



The ACA Four Months In— What Staffing Firms Need to Know Now



2015 **ASA**

Staffing Law
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Today's Agenda

- ACA Compliance Survey highlights
- Supreme Court update
- Employer information reporting
- Top current issues for staffing firms
- Questions



ACA Compliance Survey Highlights



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ACA Compliance Survey

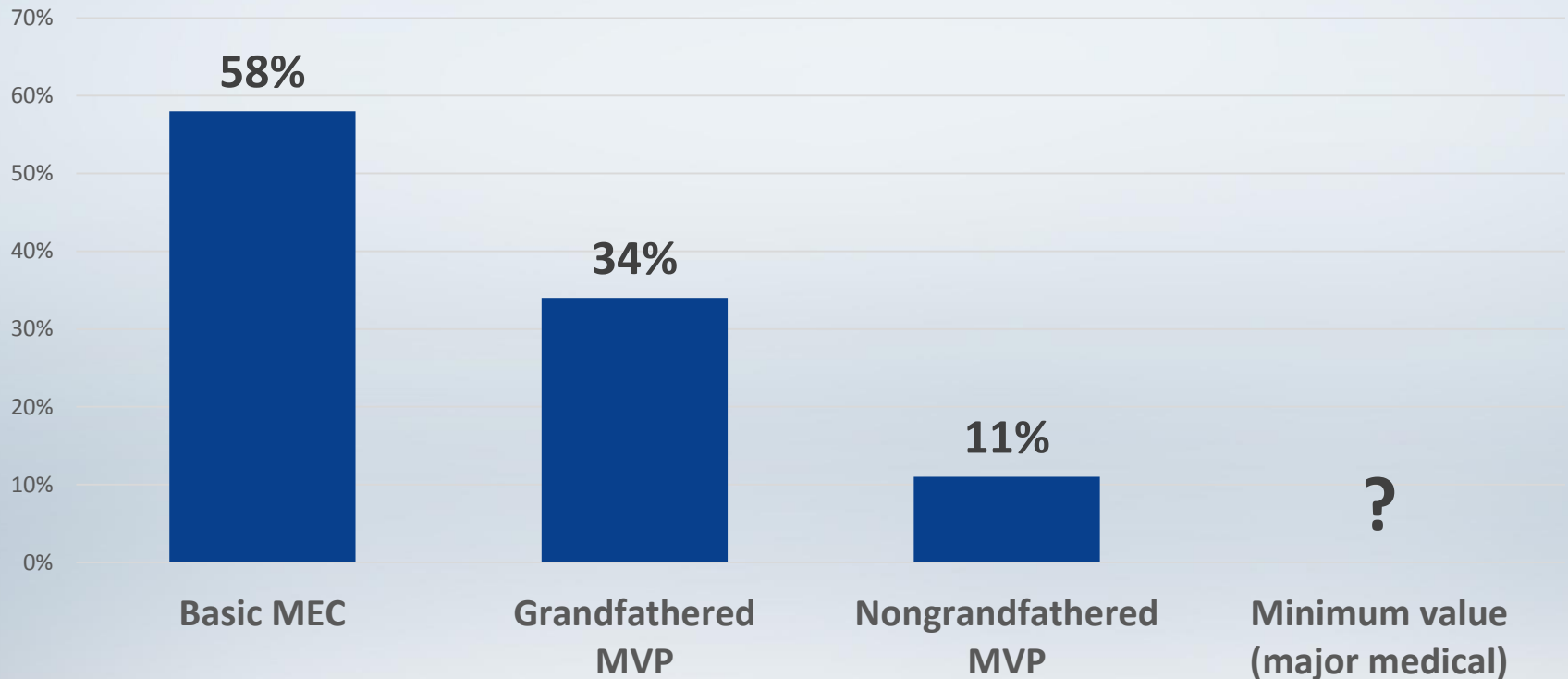
688
staffing firms



79%
offered an ACA-compliant
health insurance plan to at
least 70% of full-time
temporary and contract
employees

ACA Compliance Survey

Health Insurance Plan Offerings



ACA Compliance Survey

Employee Participation

- Employee enrollment varies based on industry sector but is generally low, consistent with historical patterns.
- Participation could rise due to an increase in individual tax assessment for 2015.

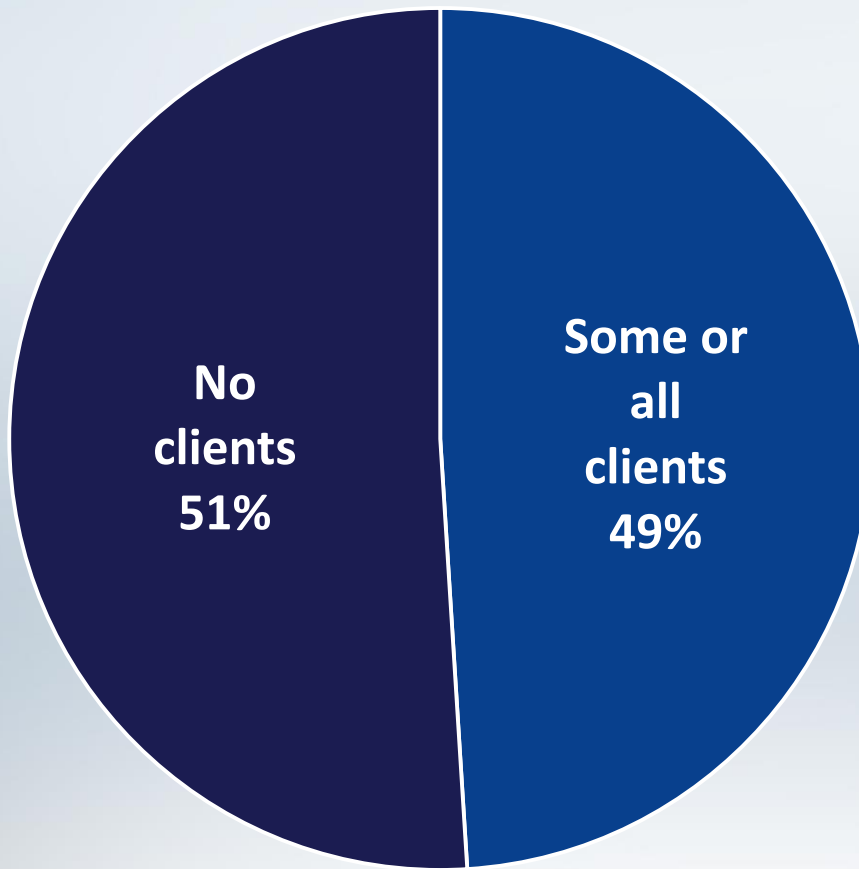
Individual Tax Assessment

- **2015:** *Greater* than **2%** of household income above tax filing threshold (generally \$10,150 for individual in 2014) **or** “flat dollar amount” of **\$325** per person (**\$162.50** per child under 18), up to **\$975** per family*
- **2014:** **1%** of household income or **\$95** per person plus **\$47.50** per child under 18 up to **\$285** per family
- Assessment capped at national average premium for bronze plan (\$12,240 for family of five or more in 2014)

*For 2016, the respective values are **2.5%**, **\$695**, **\$347.50**, and **\$2,085**.

ACA Compliance Survey

ACA Costs Charged as Separate Item



**Common-law
employer issue
primary factor
for less than half
(43%)**

Bill Rate Increases

- Nearly four out of 10 (36%) did *not* propose bill rate increases
- Among those increasing bill rates...
 - Nearly half (48%) said that the “great majority” of clients accepted the increases with “little or no resistance”
- Publication of markup and bill rate data to be determined per antitrust guidance



Supreme Court Update



King v. Burwell Update

- Issue: Can federal health care exchanges grant tax subsidies—or only states?
- Sixteen states plus DC set up own exchanges; 34 are run by HHS. For a complete list, see *kff.org*.
- Justice Kennedy: It would be a “drastic step” to allow IRS, by regulation, to authorize billions in subsidies without “very, very clear” authority
- Employers in 16 states plus DC still exposed
- Decision expected late June



Employer Reporting



ACA Reporting Requirements

Code § 6055	Code § 6056
<p>Entities offering minimum essential coverage must report certain information about the coverage to covered individual and the IRS</p>	<p>Applicable large employers must provide detailed information relating to their offer or failure to offer group health insurance</p>
<p>Purpose: Enforcement of Code § 36B, relating to premium subsidies and/or cost-sharing subsidies for low- and moderate-income individuals to help buy coverage from public insurance exchanges or marketplaces</p>	<p>Purpose: Enforcement of Code § 4980H, relating to the ACA employer shared responsibility rules that apply only to applicable large employers</p>

Effective Date of Reporting

- Requirements were originally slated to take effect in 2014, but were delayed for a year in IRS Notice 2013-45.
- They are now effective for calendar years commencing after Dec. 31, 2014 (i.e., 2015 and later years).
- Code §§ 6055 and 6056 reporting requirements mirror the scheme used for the reporting of wages: statements are provided to affected individuals with copies to IRS.
- Good Faith Standard for 2015 Penalty Relief—This applies to 2015 reporting penalties for incorrect or incomplete filings (but not failure to file).

New IRS Forms and Instructions

	Who Provides?	Transmittal Forms	Reporting Forms
Code § 6055	Entities providing MEC	1094-B (Transmittal of Health Insurance Coverage Information Returns)	1095-B (Health Insurance Coverage)
Code § 6056	ALE Members	1094-C (Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns)	1095-C (Employer-Provided Health Insurance Offer and Coverage)

Code § 6056—Filing Obligation

- Each “applicable large employer” (ALE) member is required to
 - File a Code § 6056 form, and
 - Furnish a copy of the filing to each full-time employee
- “Applicable large employer”—an employer-controlled group that employs an average of 50 or more full-time employees or full-time employee equivalents in the prior calendar year
- Self-funded group health plans must also file under Code § 6056 and furnish a copy to each “responsible individual”
- “Responsible individual”—the primary insured, employee, former employee, uniformed services sponsor, parent, or other related person who enrolls one or more individuals in minimum essential coverage

Code § 6056–Filing Obligation (cont'd)

- Reporting is done separately by each ALE member under its own EIN (ALE members may need to apply for an EIN).
- An ALE member may hire a third-party agent (e.g., a third-party administrator) to file on its behalf, but the ALE member remains liable for the reporting.
- An ALE member that is a governmental unit may designate another, related governmental unit to file on its behalf.
- An employer that is not subject to Code § 4980H is not required to file.

Reporting Eligibility and Enrollment

	Employer-Insured Health Plan	Self-Insured Health Plan
Small employer—Fewer than 50 full-time equivalent employees (FTEs)	Small employer does not file. Insurer files Form 1095-B.	An entity this small would not normally have a self-insured health plan but, if it did, it would file Form 1095-B.
Applicable Large Employer (ALE)—50 to 99 FTEs	ALE member files Form 1095-C Parts I and II (not Part III), even though it may not be subject to “play or pay” penalties in 2015. Insurer files Form 1095-B.	An entity this small would not normally have a self-insured health plan but, if it did, it would file Form 1095-C Parts I, II, and III, even though it may not be subject to “play or pay” penalties in 2015.
ALE—100 or more FTEs	ALE member files Form 1095-C Parts I and II (not Part III). Insurer files Form 1095-B.	ALE member files Form 1095-C Parts I, II, and III.

Furnishing of Statements

- Sponsors of self-funded group health plans use Form 1095-C (or a substitute) to satisfy *both* the employer responsibility and the minimum essential coverage reporting requirements.
- Sponsors of fully insured group health plans also use Form 1095-C, but will leave Part III blank.
- Employers who are not subject to the employer shared responsibility requirements, health insurance issuers, self-insured multiemployer plans, and providers of government-sponsored coverage will report on Form 1095-B, or a substitute form.
- Sponsors must also submit a Form 1094-B and Form 1094-C as a “transmittal form” to the IRS with the Forms 1095-B or 1095-C, as appropriate.

Required Information

- Name, address, and employer identification number (EIN) of employer
- Name and telephone number of employer's contact person
- Calendar year for which information is reported
- Certification as to whether employer offered its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, by calendar month
- Months during calendar year that minimum essential coverage under the plan was available

Required Information

- Each full-time employee's share of lowest cost monthly premium (self-only) for minimum value coverage, by calendar month
- Number of full-time employees for each month during calendar year
- Name, address, and taxpayer identification number (TIN) of each full-time employee during calendar year and the months, if any, during which the employee was covered under the plan
- Any other information required by forms or instructions

Furnishing and Transmitting Forms

- Paper or electronic Forms 1095-B and C are filed with the IRS (electronic required for 250 or more returns).
- Paper statements must be provided to the full-time employee or responsible individual at last known address, via first class mail.
- Employee statements may be delivered electronically with the written consent of the employee or responsible individual (similar rule applies to W-2s).
- Forms are generally filed with the IRS by Feb. 28 (March 31 for electronic filing), and furnished to employees or responsible individuals by Jan. 31.

The “Authoritative Transmittal”

- Generally, each applicable large employer member (i.e., each separate member of a group of employers under common control) must file a separate information return (Form 1094-C).
- If there is only one ALE member, it must report all aggregate employer-level data.
- If there’s more than one ALE member (or if one third party is facilitating reporting for an ALE member—e.g., because the ALE member has contracted with two or more third parties to report with respect to certain groups) there must be one authoritative transmittal (Form 1094-C) reporting aggregate employer-level data for *all* full-time employees of the ALE member.

Example 1—Ongoing Employee

- Staffing firm maintains self-insured, minimum value group health plan; employee contribution for single coverage is \$150 per month
 - Offers health insurance coverage to full-time employees (using look-back measurement method); calendar year stability period
 - Coverage offered to spouse and dependents
- Payrolled employee A is an ongoing employee
- Employee A is offered coverage during staffing firm's 2015 open enrollment, but declines
- 2015 Form W-2 Box 1=\$25,000

Example 1 (cont'd)

Part II Employee Offer and Coverage

	All 12 months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)	1E												
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$150.00	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)	2F												

1E: MEC providing MV offered to employee and at least MEC offered to dependent(s) and spouse

2F: Section 4980H affordability Form W-2 safe harbor

Form 1094-C Issuance

- If employee A is the common law employee of staffing firm, then
 - Form 1094-C (transmittal), Part I, identifies the staffing firm as the ALE member
 - The transmittal may be authoritative (see Part II, line 19)
- But if employee A is the common law employee of the client organization, then
 - Form 1094-C, Part I, identifies the client as ALE member, and
 - The filing is not authoritative
- Should this matter if employees are being reported *somewhere*?

Example 2—New Full-Time Employee

- Staffing firm (ALE member) hires employee B on Feb. 15, 2015.
- Staffing firm expects on start date that employee B will work full-time hours
- 90-day waiting period for health coverage
- Coverage available to dependents and spouse
- Employee B elects single coverage effective May 16, 2015

Example 2 (cont'd)

Part II Employee Offer and Coverage													
	All 12 months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1H	1H	1H	1H	1H	1E	1E	1E	1E	1E	1E	1E
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)		2A	2D	2D	2D	2D	2C	2C	2C	2C	2C	2C	2C

1E: MEC providing MV offered to employee and at least MEC offered to dependent(s) and spouse

1H: No offer of coverage (employee not offered any health coverage or employee offered coverage not providing MEC)

2A: Employee not employed during the month

2D: Employee in a section 4980H(b) limited nonassessment period

2C: Employee enrolled in coverage offered

Example 2 (cont'd)

Part III Covered Individuals

If Employer provided self-insured coverage, check the box and enter information for each covered individual



(a) Name of covered individual	(b) SSN	(c) DOB (if SSN is not available)	(d) Covered all 12 months	(e) Months of Coverage											
				Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
17 Charles Clark	xxxxx1234		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
18			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Example 3—Transfer to Part Time

- ALE hires employee C on Feb. 15, 2015, expecting employee C to work full time
- 90-day waiting period for health coverage
- Employee C elects single coverage effective May 16, 2015, but transfers to part time on July 15, 2015
- ALE terminates employee C's coverage on July 15, 2015 based on change in position and sends a COBRA notice
- COBRA premium is \$350 per month
- Employee C does not elect COBRA
- Employee C works fewer than 130 hours per month in every month except September and December

Example 3 (cont'd)

Part II Employee Offer and Coverage													
	All 12 months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)		1H	1H	1H	1H	1H	1E	1E	1E	1E	1E	1E	1E
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$150.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)		2A	2D	2D	2D	2D	2C	2B	2B		2B	2B	

1E: MV plan offered to employee and at least MEC to dependent(s) and spouse

1H: No offer of coverage or coverage is not MEC

2A: Employee not employed during the month

2B: Employee not a full-time employee

2C: Employee enrolled in coverage offered

2D: Employee in a section 4980H(b) limited nonassessment period

What Should Employers Be Doing?

- Contact your broker/carrier/TPA/payroll supplier.
- Determine who will be responsible for collecting what data.
- Establish policies and procedures to ensure reporting rules are followed.
- Ensure supplier agreements are up-to-date and complete.
- Determine if tracking/management will be handled in-house or outsourced to HRIS supplier/payroll supplier.
- Start planning now—don't wait until December.



Top Staffing Firm Issues



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Top Issues for Staffing Firms

- How is eligibility for coverage determined?

Variable-Hour Employees

Application of variable-hour factors:

- Employee-by-employee or homogeneous groups?

Top Issues for Staffing Firms

- Tracking and reporting

Top Issues for Staffing Firms

- Coverage issues
 - Current availability and cost of minimum value plans
 - Claims risks in self-funded plans (ASA issue paper)

Top Issues for Staffing Firms

- Charging clients for ACA costs
 - Separate line item vs. across the board
 - Common-law employer issue not a major factor



Questions?

