

# Ultimate

SOFTWARE

People first.

*Success comes from putting first things first.*



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audio, please use  
your computer's  
speakers.*

## ACA Planning 2016 and Beyond

**Ann Carr Mackey**  
Attorney, Ogletree Deakins

**Jeanne E Floyd**  
Attorney, Ogletree Deakins

# Our Value Proposition

Winning companies put people first. Ultimate Software is built on the profound belief that people are the most important ingredient of any business. So people management is ALL we do.

We seamlessly merge people and technology so that the HCM tools you use don't get in the way of the work you do. Because we believe that software should work for people — not the other way around.



# Ultimate Software: The Basics



- **Founded in 1990**  
Over 25 years experience exclusively focused on human capital management
- **Publicly traded 1998**  
(Nasdaq: ULTI)
- **2,800+ employees**
- **3,200+ customers in over 160 countries**
- A leading provider of unified HCM cloud-based solutions for global businesses

## Our core principles:

<b>Culture:</b>	<b>Product:</b>	<b>Service:</b>
#16	25M	97%
Place to Work	Employee Records	Customer Retention

# Some of Ultimate Software's 3,200 Customers



# Speakers



Jeanne Floyd  
Attorney, Ogletree Deakins

Ms Floyd is a member of the employee benefits and executive compensation group. Jeanne focuses her practice on issues concerning health and welfare benefits, including Section 125 cafeteria plans, medical savings accounts (such as flexible spending arrangements (FSAs), health reimbursement arrangements (HRAs) and health savings accounts (HSAs), and wellness programs.



Ann Carr Mackey  
Attorney, Ogletree Deakins

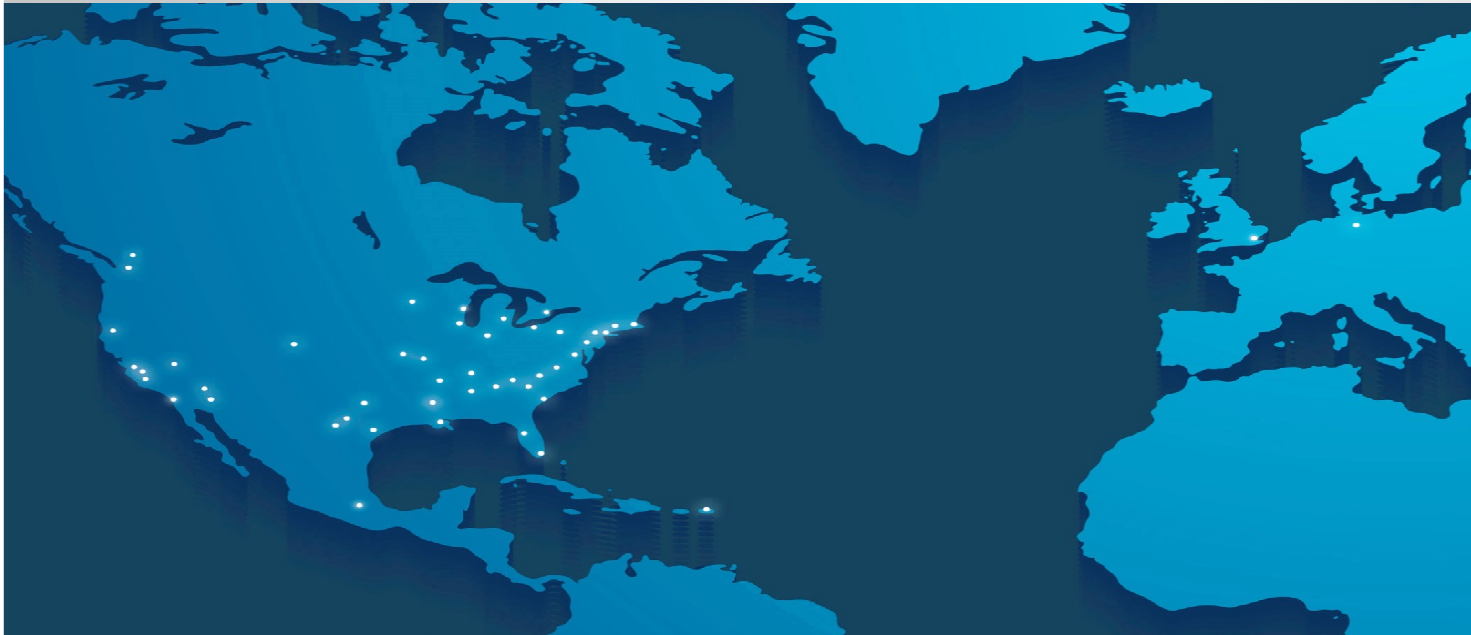
Ms. Mackey has practiced law for over 35 years. For more than 20 years, she has specialized in employee benefits. Since the Affordable Care Act was enacted in the spring of 2010, Ms. Mackey has played a key role helping employers comply with the requirements of Health Care Reform. She is co-chair of Ogletree Deakins' Health Care Reform Subgroup.

# What's New With the ACA?

Planning for 2016 and Beyond

Ann Carr Mackey (Indianapolis)  
Jeanne Floyd (Richmond/Washington DC)

March 3, 2016



Ogletree  
Deakins

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# Overview

- Proper Employee Classification
- Troublesome Reporting Issues
- Staffing Agencies
- Changes to the Law
- Questions?

# Identifying Full-Time Employees

- Full-time employee group drives offers of coverage **and** exposure to penalty
- Generally, FT means 30 hours/week *or* 130 hours/month on average and PT means less than 30 hours
  - “Hours” include working and non-working time for which payment is due
  - *Some* volunteer and student work is excluded
  - Hours earned/paid outside the US are generally excluded



# Who is a Full-Time Employee?

- How hours are counted depends on the type of employee:
  - **Hourly**: use actual hours
  - **Non-hourly**: actual hours or daily/weekly equivalencies
- Different methods can be used for different plan years and employee groups (subject to some limits)

# Who is a Full-Time Employee? (cont.)

- Choices for Measuring
  - Monthly method
  - Look-back method
- Monthly Method
  - Hard to administer, but allows delayed start date for coverage
  - Practical uses or considerations
- Look-back Method
  - For variable hour, seasonal and part-time employees

# Who is a Full-Time Employee? (cont.)

- Measurement and stability periods *assume* variable hour, part-time or seasonal status (i.e., *not* employees who are likely to work a FT schedule)
- Employer's determination will be assessed for reasonableness based on facts and circumstances
- Factors include:
  - Replacement of existing FT position
  - Hours for comparable positions
  - Communications about anticipated working hours
- Incentive to err in favor of offer of coverage?

# Who is a Full-Time Employee? (cont.)

- **Who is a seasonal employee?**
  - Not the same as “seasonal worker”
  - 6 months or less of recurring annual employment at the same (mostly) time of year regardless of actual working hours (e.g., a ski instructor)
  - **Not** an automatic exclusion – Beware!

# Who is a Full-Time Employee? (cont.)

- **Who is a variable hour employee?**
  - Cannot reasonably determine at start date that will be FT during initial measurement period because hours are variable or otherwise uncertain
  - Determination based on facts and circumstances at date of hire
  - Factors—
    - Work schedule of predecessor employee
    - Work schedule for comparable positions in recent past
    - Communications regarding expected work schedule
  - *Cannot* take likelihood of termination into account (important change from earlier rules)

# Who is a Full-Time Employee?

- **Who is a part-time employee?**
  - A new employee reasonably expected to be employed on average less than 30 hours per week during first year of employment
  - Determination based on facts and circumstances at date of hire
  - Factors:
    - Work schedule of predecessor employee
    - Work schedule for comparable positions in recent past
    - Communications regarding expected work schedule
  - *Cannot* take likelihood of termination into account (important change from earlier rules)

# Special Rules for Special Jobs

- **Adjunct Faculty**

- Use reasonable method - safe harbor for counting hours:
  - 2.25 hours for each hour of classroom time per week (1 hour in classroom + 1.25 preparation time), *plus*
  - 1 hour for each additional hour outside classroom (e.g., required office hours or required attendance at faculty meetings)

- **Layover Hours Not Paid or Counted**

- Use reasonable method to count hours for pilots, flight attendants, *and other* employees required to remain overnight as part of their jobs

- **On-Call Employees**

- Use reasonable method to count hours for employees required to be available to work
- Count on-premises time and on-call time where personal activities are significantly limited

# Dealing with Status Changes

- Transitions to or from FT to PT present complex issues
- *Generally*, a schedule change during an ongoing stability period requires no corresponding change to plan eligibility
- *But*, a schedule change during an *initial measurement period* is a different story



# Dealing with Status Changes (cont.)

- **Part-Time to Full-Time During IMP**
  - If the new position is expected to average  $\geq 30$  hours/week, must offer qualifying coverage by first day of fourth month following change to avoid a penalty
    - Assumes continued employment
  - If employee was already working FT hours during IMP, must offer coverage on first day of first month after IMP ends (including optional administrative period), if earlier

# Dealing With Status Changes (cont.)

- **Full-Time to Part-Time**

- **New and Ongoing Employees**

- Coverage generally must be retained for the remainder of the stability period unless a “change in status” occurs
- If change in status occurs, coverage can be dropped after 3 consecutive full months of averaging less than 30 hours/week
- Provided MV coverage has been offered continuously since first day of month after employee’s initial three full calendar months
- Apply monthly method through end of first full MP (and AP) that would have applied

# Leaves and Rehires

- If there is a “break in service” of less than 13 weeks (26 weeks for educational institutions), the employee:
  - is treated as an ongoing employee upon return;
  - retains the status he or she had prior to the break; and
  - must be offered coverage as soon as administratively practicable after return (by 1<sup>st</sup> of month following resumption of service) if he or she was considered full-time prior to the break.
- Coverage must be offered during leave if employee was considered full-time and in a stability period at time leave commenced, unless employment is terminated.
- Coverage can always be terminated for nonpayment.

# Leaves and Rehires (cont.)

- Employee may be treated as a new hire upon return if:
  - an employee has a break of at least 13 weeks (26 weeks for educational institutions), or
  - for breaks at least 4 weeks but less than 13 weeks (or 26 weeks for educational institutions) if the break is longer than prior employment.
- For employee treated as continuing employee (as opposed to employee treated as terminated or rehired):
  - measurement and stability period that would have applied to the employee had the employee not experienced the period of non-employment continues to apply upon the employee's resumption of service.

# Leaves and Rehires (cont.)

- If there is a “special leave”
  - Unpaid leave under FMLA
  - Unpaid leave under USERRA
  - Jury duty leave
- Must neutralize effect of leave on hours of service earned during a measurement period by either:
  - Excluding period of special leave from hours calculation, or
  - Imputing hours during special leave at average of hours earned for rest of the MP.

# Reporting – Forms 1094 and 1095

- **Standard Deadlines:**
  - Furnish statements to employees – annually by January 31
  - File with IRS – annually by February 28, or March 31 if filed electronically
- **2015 Deadlines:**
  - Furnish statements to employees – by March 31, 2016
  - File with IRS – by May 31, 2016, or June 30, 2016, if filed electronically
- **Electronic filing done through AIR system**
  - Applies to all forms
  - Required for entities with 250+ returns

# Reporting – Forms 1094 and 1095 (cont.)

- **B Forms**: Filed by insurers, certain employers sponsoring SIHPs, multiemployer SIHPs, and others providing MEC
- **Purpose**: satisfies Code §6055; verifies enrollment in MEC for individual mandate purposes; enrollment in employer-sponsored plan also affects tax credit
- **C Forms**: Filed by ALEs (subject to employer mandate)
- **Purpose #1**: Satisfies Code §6056 by providing information about coverage ALE offered (or failed to offer) to FT employees
  - For IRS to determine employer mandate penalties
  - For IRS and individuals to determine eligibility for premium tax credit
- **Purpose #2**: If ALE sponsors SIHP providing MEC, satisfies Code §6055 by verifying enrollment in SIHP

# Reporting - Forms 1094 and 1095 (cont.)

## Line 14

Code applies for a month only if the Code applies for every day of the month, **except** for month of termination of employment

### Line 14 Codes:

**1A** = MEC, MV, Affordable (FPL) to EE, and MEC to spouse and kids

**1B** = MEC, MV to EE only

**1C** = MEC, MV to EE, and MEC to kids

**1D** = MEC, MV to EE, and MEC to spouse

**1E** = MEC, MV to EE, and MEC to spouse and kids

**1G** = offer to non-full time employee who enrolled in self-funded coverage

**1H** = no offer

**1I** = claim "2015 Qualifying Offer Transition Relief"



# Reporting - Forms 1094 and 1095 (cont.)

## Line 15

- Report employee share of lowest-cost monthly premium for self-only MEC providing MV
  - Coverage offered
  - Not coverage employee actually selected
  - Used to prove affordability
  - Enter dollars and cents for each month
- Only complete if used Code 1B, 1C, 1D or 1E on Line 14
  - i.e., if offered MEC, MV to somebody in the family

# Reporting - Forms 1094 and 1095 (cont.)

## Line 16

**2A** = Not employed on any day during the month

- Cannot use if employed on even one day during month
- Cannot use for month of termination

**2B** = Not full-time employee and did not enroll

- Month of termination

**2C** = Enrolled in offered coverage every day of month (trumps other **codes**)

**2D** = Limited Non-Assessment Period

- Initial measurement period, waiting period, first year as ALE, first three months, change in status during initial measurement period, first calendar month of employment

**2E** = Multiemployer plan interim relief

**2F** = W-2 affordability safe harbor

**2G** = Federal Poverty Level affordability safe harbor

**2H** = Rate of Pay affordability safe harbor

# Reporting – Forms 1094 and 1095 (cont.)

## HRAs

- HRAs are MEC and must be reported unless:
  - Exception 1: Individual is covered by MEC and HRA sponsored by same employer
  - Exception 2: Individual has HRA coverage solely because also enrolled in other MEC coverage
- If the HRA covers individuals not covered under MEC, reporting is required showing the months those individuals had HRA coverage
  - e.g., employee has self-only coverage and family HRA

# Reporting COBRA Offers

- IRS deleted COBRA guidance in Reporting FAQs:

**16. How should an ALE member complete Part II of Form 1095-C for a full-time employee who terminates employment during a calendar year and receives an offer of COBRA continuation coverage?**

The answer to this question is currently being revised. Please check back later for the updated response. (02/22/2016)

**17. How should an ALE member complete Part II of Form 1095-C for an ongoing employee who receives an offer of COBRA continuation coverage due to a reduction in hours?**

The answer to this question is currently being revised. Please check back later for the updated response. (02/18/2016)

# Reporting COBRA Offers (cont.)

## COBRA: Earlier guidance was inconsistent:

1095-C	Enrolled in COBRA						Declined COBRA					
	Terminated Employee		Ongoing Employee		Year After Termination		Terminated Employee		Ongoing Employee		Year After Termination	
Employee status												
Source	I	Q	I	Q	I	Q	I	Q	I	Q	I	Q
Line 14	1H	1E <sup>2</sup> /1B <sup>2</sup>	1E	1B-1E <sup>1</sup>	1H	1G	1H	1H	1E	1B-1E <sup>1</sup>	NA	NA
Line 15		\$ Ee or COBRA, as applicable	\$	\$					\$	\$	NA	NA
Line 16	2A	2C	2C	2C	2A	2A	2A	2B month of termination and 2A rest of year	2B or SH	2B or SH	NA	NA

1 Enter Code for people to whom coverage was offered, not based on who enrolled in COBRA (e.g., if family coverage offered, but only employee enrolls, use Code 1E).

2 Enter Code 1E if enrolls in family COBRA, and Code 1B if enrolls in employee only COBRA.

# Other Reporting Issues

- **Union Employees**: ALEs required to report offers, but multiemployer plan may report coverage with respect to employees it covers.
- **Directors, Retirees, Other Non-Employees**: An employer sponsoring self-insured health plan may report enrollment information for individuals who were not employees on any day of the calendar year by entering code 1G (offer of coverage to employee who was not a full-time employee for any month of the calendar year) on line 14 for all twelve months, and completing Part III of Form 1095-C.
- **Penalties**: The IRS announced penalty relief for timely “good-faith” reporting.

# Staffing Agencies/PEOs

- Contingent workers may be common law employees and represent an ACA risk.
- Regulations provide that worksite employer may count offer of coverage made by staffing company/PEO as its own offer in order to avoid penalties if there is certain language in the staffing agreement.

## Staffing Agencies/PEOs (cont.)

- An offer of coverage by temp agency or PEO “counts” if:
  - Staffing agreement provides that fee paid to staffing company for contingent workers *enrolled* in staffing company health coverage is higher than fee paid for contingent workers *not enrolled* in coverage; and
  - The employer pays more for temps enrolled in staffing agency coverage.
- Without offer of coverage by the staffing agency, temporary worker is worksite employer’s responsibility.



# Law Changes in 2016

- **Transition Relief – Smaller ALEs**
- ALEs with between 50 and 99 *FTEs* that meet conditions had an extra year to comply with the employer responsibility mandate
  - But must do ACA reporting for 2015
- ALEs with between 50 and 99 *FTEs* must offer affordable, MV coverage to substantially all FT employees as of first day of 2016 plan year to avoid potential penalties

# Law Changes in 2016 (cont.)

- **Transition Relief – Dependent Coverage**
- For plan years beginning in 2015, applies to:
  - A plan that does not provide dependent coverage; or
  - Dependent coverage is not MEC; or
  - Some but not all dependents are covered
- If the ALE “takes steps” during 2014 or 2015 plan years to provide dependent coverage (but does not actually offer the coverage in 2014 or 2015), it will not be subject to a penalty
- ALE must provide dependent coverage for plan years beginning on or after January 1, 2016

## Law Changes in 2016 (cont.)

### Transition Relief - “Substantially All”

- In 2015, if making qualifying coverage to at least 70% of an ALEs FT employees and their dependents, will avoid the “big” penalty
  - But *not* the “small” penalty
- In 2016, must make offer of qualifying coverage to at least 95% of an ALEs FT employees and their dependents to avoid “big” and “small” penalty

# Law Changes in 2016 (cont.)

## Transition Relief - Penalty Calculations

- To calculate penalties for 2015, the formula for the “big” penalty is modified as follows:
  - \$2,080 x number of FT employees less 80 (vs. 30)
- To calculate penalties for 2016, the formula for the “big” penalty is no longer modified:
  - \$2,160 x number of FT employees less 30

## Law Changes in 2016 (cont.)

### Transition Relief - Auto Enrollment

- Employers with more than 200 FT employees that offer health coverage were required to automatically enroll new FT employees
- Repealed!

# Law Changes in 2016 (cont.)

## Transition Relief - Cadillac Tax

- Coverage with a cost that exceeds a threshold is subject to a 40% excise tax on the value of coverage that exceeds the threshold.
- Tax delayed until taxable years beginning January 1, 2020.

# Law Changes in 2016 (cont.)

## Transition Relief - Multiemployer Plans

- During 2015, if ALE member is required by a CBA, or related participation agreement, to make contributions to a multiemployer plan that offers affordable, MV coverage to full-time employees and dependents, contributions will be treated as a qualifying offer to employees for whom must make contributions.

# Law Changes in 2016 (cont.)

## Transition Relief – Miscellaneous

- Can use shorter 2014 MP for stability period starting in 2015
- Can determine ALE status for 2015 using any consecutive 6-month period in 2014
- Offer of coverage effective on first day of first payroll period in January 2015 is offer for all of January 2015



# Law Changes in 2016 (cont.)

## Transition Relief - Non-Calendar Year Plans

- Transition relief applies until first day of 2016 plan year
  - 50-99 exemption from employer mandate
  - Dependent extension
  - 70% = substantially all
  - Deduction of 80 from “big” penalty calculation

# Questions?



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