II. Affordable Care Act (ACA)
   - ACA requires policies and procedures for:
     - Determining applicable large employer (ALE)
     - Measurement periods
     - Crediting hours of service
     - Employee classification
     - Affordability of coverage
ACA Overview

- Employer Mandate:
  a/k/a: Employer Shared Responsibility
  Pay or Play Mandate
- Every applicable large employer (ALE) must offer health coverage to 95% of full-time employees (and dependents)

ACA Overview

- And health coverage must meet:
  - Minimum essential benefits
  - Affordable (not more than 9.5% of household income of lowest cost of self-only coverage
  - Minimum value (cover 60% of costs)

ACA Overview

- Employer Mandate is a Choice:
  - Play: offer health coverage that meets requirements or
  - Pay: do not offer coverage and pay penalty
ACA Overview

• Pay or Play Mandate:
  ➢ ALE is any employer with 50 or more FT and FTE employees
  ➢ Full-time employee: works 30 hours or more per week or 130 hours per month.
  ➢ Look at hours of service to determine if part-time employee works or is credited with working 30 hours or more per week, then must offer coverage

ACA Overview

• Pay or Play Mandate:
  ➢ Penalty #1: no offer penalty
    ❖ Don’t offer coverage to 95%
    ❖ $2,000 times FTEs minus 30 if one FTE is enrolled in State Exchange and received subsidy

ACA Overview

• Pay or Play Mandate:
  ➢ Penalty #2: “bad” coverage
    ❖ Unaffordable or not minimum value
    ❖ $3,000 for each FTE who enrolls in State Exchange and receives premium tax credit or cost sharing
ACA Overview
• Pay or Play Mandate:
  ➢ Offer of coverage:
    ▶ At least once per year
    ▶ Must offer minimum essential benefits
    ▶ Be minimum value
    ▶ Be affordable

ACA Overview
• Pay or Play Mandate:
  ▶ Employer only required to offer coverage
  ▶ If employee opts out, no penalty to school district
  ▶ Tip: Get opt out in writing

II. Eligibility for Coverage
• Each school sets hourly requirements to participate in group health coverage
• Employee must work the required number of hours to participate in group health coverage
• Offer health coverage to eligible employees
Tracking Eligibility Question

Who uses Software Unlimited (SUI) for ACA tracking of employee eligibility for group health coverage?
- if so, how is it to use?
- if not, how track hours?
  (Other - time clock, spreadsheet?)
  (Penalties - ACA, COBRA, etc.)

ACA & Eligibility for Coverage

- Under ACA, who are FT & FTEs?:
  ✓ Full-time employees work on average at least 30 hours of service per week or
  ✓ 130 hours of service a month
- Use to determine:
  ✓ If applicable large employer
  ✓ Who is full-time for coverage

ACA & Eligibility for Coverage

- Employee types:
  ➢ Full-time employee
  ➢ Part-time employee
  ➢ Variable employees
    ✤ Facts and circumstances
    ✤ Unable to determine whether 30 hours per week
ACA & Eligibility for Coverage
- Special school rule:
  - Teachers and educational staff are not treated as part-time for the year because of summer break
  - Disregard summer break when calculating average hours of service; only look at school year hours

ACA & Eligibility for Coverage
- ACA measurement periods:
  - Monthly measurement
    - Look at each calendar month by counting hours of service
  - Look-back measurement
    - Count hours of service in one Measurement Period to determine status for Stability Period

Example #1: Monthly Measurement
- Crystal, hall monitor, works 135 hours in September 2016, determined FTE for ACA, eligible & offered coverage
- She only works 50 hours in October 2016, is not FTE and not eligible for coverage in October.
- Possibly COBRA eligible?*
- Burdensome method; alternative, use look-back measurement period
Look-back Measurement

- Classify employees:
  - Ongoing employee
  - New employee - new full-time employee (okay if 90 day wait)
  - New variable hour employee
  - Part-time employee

- Ongoing employee
  - Has been employed for one full measurement period
- New variable hour employee
  - New employee, can't determine if full-time for ACA purposes
- Use to determine FT status

Look-back Measurement Sample

- Standard Measurement Period:
  - July 1, 2016 – June 30, 2017
  - Track employee hours
- Stability Period:
  - July 1, 2017 – June 30, 2018
  - FTEs (determined under prior SMP) offer coverage for entire Stability Period
Look-Back Measurement Sample

Look-back Measurement

- Variable/part-time:
  - Measure hours starting on DOH
  - Longer measurement period allowed (up to 12 months)
  - Administrative period can be shortened to one month
  - Stability period may not be shorter than the measurement period

Look-Back Measurement

- New part-time substitute teacher:
  - Number of hours unknown at start of school year of hire
  - Begin tracking hours on date of hire
  - Track hours for first school year (measurement period)
  - Status for next school year (stability period)
Example #2: Look-Back

- Abbey, variable hour substitute teacher, worked 130 hrs/p/mo in 1st school year (1st measurement period), treat as FTE in stability period (next school year) and is offered coverage
- She opts out, she signs opt out form in writing

Example #3: Look-Back

- Beth is variable (PT) substitute teacher:
  - School district limits hours to less than 130 hours per month
  - Monitor hours during measurement period, if close to averaging 130 hours p/mo, reduce work hours, not required to offer health coverage during stability period

Example #4: Look-Back

- Carrie is FT substitute teacher:
  - District reasonably believes Carrie will work more than 130 hrs. p/mo, offers health coverage upon day of hire (or after waiting period, if normally required)
Look-Back Measurement

Coaches and extracurricular advisors:
- Typically paid stipend for hours of service during activity
- Awaiting guidance
- Use reasonable method for crediting hours of service

Look-Back Measurement

- Estimate the number of practices, events, meets, and length of time for each to calculate total hours of service for the activity
- Create a chart showing hours of service for each coach or advisor
- Credit hours of service for each coach or advisor

Example #5: Look-Back

- Kyle, a history teacher and basketball coach, works FT as teacher and 40 hrs p/mo as coach
- Look at total hours worked, he’s FT, eligible for and is offered coverage
Look-Back Tip

- ACA looks at total hours for one employer
- Even if one position is not benefit-eligible work
- ACA does not separate out hours for a benefit-eligible work from nonbenefit-eligible work

Example #6: Look-Back

- Penny, a substitute teacher and ninth grade tennis coach, is FTE

<table>
<thead>
<tr>
<th>Substitute Teacher</th>
<th>119.8 hours per month</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tennis Coach</td>
<td>14.0 hours per month</td>
</tr>
<tr>
<td>Total Hours for School Year</td>
<td>133.8 average hours per month</td>
</tr>
</tbody>
</table>

Eligibility for Coverage

- Employee must work or be credited with working required number of hours per week per District policy
- OR under ACA, employee is full-time if works or is credited with working on average, 30 hrs p/wk or 130 hrs p/mo
- Must offer coverage to FT or full-time equivalent
Eligibility for Coverage

- To determine hours of service:
  - Look at actual hours worked
  - Look at hours credited for paid leave, PTO, vacation, sick time, or FMLA (whether paid or unpaid)
  - Look at all hours together to determine average hours worked or credited

Eligibility for Coverage

- FMLA leave:
  - Federal law requires continuation of benefits during FMLA leave
  - Count FMLA leave towards credited hours of service
  - FMLA does not trigger COBRA coverage

Eligibility for Coverage

- Qualifying event may trigger COBRA if school learns employee is not returning to work
- If employee does not return to work at the end of FMLA leave and terminates employment, a COBRA qualifying event has occurred
Eligibility for Coverage

- Unpaid leave:
  - Unpaid leave does not credit any hours of service in lookback period
  - Unpaid leave hours are not counted in determining full-time status

Example #7: Eligibility

Stacy, a teacher aide, worked an average of 15 hrs p/wk in the Measurement Period
- She is treated as part-time during Stability Period
- District does not offer coverage to her during Stability Period

Change in Eligibility

May cause a loss of coverage:
- Termination of employment
- Change in status / reduction in hours
- Termination for cause
Change in Eligibility

- Termination of employment
  - Coverage terminates end of month in which employment terminates
- Termination for cause
  - Coverage terminates immediately if employee commits fraud or intentional misrepresentation in application

Change in Status

- Reduction in Hours:
  - If hours fall below District policy, EE loses eligibility in group health coverage
  - ACA: if EE is treated as FT status during Measurement Period, must treat as full-time during the Stability Period; continue coverage

Example #8: Change in Status

Bobbie, a teacher's aide, was FT with GHP, took 12 wks. FMLA, worked 30 hrs. in Dec., then unpaid leave (0 hrs.) Jan. – May 2016
- Next year: treat as part-time during Stability Period
- District does not offer coverage to her during Stability Period
- Give COBRA notice – when?
Tip: Change in Status

- Special rules for lookback method:
  - May switch to monthly measurement method for employee with a change in status
  - If employee averages less than 30 hours of work per week for three full months, and

Tip: Change in Status

- Employer continues to offer minimum value coverage to the employee
- Employer may terminate coverage on the first day of the fourth month
- Offer COBRA

Change in Status

- Break in Service:
  - If less than 26 weeks of non-service, treat as continuing employee
  - If 26 or more consecutive weeks of non-service, treat as new employee
VI. COBRA

COBRA Question #1
Which of the following is a triggering event for COBRA:
   a) Termination of employment
   b) Termination for cause
   c) Loss of health insurance
   d) All of the above
   e) None of the above

COBRA Question #2
Does leave taken under FMLA or an accommodation-related leave constitute a COBRA triggering event?
COBRA Triggering Events

Loss of group health coverage due to:
1) Termination of employment
2) Reduction of hours of service
3) Divorce or separation
4) Death of employee

COBRA Triggering Events

5) Dependent child ceases to be a dependent
6) Covered employee becomes entitled to Medicare (affects spouse and children's coverage)
7) Employer's bankruptcy (only for retirees and families)

Example #9: COBRA

Larry, a 35-yr. FT teacher:
• retires & gets last paycheck on May 31, 2017;
• contract ends May 31, 2017 (request);
• starts pension June 1, 2017;
  – (gets COLA July 1, 2017 ©)
• School District pays GHP premium 9/1/2016 – 8/31/2017
Example #9: COBRA

1) When does Larry's group health coverage end?

2) When is Larry entitled to COBRA coverage?

Example #9: COBRA

1) It depends

2) It depends

Example #9: COBRA

1) **August 31, 2017**: if contract ends & premium pd to 8/31, then coverage ends 8/31 (even if last payk 5/31); give COBRA notice 8/31

2) **May 31, 2017**: if contract ends & premium pd to 5/31, then coverage ends 5/31; negotiated early term of contract; give COBRA notice 5/31
Example #9: COBRA

For regular teachers:
- Annual contract ends on 8/31
- Coverage ends 8/31
- Even if paid on 9 month basis
- Continue health coverage for 12 months

COBRA Second Triggering Events

COBRA coverage is extended to 36 mos., if initial COBRA coverage due to termination of employment or reduction of hours and a second qualifying event occurs:

COBRA Second Triggering Events

1) Death of employee
2) Divorce or legal separation
3) Covered employee becomes entitled to Medicare
4) Dependent child ceases to be dependent
COBRA Disability

- Disability: COBRA coverage may be extended to 29 months for all beneficiaries if:
  - All beneficiaries are receiving COBRA coverage due to employee's termination or reduction in hours

COBRA Disability

- If 1 beneficiary is disabled during the first 60 days of COBRA coverage
- SSA determines disability
- Notice within 60 days of latest of:
  - disability determination, termination of employment or reduction of hours, or date of loss of coverage
- Each beneficiary will be entitled to the disability extension

Termination of COBRA

- If any required premium is not paid
- Beneficiary becomes covered under another group health plan after electing COBRA
- Beneficiary becomes entitled to Medicare after electing COBRA
Termination of COBRA

- Employer ceases to provide any group health plan
- During disability extension, the disabled beneficiary is determined by SSA to not be disabled
- Plan terminates coverage for fraud or intentional misrepresentation on application

Questions??

Thank you!

McGrath North