Final Regulations Implementing Employer Shared Responsibility Rules: Key Issues For Employers

American Benefits Council
P4P... “Preparing for PPACA” Webinar

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4980H Final Regulations
Key Changes

- Adds new monthly measurement method for employers not using look-back method
- No special rules for interns or short-term employees employed more than 3 months
- 26 break in service rule shortened to 13 weeks
- New definition of Seasonal Employee
- “Dependent” doesn’t include foster children, stepchildren, and certain non-U.S. citizen children
- Clarifies “offer of coverage” rules
- Keeps affordability safe harbors, with some changes
Full-Time Employee Status

- “Employee” means common law definition of employee.
- “Full-Time” means an average of at least 30 hours of service/week or 130 hours of service/calendar month and includes:
  - Each hour for which an employee is paid, or entitled to payment, for performance of duties for any member of employer’s controlled group.
  - Paid leave for vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence is counted—no limit to hours in these categories.
NEW! Full Time Employee Status Clarifications

- Must use reasonable method of crediting hours for categories of employees with unique hours of service (E.g. commissioned salespeople, adjunct faculty, airline employees, layover or on-call hours)
- Hour of service as bona fide volunteer does not count
- No special rules for short-term and high-turnover employees
- No general exception for student interns
  - But if full-time interns are unpaid, hours are not counted as hour of service
- International employees – May treat as terminated if position anticipated to continue indefinitely or at least 12 months, and substantially all compensation treated as foreign-sourced income
NEW! Monthly Measurement Method

- Adds new monthly measurement method for employers not using look-back method
- FT status determined on monthly basis – Count hours during a particular month
- Special rule for employee first eligible for coverage
  - 3 month rule – No 4980(H) penalty if offers coverage by 1st day of 4th full calendar month after employee otherwise eligible
- “Weekly rule” to accommodate payroll periods
  - 4-week period: FT if 120 hours of service
  - 5-week period: FT if 150 hours of service
Look-Back Method

**NEW!** Specifies factors to determine if variable hour employee
- (1) Is employee replacing FT employee or non-FT employee?
- (2) Have ongoing employees in same/comparable position varied above/below average of 30 hours of service per week?
- (3) Was job advertised, communicated, or documented as requiring hours of service that would average 30 or more/less?

**NEW!** Defines seasonal employee
- Employee in position for which customary annual employment is 6 months or less

**NEW!** New category of part-time employee
- New employee who is reasonably expected at his/her start date to not be full-time and not variable hour or seasonal
- Rules that apply to variable hour and seasonal apply
Measurement Methods

**NEW!** Must use same method for all employees in same category

- Salaried v. hourly
- Employees working in different states
- Collectively bargained v. not
- Each group of collectively bargained covered by separate CBA
- **Cannot use** look-back method for variable hour/seasonal v. monthly measurement for employees with more predictable hours

**NEW!** Complex rules for transferring between types of measurement methods
Change in Employment Status

- Special rule for new variable hour or seasonal employees who experience material change in position of employment during initial measurement period.
- If employee would have been reasonably expected to work full-time if in new status at hire date, employee generally must be treated as full-time as of first day of fourth month following change.
- **NEW!** Extends rule to (1) seasonal employees who change employment status to position that would not have been seasonal, and (2) employees who change employment status from part-time to FT during initial measurement method.
Break in Service/Leave of Absence Rules

Rules on application of safe harbor to employees rehired after termination or returning after leaves of absence

Treat as new employee –

- **NEW!** If period of no service was 13 weeks or more (except 26 weeks for educational organizations); or
- Under optional "rule of parity"
  - Otherwise, treat as continuing employee with same status for that stability period
  - For employees returning after special unpaid leave (FMLA, USERRA, jury duty) –
    - Exclude special unpaid leave period; or
    - Credit hours of service for leave period at average weekly rate outside period
    - Special rule for continuing employees of educational organizations
Dependents

- The employer is required to offer coverage to “dependents”
- Does not include spouse
- **NEW!** Does not include foster children, stepchildren, and certain children who are not U.S. citizens or nationals
Offer of Coverage

- Employee must have an effective opportunity to accept coverage at least once during the plan year to be treated as having been “offered coverage”

- **NEW!** Effective opportunity to decline coverage *not* required for offer of coverage that:
  - Provides minimum value; and
  - Is offered either at no cost to employee or at a cost, for any calendar month, or no more than 9.5% of monthly federal poverty line amount for single individual

- **NEW!** Employee’s election of coverage from prior year that continues for every year unless employee opts out is considered an offer of coverage.

- **NEW!** Third party offer of coverage
  - Offer of coverage made by PEO or other employer organization on behalf of client employer is offer of coverage in some cases
Affordability Safe Harbors

- Coverage is affordable if required employee contribution for self-only coverage for the lowest cost option that provides minimum value does not exceed 9.5% of:
  - W-2 Wages for that calendar year
  - NEW! Hourly rate of pay x 130 (even if wages reduced), or Hourly rate of pay x monthly salary (does not apply if wages reduced)
  - NEW! The most recently published federal poverty level for a single individual (level in effect six months prior to beginning of plan year)
Questions?

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