

Play or pay: Who are your full-time employees?

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This column in a series we are writing about health care reform for employers focuses on helping employers that are subject to the Affordable Care Act's mandates to identify "full-time" employees - those working 30 or more hours of service per week - for purposes of calculating the play-or-pay penalties.

Recent IRS guidance provides methods by which to define and measure the hours of service for "ongoing," "newly hired," "variable hour" or "seasonal" employees.

Question 1: Who is an ongoing employee?

Answer: An ongoing employee is an employee who has been employed for at least one "standard measurement period," which is defined below.

Question 2: How to determine if an ongoing employee is a full-time employee?

Answer: An employer may determine each ongoing employee's full-time status by looking back at a "standard measurement period" that can range from three to 12 months. Any ongoing employee who is determined to be a "full-time employee" during the standard measurement period must be treated as a full-time employee during a subsequent "stability period," regardless of the number of hours of service during the stability period, so long as that individual remains an employee.

For example, consider an employer that selected the calendar year as its standard measurement period and stability period. In this case, its employees who worked 30 or more hours in 2013 would be considered full-time employees for all of calendar year 2014, regardless of the number of hours worked in 2014.

An employer contemplating a reduction in the number of hours of its workforce so as to escape or minimize the pay-or-play penalty in 2014 must implement the reduction early in 2013. Also, although it may be tempting for an employer to select a shorter measurement period, attention must be paid to certain unintended consequences such as errors in recording the correct status of an employee during a plan year as well as an unhappy human resources team who has to track changes in part-time to full-time status every few months.

Question 3: Can an employer use different standard measurement periods and stability periods?

Answer: An employer may apply different standard measurement periods and stability periods for the following categories of employees: collectively bargained employees and non-collectively bargained employees; salaried and hourly employees; and employees whose primary places of employment are in different states.

Question 4: What if a new employee is expected to be employed on average 30 hours of service per week?

Answer: An employer will not be subject to the play-or-pay penalties if it does not offer coverage to that employee for up to the initial three calendar months of employment.

Question 5: How to determine if a new variable hour or seasonal employee is a full-time employee?

Answer: Similar to the process for categorizing ongoing employees, an employer may use both an "initial measurement period" and a stability period. Any employee who is determined to be a full-time employee during the initial measurement period must be treated as a full-time employee during the stability period.

If the employee did not meet the full-time status in the initial measurement period, the employer must re-test - and determine the status of - the employee when the employee completes a "standard measurement period" - the individual has been employed long enough to be considered an ongoing employee.

Employers should review their workforce members whose hours or work schedules are irregular, seasonal or variable. Labels or categorical titles should not control here, but rather an employer must analyze its irregular workforce within the confines of the ACA.

For example, an employer who currently excludes from its group health plan a group of employees classified as "flexi-pool" employees based on their variable hours of service, must determine on an individual basis whether each flexi-pool employee meets the definition of full-time employee and if so, starting Jan. 1, offer the employee health insurance or pay a penalty.

In this situation, employers must consider how to structure compensation and benefit programs for employees who will be eligible for health insurance under ACA, but have not been historically offered any employee benefits.

Question 6: What happens if a variable hour or seasonal employee has a change in employment status to full-time employee?

Answer: If a variable hour or seasonal employee has a change in employment status that results in the employee being considered a full-time employee during an initial measurement period, the employee will be treated as a full-time employee as of the first day of the fourth month following the change in employment status or, if earlier and the employee averages more than 30 hours of service per week during the initial measurement period, the first day of the month following the end of the initial measurement period.

Question 7: What happens if an employee is rehired after termination of employment or resuming service after other absences?

Answer: If an employee has been terminated or has experienced a period of unpaid leave of absence for at least 26 consecutive weeks and is then rehired or returns from the unpaid leave, the employer may treat the employee as a new employee. Employees who are rehired or return to work prior to 26 weeks would generally be treated as continuing employees.

The final part of this series will focus on the penalty calculation itself.

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