

The Affordable Care Act – Is Your City In Compliance?

Hosted By:
League of California Cities
Personnel & Employee Relations Department
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Webinar Speaker

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- *Author of “ACA’s Final Regulations on the Employer Mandate” and related publications.*





Presentation Availability

- A copy of this presentation will be made available under the Resource section of the League's Personnel and Employee Relations Department website following the completion of the webinar.
- Visit the League's website: www.cacities.org
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SAVE THE DATE!

- 2014 League of California Cities Annual Conference & Expo
 - September 3 – 5, Los Angeles Convention Center
- Human Resources Track:
 - Keys to Success: Understanding Differences between Private and Public Employment
 - Using Interest Based Principles in Labor Negotiations and Workplace Management
 - Keep Calm and Update Your Status: Social Media Legal Trends
 - In Depth Study of Health Care Reform Rules Impacting Employers
 - Keeping Focus and Passion in Times of Change and Transition
 - High cost of postponing



How to Ask a Question


- All phone lines have been muted.
- For written questions - use the Q&A window to the right side of your screen. Please enter your name, title and city.
- Please let us know the number of participants per connection so we can gauge participation and use information for future webinar outreach.
- Please do not use the chat box feature during the presentation.

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Employer Shared Responsibility Penalties



Employer Mandate: Large Employer Penalties

- Effective January 1, **2015** (was 2014)
- Large Employers
- Trigger: FT employee purchases subsidized coverage in exchange

(Penalty A) Employer does not offer “minimum essential coverage” to “substantially all” FT employees & dependents; or

(Penalty B) Coverage is “unaffordable” or doesn’t provide “minimum value”

SOME TRANSITION RELIEF AVAILABLE



Employer Mandate: In Plain English

If you don't offer affordable coverage to your full-time employees, and a full-time employee goes to Covered California and qualifies for a government subsidy, then the IRS could assess one of 2 potential penalties.

- Key – Who is a full-time employee?



Penalty (A)
“No Coverage”

No Coverage: Penalty A

- Effective January 1, 2015 (was 2014)
- Large Employers
- During any month
- Trigger: FT employee purchases subsidized coverage in exchange
- Penalty if:

Employer does not offer “minimum essential coverage” to “substantially all” FT employees & dependents



Offer of Coverage

- Employees continuously covered under plan are considered to have been offered coverage each year until they disenroll (“opt out”)
- Employees who opt out must be given a yearly offer of coverage

Substantially All

Substantially All = 95% of full-time employees

- Margin of error
- Dependents
 - Children up to age 26 (but not stepchild or foster child)
 - Not spouses
- In 2015 only transition relief - means that “substantially all” is only 70%



How Much is Penalty A? (Failure to Offer Coverage)

\$166.67/month (\$2,000/yr)*

x

(# of Full-time employees employed during that month
less 30**)

*Amount adjusts annually

**less 80 in 2015 only

Example Penalty A Calculation – Fails To Offer Coverage

No. of FT Employees	Assessable Payment '14	Formula	Monthly Penalty	Penalty Annualized
100	\$166.67	$\$166.67 \times (100 - 30)$	\$11,667	\$140,003
500	\$166.67	$\$166.67 \times (500 - 30)$	\$78,335	\$940,019
1,000	\$166.67	$\$166.67 \times (1,000 - 30)$	\$161,670	\$1,940,039
2,000	\$166.67	$\$166.67 \times (2,000 - 30)$	\$328,340	\$3,940,079
4,000	\$166.67	$\$166.67 \times (4,000 - 30)$	\$661,680	\$7,940,159



Penalty (B)

“Unaffordable Coverage”

Unaffordable Coverage: Penalty B

- Effective January 1, 2015 (was 2014)
- Large Employers
- For any given month
- Trigger: FT employee purchases subsidized coverage in exchange
- Penalty if:

Coverage offered is “unaffordable” or doesn’t provide “minimum value”

Avoiding Penalties: Minimum Value

- “Minimum Value” means that the employer’s insurance plan covers at least 60% of the cost of the total allowed benefits.
- It is an actuarial determination
- Ask insurer



CalPERS Plans

- CalPERS has certified that its plans offer “minimum value”

Employers Must:

- Make sure plans offered are “affordable”

AND

- Identify which employees are “full-time”

What is “affordable?”

Coverage is “affordable” where:

- Employee’s share of the premium for the employer’s lowest cost, self-only plan is no more than 9.5% of *household income*
- This is the test Covered CA will use to determine whether an employee gets a subsidy.



Employers May Use An Affordability Safe Harbor

Safe Harbors for determining 9.5% of *household* income:

1. Form W-2 (use Box 1 wages)
2. Rate of Pay [(hourly rate x 130) **or** monthly salary]
3. Federal Poverty Line (monthly FPL)



Affordability Safe Harbor Form W-2

Employer will not be subject to unaffordable coverage penalty if:

Employee's portion of the premium for the lowest cost self-only coverage does NOT exceed 9.5% of the employee's Form W-2 wages reported in Box 1.

Affordability Safe Harbor Rate of Pay

Not subject to unaffordable penalty if:

- Employee's portion of the premium for the lowest cost self-only coverage does NOT exceed 9.5% of monthly amount
- Monthly amount = Hourly rate of pay x 130 hrs./mo.



Question

- City offers Bob two health plans:
 - (1) Green Plan at \$350/mo.; and
 - (2) Yellow Plan at \$1000/mo.

Bob enrolls his family in the Yellow Plan. Bob makes \$30.00 per hour.

Using Rate of Pay Safe Harbor, has City offered Bob affordable coverage?

Answer: YES

- Affordability is not measured against the coverage Bob selects
- Affordability is measured against the lowest cost plan Candyville offered to Bob
- If the lowest cost plan offered = \$350/mo.
- Using the Rate of Pay Safe Harbor
- $\$30 \times 130 = \$3,900$ (monthly amount)
- $(9.5\% \text{ of } \$3,900 = \$370.00)$
- Bob's share is not more than \$370, so it's affordable



Affordability Safe Harbor

Federal Poverty Line

Not subject to unaffordable penalty if:

- Employee's portion of the premium for the lowest cost self-only coverage does NOT exceed 9.5% of the monthly FPL
- FPL in 2014 is \$972.50 per month
- $9.5\% \text{ of } \$972.50 = \$92.38/\text{mo.}$

Thus, if employee contribution is lower than \$92.38, it will automatically be affordable based on this safe harbor.



Action to Take:

- Figure out which safe harbor you want to use for 2015
 - If cover most of cost, FPL probably best because might also benefit from simplified reporting
 - Rate of Pay is most generous for employer
- Apply on a reasonable and consistent basis
- Adopt all 3 for flexibility in years to come



Rules to Measure Affordability

- Affordability is not measured against the coverage employee selects
- Affordability is measured against the lowest cost plan offered to your employees for single, employee only coverage
- No requirement that dependent coverage be “affordable”



How Much is Penalty B? (Unaffordable Coverage)

\$250/mo (\$3,000/yr)*

X

of FT employees receiving subsidy during that
month

But, never more than Penalty A

*adjusts annually

Ex. Penalty B Calculation – Offers Unaffordable Coverage

Monthly penalty is *lesser* of two penalties:

No. of FT EEs	No. who enroll in subsidized coverage (here 2%)	Penalty B (\$250 x No. subsidized)	Penalty A	Monthly Penalty (Penalty B is lesser)	Penalty Annualized
100	2	\$500	\$11,667	\$500	\$6,000
500	10	\$2,500	\$78,335	\$2,500	\$30,000
1,000	20	\$5,000	\$161,670	\$5,000	\$60,000
2,000	40	\$10,000	\$328,340	\$10,000	\$120,000
4,000	80	\$20,000	\$661,680	\$20,000	\$240,000

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Calculating Hours of Service

Who is an Employee?

- Under ACA, defined by common law principles
- Includes those individuals directed and controlled by the employer under common law test
- Would not include a true independent contractor

Calculating Hours of Service

- Hourly – hours of service
- Non-hourly – 3 methods:
 1. Hours of service
 2. Days worked equivalency (8hr/day for each day entitled to pay/req'd to be credited with an hour of service)
 3. Weeks worked equivalency (40hr/wk for each week entitled to pay/req'd to be credited with an hour of service)



Volunteers

- Do not include hours worked by “bona fide volunteers.”
- “Bona fide volunteer”=
 - Government entity, 501(c) or 501(a) organization
 - Only compensation allowed is reimbursement for reasonable expenses or reasonable benefits/fees customarily paid



On-Call Employees

- On call hours of service include:
 - Each hour for which payment is made or due;
 - Each hour for which the employee must remain on-call on the employer's premises;
 - Each hour for which the employee's activities are subject to substantial restrictions preventing effective use of time for the employee's own purposes.



2 Options:

Determining Full-Time Employees

- Monthly Measurement Method
 - Average 30 hours of service per week in any given month (130 hours per month) or use weekly rule:
 - 4 weekly periods/month, 120 hours = full-time
 - 5 weekly periods/month, 150 hours = full-time
- Look Back Measurement Method Safe Harbor
 - Average 30 hours of service per week over a Standard Measurement Period (up to 12 mo)



Look Back Measurement Method Safe Harbor



Documenting Adoption of Safe Harbors

- No requirement to adopt a resolution in order to establish the Look Back Safe Harbor or the Affordability Safe Harbors.
- However, documentation recommended
- Key = document the Safe Harbors
 - Policy
 - Plan
 - Administrative Procedure
 - Guideline



Types of Employees

- Existing Employees (first year of compliance)
- New Employee
 - Full-time
 - Part-time
 - Variable Hour
 - Seasonal
- Ongoing Employee – employed for one entire standard measurement period

A decorative graphic at the top of the slide consisting of several overlapping, wavy bands in various shades of blue, creating a sense of movement and depth.

Seasonal Employees

- A “seasonal employee” = an employee who is hired into a position for which the *customary* annual employment is 6 months or less.
- These employees will not be considered full-time unless they qualify as full-time over the course of an initial measurement period.



Short-Term Employees

- No exception to the employer mandate for “temps” or “short term”
- Generally measured under the same rules applicable to new hires who are part-time, variable hour or seasonal
- Treat as new employees if they are re-hired after at least a 13 week break in service



Legal Restrictions – Timing & Length of Periods

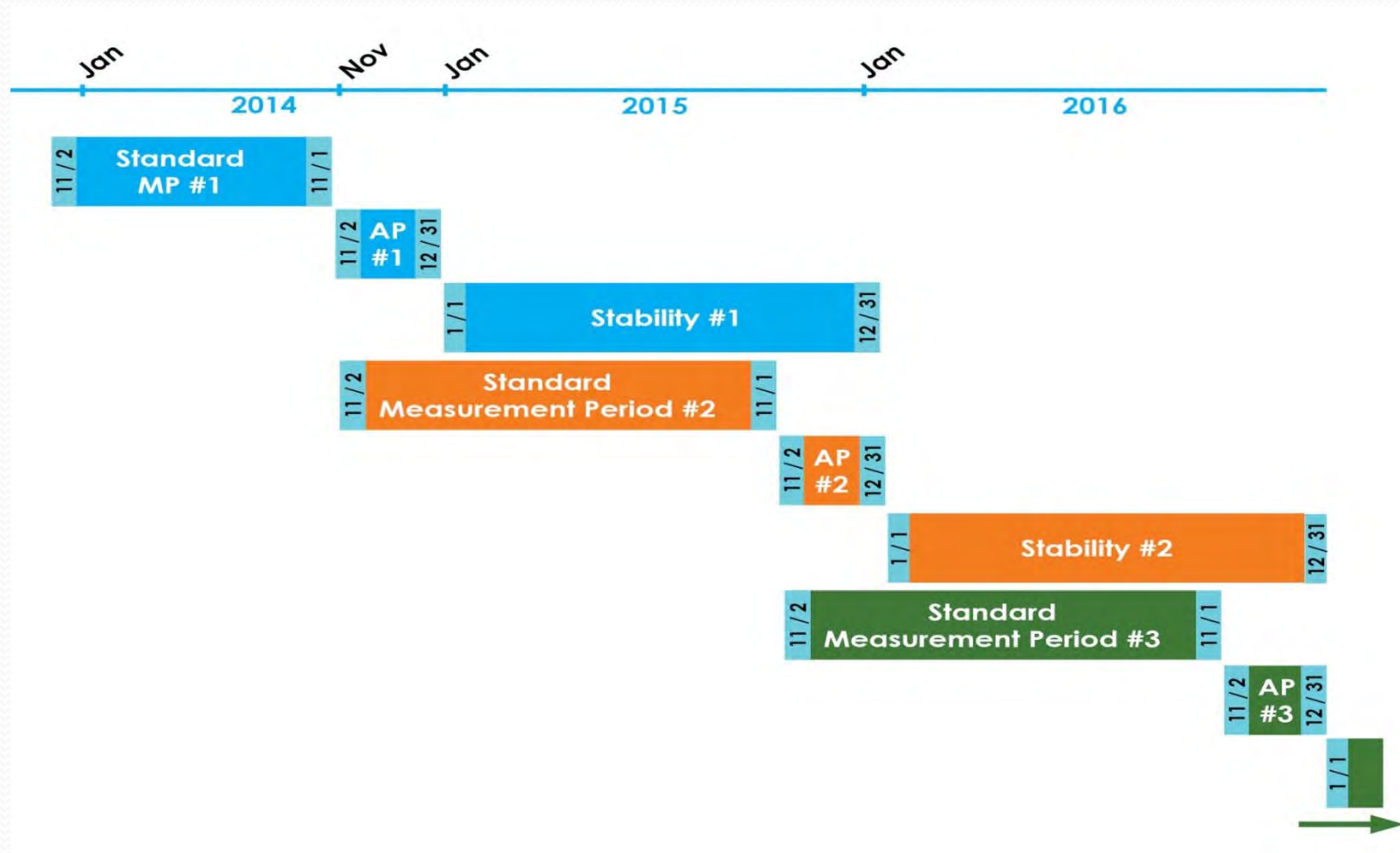
- Ongoing employees
 - Standard Measurement Period
 - Administrative Period
 - Stability Period
- New Variable Hour, Part-Time, Seasonal employees
 - Initial Measurement Period
 - Administrative Period
 - Stability Period

Look Back Measurement Method

Safe Harbor: How it Works

- Basic Concept: Measure employee for time period to determine full/part time – treat them as such during associated stability period
- Rules Vary For:
 - 1) Ongoing (employed for one full standard measurement period)
 - 2) New Full-Time
 - 3) New Variable Hour, Part-Time & Seasonal

Ongoing Employees





New Employees

New Employee @ Start Date, Ask:

Does employer reasonably expect employee to average 30 or more hours of service per week over the initial measurement period?

What does “reasonably expected” mean?



Reasonably Expected

- Fact-Sensitive Analysis (at start date):
 - Is employee replacing one who was full-time?
 - Extent to which employees in same or comparable positions are full-time?
 - Job Advertised?
 - Job Description?
 - How communicated to employee?



New Full-Time

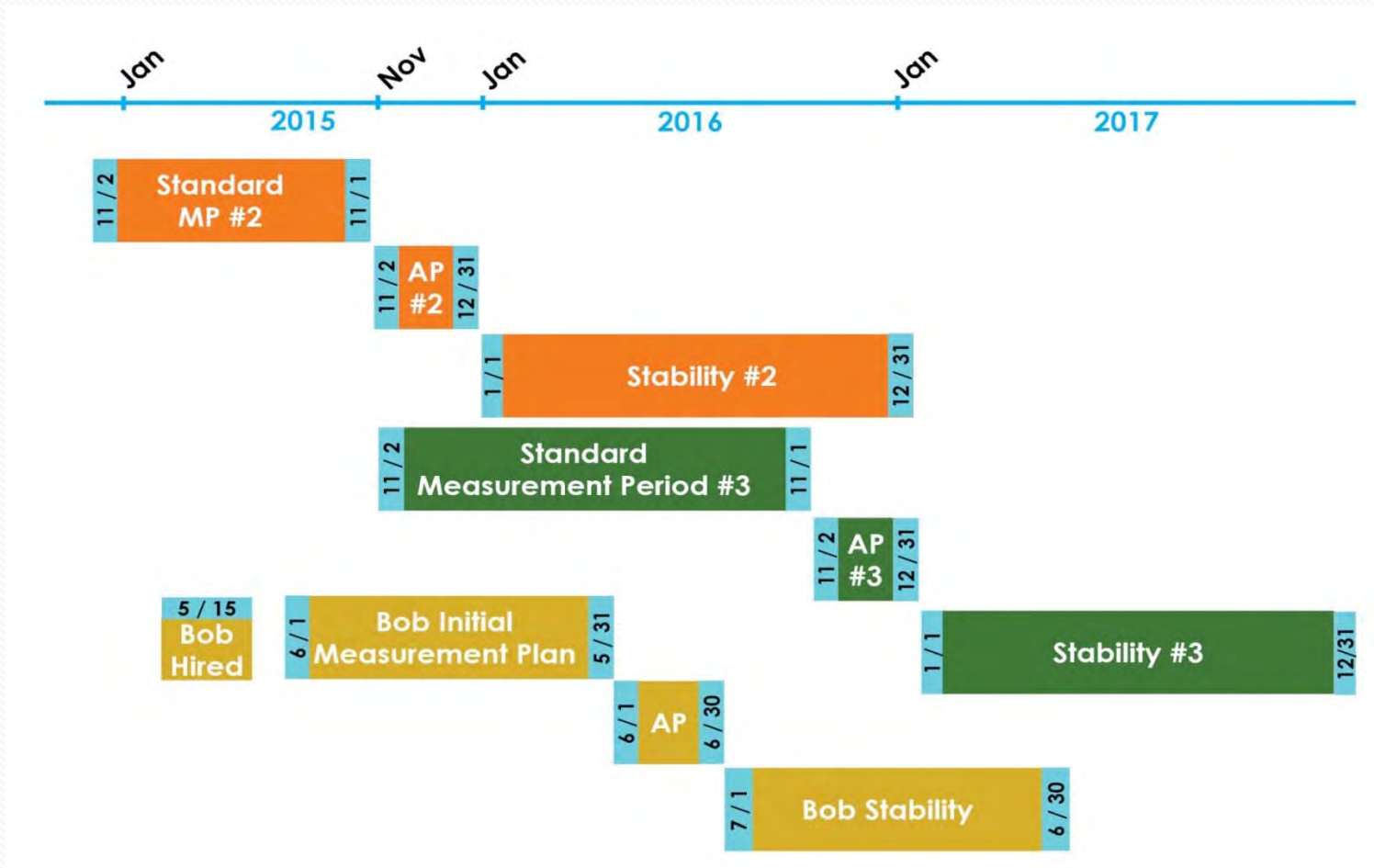
- Reasonable Expected to Be Full-Time
- If not offered coverage within first 3 months, employer will be subject to potential penalty during those first 3 months with regard to that employee
 - Employee May Trigger Penalty
 - Employee Will Be Included in any Full-Time count under ACA during those months
- 60 days under CA law re waiting periods



New Variable Hour, Seasonal or Part-Time Employees

- Start measuring hours of service under Initial Measurement Period (IMP)
- Will not be treated as full-time during IMP
- Will not trigger a penalty during IMP
- Even if they hit 130 hours of service/month during any month of IMP
- If hit 1560 hours of service during year, then they will be full-time for following Stability Period.

New Variable, Seasonal, PT





Question:

How to Measure a New Hire

- City hires new employee, Joe. Joe was hired to work on a special project. City expects his work hours to range from 10 to 40 hours per week over the year to come. City has adopted a one year measurement period. Will City be subject to potential penalties during his first year if it does not offer coverage to Joe?



Answer: NO

- Joe is not reasonably expected to work full-time.
- He is a New Variable Hour Employee.
- As long as City adopts the Look Back Safe Harbor, it can measure Joe's hours of service for up to 12 months without potential penalty.



Question: Seasonal Employees

City has 67 employees who work full-time from June through August in the parks and recreation department. They do not work the rest of the year.

Must City offer them health coverage during June, July & August?



Answer: Possibly

- ACA does not require that any employer offer coverage
- It Depends:
 - If Look Back Safe Harbor adopted:
 - No potential penalty for failure to offer coverage.
 - Seasonal employee definition applies
 - If no Look Back Safe Harbor, Monthly Measurement Used
 - Potential penalty during June, July & Aug

New Employees – Double Measure

- Measure under Initial Measurement Period
 - Up to a 12 month period specific to that employee
- Simultaneously measure under first full Standard Measurement Period
- Can attain “full-time” status under either track
- Treated accordingly during entire Stability Period

Rehires as New Employees?

- A rehire may be treated as a new EE if
 - 13 consecutive wks. of no qualifying hours, **OR**
 - Parity Rule: The break in service is at least 4 wks. long and the break is longer than the preceding period of service
- Not a new EE
 - If cannot qualify as new hire under above calculation, then the individual's previously used SMP and SP continue to apply, as if there were no break in service



Special Unpaid Leave

- Treated differently – 3 types:
 - Family and Medical Leave Act (FMLA)
 - USERRA (military leave)
 - Jury duty
- Treated as a continuing employee upon return
- Employee cannot be penalized for protected leave period



Special Unpaid Leave

Averaging Method:

- Exclude special unpaid leave/break period and apply average over entire measurement period;

OR

- Credit hours of service for the special unpaid leave/break period at a rate equal to average weekly hours of service for weeks worked during measurement period.

How to Prepare



How to Prepare?

- Are you a Large Employer?
 - (annual determination)
- If yes, analyze workforce
 - Who is full-time, part-time, seasonal, variable hour?
- Conduct affordability determination
- Determine potential exposure for penalties
- Identify Options & Plan



How to Prepare?

- Adopt Safe Harbors
- Set Up Tracking System
- Implement Tracking of Hours of Service
- Learn Safe Harbor Rules & Its New Terms
- Train Personnel
- Create Documentation of the Above!

Questions?





Thank you to our speakers and thank you for attending this webinar!

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