

## EMPLOYMENT & IMMIGRATION LAW

### Figuring Full-Time Employee Status Under ACA

IT'S NO SIMPLE TASK TO DETERMINE WHO MUST BE OFFERED HEALTH INSURANCE

By **RACHEL ARNETT**

Under the Affordable Care Act (ACA), “applicable large employers” are required to offer affordable medical coverage to full-time employees and their dependent children, or pay a penalty for failure to do so. This requirement, sometimes called the “employer mandate” or “pay or play,” becomes effective for plan years beginning on and after January 1, 2014.

If a business, during the prior calendar year, had an average of 50 or more full-time and full-time equivalent employees, it is an “applicable large employer” in the current calendar year.

**We're An Applicable Large Employer. Now What?** Once a business has determined that it is an applicable large employer, the focus is on identifying full-time employees to whom the business must offer affordable medical coverage in order to avoid a penalty —

employees who, on average, work at least 30 hours per week regardless of scheduled hours or employee classification — i.e., “ACA-full-time” employees.

**How To Count Hours:** It's important to note that some employees now classified as part-time, per diem, temporary or seasonal could be ACA-full-time employees if they average at least 30 hours based upon hours worked, not hours scheduled. Hours “worked” are determined as follows:

- For hourly employees, include hours paid for work performed *and* hours paid for periods during which no work is performed (vacation, sick, holiday, jury duty, paid leave).
- For salaried employees, credit eight hours for each day for which the employee is credited with at least one hour of service, or credit 40 hours per week for each week in which the employee is credited with at least one hour of service.

**Determining Full-Time Status — Ongoing Employees:** Proposed regulations set out a safe harbor method for

determining who is an ACA-full-time *ongoing* employee (i.e., not a new hire):

- There is a standard measurement period prior to the beginning of the plan year during which a large employer will count hours and determine which employees, on average, work at least 30 hours per week — that is, which employees are “ACA-full-time” —and must be offered medical coverage for the coming plan year so that the large employer avoids the “no offer” penalty. A standard measurement period can be up to 12 months (typically ending in time for open enrollment), but can be six months for 2014 and 12 months for subsequent plan years.
- Immediately following the standard measurement period there may be an administrative period (of no more than 90 days) during which a large employer will offer coverage for the



coming plan year to any employee determined to be ACA-full-time during the standard measurement period. That coverage must become effective no later than the first day of the coming plan year.

- Finally, there is a stability period (of no more than 12 months, typically the plan year) during which a large employer will continue to treat employees as ACA-full-time or not, based on the determination made during the standard measurement period, regardless of their average weekly hours during the stability period (whether more, or less, than during the measuring period).

#### **Determining Full-Time Status —**

**New Employees:** For a new employee hired with the expectation he/she will work an average of at least 30 hours per week and is *not* seasonal (i.e., someone hired as an ACA-full-time employee), there is no measurement or administrative period. That employee must be offered coverage that becomes effective no later than 90 days following his/her date of hire.

For a newly-hired variable hour or seasonal employee, the process works a bit differently, because the initial measuring period is specific to each employee, and runs for a period of up to 12 months, generally from the employee's date of hire.

- “Variable hour employee” means an employee for whom, as of his/her date of hire, it can't be determined

that he/she is reasonably expected to work an average of at least 30 hours per week.

- “Seasonal employee” has not yet been defined in regulations, but for 2014, large employers are permitted to use a “reasonable good faith” definition. The “120-day rule” for use in determining whether to count seasonal employees for applicable large employer status does *not* apply to determining which employees must be offered coverage (at least not as of this writing – stay tuned for future regulations).
- If during that initial, employee-specific measurement period the new employee works on average at least 30 hours per week, then at the end of the measurement period the employee is deemed an ACA-full-time employee and, during the administrative period, must be offered coverage that becomes effective no later than the first day of the month that begins on or immediately after the 13-month anniversary of his/her date of hire.
- If a new variable hour employee has a material change in employment status during the initial measuring period such that if he/she had been initially hired into the new position he/she would have been treated like an ACA-full-time employee from date of hire, then the initial, employee-specific measurement period ends for that employee and he/she must be offered coverage that will become effective

no later than 90 days following the change in status to ACA-full-time.

**Temporary Employees:** New full-time temporary employees (who work at an ACA-full-time rate but for limited duration) generally must be treated like any other ACA-full-time employee (i.e., offered coverage that becomes effective no later than 90 days following date of hire), regardless of whether they will be employed for the entire standard measurement period.

For the 2014 plan year, there is some leeway to treat full-time temporary employees as variable hour employees, and thus subject them to an initial, employee-specific waiting period. However, for the 2015 plan year (and thereafter), new full-time temps *cannot* be treated as new variable hour employees just because they may not be employed for the entire standard measurement period. Large employers may decide it is “cleaner” to adopt the 2015 rule for 2014.

#### **Reminders**

Although this article focuses on a large employer's obligation to offer medical coverage to full-time employees and their dependent children, it's important to note that there is a second prong to the pay or play rules: *the coverage offered must also be affordable*, or the employer will be subject to a different (though lesser) monetary penalty. ■