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To Comply with PPACA, Employers Must Identify Full-Time Workers

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With a substantial portion of the Patient Protection and Affordable Care Act (PPACA) set to go into effect in 2014, employers are working to determine how the law will impact them, their business and their employees. Because the law will require most employers to provide affordable minimum essential health insurance coverage to full-time employees or face financial penalties, employers must understand how the law defines full-time workers, as well as the penalties that businesses can face for failing to comply or choosing not to provide coverage.

Under provisions called the employer shared responsibility rules, the PPACA requires large employers (generally those with 50 or more full-time employees) to provide affordable group health coverage with sufficient value to full-time employees and their dependents. Full-time employees are generally defined as those who work on average at least 30 hours per week. Employers that fail to comply with these rules can face penalties.

What Are the Potential Penalties?

The failure to offer coverage penalty applies if at least one full-time employee obtains subsidized coverage on an exchange where the employer does not offer coverage to at least 95 percent of its full-time employees and their dependents. This penalty – which can be up to $2,000 per year for each full-time employee (in excess of 30) – will be based on the total number of full-time employees an employer has, regardless of how many employees have government-subsidized exchange coverage.

The insufficient coverage penalty applies if the employer offers full-time employees coverage, but the coverage is either unaffordable (individual premium cost exceeds 9.5 percent of the employee's household income) or does not provide minimum value (plan pays less than 60 percent of the covered costs). Proposed regulations released by the IRS provide guidance and alternative safe harbors for calculating whether health coverage is unaffordable, including use of an employee's W-2 earnings. The potential penalty for insufficient coverage is $3,000 per year for each employee who obtains government-subsidized coverage on an exchange.

Employers also should note that in determining whether an employer is subject to these provisions (i.e., is a "large employer"), the IRS controlled group rules are applied – meaning that all affiliated employers for which there is 80 percent or greater common ownership will be treated as a single employer. However, compliance with the employer shared responsibility rules – and any associated penalties – will generally be assessed on an employer-by-employer basis.

Who Is Considered a Full-Time Employee?

As an employer, the determination of who is a full-time employee will be crucial in evaluating your options for complying with the employer shared responsibility rules, and equally important, designing your group health plan's eligibility and participation requirements.

Because there can be various ways of assessing what constitutes a full-time employee eligible for coverage under the PPACA, the IRS has issued guidance in the form of several notices, as well as temporary regulations. These guidelines set out criteria and standards that can help employers make accurate determinations when hiring new employees, including:

**Initial measurement period* – A designated period of not less than three months or more than 12 months used in determining whether a newly hired variable or seasonal employee is full-time.

**Standard measurement period* – An annual designated period of not less than three months or more than 12 months used to determine whether an ongoing variable or seasonal employee is full-time.

**Administrative period* – A period of up to 90 days for making full-time determinations and offering/implementing full-time employee coverage.

**Stability period* – An annual designated period of not less than six months (and not less than the corresponding measurement period) during which the employer must offer affordable minimum essential health coverage to all full-time employees, or face financial penalties for not doing so.

**Full-time employees* – If a new employee is reasonably expected to average at least 30 hours per week at the time of hire, the employee must automatically be treated as full-time and offered group health coverage within three months of hire.

**Variable hour and seasonal employees* – A variable hour employee is someone whom the employer cannot reasonably determine will average at least 30 hours per week at the time of hire. No definition is provided for a seasonal employee, but presumably it would include anyone who works on a seasonal basis. Employers may use the initial measurement period to determine whether a newly hired variable or seasonal employee actually averages at least 30 hours per week, and the standard measurement period to determine whether an ongoing variable or seasonable employee actually averages at least 30 hours per week. If the employee does average at least 30 hours per week during the initial measurement period or standard measurement period, the employer must offer affordable minimum essential health coverage during the stability period, or face financial penalties for not doing so.

**Transition from new to ongoing employee status* – Once a new employee has completed an initial measurement period and has been employed for a full standard measurement period, the employee must be tested for full-time status under the ongoing employee rules for that standard measurement period, regardless of whether the employee was full-time during the initial measurement period.

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