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ERISA Group Benefits Alert

New Federal Healthcare Rules Require Employers To Identify "Full-Time Employees" And "Part-Time Employees"

In 2014, the Patient Protection and Affordable Care Act provides that employers with at least 50 "full-time employees" must provide minimum health care coverage or face tax penalties. When counting employees for this rule, employers must also count "full-time employee equivalents" (by counting hours worked each month by part-time employees and dividing by 120). For those employers that are uncertain whether they will be treated as having at least 50 full-time employees, and for purposes of determining the full-time or part-time employee status of each employee after a determination has been made that the new health care coverage rules apply, IRS guidance has been issued and will require some employers to track employment information throughout 2013.

Under the guidance, a full-time employee is an employee who works an average of 30 or more hours per week (or 130 hours per month). If an employer reasonably expects an employee to work an average of 30 or more hours per week when hired, then the individual must be treated as a full-time employee. For variable hour employees, the employer may either treat the employee as a full-time employee or use a "safe harbor" determination method.

If the safe harbor determination method is used, the employer must first designate a "Standard Measurement Period", which is the period used to make the determination, and a "Stability Period", which is the minimum period during which the coverage must be provided. The Standard Measurement Period must be between 3 and 12 months. The Stability Period must be the greater of 6 months or the number of months used as the Standard Measurement Period.

Next, the employer can include an "Administrative Period" of up to 90 days between the end of the Standard Measurement Period and the commencement of the Stability Period, so that the employer can determine who is eligible for coverage and give them an opportunity to enroll. For example, an employer could make November 1 to October 31 of the following year the Standard Measurement Period, designate December 1 to December 31 as the

Administrative Period, and designate the following January 1 to December 31 as the Stability Period.

For new employees who are working variable schedules and whose status cannot be initially determined, the employer must also establish an "Initial Measurement Period" which can last from 3 to 12 months after each employee's date of hire, in order to determine initial eligibility.

The new IRS guidance also addresses seasonal employees. When an employer is determining whether it is classified as having 50 full-time employees, it can exclude all seasonal employees who were employed on no more than 120 days during the prior calendar year. If the employer meets the 50 full-time employee threshold with those seasonal employees excluded, then it would have to use the analysis for part-time employees described above to determine whether seasonal employees need to be offered coverage.

As a result of this guidance, employers need to consider whether they should select any determination periods, beginning in late 2012 or early 2013. It will be very important to distinguish full-time employees from part-time employees before the beginning of 2014 in order to assess the potential costs of either complying with the health care coverage mandate or paying the tax penalties for non-compliance.

Please note that this *Benefits Alert* only highlights the most significant changes in the law. The details of these changes are complex and beyond the scope of this Alert. We look forward to discussing these changes and how they may impact your plans with you. Please do not hesitate to contact any of the following members of our Employee Benefits and Executive Compensation Practice if you have any questions or if you would like additional information.


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