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Determining Full-Time Employee Status Under Health Care Reform

Health Care Reform's Employer Shared Responsibility provisions are scheduled to take effect beginning January 1, 2015. Even though final guidance is still lacking, it is critical that employers take action now to begin tracking their employees' hours.

Background. Under the Employer Shared Responsibility provisions, beginning January 1, 2015, an employer with an average of at least 50 full-time employees (or full-time equivalent employees) that (i) does not offer minimum essential coverage to at least 95% of its full-time employees and their dependents (but not spouses), or (ii) offers minimum essential coverage to its full-time employees that is either unaffordable or does not provide minimum value, will face penalties *if any of its full-time employees who qualify for a tax credit or cost-sharing reduction purchase health insurance through an Exchange.*

The penalties are generally (i) \$167 per month (1/12 of \$2,000) per full-time employee (minus 30) for **not offering coverage**, and (ii) \$250 per month (1/12 of \$3,000) per each full-time employee who actually receives a tax credit or cost-sharing reduction for offering coverage that is **unaffordable** or **does not provide minimum value**.

The rules for determining full-time employee status were issued as proposed rules only. The IRS indicated it would issue final rules for 2015 and future years. Even though the announcement delaying the employer mandate was issued last July, the IRS has still not issued final rules for 2015. Below is a brief summary of the proposed rules. Employers who are anxious about getting their systems in place for 2015, may wish to begin preparations on the basis of the proposed rules until further guidance is issued.

Full-Time Employee. A "full-time employee" is any employee who is employed on average at least 30 hours per week. Under the current proposed guidance from the IRS:

- 130 hours of service in a calendar month would be treated as the monthly equivalent of 30 hours of service a week.
- "Hours of service" includes each hour an employee is paid or entitled to be paid for actual hours worked or paid leave (including vacation, holiday, illness or incapacity, layoff, jury duty, and military leave).
- If an employee is expected to work at least 30 hours per week, coverage must be offered to the employee within 90 days of hire (or for current employees, beginning January 1, 2015).
- If an employee is expected to work less than 30 hours per week, an employer may determine whether the employee is full-time by using a "measurement period" of 3 to 12 consecutive months. The measurement period applies retroactively (looks-back) for current employees and prospectively (looks-forward) for new hires.
 - If the employee is determined to be full-time during the measurement period, coverage must be offered to the employee during a subsequent "stability period" (*i.e.*, the period immediately following the measurement period (see below)).
 - The stability period must be at least 6 months but cannot be shorter than the look-back period (*i.e.*, if the look-back period is 12 months, the stability period must be 12 months).
 - For current employees, an "administrative period" of up to 90 days beginning immediately after the measurement period may be used to enroll employees before the stability period begins. For new hires eligible to participate after their initial measurement period, the "administrative period" may be significantly shorter.

Action Steps. We understand that employers are struggling with how to proceed as the guidance for determining full-time status has not been finalized. Just at the time employers need clear and timely guidance from the IRS in order to ensure they accurately comply with the law, it is still unclear whether the employer mandate will be delayed another year (due to the lack of final regulations) or changed prior to 2015. For example, the House Ways and Means Committee is currently reviewing legislation, introduced last summer, that would change the definition of “full-time employee” from 30 to 40 hours per week. Similar legislation was also introduced in the Senate.

Although the IRS has yet to finalize the regulations for determining full-time employees, employers who wish to take advantage of the measurement periods in the proposed regulations will need to have developed systems and processes for tracking hours well in advance of January 1, 2015. This results from a look-back period being used to lock in a current employee’s full-time or part-time status for the applicable stability period.

For Example: If an employer wishes to impose a 12-month stability period that will run from January 1 – December 31 (to coincide with the plan year), the initial measurement period for 2015 would need to run from October 3, 2013 – October 2, 2014 (in order to take advantage of the full 90-day waiting period) and the administrative period would run from October 3, 2014 – December 31, 2014.

Accordingly, employers wishing to use 12-month stability periods beginning January 1, 2015 will need to be able to capture and measure hours beginning in 2013.

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