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Healthcare Reform

Key Issues for Agricultural Employers

Presented By

Sheldon J. Blumling

Fisher & Phillips LLP

(949) 798-2127

sblumling@laborlawyers.com

Healthcare Reform

Today's Agenda:

1. The Big Picture
2. Employer Play or Pay Mandate
3. What Ag Employers Should be Doing Now

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The Big Picture—

- Primary policy goal is to get everyone covered
- Primary Tools:
  - Individual Mandate
  - Employer Mandate
  - Insurance Exchanges or "Marketplaces"
- No "magic solutions" or blanket exceptions for Ag employers (or any other types of employers)

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Employer Play or Pay Mandate—

- Applies to “large employers”
  - 50 or more “full-time” employees (including full-time equivalents)
  - “Full-time” means 30 or more hours per week (or 130 or more hours per month)
- Mechanics of the “50 or More” Test:
  - Based upon prior year employee counts
  - Requires a month by month determination
  - Determined on a “controlled group” basis

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Employer Play or Pay Mandate—

- “Seasonal Worker” Exception to the “50 or More” Test
  - Not a “free pass” for Ag employers or a blanket exclusion of seasonal workers
  - Applies if there are “50 or More” for 120 days or fewer during the year and any employees in excess of 50 are seasonal workers

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Employer Play or Pay Mandate—

- IRS definition of "Seasonal Worker":

  Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. <u>A worker who moves from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he may continue to be employed during a major portion of the year</u>.

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Employer Play or Pay Mandate—

- Important to keep in mind:
  - "Seasonal Worker" concept is only relevant for purposes of the "50 or More" Test
  - "Seasonal Worker" exception will not help many large growers or growers with year-around operations
- "50 or More" Test transition rule for 2014:
  - Use 2013 employee counts for any consecutive 6-month period

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Employer "Play or Pay" Mandate—

- In order to "play" and avoid the possibility of "paying" penalty taxes, an employer must offer <u>adequate</u> and <u>affordable</u> group health plan coverage to all full-time employees and their dependents
  - Adequate = "Minimum Value" (plan covers at least 60% of the cost of benefits)
  - Affordable = Employee premium cost does not exceed 9.5% of "household income"

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Employer Play or Pay Mandate—

- "Safe Harbor" incomes for the 9.5% test:
  - Current year W-2 income
  - "Rate of Pay" (x 130 hours)
  - Federal Poverty Line (currently results in max monthly employee contribution of $88.43)
- Important to keep in mind:
  - Affordability based upon cost of employee-only coverage
  - Dependent coverage must be offered, but does not need to be subsidized
  - An offer is all that is required

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Employer "Play or Pay" Mandate—

- If an employer fails to "play" by not offering coverage to ALL full-time employees and their dependents AND at least one full-time employee receives Federal premium assistance for purchasing coverage through an insurance exchange, then the employer will "pay" an annual penalty tax of $2,000 per full-time employee, excluding the first 30 full-time employees.
  - An employee may qualify for Federal premium assistance if his or her income is less than 400% of the Federal poverty level (approximately $88,000 for a family of four)

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Employer "Play or Pay" Mandate—

- If an employer fails to "play" by offering <u>inadequate</u> or <u>unaffordable</u> coverage AND at least one full-time employee receives Federal premium assistance for purchasing coverage through an insurance exchange, then the employer will "pay" an annual penalty tax equal to the lesser of (i) $3,000 per full-time employee receiving assistance OR (ii) $2,000 per full-time employee, excluding the first 30 full-time employees.
  - An employee may qualify for Federal premium assistance if his or her income is less than 400% of the Federal poverty level (approximately $88,000 for a family of four)

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Employer Play or Pay Mandate—

- Planning considerations:
  - Penalty applies to all full-time employees, whereas coverage subsidies apply only to those employees who actually buy the coverage
  - Penalty is nondeductible, whereas coverage subsidies are deductible
  - "Play" vs. "Pay" choice may be different for each controlled group member

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Employer Play or Pay Mandate—

Lookback and Stability Period Concepts

- Apply to "variable hour" employees for whom it cannot be determined that the employee is reasonably expected to work on average at least 30 hours per week –and- "<u>seasonal employees</u>"
- Maximum 90-day waiting period for otherwise eligible full-time employees

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Employer Play or Pay Mandate—

Lookback and Stability Period Concepts-New Employees

- Lookback period of 3 to 12 months
- Stability period of at least 6 months, but no shorter than lookback period (and stability period for ongoing employees)
- May apply an additional "administrative" period for enrollment process, as long as coverage begins no later than the end of the first calendar month beginning on or after an employee's first anniversary

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Employer Play or Pay Mandate—

Lookback and Stability Period Concepts-Ongoing EEs

- Lookback period of 3 to 12 months
- Stability period of at least 6 months, but no shorter than lookback period
- Use of an “administrative” period for enrollment process must overlap the stability period in order to prevent potential gaps in coverage
- Different periods for different groups permitted in some circumstances

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Additional Requirements to Consider—

Automatic Enrollment

- Will apply to "large employers" of more than 200 full-time employees
- Informal guidance indicates that requirement will not be implemented until sometime after 2014

Nondiscrimination Requirements for Insured Plans

- Delayed implementation for now…

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What Ag Employers Should be Doing Now—

1. Determine if Employer Play or Pay Mandate Applies
   - "50 or More" Test
   - "Seasonal Worker" Exception
2. Model impact of Employer Play or Pay Mandate
3. Designate lookback and stability period concepts
4. Follow further developments in the law:
   - Automatic Enrollment
   - Nondiscrimination Requirements for Insured Plans

Questions ?

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