

The background of the slide is a photograph of several classical columns, likely from a government building or courthouse. The columns are made of light-colored stone or marble and feature fluted shafts. The perspective is from a low angle, looking up at the columns, which creates a sense of height and grandeur. The lighting is bright, casting shadows that emphasize the texture and depth of the columns.

CSAC – League of California Cities – CalPERS

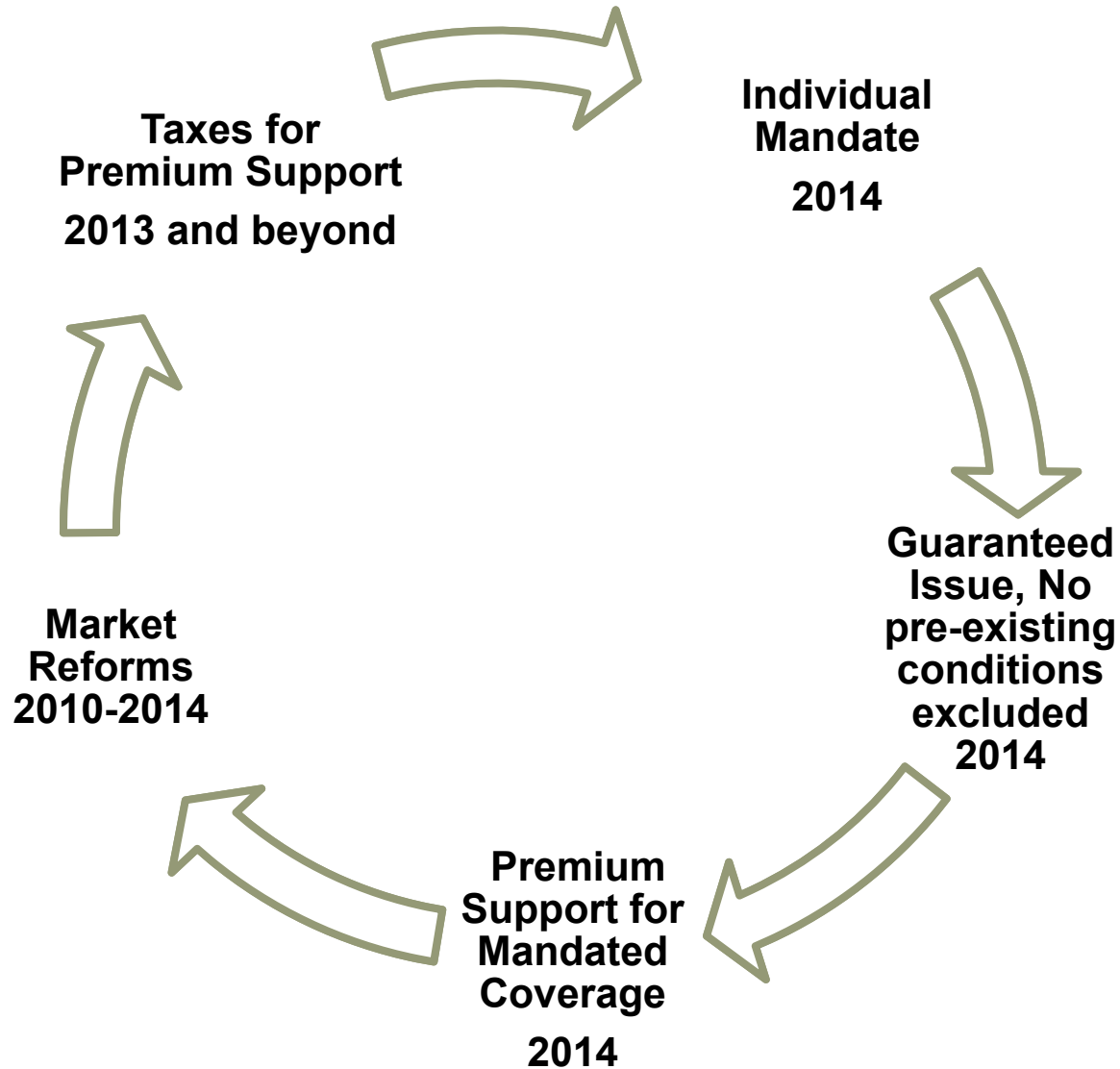
**Health Care Reform Update:
Play or Pay and More**

April 2, 2013

Alliant
EMPLOYEE BENEFITS

- **Overview of the Affordable Care Act**
- **Pay or Play**
 - **Affordability and Minimum Value**
 - **Who is a Full-time Employee?**
 - **Special Concerns**
 - **Compliance Strategies**
 - **What to Do Now**
- **Other Reform Matters**
- **Next Steps**
- **Disclaimer**

HEALTHCARE REFORM- WHAT



INDIVIDUAL MANDATE: IRC 5000A



What

Individuals must have Minimum Essential Coverage

Who

All U.S. citizens and legal residents

When

Beginning in 2014

How

If individual or individual's spouse or dependent does not have Minimum Essential Coverage, penalty will be assessed against that individual



Penalty is charged for each individual without coverage:

- 2014: \$95/individual, \$47.50/child, capped at greater of \$285/family or 1% of family income
- 2015: \$325/individual, \$162.50/child, capped at greater of \$975/family or 2% of family income
- 2016: \$695/individual, \$347.50/child, capped at greater of \$2,085/family or 2.5% of family income

HEALTHCARE REFORM- WHAT



Coverage required - Individual Mandate

Access to comprehensive coverage

- Healthcare Exchanges
- No pre-existing conditions
- Guaranteed issue coverage
- No rescission of coverage
- Dependent coverage through age 25
- No limits on Essential Health Benefits
- Coverage must be Minimum Value (60%)
- Improved preventive/women's healthcare
- Limit waiting periods – benefits begin by 91st day

Cost & quality initiatives

- Medical Loss Ratio (MLR) Rebates
 - 80-85% of premiums must be used for claims
- Wellness program premium differential (up to 50%)
- Pilot quality of care programs

Revenue generation

- Pay or Play penalties
- FSA limits
- Cadillac tax
- Various taxes & fees

Affordability

- Subsidies for lower income families
- Caps on employee cost for single coverage

Employer administration

- Automatic enrollment
- Monitor status changes
- Proof of coverage offering

Employee communication

- Summary of Benefit Coverage (SBC)
- Notice of Exchange
- W-2 reporting

HEALTHCARE REFORM - WHO



Fed Govt.

- Issues regulations & rules; enforces compliance
- Federal Health Insurance Exchange
- Subsidizes coverage for low income individuals
- Collects taxes and fees
- Builds pilot programs around cost and quality

State Govt.

- Option to expand Medicaid coverage
- Option to run State Health Insurance Exchange
- Set minimum essential benefits
- Continues to regulate insurance

Individuals

- Most required to have insurance or pay a tax (Individual Mandate)
- Expanded benefit levels and more options for coverage

Healthcare Providers

- Estimated 30+ million new insured individuals
- Higher reimbursement for Medicaid
- Lower reimbursement for Medicare
- New fees and taxes
- New quality reporting requirements

Employers

- Pay or Play Penalties
- Benefit mandates
- Tracking and reporting requirements
- Employee communication requirements
- Pay certain new fees and taxes

PAY OR PLAY: IRC 4980H: "EMPLOYER SHARED RESPONSIBILITY"



What

Health plan offers **Minimum Essential Coverage** that is **Affordable** and provides **Minimum Value** (60% actuarial)

Who

Large employers (50+ full-time + FTEs)

How

Provided coverage to substantially all (95%) of **full-time employees** (130+ hrs/mo) and their **dependents**.

When

January 1, 2014 (non-calendar year plans may qualify for delay to first day of 2014 plan year)



= \$2,000 x (# full-time employees - 30)
Coverage not offered at all OR fail to offer Minimum Essential Coverage to all full-time employees.

= \$3,000 per employee
that enrolls in subsidized exchange coverage if Affordable, Minimum Value coverage not offered

Effective date



Pay or Play penalties generally effective **January 1, 2014**



Non-calendar year plans effective date may be delayed to 1st day of 2014 plan year if:

- They offer Affordable, Minimum Value Coverage to full-time employees by the 1st day of the 2014 plan year, **and**
- Plan was in place on December 27, 2012, **and**
- Coverage offered to 1/3 of employees during 2012 open enrollment, **or**
- 25% of employees enrolled at 2012 open enrollment or on any date between October 31, 2012 – December 27, 2012

Note: Employee is not defined. Assume includes all employees including part-time, seasonal, on unpaid leave (e.g., FMLA), etc.

Affordable Coverage



Coverage must be **Affordable** for those with **household** incomes of 100-400% of Federal Poverty level



Safe Harbor

- **Federal Poverty Level**
 - Annual single coverage costs \leq 9.5% of Federal Poverty Level for single household
 - Employer uses same base contribution for all employees
- **Rate of Pay Method**
 - Monthly single coverage costs \leq 9.5% of hourly wage x 130
- **W-2 Method**
 - Annual single coverage costs \leq 9.5% of year end W-2 (box1)



= \$3,000 per employee
that enrolls in subsidized exchange coverage
if coverage is not Affordable

Applying Safe Harbor Tests

Safe harbors all based on cost of single coverage for least cost plan offered

May apply different tests to different categories of employees: represented/un-represented, hourly/salaried, different bargaining units, employed in different states

Federal Poverty Level Safe Harbor

Single coverage employee cost is $\leq 9.5\%$ of single household **Federal Poverty Level**

Continental US

$$\$11,470 \times 9.5\% = \$1,089.65$$

Affordable base plan employee contribution

$$\leq \mathbf{\$1,089.65}/\text{year or } \mathbf{\$90.81}/\text{month}$$

Most favorable to employees

Calculations based on 2013 Federal Poverty Levels

Rate of Pay Safe Harbor

Single coverage employee cost is $\leq 9.5\%$ employee's **hourly wage** x 130

Calculation

- Each employee evaluated separately
- Employee earning \$8.50/hr

$$\$8.50 \times 130 = \$1,105 \times 9.5\% = \$104.97$$

Affordable base plan employee contribution \leq **\$104.97/mo**

W-2 Safe Harbor

Single coverage employee cost is $\leq 9.5\%$ employee's **W-2** earnings (box 1)

Calculation

- Each employee evaluated separately
- Employee that earned \$20,000/yr

$$\$20,000 \times 9.5\% = \$1,900$$

Affordable base plan employee contribution \leq \$1,900/yr or **\$158.33/mo**

WARNING! W-2 income is final at end of year, but no retroactive changes

PAY OR PLAY: AFFORDABILITY SPECIAL CONCERNS



- **Availability of data**
- **Very low wage employees**
- **Union plans, e.g. OE3**
- **Will Cafeteria Plan arrangements that allow minimum CalPERS retiree contribution meet the affordability tests?**
- **Retirees**

Minimum Value Coverage



- Must offer **Minimum Value** for those with **household** incomes of 100-400% of Federal Poverty level.
- **Minimum Value** = Plan pays 60% actuarial benefit



Safe Harbor

- **Pending**
 - Plan design calculators
 - Plan design checklists



**ACTUARY
NOT REQ'D**



Penalty

**= \$3,000 for each employee
that enrolls in subsidized exchange coverage
if coverage is not Minimum Value**

PAY OR PLAY – FULL-TIME EMPLOYEES



Full-time



- Must offer coverage to substantially all **(95%) full-time** employees (130+ hrs/month)



- Monitor status on monthly basis
 - Stable workforce with full-time/part-time only
 - Assume retroactive changes req'd based on hours worked



Safe Harbor

- **Establish Measurement/Stability Periods**
 - Workforce includes variable hour, temporary and/or seasonal employees
 - Movement between full-time and part-time status



Penalty

= \$2,000 x (# full-time employees - 30)
Coverage not offered at all OR fail to offer Minimum Essential Coverage to full-time employees and dependents if ONE employee enrolls in subsidized exchange coverage

PAY OR PLAY –OFFER TO “ALL”

“All” clarified



- Must offer coverage to **all** full-time employees



- **De Minimis Exception**
 - All = at least 95% of full-time employees
WARNING! Offering coverage to 95% of employees does not eliminate potential for other penalties (e.g., if coverage is not Affordable)



= \$2,000 x (# full-time employees - 30)
Coverage not offered at all OR fail to offer Minimum Essential Coverage to full-time employees and dependents if ONE employee enrolls in subsidized exchange coverage

PAY OR PLAY – FULL-TIME SAFE HARBOR



Employee Category	Definition	In 2014
Full-time	Defined by IRS; expected to average 130+ hours/month (about 30 hrs/week)	Benefits must begin by 91 st day
Part-Time	Not specifically defined by IRS; reasonably expected to work less than 30 hours per week	Not required to offer benefits. Continue ongoing cycle of Standard Measurement, Administrative, and Stability Periods

- The vast majority of public employees will be in these categories

PAY OR PLAY – FULL-TIME SAFE HARBOR



Employee Category	Definition	In 2014
Variable hour	Defined by IRS; hours are variable and unable to determine if employee will work 130+ hours/mo, or (in 2014 only) whether the employee will work over 30 hours per week for a limited duration	Not required to offer benefits, initiate Initial Measurement Period
Seasonal	Not specifically defined by IRS; Hired for a limited duration to cover a business cycle (e.g. ski season, holiday)	Not required to offer benefits, initiate Initial Measurement Period

PAY OR PLAY – FULL-TIME SAFE HARBOR



Employee Category	Definition	In 2014
Ongoing employee	An employee that has completed at least one Standard Measurement Period. Once an employee is ongoing, he/she is perpetually in a Standard Measurement or Stability Period.	Continue ongoing cycle of Standard Measurement, Administrative, and Stability Periods
New Employee	Employee who has been employed by an applicable large employer member for less than one complete Standard Measurement Period.	

PAY OR PLAY – FULL-TIME SAFE HARBOR



Employee Category	In 2014	In 2015
Full-time	Averages (expected) 130+ hours/month (about 30 hrs/week); benefits begin by 91 st day	No change
Part-time*	Averages (expected) less than 130 hours per month; not required to offer benefits	No change
Variable hour	Hours are variable and unable to determine if employee will work 130+ hours/mo or working over 30 hours per week for limited duration; not required to offer benefits, initiate Initial Measurement Period.	If working more than 30 hours per week must assume will work for entire measurement period and offer benefits by 91st day



*IRS does not define part-time

PAY OR PLAY: WAITING PERIOD – THE 90 DAY RULE



What

Benefits must begin by the 91st day

Who

Applies to group health plans and insurers

When

Plan years beginning on or after January 1, 2014

How

If an employee is expected to be full-time (130 hrs/month), he/she must be eligible to enroll within 90 days of his/her start date. Note that this 90-day standard appears to be a true "days passed" standard.

- Guidance does not appear to allow an employer to wait until the first of the month after 90 days have passed – seems to require employers to allow mid-month enrollments



Penalty

\$100 per day per affected individual

PAY OR PLAY: FULL TIME SAFE HARBOR: SPECIAL CONCERNS



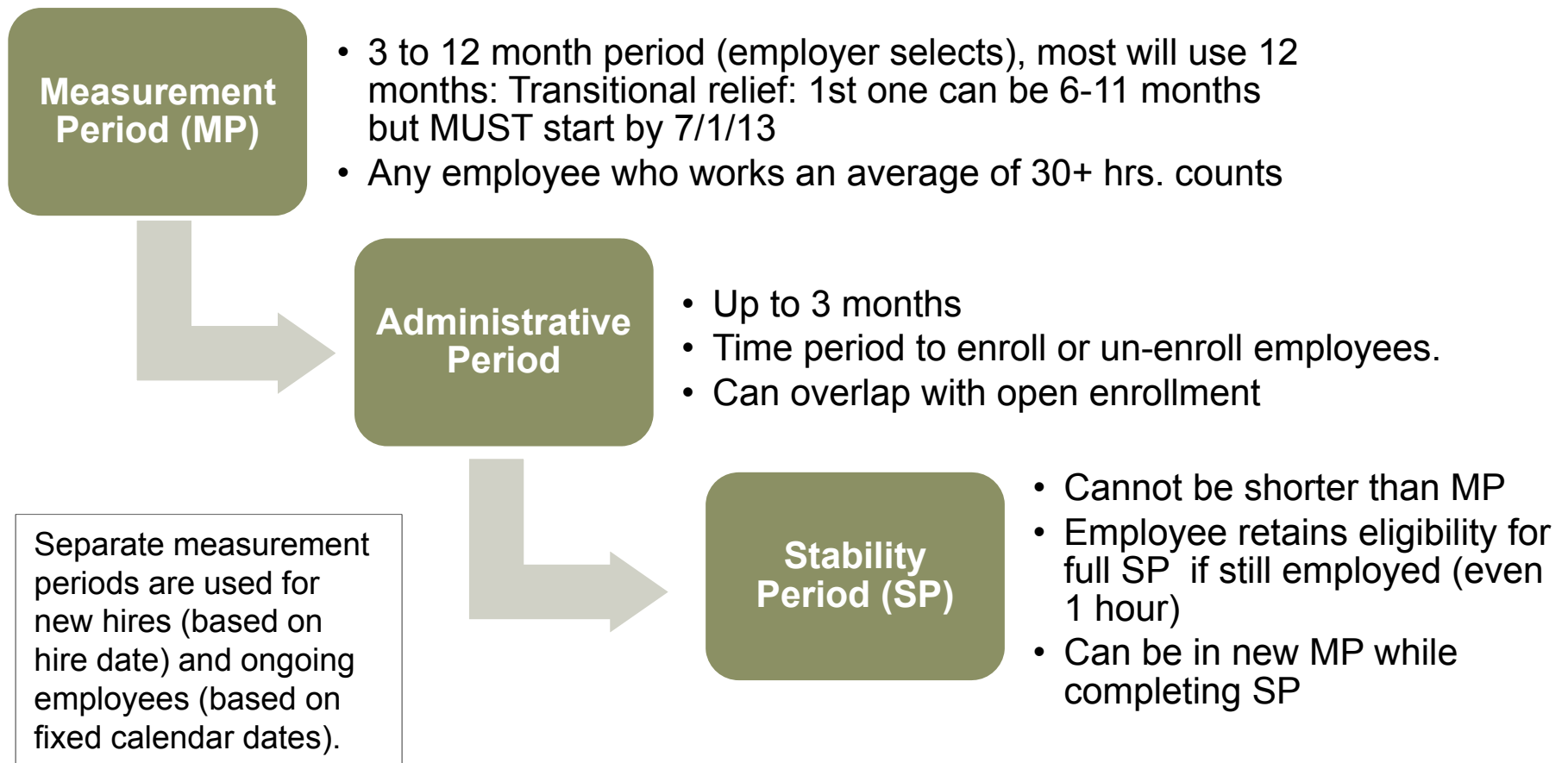
- **Employees working over 30 hours per week for a number of months**
 - **Long-term “temporary” employees**
 - **Often work in recreation areas: parks, reservoirs, etc.**
 - **Special projects, IT, Public Health**
 - **“Extra Hire” employees**
 - **Retired Safety (or other) employees with retiree health benefits from former employer**
 - ***In 2015 these employees must be offered benefits by the 91st day of employment***

- **IHSS Employees (Counties only)**

PAY OR PLAY – FULL-TIME SAFE HARBOR



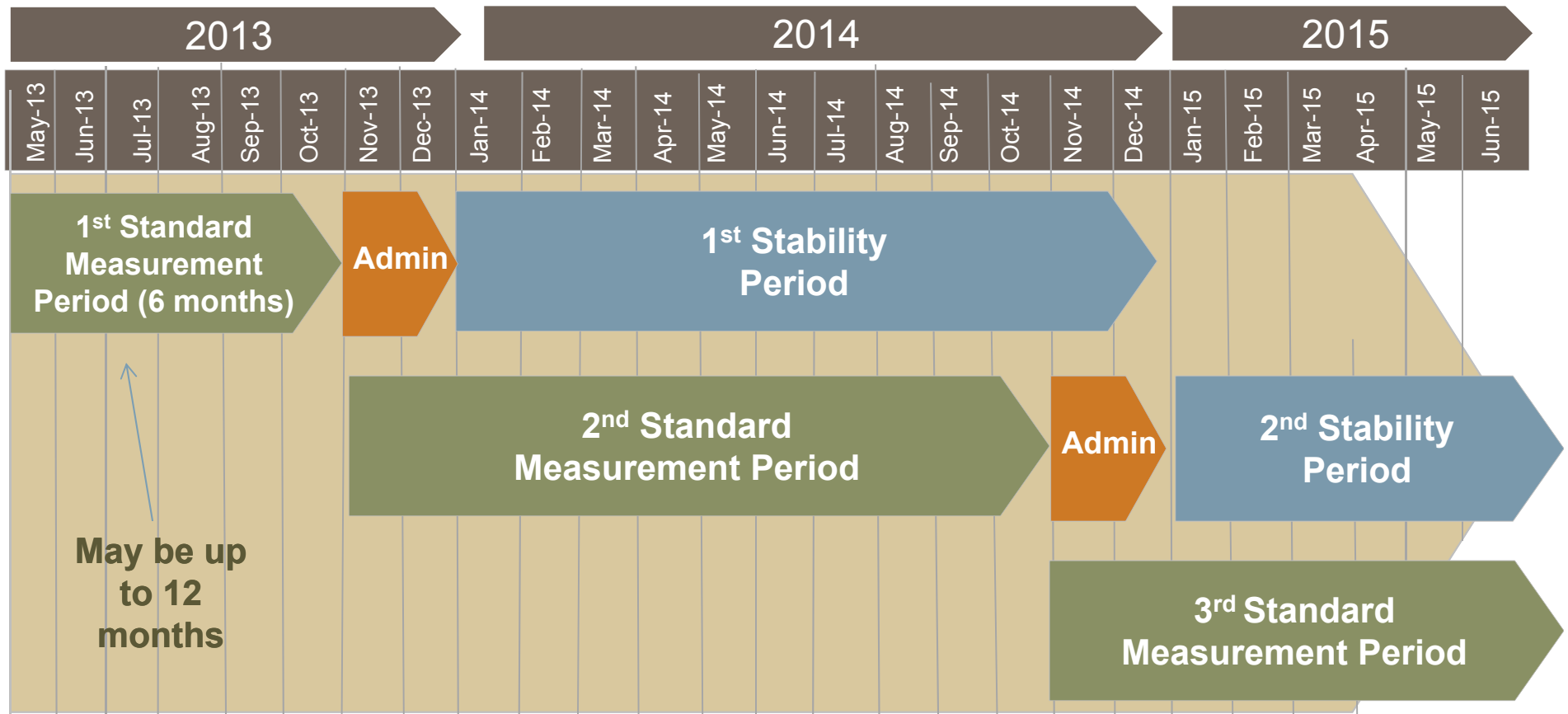
Safe Harbor Look Back Measurement Framework



PAY OR PLAY – FULL-TIME SAFE HARBOR



Standard Measurement Period – January 1 plan year



Transitional 1st Standard Measurement Period (6 months), start measuring May 1, 2013. Future Standard Measurement Periods will be 12 months. Administrative Period 2 months. Stability Period 12 months. Assume we start measuring all current employees. Guidance pending.

PAY OR PLAY – FULL-TIME SAFE HARBOR



How is Amy measured?

Amy has been with Big City for 5 years and is regularly scheduled to work 40 hours/week. Amy's Standard Measurement Period begins on 5/1/2013.

Standard Measurement Period

5/1/2013 – 10/31/2013

(First time may be from six to twelve months)

Administrative Period

11/1/2013 – 12/31/2013

Did Amy average 30 hours/week?

Stability Period

1/1/2014 – 12/31/2014

Amy is locked in as a full-time employee and offered benefits. If she enrolls, she cannot be dropped even if her status changes.

Yes

No

Stability Period

1/1/2014 – 12/31/2014

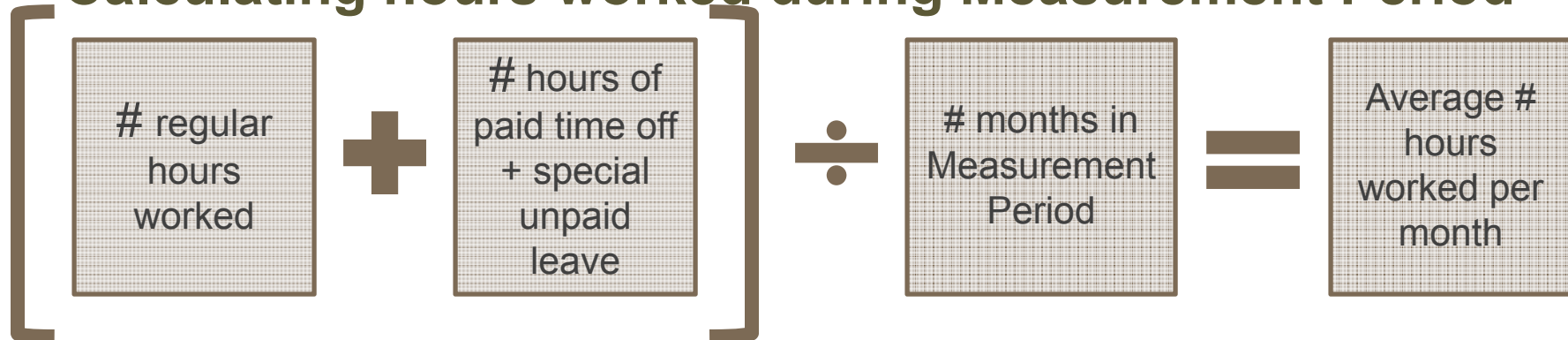
Amy is a part-time employee and benefits are not required.

Most public employers will want to use a longer transitional measurement period!

PAY OR PLAY – FULL-TIME SAFE HARBOR



Calculating hours worked during Measurement Period



- **# hours of paid time off:** include vacation, PTO, sick time, teacher breaks
- **# hours of special unpaid leave:** includes jury duty, USERRA and FMLA

Rehires

Use all hours worked during Measurement Period if:

- Break in service is < 26 weeks **and**
- Employee worked at least 4 weeks before break **and**
- Break in service \leq time worked before break
- Otherwise, treat employee as new hire

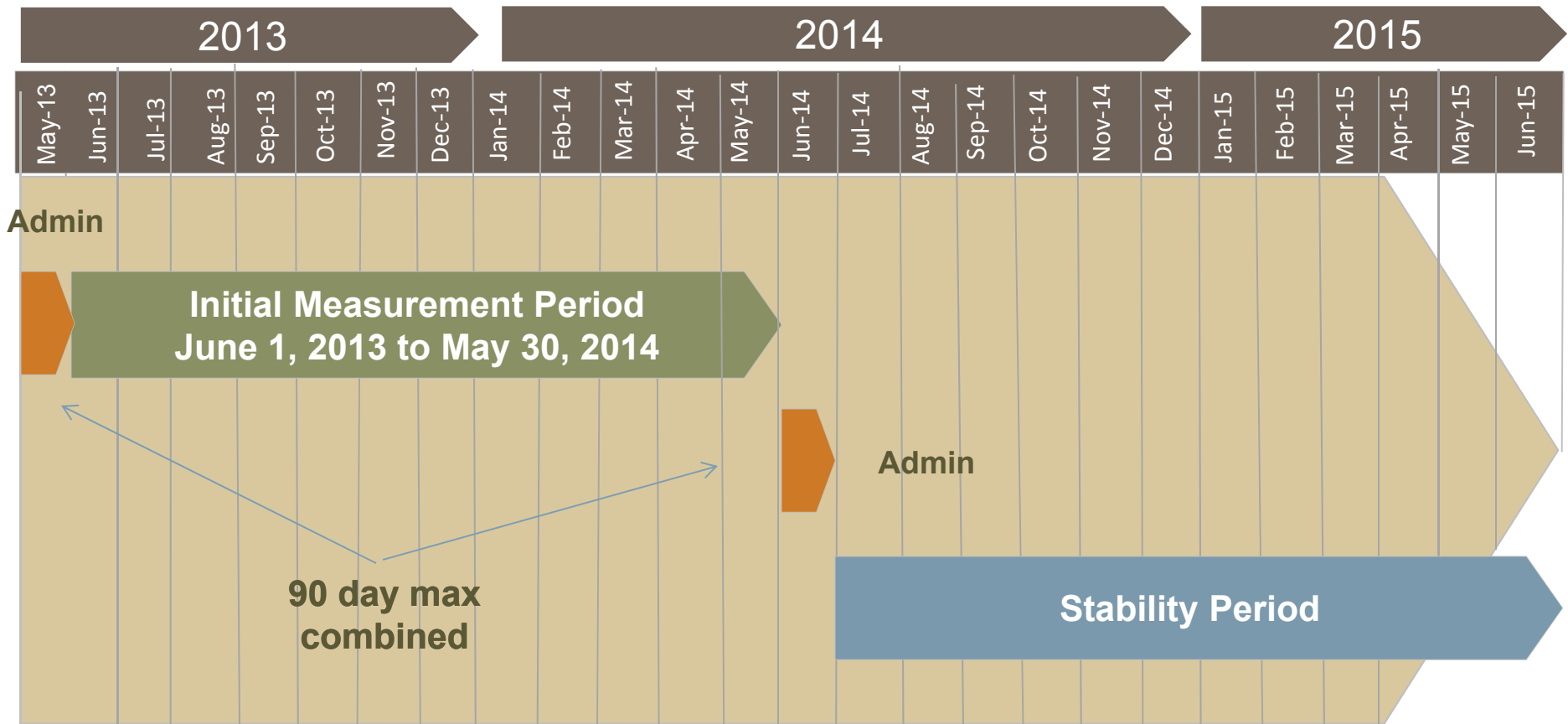
Employer Action!

- Ave hours $\geq 130 \rightarrow$ Full-time \rightarrow offer benefits
- Ave hours < 130 \rightarrow Part-time \rightarrow don't offer benefits

PAY OR PLAY – FULL-TIME SAFE HARBOR



Example: Initial Measurement Period – May 5, 2013 hire



Chris is a new Seasonal or Variable hour employee hired on May 5, 2013. Initial Measurement Period 12 months from June 1. Administrative Periods May 5,-May 31, 2013 and June 1-June 30, 2014. Stability Period 12 months. Benefits begin July 1, 2014 if full-time (avg. 30+ hours) during Initial Measurement Period.

PAY OR PLAY – FULL-TIME SAFE HARBOR



How is Chris measured?

Chris is a new “seasonal or variable hour employee hired May 5, 2013. He is scheduled to work 32 hours per week. Chris’ Initial Measurement Period begins on June 1, 2013.

Initial Measurement Period
June 1, 2013 – May 31, 2014

Administrative Periods
5/6/13-5/31/13
And 6/1/14-6/30/14
Did Chris average 30 hours/week?

Stability Period
7/1/2014 – 6/30/15
Chris is locked in as full-time employee and offered benefits. If he enrolls, he cannot be dropped even if his status changes.



Stability Period
7/1/2014 – 6/30/15
Chris is a part-time employee and benefits are not required.

- **Additional Considerations (Guidance Pending)**
 - **Transition from Initial to Standard Measurement Period for New Hires**
 - **Different outcomes for those who qualify for benefits in Initial Measurement Period and those who do not**
 - **Status changes**
 - **P/T to F/T and F/T to P/T**
 - **Different outcome for new and on-going employees**
 - **Selecting a Fiscal Year Stability Period with a Calendar Year health plan**

PAY OR PLAY – COMMON STRATEGIES



- Offer a lower cost plan, e.g. high deductible at 60% or 70% actuarial value (~ \$2,000 deductible) to reduce contribution requirements
- *Caution: non-discrimination rules may apply*

OTHER MATTERS: NON-DISCRIMINATION TESTING



What

Plans may not discriminate by giving highly-compensated employees better benefits or premium contributions

Who

Fully-insured group health plans



When

Delayed (until 2014?)

How

- Fully-insured group health plans cannot discriminate in favor of highly compensated individuals - Code Section 105(h)(2)
 - Assume plans must offer consistent plans, contributions and waiting periods to all eligible employees
 - Can discriminate in favor of lower paid employees
- In effect for self-funded plans – updated guidance expected



\$100 per day per affected individual

Pay or Play: What to Do Now



- **Step 1: Determine what data you need and what you have and what you need to start collecting**
 - How do you determine who is benefited and who is not?
 - What records are do you use/have?
 - Payroll hours; pension service; position filled?
 - If hours/service
 - How are these counted?
 - How timely is the data?
 - Can you track monthly?
 - Can you “prove it” to the IRS?

- **Step 2: Identify Safe Harbor method to test for affordability of coverage (or choose to risk penalties)**

Pay or Play: What to Do Now



- **Step 3: Consider Safe Harbor method you will use to determine full-time status**
 - Full-time and/or part-time + variable hour
 - Expect to monitor employee status monthly
 - Set Measurement and Stability periods
- **Step 4: Expect to begin measuring employees using Safe Harbor possibly starting as early as 11/1/12 or 12/1/12**
- **Step 5: Plan to monitor status changes in 2014**
- **Step 6: If needed, understand how you will modify eligibility or employment practices to cover at least 95% of full-time employees (or choose to risk penalties)**

OTHER MATTERS: CADILLAC TAX



What

40% tax on **excess** premiums

Who

Insurers and TPAs (assume costs passed onto employers)

When

2018

How

- Healthcare premiums >\$10,200/individual and \$27,500/ family are “excessive”
- Higher limits for high risk jobs or workforces with older populations



Penalty

$$\begin{aligned} \text{Tax} = & \\ & [(\text{Individual premium} - \text{premium cap}) \times 40\%] \times \# \text{ singles enrolled} \\ & + \\ & [(\text{Family premium} - \text{premium cap}) \times 40\%] \times \# \text{ families enrolled} \end{aligned}$$

OTHER MATTERS: CADILLAC TAX



Health Plans
will be subject to
tax in 2018;
immediate
attention needed



CalPERS 2013 State Rates	Single	Family
Monthly		
Kaiser HMO	\$609.34	\$1,584.28
PERChoice PPO	\$634.06	\$1,648.56
Annual 2013		
Kaiser HMO	\$7,312.08	\$19,011.36
PERChoice PPO	\$7,608.72	\$19,782.72
Annual 2018 @ 9%/year		
Kaiser HMO	\$11,250.54	\$29,251.33
PERChoice PPO	\$11,706.96	\$30,438.17
Threshold (2018)	\$10,200.00	\$27,500.00
Taxable Amount		
Kaiser HMO	\$1,050.54	\$1,751.33
PERChoice PPO	\$1,506.96	\$2,938.17
Tax at 40%		
Kaiser HMO	\$420.22	\$700.53
PERChoice PPO	\$602.78	\$1,175.27

NEXT STEPS

- Best Practices
 - Analyze your workforce; identify risk of penalties
 - Determine how you will document monthly hours worked and affordability; can you prove it to the IRS?
 - Educate management, elected officials and labor
 - Create an inter-departmental Task Force
 - Review your employment practices and contributions
 - Look at your MOU's: what has to be bargained to avoid penalties, including the Cadillac tax?
- *Watch for more guidance; the rules will keep changing!*

THANK YOU

- For More Information

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DISCLAIMER

The Affordable Care Act (“ACA”) is an extraordinarily complex law that will impact all areas of medical insurance in the U.S. Both federal and state agencies have been and will continue to issue temporary and final regulations that materially impact compliance requirements and necessitate new or modified compliance actions.

This document and the related resources are intended to support a best practice approach to ACA compliance based on known regulations and practical responses to an evolving landscape. ACA compliance will be an ongoing process that will require regular updates to an employer’s strategy based on new regulations and marketplace developments.

This document provides general information regarding the mandates under the Affordable Care Act (ACA). It does not provide a review of, or ensure compliance with, ACA mandates.

Alliant Insurance services does not provide legal advice or legal opinions. Please consult counsel if a formal legal opinion is desired.