Healthcare 101

A primer for the pizzeria operator on the Affordable Care Act

WRITTEN BY *Daniel P. Smith* ILLUSTRATIONS BY *Rick Daugherty*

When David Cole teamed with his three brothers to open i Fratelli Pizza in 1987, the group did not discuss the issue of healthcare coverage for themselves let alone entertain any conversation about providing health insurance for employees.

That reality changed over the intervening two decades as the Coles expanded the i Fratelli enterprise — now 10 Dallas area stores in total — and added dozens of full-time employees to the company payroll. Slowly, health insurance transitioned from backburner topic to a routine business area for the Coles, who now employ well over 300 staff members.

Today, however, healthcare conversations have intensified at i Fratelli's Texas headquarters and thousands of other pizzerias across the country. With the major requirements of the Affordable Care Act (ACA), widely known as Obamacare, set to kick in at the start of 2014, pizzeria owners like the Coles have monitored the changing healthcare landscape and will soon be forced to make significant decisions that could shape the future of their operations.

In fact, officials with the National Restaurant Association (NRA) have called implementation of Obamacare "one of the greatest challenges restaurant operators will ever face." And that's saying something for an industry that, in just the last five years, has faced a recession, skyrocketing commodity prices and heated competition for the consumer's dollar.

"I'm sure everybody will figure this out, but it will take a while to navigate this complexity and get over the hurt," Cole says.

To date, more than 20,000 pages of regulations explaining ACA have been released, a number that continues to swell as government agencies, such as the Treasury, Health and Human Services and Labor Departments, push out piecemeal updates. As restaurant operators generally favor certainty and the ability to plan, the continued fluidity of the regulatory environment — even as major pieces of this landmark legislation sit just months away from activation — has prompted frustration and anxiety among many restaurateurs eager to define their next steps.

At the NRA Show in May, NRA director of labor and workforce policy Michelle Neblett and Randy Spicer of NRA Healthcare Services delivered six different hour-long programs detailing the must-know healthcare information for restaurant operators. In all six sessions, the 150- to 200-seat rooms were packed. On the expo floor, meanwhile, the NRA's Knowledge Center fielded hundreds of questions from operators about healthcare preparation and compliance.

"There was a lot of fear about the unknown," Neblett says of the NRA Show's vibe around healthcare. "Wrapping your head around the requirements isn't easy and it takes time to dig into the details — and, in this case, the details matter."

While each operator has his or her unique challenges to confront with respect to the ACA, a reality that demands planning and open conversations with trusted business advisors, including insurance, legal and accounting professionals, let's review some of the legislation's basic provisions and separate fact from fiction.

Myth: Full-time employees work 40 hours per week.

The Reality: Forget the traditional definition of the full-time employee working a weekly load of 40 hours. The ACA defines a full-time worker as one that averages at least 30 hours of service per week in a month or 130 hours of service in a calendar month. This applies to seasonal workers as well.

As a regular routine, employers will need to track every employee's hours and, when applicable, offer employees crossing into the full-time realm the opportunity to enroll in health coverage.

Myth: "I don't have 50 full-time equivalent (FTE) employees, so this legislation doesn't apply to me."

The Reality: While it's true that the so-called "small employers" — the ACA's terminology for those employers with fewer than 50 FTE employees — are not required to offer health benefits to staff members, the legislation cannot be discarded by small business owners. Employers close to this threshold will need to annually determine their large or small-employer status, which will include tracking employees' hours by calendar month.

In addition, small operators eyeing growth must be cognizant of the legislation and understand how opening a new location or expanding operations could push them over the 50 FTE threshold and bring a litany of new costs.

Myth: Restaurant owners only need to calculate their large or small employer status once.

The Reality: Annual calculation is the new normal. A restaurant's compliance and associated reporting requirements for the calendar year depend on employment levels for the previous calendar year. As such, a pizzeria's workforce numbers in 2014 will determine its 2015 status.

Myth: Restaurant owners with separate business entities will not need to worry about the ACA mandate in their particular entities with fewer than 50 FTEs.

The Reality: Neblett says many employers with more than one restaurant entity have failed to recognize that they might need to consider all of their workers as one

group for the purposes of the healthcare law. To define the employer, the IRS will apply its longstanding common control standard, which says that companies with a common owner or those otherwise related must be considered as one employer.

For instance, while one business under the umbrella of another may not employ enough workers to meet the mandate, its combined total with related businesses could push a common owner over the 50 FTE threshold and demand compliance with the healthcare mandate.

Myth: Employers have the ability to define "affordability" in healthcare coverage.

The Reality: The law defines affordability based on what an employee is asked to contribute to premium payments by the employer. At first, an exchange will make this determination, but ultimately the IRS will determine affordability based on household income and the reporting mechanisms of employers and insurers. It is the IRS's process that will result in employer penalties.

As a quick test: if an employee has to pay more than 9½ percent of his or her household income for self-only coverage in the employer's lowest-cost plan, then it is deemed unaffordable. An employer is then subject to a $3,000 penalty for every employee who utilizes a federal subsidy to help them access insurance on an exchange.

Myth: Healthcare coverage is for the worker, a spouse and all dependents.

The Reality: The mandate requires healthcare coverage for employees and dependents, defined as children under age 26. Spousal coverage is not required. Furthermore, while coverage for the employee must meet affordability standards, those same standards do not apply to what the employee pays for dependent coverage.

Myth: New full-time employees are eligible for immediate healthcare coverage.

The Reality: If a new hire is reasonably expected to average 30 hours of service per week, he or she is considered full-time. Healthcare coverage must be offered to start by the 91st day of employment.

Myth: All employees must take insurance.

The Reality: Employees can decline an employer's healthcare coverage for any number of reasons, such as choosing the plan provided by a parent or spouse or purchasing coverage on an exchange themselves. Employers should remind their staff, however, that the ACA requires nearly all Americans to obtain "minimum essential coverage" at the start of 2014 and that there are tax penalties for those individuals who fail to do so.

In the event that an employee is offered and declines coverage, the employer will not be subject to penalties provided he or she can show — read: supply documentation — that an affordable, minimum-value plan was offered and, subsequently, declined by the employee. Each year, large employers will be required to report to the IRS which employees were offered coverage.

Myth: Large employers cannot buy insurance through exchanges.

The Reality: For now, it is true that employers cannot buy large group insurance through exchanges. However, that will change in 2016 when small group is expanded to 100 and in 2017 when states will have the option of opening up their services to groups of 100 or more.

TWO KEY UPCOMING DATES

October 1, 2013: Regardless of size, all employers must provide written information to new and existing employees about the exchange in their particular state and how to access it. (To this end, the Department of Labor has provided model language and templates for business owners.) On this date, the exchanges will also begin enrolling individuals and small businesses.

January 1, 2014: Employers with 50 or more full-time equivalent employees must offer "minimum essential coverage" to full-time employees and their dependents. If employers fail to comply, they could face penalties. On July 2, the U.S. Department of Treasury announced that employers would be given an additional year before mandatory reporting requirements under the ACA would begin. In addition, the Department extended transition relief for the employer penalties, which now will not apply until 2015.

QUICK TIP

The NRA's Health Care Knowledge Center (www.healthcare.restaurant.org) has become an oft-visited portal for restaurant owners and operators seeking the latest information on regulations and compliance information.

QUICK TIP

Assemble a plan for reporting requirements. Beginning in 2015, employers must supply information to the IRS about full-time employees and their dependents every January 31.

"There's a lot of work we're all going to have to do behind the scenes to ensure consistent compliance," i Fratelli's David Cole says.

THE CALCULATION: ARE YOU AN APPLICABLE LARGE EMPLOYER?

Step 1: For each of the 12 calendar months in the preceding calendar year (or any six consecutive months in 2013 to determine status for 2014), an employer must determine how many employees, including seasonal employees, averaged at least 30 hours of service a week over the month or 130 hours or more hours of service in a calendar month. That will be the number of full-time employees you employed during that calendar month.

Step 2: Add the hours of service of all other non-full-time employees (including part-time seasonal employees), but do not count more than 120 hours per person per calendar month.

Step 3: Divide the total hours of service for non-full-time employees by 120. That determines a full-time-equivalent number for non-full-time employees.

Step 4: Next, add the number of full-time employees to the number of equivalents, to get the total number of full-time-equivalent employees for that calendar month.

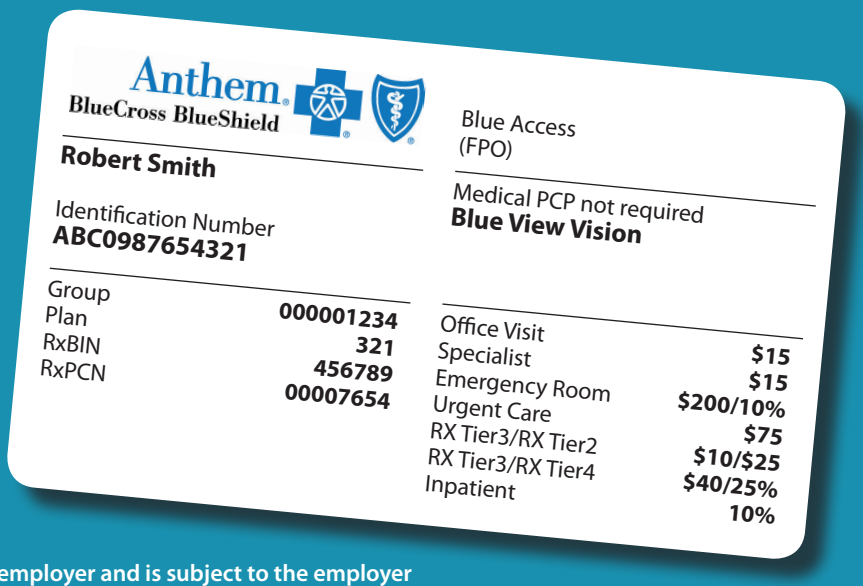
Step 5: Repeat the process for each of the remaining 11 months.

Step 6: Add each of the 12 numbers together.

Step 7: Divide by 12 for the average annual FTE number. That is the number employers must use to determine whether they are considered applicable large employers.

The Result: If the total number of FTEs is 50 or higher, the employer is considered an applicable large employer and is subject to the employer mandate and additional reporting requirements.

Source: National Restaurant Association's May 2013 Health Care Law Primer (p.6)



DO I PROVIDE INSURANCE OR TAKE THE PENALTIES?

Between healthcare costs and penalties, some restaurant operators are pulling out calculators to determine if it might be more cost effective (and less time consuming given the ACA's administrative demands) to pay penalties rather than offer healthcare coverage to employees.

If a large employer fails to offer minimal essential coverage to at least 95 percent of his or her full-time employees and any full-time employee receives a federal tax subsidy to buy a plan on a public exchange, the employer faces an annual penalty of $2,000 for every full-time employee minus the first 30.

While the potential penalty is rather easy to calculate, insurance costs – as of late June — remain elusive, thereby rendering an apples-to-apples number comparison insufficient.

That said, an operator's decision to pay a penalty or offer health coverage will likely travel well beyond the numbers. The operator's call here will potentially reverberate throughout his or her restaurant, impacting issues such as staff recruiting and retention efforts as well as the restaurant's culture.

"This isn't solely a black-and-white, numbers-based decision," Neblett says. "Operators big and small will need to consider the impact this decision can have on morale, turnover, training and all the costs associated with those areas." ◆

*Chicago-based writer **Daniel P. Smith** has covered business issues and best practices for a variety of trade publications, newspapers, and magazines.*