



Overview of the Law and School Districts' Obligations

The Affordable Care Act

Julia Martin
Brustein & Manasevit, PLLC
jmartin@bruman.com

+ Agenda

- What is the Affordable Care Act?
- How does the law work?
- The Employer Mandate
- Deadlines and Resources
- Frequently Asked Questions



What is the Affordable Care Act?

- Also known as “ACA” or “Obamacare”
- Passed by Congress in 2009
- (Mostly) upheld by Supreme Court in June 2012
 - But subject to continued legal challenges
- Multi-part law designed to expand access to health insurance coverage and reduce costs through:
 - New regulations on insurers
 - New subsidies and “exchanges”
 - New requirements on coverage for individuals and employers



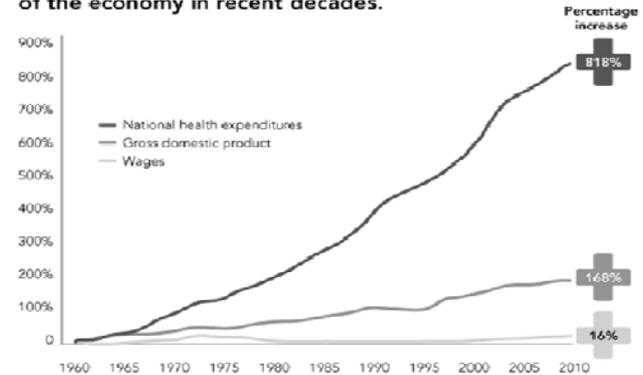
How does the law work?

+ The Problem: Rising Costs

- Costs of medical care increasing at a higher rate than inflation
- Delays in seeking preventive care (often due to lack of insurance) lead to higher use of more costly emergency medicine

The Problem: Rising Costs

Health care spending has grown much faster than the rest of the economy in recent decades.



Sources: McKinsey, "Accounting for the Cost of U.S. Health Care" (2011); Center for American Progress

THE HUFFINGTON POST

+ The Problem: Lack of Access

- Lower-income individuals priced out of insurance markets when not provided with employer-subsidized coverage
- Preexisting conditions preclude access to insurance plans, or make insurance prohibitively expensive



+ The Problem: Freeloaders

- Hospitals required by law to treat all patients, regardless of ability to pay
- Individuals without coverage seek treatment at emergency rooms
- Emergency coverage is inherently more costly
- When individuals can't pay, hospitals raise costs to cover losses

+ The Idea: Reduce Costs

- Reforms designed to reduce costs of care (apply to all insurance plans):
 - Young individuals up to age 26 can stay on parents' plans
 - Prohibits lifetime caps on coverage
 - Requires free preventive care visits
 - Limits increases in premiums based on age, gender, smoking, etc.
 - Limits denials or price increases based on preexisting conditions

+ The Idea: Increase Access

- Uninsured individuals and small businesses can buy coverage through State- or federally-run “marketplaces” or “exchanges”
- Low-income individuals may receive federal subsidies for coverage
- In order to be sold on exchanges, plans must meet requirements set by law and regulation
 - “minimum essential benefits”

+ The New Problem: Insurer Burden

- ACA requires insurance companies to offer new benefits, but limits amount that can be charged for costly new services (e.g. coverage of preexisting conditions)
 - Increases costs to insurers
- How to make sure insurers not unduly burdened?
 - Increase number of low-cost insured in insurance pool

+ The (new) Problem: “Young Invincibles”



- Who are low-cost insured?
 - Young, healthy individuals, who often forgo coverage because of high cost-benefit ratio
 - Sometimes referred to as “young invincibles”
- How to increase number of low-cost insured?
 - Require them to buy insurance!

+ The Solution: Mandates

- Individual Mandate
 - All individuals must purchase coverage
 - Unless provided coverage by Medicare or Medicaid, or employer
- Employer Mandate
 - All “large” employers must offer coverage to all “full-time” employees
- Both mandates enforced through tax penalties

+ The Employer Mandate

- Generally
- Special Considerations for SEAs, LEAs, and Schools
 - Treatment of summer and other breaks
 - Part-time teachers and substitutes
 - How to deal with premium refunds
- Policy Considerations

+ Employer Mandate: Generally

- Under ACA, “large” employers must offer subsidized coverage to all “full-time” employees
 - “large” = more than 50 FTE employees
 - “full-time” = working 30 or more hours per week for 120 days or more per year

Note: These definitions only apply for purposes of the ACA; States/districts many have different definitions for other purposes

+ Employer Mandate: Generally

- Employers who do not offer affordable coverage to at least 95% of full-time employees – and who have at least one employee who applies and qualifies for a subsidy on the exchange – pay a fine
- Known as “play or pay”



+ How to determine if an employee is full time for purposes of ACA?

- Full-time status is determined by averaging hours over a “measurement period” of no less than three and no more than 12 months
- Salaried, full-time employees: no change
- Hourly employees: determine hours worked based on timesheets or other time-and-attendance system
- Non-salaried, non-hourly, adjunct, or other employees: special rules for determining hours worked

+ Employer Mandate: Example

- Alice works full-time as a Title I administrator at the State Department of Education. She is not paid hourly wages, instead she receives an annual salary paid in biweekly installments.
- The State IS required to offer coverage to Alice
 - Should not represent change from current policy in most cases

+ Employer Mandate: Example

- Betty works in grounds maintenance at a State department facility. She works 20 hours per week, year-round (minus vacations and holidays).
- The State IS NOT required to offer Betty coverage
 - Should not represent change from current policy in most cases

+ Employer Mandate: Example

- Carl is a security officer at a district storage facility. He works 38 hours per week, year-round (minus vacations and holidays).
- The district IS required to offer Carl coverage
 - May differ from current policies

+ Special Considerations

For SEAs, LEAs, and Schools

+ Summer Break

- Proposed regulations specifically address academic calendar
- Employers may NOT calculate "employment break periods" (like summer break) in a way that would significantly detract from an employee's overall work average
- Employees who work for educational organization with "employment break periods" do NOT qualify as seasonal employees



+ Summer Break

- Regulations offer two options for calculating an employee's average hours worked during a break or holiday:
 - Average the hours without including the employment break period
 - Credit the average hours from the active period to the employment break period



+ Summer Break: (bad) Example

- Dave works 35 hours per week in a school's cafeteria. The district uses a six-month look back period from July through December. When calculating healthcare eligibility, the district notes that Dave does not work during the months of July and August. Therefore, he averages 23 hours per week. The district does not offer Dave coverage.

WRONG!!!

+ Summer Break: Example

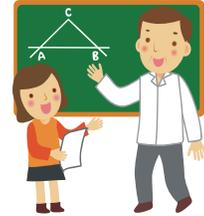
- Dave works 35 hours per week in a school's cafeteria. The district uses a six-month look back period from July through December. Dave does not work during the months of July and August. The district credits Dave with 35 hours per week during those months. The district determines Dave is eligible for coverage.

RIGHT!!!

+ Part-Time Teachers and Subs

■ Very Generally:

- Must look at hours worked to determine eligibility for coverage, as with other part-time employees
- Should be able to use automated substitute placement/absence management system to pull reports



■ BUT:

- Must also take into account preparation and administrative time

+ Part-Time Teachers and Subs

■ Prep and administrative time

- Preamble to draft regulations for “Employees compensated on a commission basis, adjunct faculty, transportation employees and analogous employment positions”
- Specifically addresses adjunct faculty at college level, but may be considered to apply in other educational contexts

+ Prep and Administrative Time

- Employers “must use a reasonable method for crediting hours of service that is consistent with the purposes of section 4980H. A method of crediting hours would not be reasonable if it took into account only some of an employee's hours of service with the effect of recharacterizing, as non-fulltime, an employee in a position that traditionally involves more than 30 hours of service per week.”

+ “Anti-Abuse” Provisions

- “Anti-abuse” provisions in place regarding methods of counting/crediting hours for part-time employees
 - Need to be able to show that policy is “reasonable” and goal is not to manipulate hour crediting to escape mandate
 - Healthcare/employment policies cannot violate/supersede pension obligations under ERISA
- These provisions do NOT prohibit changing work schedules

+ Prep and Administrative Time

■ Overall:

- For hourly subs and part-time staff, make sure you are also recording and crediting hours for required professional development, classroom prep, mandatory meetings, etc. (even if not paid for these hours)
- Make sure you use a reasonable, well-documented method of tracking these hours and taking them into account



+ Part-time teachers: Example

- Evan teaches five 1-hour science classes each day. Evan is paid a part-time salary based on his 25 teaching hours per week. Evan must also spend 2 hours per day (on average) on preparation, lesson planning, grading, meetings, and other activities.
- The district MUST find a way of counting those 2 hours. Assuming the district credits him 1-2 hours per day for prep time, it IS required to offer him coverage.

+ Subs

- Obligations may change if State/ district outsources sub placement, or treats as independent contractors
 - Burden is on employer to show a sub is an independent contractor
- Depending on the assignment, sub can be considered temporary employee, variable hour employee, or other

+ Subs: Example

- Florence works for the school district as a substitute. Over a six-month measurement period, she averages two 8-hour days per week
- The district IS NOT required to offer Florence coverage

+ Subs: Example

- Gary works as a long-term sub. He teaches 8 hours per day, every day, plus prep time, for 6 months (180 days)
- The district IS required to offer Gary coverage

+ Premium Refunds

- The ACA requires a minimum medical loss ratio (MLR) for insurers
- If MLR falls below minimum, insurers must issue a premium refund
- Refund goes through plan purchaser (in this case, employer)
 - Employee share of premium must be refunded/credited to employee
 - Employer share goes back to employer

+ Premium Refunds

- Should refund go back to general fund or to specific grants?
 - No official guidance from HHS, IRS, ED, or DOL
 - General suggestion from federal officials:
 - Treat the refund as you would any other refund under a federal program - that is, it should be returned to the grant.
 - Unless it is outside the obligation period (i.e. ARRA), in which case the money should be returned to the federal treasury.
 - You do not have to treat the money as program income.
- BUT this is all unofficial, only a suggestion, and subject to change

+ Policy Considerations

+ Points to Remember

- (1) Regulations, policies, and guidance surrounding every portion of the ACA are in flux and **subject to change**.
 - Many policies have not yet been solidified
 - So: document and explain decision-making!
- (2) Federal agencies will **ALWAYS** interpret policies **in favor of offering more coverage**, not less.

+ Employee Relations

- Employee Relations
 - Carefully consider the impact of reducing hours of staff (even if financially necessary)
 - Potential impact on pay, health insurance status, and morale
 - May make retention of qualified staff more difficult
 - News coverage of policies can reflect negatively on schools/districts if they result in staff losing hours/money
- Collective Bargaining
 - If employees are subject to collective bargaining contracts, must still meet those obligations

+ Deadlines and Resources

+ Deadlines

- Employer mandate will be enforced beginning January 2015 (was January 2014, but delayed)
- Before that date, need:
 - Measurement period (3-12 months)
 - Employee hours measured to determine if employer must offer coverage
 - Administrative period (optional)
 - Used for administrative tasks like determining who is an eligible full-time employee and providing applicable enrollment materials
 - May not exceed 90 days or result in any gaps in coverage

+ Key Resources:

- ACA Section 4980H: “Shared Responsibility for Employers Regarding Health Coverage”
- **Final IRS Rule** (RIN 1545-BL33)
 - Published February 12, 2014
 - IRS reserves right to add more guidance, especially in education context



+ FAQs on the ACA

+ Doesn't this lead to more part-time work?

- Maybe, but in most cases, no:
 - Research shows that recessions, not labor regulations, are biggest drivers of increase in part-time employment
 - Wal-Mart announced in September that it would move 35,000 more employees to full-time status
 - Home Depot has already been using the 30-hours-per week standard, so no impact
 - In Hawaii, part-time work increased only slightly (1.4 percentage points) in the two decades after a state law required employers to provide health insurance to employees working 20 hours a week or more.

+ Doesn't this lead to more part-time work?

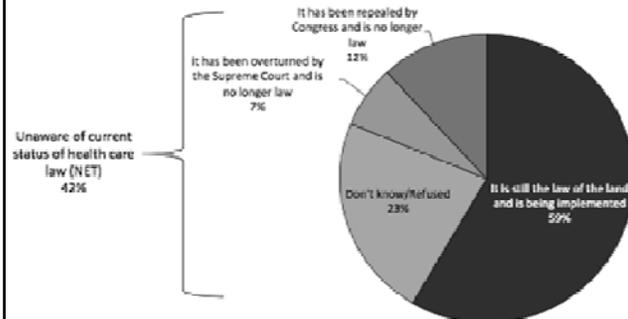
- Even if it does:
 - CBO February 2014 report says people leaving jobs, but due to new insurance options (not "locked in")
 - For some part-time workers, buying insurance on the exchanges may be cheaper
 - Trader Joe's is ending part-timer health coverage, but is offering a \$500 premium credit for purchasing care on exchange
 - Estimates this will make coverage cheaper for 70% of employees
 - This is a common result no matter where the dividing line is between part-time and full-time

+ Are Members of Congress Exempt?

- No!
- Members of Congress and their staff must purchase insurance and otherwise comply with the individual mandate
- Amendment to law during passage required Congressional employees to purchase plans through State exchanges
 - But still retain employer subsidy

Didn't the Supreme Court Strike this law down?

As you may know, a health care bill was signed into law in March 2010. As far as you know, which comes closest to describing the current status of the health care law?



SOURCE: Kaiser Family Foundation Kaiser Health Tracking Poll Omnibus Supplement (conducted April 18-21, 2013)



+ Didn't the Supreme Court Strike this law down?

- No
 - The Supreme Court upheld the law generally, and the individual mandate
 - The Court struck down a portion of the Medicaid expansion
 - Law asked States to expand eligibility for Medicaid
 - But if they did not expand, would lose all federal Medicaid funding
 - Struck down as overly coercive ("economic dragooning")
 - Now States have OPTION to expand Medicaid, but there is no punishment for not doing so

+ Will the Law Change?

- Probably not
 - There have been administrative delays, but the major content of the law has not changed
 - President, House and Senate Democrats are determined it will stay in place
- Possible tweaks
 - Medical device tax
 - Delay in individual mandate
 - Changes to how federal workers receive coverage



+ Questions?

+ Disclaimer

This presentation is intended solely to provide general information and does not constitute legal advice. Attendance at the presentation or later review of these printed materials does not create an attorney-client relationship with Brustein & Manasevit, PLLC. You should not take any action based upon any information in this presentation without first consulting legal counsel familiar with your particular circumstances.