

**The Concession
& Hospitality Expo**

July 15-18
2014



Denver Marriott City Center
Denver, CO

ACA Update

RUSSELL HOLLRAH

HOLLRAH LLC

WASHINGTON, D.C.

(202) 659-0878

RHOLLRAH@HOLLRAHLLC.COM



U.S. SUPREME COURT ACTION

Burwell v. Hobby Lobby Stores, Inc.

Held that the Religious Freedom Restoration Act of 1993 does not permit the U.S. Department of Health and Human Services (“HHS”) to demand that a closely held, for-profit corporation provide health-insurance coverage for methods of contraception that violate the sincerely held religious beliefs of the company’s owner

At issue were four contraceptive methods which are abortifacients

Decision was 5-4, delivered by Justice Alito

U.S. SUPREME COURT ACTION

Burwell v. Hobby Lobby Stores, Inc.

Held: Religious Freedom Restoration Act applies to a closely held for-profit corporation (in this case, the companies were owned and controlled by members of a single family)

Held: compliance with HHS regulations substantially burden the exercise of religion

- The owners believed that if they comply with the HHS mandate, they would be facilitating abortions
- Failure to comply subjected the company to substantial financial sanctions

Assumed: the HHS regulations serve a compelling government interest

Held: HHS regulations not the least restrictive means of serving that compelling government interest

Reasoned: HHS has already devised an alternative for religious non-profits, and provided no reason why it could not be offered to owners of for-profit corporations

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EMPLOYER MANDATE FINAL REGULATIONS

Issued February 10, 2014

Largely adopt proposed regulations

Provide significant transition relief



EMPLOYER MANDATE FINAL REGULATIONS

Background:

The ACA employer mandate – what it is....

A mandate that an “applicable large employer” offer its full time employees (and their dependents) specified health-care coverage – that is *affordable* and *adequate* – or be liable for an “assessable payment” (i.e., penalty) *if* at least one employee receives premium credits or cost-sharing reduction

These Slides Present a High-Level Overview....

EMPLOYER MANDATE FINAL REGULATIONS

Background:

Only Applicable Large Employers (“ALE”) are subject to penalties

ALE: with respect to a calendar year, an employer with an average of ≥ 50

- full-time employees, plus
- full-time equivalent employees (“FTEs”)

on business days during the preceding calendar year

FTEs = sum of number of hours of service for a calendar month for employees who are not full time employees (but not more than 120 hours per employee) and divide the number by 120

EMPLOYER MANDATE FINAL REGULATIONS

Background:

Only Applicable Large Employers (“ALE”) are subject to penalties

Transition rule for 2015: for the 2015 calendar year, an employer may determine its status as an ALE by reference to any period during the 2014 calendar year of at least six *consecutive* calendar months, as chosen by the employer (rather than the entire 2014 calendar year)

EMPLOYER MANDATE FINAL REGULATIONS

Background:

Only Applicable Large Employers (“ALE”) are subject to penalties

Employee status: determined using the “common-law” test

- Control over the means and methods of the worker’s performance

Full time employee: with respect to a calendar month, an employee who is employed an average of ≥ 30 hours of service per week with an employer

- Permitted equivalency: 130 hours of services/month = average of 30 hours of service/week (**very useful**)

EMPLOYER MANDATE FINAL REGULATIONS

Only Applicable Large Employers (“ALE”) are subject to penalties

Seasonal worker exception: If the sum of full-time employees and FTEs during the preceding calendar year > 50 for 120 days or less, and the employees in excess of 50 during those 120 days or less were *seasonal workers*, then the employer is not an ALE

Permitted equivalency: 4 calendar months =120 days

- the months need not be consecutive

EMPLOYER MANDATE FINAL REGULATIONS

Only Applicable Large Employers (“ALE”) are subject to penalties

Seasonal worker: a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including (but not limited to)

(i) 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

and

(ii) retail workers employed exclusively during holiday seasons

Employers may apply a reasonable, good faith interpretation of the term seasonal worker

EMPLOYER MANDATE FINAL REGULATIONS

Only Applicable Large Employers (“ALE”) are subject to penalties

Recap:

ALE: with respect to a calendar year, an employer that employed an average of ≥ 50 full-time employees (including full-time equivalent employees (“FTE”)) on business days during the preceding calendar year

If Not an ALE: Stop

If Yes an ALE: Continue Analysis

EMPLOYER MANDATE FINAL REGULATIONS

Only Applicable Large Employers (“ALE”) are subject to penalties

ACA employer mandate penalties

- Penalty for no coverage, and at least one employee receives premium credits or cost-sharing reduction – on monthly basis:
 - (\$2,000/year) x number of full time employees (*in excess of 30*)
- Penalty for coverage, but that is not *affordable* or is not *adequate*, and at least one employee receives premium credits or cost-sharing reduction – on monthly basis:
 - Lesser of
 - (i) (\$3,000/year) for each full time employee who receives credits for exchange coverage, or
 - (ii) (\$2,000/year) x number of full time employees (*in excess of 30*)

- *Penalty amounts are indexed for inflation; expected to be higher for 2015 -*

EMPLOYER MANDATE FINAL REGULATIONS

Only Applicable Large Employers (“ALE”) are subject to penalties

TRANSITION RELIEF fro 2015:

- One year ACA penalty relief for employers – *that meet specified criteria* – with **less than 100 (in lieu of 50)** full-time employees
- Penalty for no coverage, and at least one employee receives premium credits or cost-sharing reduction:
 - (\$2,000/year) x number of full time employees (**in excess of 80 (in lieu of 30)**) – on monthly basis

EMPLOYER MANDATE FINAL REGULATIONS

Determining whether an employee is a full-time employee: Two methods

- **Monthly measurement method**
 - penalty for ALE offering health coverage
 - penalty for ALE not offering health coverage
 - determining ALE status
- **Look-back measurement method (“LBMM”)**
 - penalty for ALE offering health coverage
 - penalty for ALE not offering health coverage
 - **But not for purposes of determining ALE status (determined based on prior calendar year)**

EMPLOYER MANDATE FINAL REGULATIONS

Look-Back Measurement Method

The concept...

Measurement Period

Stability Period

EMPLOYER MANDATE FINAL REGULATIONS

Look-Back Measurement Method

- Ongoing employees
- New variable, seasonal and part-time employees

Measurement Period

Stability Period

EMPLOYER MANDATE FINAL REGULATIONS

LBMM - Ongoing Employees

- Ongoing employee: an employee who has been employed by an ALE for at least one complete standard measurement period (“SMP”)
- SMP – a period the ALE determines, by designating the months in which the SMP starts and ends:
 - $3 \leq \text{SMP} \leq 12$ consecutive months

Standard Measurement Period

Stability Period

EMPLOYER MANDATE FINAL REGULATIONS

LBMM - New variable, seasonal and part-time employees

- **Variable employee:** at new employee's start date, cannot determine whether the employee is reasonably expected to work on average > 30 hours per week (130 hours/month) during the initial measurement period ("IMP") because the employee's hours are variable or otherwise uncertain
- **Seasonal employee:** a new employee hired into a position for which the customary annual employment < 6 months
- **Part-time employee:** a new employee reasonably expected to work on average < 30 hours per week (130 hours/month) during the IMP, based on the facts and circumstances at the employee's start date

EMPLOYER MANDATE FINAL REGULATIONS

LBMM - New variable, seasonal and part-time employees

- ALEs can determine whether the new employee is a full-time employee using an initial measurement period (“IMP”)
- An IMP can begin on the employee's start date or on any date up to and including the first day of the first calendar month following the employee's start date
 - $3 \leq \text{IMP} \leq 12$ consecutive months

Initial Measurement Period

Stability Period

ACA Employer-Mandate Possibilities

- Other pending court challenges, e.g., federal credit for Exchanges created by the federal government, rather than by a state
- Additional administrative changes (18 substantive changes to ACA already)
- Legislative change

Questions?

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