon propose regulations on this view
 - Relief for "opt-out payments" or "waiver payments" already in place by December 16, 2015 for periods before effective date of regulations (most likely just for 2016 plan year and prior)
 - Hint that future regulations may distinguish situations where payments are conditioned on proof of coverage under spouse's group coverage or other group coverage

Affordable Care Act

The ACA is still a bit of a moving target...

- Regulatory updates (continued):
 - IRS Notice 2015-87 (released on December 16, 2015)
 - Reiterates IRS concern that prevailing wage fringe amounts available in the form of cash or other non-health benefits should perhaps be treated as increasing an employee's cost of coverage for ACA employer mandate affordability purposes
 - IRS acknowledges resulting "dilemma" for prevailing wage employers and thus expects to issue future guidance on the issue
 - Relief for fringe amounts available in cash or other non-health benefits for periods before effective date of future guidance (at least for 2016 plan year and prior)
 - Hint that future guidance may eliminate the "dilemma" in some way

Affordable Care Act

The ACA is still a bit of a moving target...

- Regulatory updates (continued):
 - IRS Notice 2015-87 (released on December 16, 2015)
 - For 2016 IRS Forms 1095-C, non-health flex contributions, opt-out / waiver payments and prevailing wage fringe amounts entitled to relief may be taken into account for purposes of reporting employee contributions
 - However, employees will not be negatively impacted by the relief
 - IRS encourages not taking such amounts into account for purposes of reporting employee contributions and then just claiming the applicable relief, if necessary...

Many questions still remain...

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IMPLEMENTATION ISSUES WITH FULL-TIME EE DEFINITIONS

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Affordable Care Act

Administering a measurement / stability period system

- Why do it?
- Basic concept
- Don't forget initial measurement / stability periods**
- Remember the purpose of the IRS rules
- Oftentimes there are business reasons to be more generous than the IRS rules
- Even measurement/stability period system uses Monthly
- What about other benefits (life, disability, etc.)?
- Putting something in writing...**

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Affordable Care Act

Group health plan benefits during a leave

- The “old way” vs. the “new way” for ALEs
- Hours worked vs. “hours of service”
- Paid vs. unpaid leave
- What about third-party disability payments?
- Breaks in service (13 or 26 weeks)
- Minimum requirements vs. “the real world”
- **Employees still have to pay their share of the premiums**
- All the more reason to put something in writing...

Affordable Care Act

Change in Status – When Can You Drop Coverage?

- Employee in **Stability Period** – no change
 - PT to FT – more generous??
 - FT to PT – Limited Exception for EE continuously (1) offered MV Plan from 1st day of 4th month after DOH and (2) whose employment status changes to a true part-time position (not just reduced hours). ER may switch to month to month for EE if for 3 full calendar months <130 hours. Drop coverage as of first day of 4th month. Stay on Monthly measurement through remainder of current measurement period.
- Employee in **Initial Measurement Period**
 - Change to FT – Offer coverage earlier of (1) 1st day of fourth full calendar month or (2) beginning of next stability period
- New Full-Time EE – Monthly MM

Affordable Care Act

Options for Handling FT to PT Under Look-Back

- **Adopt Special Month to Month Rule (limited eligibility)**
- **Keep Covered Through Stability Period**
- **Adopt Special 125 Plan Rule:** 125 Plan can allow EE to drop coverage (no COBRA) for switch to PT in stability period. EE and Ds losing coverage must enroll in other MEC by 1st day of 2nd month following revocation. ER can rely on EE representation.
- **Offer COBRA – Penalty Risk**
 - Plan can exclude PT Ees – FT EE Definition for ACA Reporting and Penalty Purposes Only.
 - Loss of Coverage COBRA event and Special Enrollment Opportunity in Exchange

Final Questions

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Thank You!

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