IMPORTANT HEALTH REFORM
INFORMATION FROM THE NEW YORK STATE TEAMSTERS COUNCIL
HEALTH AND HOSPITAL FUND

September 16, 2013

Dear Contributing Employer:

The New York State Teamsters Council Health and Hospital Fund ("NYS Fund") has received many questions from contributing employers regarding the application of the Affordable Care Act's ("ACA") employer shared responsibility penalty ("penalty") provisions. This publication provides answers to those questions and other information contributing employers need to know regarding the ACA's requirements as they relate to the participation in the NYS Fund. We note that government guidance on the ACA's requirements is continuously being updated, and the information provided herein is only current as of the date of this mailing.

What does the ACA require of NYS Fund Contributing Employers?

To avoid the penalty, *large employers* generally must provide *full-time employees and their dependents* with *"minimum essential coverage"* under an *eligible employer-sponsored plan* that provides *"minimum value"* and is *"affordable,"* as defined by the ACA.

When do these ACA requirements going into effect?

Originally, the ACA's employer requirements were supposed to become effective January 1, 2014. On July 2, the government announced that implementation of the ACA employer shared responsibility penalty provisions is postponed for one year, and that these ACA requirements will become effective on January 1, 2015.

Does the NYS Fund provide *"minimum essential coverage"* under an *eligible employer sponsored plan* as required by the ACA?

Yes. The NYS Fund provides *minimum essential coverage* under the ACA. *Minimum essential coverage* includes coverage under an *eligible employer sponsored plan*, which is any group health plan offered by an employer to an employee that provides benefits beyond limited scope dental and vision, and/or a flexible spending account. In addition, as required by ACA, the NYS Fund offers such coverage to employees and their dependents, which are defined as children under age 26.

Does the NYS Fund provide *"minimum value"* under the ACA?

Yes. The NYS Fund provides coverage that is of *"minimum value"* under the ACA. In general, a health plan provides *"minimum value"* if the plan's share of the total allowed benefit costs covered by the plan is no less than 60% of such costs. In other words, the employee's share of costs (excluding premium contributions) for allowed benefits provided under the plan cannot exceed 40%. For purposes of determining whether this 60% test is met, the health plan is measured against a level of health plan benefits defined by the Department of Health and Human Services. All of the plans currently offered by the NYS Fund exceed the 60% minimum, and the plan that covers most participants (e.g., Supreme Plan) covers well over 80% of the costs.

Is the coverage provided by the NYS Fund *"affordable,"* as defined under the ACA?

Probably, but the NYS Fund cannot answer this question for all contributing employers. Under the ACA, coverage is considered "affordable" if the employee's contribution toward the cost of self-only coverage does not exceed 9.5% of the employee's household income. However, recognizing that employers generally do not know the household income of their employees, the guidance allows employers to measure affordability based on whether the cost of self-only coverage exceeds 9.5% of the employee's income. To determine if the 9.5% test is met with regard to the employee's income, the guidance provides three possible safe harbors, based on W-2 wages, rate of pay or the federal poverty line. Employers will need to decide which, if any, of these safe harbors should be applied to their employees.

For those groups that require no contribution by the employee to health benefits, the coverage by the NYS Fund is *'affordable"* because the employee's required contribution would be zero. For those groups where employees are required to make some contribution, it is impossible for the NYS Fund to determine whether the employee's cost exceeds 9.5% of household income (or the employee's wages). Because how much an employee is required to contribute for coverage is determined by collective bargaining and is not something the NYS Fund controls or in many cases knows about, whether the self-only coverage is greater than 9.5% of an employee's household income (or wages) is something each contributing employer must determine. As noted above, employers may be able to determine *affordability* using one of the three safe harbors.

What penalties could apply to employers who do not offer coverage or fail to offer *"affordable"* coverage?

If a large employer does not offer coverage to at least 95% of its full-time employees and their dependents (children up to age 26), or offers coverage that is not "*affordable*" or does not provide *"minimum value"* then such employer will be subject to a penalty if any full-time employee receives a premium tax credit or cost sharing subsidy for coverage purchased on an Exchange. The monthly penalty for not offering coverage to at least 95% of full-time employees and their dependents is 1/12 of $2,000 times the total number of full-time employees (minus the first 30 employees). The monthly penalty for offering coverage that is not *"affordable"* or does not offer *"minimum value"* is 1/12 of $3,000 times the total number of full-time employees receiving a premium tax credit or cost sharing subsidy for coverage purchased on an Exchange.

What is the definition of a large employer under the ACA?

A large employer is defined under the ACA as an employer with at least 50 full-time employees. It is important to remember that this number is based upon all of the employer's employees, not just those employees that are participating in the NYS Fund or part of the bargaining unit. Further, in counting the number of full-time employees, the employer's entire controlled group must be included. To determine whether there are at least 50 full-time employees, the employer must count its full-time employees and its full-time equivalent employees (FTEs), which are its other employees who work less than full time hours (part timers, seasonal, and others who work less than on average 30 hours of service per week), using a formula that aggregates the hours worked by the FTEs. The number of full-time employees, including FTEs, in the prior calendar year is used to determine whether an employer is a large employer for purposes of the ACA.

What is the definition of full-time employees?

Under the ACA, a full-time employee generally is defined as an employee that works 30 or more hours of service per week on average (130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week, provided the employer applies this equivalency rule on a reasonable and consistent basis). Hours of service include hours actually worked and hours for which an employee is paid or entitled to payment even if no work is performed (e.g. vacation, disability, paid time off, paid leave, military service, etc.).

There are complex rules that apply to determine whether an employee who works a variable or shifting schedule is a full-time employee. For a detailed discussion of how to

determine whether an employee should be treated as full time employee for ACA purposes, visit the following website: http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf.

Are employers required to provide notification to their employees about the Exchanges?

Yes. By October 1, 2013, all employers that are subject to the Fair Labor Standards Act ("FLSA") must provide each employee a written notice informing the employee of the existence of the Exchange marketplace. Beginning on October 1, 2013, employers must also provide this notice to all new hires within 14 days of their start dates. The Department of Labor ("DOL") has developed an online tool that employers may use to determine if they are subject to the FLSA, which can be accessed at http://www.dol.gov/elaws/ebsa/flsa/scope/screen24.asp.

The DOL has issued a model employer Exchange Notice on its website, which is very misleading for multiemployer plan participants. However, use of the model notice is not required. To assist you in fulfilling your obligations under the Affordable Care Act with respect to your employees on whose behalf you contribute to the NYS Fund, and in an effort to avoid employee confusion, enclosed is a revised Notice regarding the Health Insurance Marketplace for you to consider distributing to your current and future employees covered under collective bargaining agreements requiring contributions to the NYS Fund. ***This notice should only be used for your employees on whose behalf you contribute the NYS Fund.***

Isn't there a special rule for employers who contribute to multiemployer plans?

There is a special multiemployer plan transition rule, which applies through the end of 2014. However, because the government has pushed back the effective date of the implementation of employer penalties until January 1, 2015, it is unclear whether the transition rule that was announced will apply for 2015. Guidance regarding the one year delay is expected in the coming weeks, and we are hopeful that it will clarify whether this transition rule will apply in 2015.

Under the transition rule, a large employer would not be subject to the ACA penalties discussed above, if: (1) the employer is required to make a contribution to a multiemployer plan with respect to the full-time employee through a collective bargaining agreement; (2) coverage is offered to the full-time employee (and his/her dependent children) under the multiemployer plan (regardless of whether the employee is actually enrolled in such coverage); and (3) the coverage is "affordable" and offers "minimum value." The transition rule also provides employers with a fourth safe harbor

for measuring whether coverage is *affordable*, which allows the income against which the 9.5% amount is measured to be based on the wages reported to a multiemployer plan, whether the actual wages or an hourly wage rate under the applicable collective bargaining agreement.