Responses to Questions about the Affordable Care Act –
July 26, 2013

1. How are temporary workers treated under the employer mandate?

The recent announcement of the delay of the employer mandate noted that simplified rules on how business will report data will be issued this summer. Therefore, it is possible that many definitions and classifications may be subject to change. In the meantime, here are some considerations.

Currently, the ACA has no “temporary” category. Temporary employees may be treated as full-time, part-time, or seasonal, depending on the terms of employment.

Employees working at least 30 hours/week would be considered full-time, and subject to the employer mandate.

“Seasonal employees” can be excluded from the health plan. For the purposes of computing whether an employer is a “large employer,” workers can be excluded from the calculation if they work less than 120 days in a calendar year. For the purposes of applying the per employee penalty, employers are permitted to use a reasonable, good faith interpretation of the term “seasonal employee.” The Treasury and the IRS have indicated that final ACA regulations may tighten the definition of seasonal employee.

Temporary agency employees are treated as employees of the staffing firm, and are treated a bit differently. Staffing firms can use up to a full 12-month look-back period for temporary employees, as long as they are properly classified as variable hour employees.

For more information: Potential Employer Penalties Under the ACA

2. What will be the insurance plan rates on state-based Exchanges?

There will be four levels of coverage for plans on the exchanges (bronze, silver, gold, and platinum), and premium rates will vary depending on the coverage level. Premium rates will also vary by insurer, geographic region within the state, age of individuals, and possibly whether or not the individual is a smoker.

Only a handful of states have reported their 2014 rates on the state-based exchanges. States with Federally-Facilitated Exchanges will not likely report their rates until October 2013. The states reporting their rates include:

Range of Monthly Premium Rates for a Silver Plan in 2014*

State	Individual Coverage	Family Coverage
California**	$222 - $476	Not listed

Colorado+	$240 - $659	Not listed
New York	$320 - $636	$910 - $1,812
Oregon**	$221 - $339	Not listed
Vermont+	$440 - $442	$1,237 - $1,242
Washington, DC+ **	$247 - $312	Not listed

* Silver plans have an actuarial value of 70%. Rates vary by insurer, geographic region within the state, and age of individuals. Rates listed do not include any federal subsidies.
** Preliminary, average rates.
+ For a 40 year-old nonsmoker.

More details on these rates available at: California; Colorado; New York; Oregon; Vermont; Washington, DC.

3. How are workers who have been laid-off, on disability, or on FMLA leave treated under the act?

Under the Affordable Care Act, voluntarily or involuntarily terminated employees (including those that have been "laid off") that are currently eligible for COBRA coverage through an employer will be able to buy coverage on the state based health insurance exchanges beginning January 1, 2014. Middle to low income workers will most likely find coverage on the exchanges more attractive than standard COBRA benefits due to the subsidies that will be offered there. Employers are not mandated to provide affordable coverage for terminated workers under the bill.

Currently, for the purposes of the employer mandate, workers on paid leave (such as vacation, illness or disability) will be treated the same as if the paid leave time were regular hours worked. Employers will be required to provide affordable coverage to those receiving more than 30 hours per week in paid leave.

The Family and Medical Leave Act requires employers to offer group coverage to employees on FMLA leave under the same conditions offered to all employees. It is unclear at this point, however, whether employers will be liable for penalties if workers on unpaid leave go to exchanges and receive subsidies. More regulations will be released this year that should clarify these rules.

4. How are "high-risk jobs" defined in the Affordable Care Act for the purpose of applying the Cadillac tax?

Beginning January 1, 2018, the federal government will impose a new excise tax on plans that are valued at more than $10,200 for individual coverage and more than $27,500 for family coverage. The tax will be equal to 40% of any amount over those thresholds.

Certain plan participants will be subject to adjusted thresholds of $11,850 for individual coverage and $30,950 for family coverage in 2018. These higher levels are for retirees over the age of 55 who are not eligible for Medicare. Active workers may also be subject to these higher thresholds under the law if they are employed by a company where a majority of their workforce is engaged in repairing or installing electrical or telecommunications lines, or is a designated "high risk profession."

"High risk professions" are defined by the law as:

- law enforcement,
- fire protection,
- out-of-hospital emergency medical care (emergency medical technicians, paramedics, and first-responders),
- longshore work,
- construction,
- mining,
- agriculture (excluding food processing),
- forestry,
- fishing, and
- any retirees that were employed for 20 or more years in the previously listed areas.

More information on Excise Tax: [Excise Tax on High Cost Employer-Sponsored Health Coverage]

5. What is the impact of stop-loss on fully/self insured definition?

Stop-loss insurance is often purchased by self-insured plans to mitigate the risk of catastrophic health care costs. Employers with self-insured group coverage can purchase a stop-loss plan that covers costs in excess of a certain amount every year (called an "attachment point") or covers particularly high claims by an individual.

Although employers can use generous stop-loss policies to insulate themselves from unpredictable claims costs, these plans are still considered self-insured.

Self-insured status can be valuable for employer plans because fully-insured plans are subject to additional regulations, such as the requirement to cover essential health benefits and the minimum-loss ratio requirement.

6. What is the increase in Medicare taxes?

Beginning January 1, 2013, wages in excess of $200,000 per year for a single taxpayer and $250,000 for married taxpayers filing jointly will be subject to an additional 0.9% Medicare tax.

For additional information on this tax, the IRS has provided a Frequently Asked Questions document here.

7. Are self-employed people eligible for subsidies on the exchanges? Can they get small business tax credits?

Self-employed business owners without any employees will be eligible to buy coverage on the individual state-based health insurance exchanges beginning January 1, 2014. Hiring independent contractors to do work for a self-employed business will not disqualify the owner from access to the individual exchanges.

If the self-employed business hires 1 to 50 employees (workers whose income are reported on a W2), coverage can be obtained for their workforce on new state-based small-business exchanges (called SHOP). Small businesses with less than 25 employees will be eligible for a tax credit to mitigate the cost of providing coverage.

Healthcare.gov Guide for Self-Employed: What if I'm self-employed?
SHOP Exchange Program and Small Business Tax Credits: Welcome to SHOP