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### HEALTH CARE REFORM Safe Harbors for Determining Full-Time Employee Status

The Treasury Department recently issued safe harbor guidance to help employers determine which employees are full-time employees for purposes of the employer penalties in Health Care Reform. These penalties may apply when an employer fails to offer its full-time employees affordable coverage. Generally, an employee is “full-time” if he or she works an average of at least 30 hours per week. Employers may rely on this guidance through the end of 2014.

**Types of Employees.** The guidance categorizes employees into the following four types to determine whether the safe harbor periods apply:

- ***New Full-Time Employees.*** If an employer reasonably expects that an employee will work an average of 30 hours at his or her start date, then he or she is a New Full-Time Employee.
- ***New Variable Hour Employees.*** If an employer cannot determine whether a newly hired employee will work an average of 30 hours per week at his or her start date, then he or she is a Variable Hour Employee.
- ***New Seasonal Employees.*** Employers can use a “reasonable, good faith interpretation” to determine which employees are seasonal during 2014.
- ***Ongoing Employees.*** An Ongoing Employee is employed by his or her employer for at least one complete standard measurement period (a defined time period of 3 to 12 consecutive months).

#### **Safe Harbor Guidance.**

- ***Full-Time Employees.*** For a New Full-Time Employee, employers must offer coverage to the employee by the first day of the calendar month following the 3 month anniversary of the employee’s date of hire to avoid the employer penalties. However, other portions of Health Care Reform only allow a maximum waiting period of 90 days for full-time employees before coverage must become available (*e.g.*, if hired on April 11, coverage could start August 1 but the waiting period would be 112 days). A violation of the 90-day waiting period limitation would subject the plan to an excise tax under Code Section 4908D of \$100 per day with respect to each individual subject to a waiting period in excess of 90 days. Please

see September 20, 2012 [theHRBenefitsAuthority, Health Care Reform – How Long is Too Long: Guidance on 90-Day Waiting Period](#) for more information.

- **Non-Full-Time Employees.** The following are important highlights for non-full-time employees:
  - **Look-Back Period.** An employer may generally determine whether its Ongoing, New Variable Hour and Seasonal Employees are full-time by looking back to a period of 3 to 12 consecutive months to determine whether the employee worked an average of 30 hours per week.
  - **Stability Period.** If, after the look-back period, the employer determines that certain Ongoing, New Variable Hour or Seasonal Employees worked an average of 30 hours per week, the employer **must** treat these employees as a full-time employee during a specified period of time immediately following the look-back period, (the “Stability Period”) regardless of the employee’s actual hours of service, so long as the employee remains an employee. The Stability Period must be the longer of 6 consecutive months or the length of the look-back period that applied to the employee.
  - **Administrative Period.** Employers may use an administrative grace period of up to 90 days after a look-back period to calculate hours or service and enroll full-time employees. However, coverage must begin for a New Variable Hour or Seasonal Employee (who is determined to be full-time) by the first day of the calendar month following the 13-month anniversary of his/her date of hire.
- **W-2 Wages.** An employer can determine whether the coverage under its plan is affordable to a full-time employee if the employee’s required contribution is no more than 9.5% of the employee’s Form W-2 wages reported in Box 1. Although there are no regulations yet defining the “required contribution” for purposes of the unaffordability penalty, it appears reasonable to calculate the employee’s required contribution using the employee-only contribution based upon Internal Revenue Code Section 36B and the final regulations for the premium tax credits (which were issued in May 2012).

**Next Steps.** Employers will need to determine whether to use the safe harbor methods for the 2014 calendar year. If the safe harbor methods are used, then employers will need to determine the look-back periods and subsequent stability periods and set-up a system to track employees’ hours of service.

**Contact Information.** If you have any specific questions about how you can apply this safe harbor guidance or any other Health Care Reform provisions, please contact Amy Heppner (404.888.8825), Kelly Meyers (404.888.8838) or Jessica Gallegos (404.888.8849). For more information from VCG Consultants, please contact Leslie Schneider (770.863.3617).

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