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CohnReznick Benefits Consultants
Business Smart
516-683-6100 | www.cohnreznickbenefits.com
www.healthcarereformtoday.com

INSIGHTS & IMPLICATIONS

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INSIGHTS: The ACA: Counting Full-Time Employees May Be a Full-Time Job

Under the Affordable Care Act (ACA) a full-time employee with respect to any month is an individual who works (or is scheduled to work) 30+ hours per week or alternatively, 130 hours of service per calendar month. The final ACA employer mandate regulations include guidance on how to measure and track hours of service to properly identify the full-time workforce to determine ALE status as well as for application of the employer mandate and possible assessable penalties. Beginning in 2015 the ACA requires Applicable Large Employers (ALE) with 50 or more full-time equivalent (FTE) employees in 2014 to either:

a) Offer healthcare coverage to 95% (“coverage threshold”) of full-time employees (and dependents) or pay an annual penalty of $2K times the number of full-time employees less 30 (“penalty offset”) if one full-time employee receives subsidized coverage from an ACA marketplace, or
b) Offer minimum value and affordable coverage to 95% of full-time employees (and dependents) generally after 90 days of service or pay an annual penalty of $3K for each full-time employee who receives subsidized coverage from an ACA marketplace.

More information about employer mandate transition relief may be found in our earlier edition of ***Insights and Implications***.

IMPLICATIONS

It is important that ALEs have processes and procedures in place to track the full-time workforce and to prepare for the ACA reporting requirements that become effective with the 2015 calendar year. Employers must capture and report the 2015 data to the IRS and provide individual employee statements regarding full-time status as well as coverage availability from the employer early in 2016. The final employer mandate regulations discuss:

- What hours of service must be recognized
- Identifying full-time employees: the Monthly Measurement or Look-Back Measurement Method
- How to account for a break-in-service (i.e. treat the individual as a new hire or continuing employee) or change in status from full-time to part-time and vice versa
- Circumstances an employer will not be liable for an assessable employer mandate payment

Hours of Service

An employee must be credited with an hour of service for each hour in which the individual is paid or entitled to pay such as vacation, jury duty and other paid time off. Employers must track actual hours of service for hourly paid employees. Employers may use actual hours or use one of two equivalency methods to calculate hours of service for those not paid on an hourly basis:

- Days-worked: credit 8 hours/day an employee is credited with 1 hour of service
- Weeks-worked: credit 40 hours/week for each week an employee is credited with 1 hour of service.

In general, many payroll systems should already be equipped to track an employee’s hours of service and employers with salaried staff regularly working at least 30+ hours per week should not find this requirement particularly burdensome.

Identifying Full-Time Employees

The final regulations present an employer with two options to determine full-time status, the **Monthly Measurement Method** and the **Look-Back Measurement Method** although other strategies that would allow more individuals to be eligible for employer-sponsored coverage may also be applied. Employers are not required to use the same method for every category of employee however; the final rules reinforce that employers may use different measurement techniques based only on the following classification categories:

- Hourly and salaried employees
- Collectively bargained and non-collectively bargained employees
- Employees covered under separate collectively bargained plans
- Employees primarily working in different states

Member companies of a controlled group of corporations may separately analyze their workforce.

EXAMPLE: Company Q employs 100 full-time salaried employees, 65 full-time hourly employees who are required to work 35 hours of service per week and 15 hourly paid employees whose work schedules vary depending upon production orders and cannot determine if they are full-time employees (variable hour employees). Company Q does not have any employees covered by a collectively bargained agreement. Company Q will use the Monthly Measurement Method for the salaried employees. Company Q wishes to use the Look-Back Measurement Method for the variable hour employees, and therefore it appears that Company Q must use the Look-Back Measurement Method to track hours for the full-time hourly population, although this should not impact the determination of full-time status for non-variable hour employees[1].

Monthly Measurement Method

As the name implies, employers will measure hours of service on a monthly basis and a full-time employee is one who is credited with at least 130 hours of service in a calendar month. Employers may also measure hours of service over successive four or five week time frames to better align with payroll periods (weekly rule). Under the weekly rule the calendar month must contain the week that includes either the first or last day of the month, but not both. A full-time employee is an individual who works 120 hours over months with four successive weeks or 150 hours when using months with five successive weeks. A few key facts about the Monthly Measurement method:

- In general, an employer will not be liable for the $2K penalty during the plan's waiting period (up to 90 days) provided the full-time employee is offered coverage in a timely fashion.
- If the coverage is minimum value and affordable, the $3K penalty will also not apply even if a full-time employee was receiving subsidized marketplace coverage prior to becoming eligible for employer-sponsored coverage.

This method may work best for employers with employees who generally work relatively stable hours.

Look-Back Measurement Method

This technique allows an employer the ability to measure hours of service over a specified timeframe to determine full-time status and to either offer or not offer coverage in a successive timeframe and may be helpful for an employer with variable hour, seasonal and/or part-time employees. Key concepts include:

- ***Initial Measurement Period:*** Period of time (3 – 12 months) selected by the employer to measure an employee's hours of service beginning from the date of hire.
- ***Standard Measurement Period:*** Period of time (3 – 12 months) selected by the employer to determine each Ongoing Employee's continuing full-time status. Many employers are considering using a 12-month measurement period to align with the annual open enrollment period.
- ***New Employee:*** An individual employed for less than one complete Standard Measurement Period.
- ***Ongoing Employee:*** An individual employed for at least one complete Standard Measurement Period.
- ***Stability Period:*** Period of at least 6 consecutive calendar months (at least as long as the Initial or Standard Measurement Period) that begins after the Standard Measurement Period plus any **Administrative Period.** Employees determined to be full-time during a Standard or Initial Measurement Period must be offered coverage for the entire Stability Period that follows.
- ***Administrative Period (AP)****:* Optional timeframe (no more than 90 days) between a Measurement Period and Stability Period used for calculating hours of service and preparing the coverage offer to full-time employees.

EXAMPLE: Company Z uses the Look-Back Measurement Method to determine full-time status for hourly employees. Company Z uses a 12-month Standard Measurement Period for Ongoing Employees that runs October 15 – October 14 and also uses a 2-1/2 month Administrative Period (October 15 – December 31) to align with the Company's calendar year healthcare plan. Company Z also uses a 12-month Initial Measurement Period. Company Z hires Jim on February 10, 2014 and at the time of Jim's employment Company Z cannot determine whether Jim will regularly be working 30+ hours of service per week. Jim is considered a variable hour employee.

Jim works 30+ hours during his Initial Measurement Period that runs from February 10, 2014 – February 9, 2015 and Company Z calculated his hours of service during the Administrative Period following the Initial Measurement Period. According to the final rules, Company Z must make healthcare coverage available to Jim *no later than 13 months from the date of hire (which if not the 1st day of a calendar month may be adjusted to the 1st day of the following calendar month).* Therefore, Jim is eligible for healthcare coverage for the period April 1, 2015 – March 31, 2016.

EXAMPLE CONTINUED: Jim remains employed with Company Z which is also tracking Jim's hours during the overlapping Standard Measurement Period of October 15, 2014 – October 14, 2015. Jim, an Ongoing Employee also works 30+ hours during this Standard Measurement Period and would be eligible for coverage for the Stability Period January 1, 2016 – December 31, 2016 (January - March overlaps with the Initial Stability Period). However, during the next Measurement Period that runs October 15, 2015 – October 14, 2016 Jim does not average 30 hours of service per week. Company Z will end Jim's coverage (and offer COBRA) for the period January 1, 2017 – December 31, 2017.

Let's review Jim's employment with Company Z in this table:

Hire Date	Initial 12-Month Measurement Period	Initial Administration Period	Initial Coverage Offer	Initial Stability Period	Standard Measurement Period	Standard Administrative Period	Stability Period
2/10/14	2/10/14 - 2/9/15 30+ hours of service	2/10/15 - 3/31/15	4/1/15	**4/1/15 - 3/31/16 Eligible for Coverage**	10/15/14 - 10/14/15 (overlaps Initial Stability Period)	10/15/15 - 12/31/15	**1/1/16 - 12/31/16 Eligible for Coverage**
					10/15/15 –10/14/16 < 30 hours of service	10/15/16 -12/31/16	1/1/17 – 12/31/17 NOT eligible for coverage

Some key facts about the Look-Back Measurement Method

- An employee who is reasonably expected to be a full-time employee at the time of hire must generally be offered coverage after 90 days of service. Therefore, our *regular full-time hourly employees in Company Q* from the earlier example cannot be made to wait until the conclusion of the Initial Measurement Period to be offered healthcare coverage.
- In general, an employer will not be liable for the $2K or $3K penalty with respect to an employee during the Initial Measurement Period.
- A variable, seasonal or part-time employee who is offered a full-time position before the end of the Initial Measurement Period must be offered coverage by the earlier of the (a) start of the applicable Stability Period, or (b) the 1st day of the 4th month following the change in status.
- Employers have the option to consolidate Initial Measurement Dates for ease of administration. The rules allow a consolidated measurement period to begin on any date following the date of hire up to the 1st day of the following calendar month which enables employers to establish 12 new hire groups throughout the year.

EXAMPLE: Company Q hires 3 new seasonal employees in 2014 whose hire dates are March 3, 10, and 17. In lieu of establishing three distinct Initial Measurement Periods beginning on their individual dates of hire, Company Q establishes an Initial Measurement Period that begins April 1, 2014 and ends March 31, 2015 for each of these three seasonal employees.

- Employers who wish to use a 12-month Stability Period in 2015 may not be ready to measure hours over a 12-month Measurement Period for current employees. A Transition Measurement Period of 6 -11 months (begins no later than July 1, 2014 and ends no earlier than 90 days before the first day of the 2015 plan year) may be used to allow time to establish appropriate procedures. This transition rule can only be applied to individuals employed as of the first day of the Transition Measurement Period selected by the employer.

EXAMPLE: Company X has a calendar year plan and intends to use 12-month Measurement and Stability periods for variable hour employees. Company X establishes a 6-month Transition Measurement Period from June 1, 2014 – November 30, 2014 (followed by a 30-day Administrative Period) to align with the 12-month 2015 Stability Period that begins January 1, 2015. Company X may use this Transition Measurement Period only for individuals who were employed as of June 1, 2014.

Re-Hire and Break-In-Service Rules for Continuing Employees

The following apply to both the Monthly and Look-Back Measurement Methods unless specifically noted:

- An employee must be treated as a continuing employee (rather than as a new hire) unless the employee has not been credited with an hour of service for at least 13 weeks (26 weeks for educational institutions).
- The employer may also apply a "rule of parity" and treat an individual as a new hire if the break-in-service (at least 4 consecutive weeks) is greater than the period of employment prior to the break.
- Under the Look-Back Measurement Method only, employees absent due to Family Medical Leave (FMLA), military leave under the Uniformed Services and Employment and Reemployment Act (USERRA), and jury duty who are treated as returning employees (rather than new hires) must be credited with his/her average hours of service during the leave of absence.

- Employees of educational institutions must also be credited with average hours of service during break periods under the Look-Back Measurement Method however; employers are not required to credit more than 501 hours of service in a calendar year for this purpose.

Conclusion

Employers should carefully review their workforce composition and prepare to account for the full-time population and employer mandate reporting requirements. Employers will need to have processes in place to accurately track the full-time and non-full-time workforce and should begin to address and assess HRIS needs as well. The IRS acknowledges that more employment-related issues will be addressed in future guidance.

[1] The final regulations do not permit an employer to adopt the look-back measurement method for variable hour and seasonal employees while using the monthly measurement method for employees with more predictable hours of service. Under the look-back measurement method, the identification of a variable hour employee at the start date is based upon the employer's reasonable expectations. If classified as a variable hour employee, the employer is permitted to wait through the initial measurement period to determine whether the employee is a full-time employee; however, for every subsequent year of that employee's employment the identification of whether the employee is a full-time employee is based upon the employee's hours of service in the prior measurement period, without any application of the employer's reasonable expectations.