ACA Pitfalls & Perils for Public Employers

Sally Wineman, JD
Area Senior Vice President, Compliance Counsel
Don’t overlook potential transition relief

Do you have at least 50 FT and FTE employees?

- **YES**: Is coverage offered to FT employees at required percentages?
  - **2015**: 70% for employers with 100+ FT and FTE employees
  - **2016 and beyond**: 95% for all applicable large employers
  - **YES**: Does plan have minimum value?
    - **NO**: No penalty applies!
    - **YES**: Is coverage affordable?
      - **NO**: Lesser of:
        - $3,120 for each FT receiving tax credit OR
        - $2,080 x (# of FTs – 30 (80 for 2015))
      - **YES**: No penalty applies!
  - **NO**: If at least one FT employee receives premium assistance:
    - **2015**: $2,080 x (total # of FTs – 80) for employers with 100+ FT and FTE employees only
    - **2016**: $2,080 x (total # of FTs – 30)

- **NO**: No penalty applies!
Transition rule available for non-calendar year plans
Transition rule available for employers with 50-99 FTE employees
- Not automatic
- More information available at ajghealthcarereform.com
- Employer Resources → Employer Shared Responsibility Mandate Toolkit
Don’t let employee hours run adrift

– Look-Back Method
  • Variable hour or seasonal employees, part-time employees

– Monthly Measurement Method
  • No penalty if offer coverage by 1st day of fourth month
## Pitfalls & Perils

<table>
<thead>
<tr>
<th>Category</th>
<th>Requirements</th>
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</table>
| **Full-Time Employee (30+ hpw)** | • Offer affordable, minimum value employee + dependent child coverage  
  • Offer coverage within first day of the $4^{th}$ month or pay penalty |
| **Part-Time Employee (<30 hpw)** | • Use measurement/look-back period to monitor eligibility  
  • No penalty applies if remain part-time |
| **Seasonal Employee (30+ hpw)**  | • Six months or less which begins in same part of year each year  
  • May use measurement/look-back period to determine eligibility  
  • Offer coverage no later than 13 ($+$fraction) months from hire date or pay penalty |
| **New Variable Employee (30+ hpw)** | • Can’t be determined that the employee is reasonably expected to work 30 hpw  
  • May use measurement/look-back period to determine eligibility  
  • Offer coverage no later than 13 ($+$fraction) months from hire date or pay penalty |
| **Ongoing Employee (30+ hpw)**   | • May use measurement/look-back period to determine eligibility (no longer than 12 months)  
  • Offer coverage at end of admin period or pay penalty |
Don’t set sail without a plan for monitoring hours

<table>
<thead>
<tr>
<th>Standard Measurement Period</th>
<th>Standard Administrative Period</th>
<th>Standard Stability Period</th>
</tr>
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</table>
| • Look-back at hours worked by variable hour employee to determine eligibility for coverage  
  • Employer choose length from 3 to 12 months  | • Count hours, offer & enroll in coverage  
  • Maximum length of 90 days  
  • Cannot reduce or lengthen the measurement or stability period  
  • Overlaps with prior stability period  | • Coverage remains available regardless of hours worked during stability period  
  • Full time employees  
    • Cannot be shorter than the standard measurement period  
    • Must be at least 6 months  
  • Non full time employees  
    • Stability period cannot be longer than the standard measurement period  |
1st Standard Measurement Period
Jul 1, 2014-Apr 14, 2015

1st Administrative Period
(≤90 days)
Apr 15, 2015-Jun 30, 2015

- Meets hpw requirements during 1st Standard Measurement Period
- Employee offered coverage July 1, 2015

2nd Standard Measurement Period
(≤12 months)
Apr 15, 2015-Apr 14, 2016

2nd Administrative Period
(≤90 days)
Apr 15, 2015-Jun 30, 2016

2014-15 Plan Year

1st Stability Period
July 1, 2015-Jun 30, 2016

2nd Stability Period
Jul 1, 2016-Jun 30, 2017
Don’t miss the mark in recognizing potential new classes of full-time employees

– Traditionally, certain classes of employees have been excluded from eligibility for employee benefits
  • Such as long-term substitutes and multi-seasonal seasonal employees (e.g., Parks and Recreation Department employees)
  • However, those employees may qualify as “full-time” employees for purposes of PPACA and thus could trigger penalties and should be included in Section 6055 Reporting
– These employees count toward the determination of whether the entity reaches the 70% (95% for 2016 and beyond) offer threshold

Don’t miss the mark in recognizing potential new classes of full-time employees

– Who is variable?
  • Is employee replacing FT employee or non-FT employee?
  • Have ongoing employees in same/comparable position varied above/below average of 30 hours of service per week?
  • Was job advertised, communicated, or documented as requiring hours of service that would average 30 or more/less?

– Who is seasonal?
  • Employee in position for which customary annual employment is 6 months or less
  • Begins in the same time of year each year (e.g., summer or winter)
Don’t miss the mark in recognizing potential new classes of full-time employees

- Perform analysis of employee categories
- May also have controlled group issues
  - Must use good faith effort to determine if governmental entity is part of a controlled group
  - Potential factors: same budget used, appointment authority, control
Fend off the impact of breaks-in-service

- Breaks longer than 13 weeks (26 weeks for schools)
  - Treat as a new employee
- Breaks shorter than 13 weeks
  - Treat as continuing employee with same status for the remainder of the stability period
  - Treat measurement period as if did not have a break in service (counting zero hours during break)
- Optional – Rule of Parity
  - Use for breaks between 4-13 weeks
  - Can treat as new employee if the break period is longer than immediately preceding employment period

<table>
<thead>
<tr>
<th>Initial Employment = 9 weeks</th>
<th>Break in Service = 12 weeks</th>
<th>Employer can:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee terminates</td>
<td>Employee rehired. Break in service longer than initial employment.</td>
<td>1) Treat as continuing employee, or 2) Treat as new employee</td>
</tr>
</tbody>
</table>
Fend off the impact of breaks-in-service

– Potential issues

• May understate hours of service for variable hour employee working for educational employer

• May fail to identify full-time employee for purposes of penalties and reporting
Don’t cast away “as needed” employees

- Short-term and high-turnover employees
  • Must offer coverage to short-term hires reasonably expected to work a full-time schedule by the first day of the fourth full month after hire (or risk paying a penalty)

- Unique hours of service (e.g. adjunct faculty, layover or on-call hours)
  • Must use reasonable method of crediting hours

- Volunteers
  • Hours of service as bona fide volunteer do not count

- Student interns
  • If full-time interns are unpaid, hours 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
Moor down the caps on employee contributions and plan eligibility

- Many public employers must establish employee contributions based upon local or state legislation or regulation and are necessarily tied to statutorily determined eligibility or eligibility linked to another governmental entity’s eligibility
- May create categories of employees who are determined to be full-time employees for purposes of PPACA, but who are not legislatively eligible for benefits supported by a governmental body
- May wish to add those employees to avoid penalties
- Must obtain other source of funding for employer’s share of premium or would create discrimination issue
Section 6055 – Minimum Essential Coverage Reporting

To Enrolled Employees

- Individualized Statement
  Form 1095-B
  January 31, 2016

To IRS

- Transmittal Report
  Form 1094-B
  February 28, 2016
  (March 31, 2016 if e-file)

- Each Employee Statement
  Forms 1095-B
  February 28, 2016
  (March 31, 2016 if e-file)

Each member of controlled group reports separately
Section 6056 – Applicable Large Employer Reporting

To Full-Time and Enrolled Employees*

Individualized Statement
Form 1095-C

January 31, 2016

Transmittal Report
Form 1094-C

February 28, 2016
(March 31, 2016 if e-file)

Each Employee Statement
Forms 1095-C

February 28, 2016
(March 31, 2016 if e-file)

Each member of controlled group reports separately

*Fully insured plans provide only to full-time employees
Seek another entity to take the helm on IRS reporting

- A governmental employer that maintains a self-insured group health plan may enter into a written agreement with another governmental unit (or an agency or instrumentality of a governmental unit) to designate the other governmental unit, agency, or instrumentality as the “person” required to file the returns and to furnish the statements required by Sections 6055 and 6056

- That other entity assumes liability for filing and any penalty for failure to file
Seek another entity to take the helm on IRS reporting

- Example: County is an applicable large employer made up of the School District, the Police District, the Firefighter District, and the County General Office
- State runs a health plan in who all county teachers may participate, but not clerical or managerial staff
- School District
  - Designates the State to report on behalf of the teachers
  - Reports for its remaining full-time employees other than firefighters
Seek another entity to take the helm on IRS reporting

Example continued:

- The Police District runs a health plan in which EMTs may participate, but not the other firefighter personnel
- The County contributes to a multiemployer plan on behalf of the firefighters
- The Firefighter District
  - Designates the Police District to report on behalf of the EMTs
  - Has the multiemployer plan report on behalf of the firefighters
  - Prepares its own returns for its other employee
- The County reports for all of its full-time employees

NOTE: Even though reporting responsibility shifts, Section 4980H responsibility does NOT shift
Seek another entity to take the helm on IRS reporting

– Potential issues

• No definition under the PPACA rules for what constitutes a “controlled group” for employers who are governmental entities or instrumentalities
  – Use good faith effort
  – Will look at factors such as whether entities have the same budget and whether one entity appoints directors of, or controls the other

• Must have agreements approved in timely manner

• Pools may wish to do reporting and provide disclosures on behalf of pooling members
  – Generally, a pool is an “instrumentality” of a governmental agency
Batten down the hatches for impact on collective bargaining agreements

- Are the benefits subject to collectively bargained agreements?
- PPACA drives changes to benefit eligibility, plan design, and more
  - May need to “unlock” multiple year CBA
Batten down the hatches for impact on collective bargaining agreements

– Potential issues

• Cadillac Tax planning to consider
  – Reopener clauses
  – Shortened terms

• Concerns over eligibility language for variable hour and seasonal employees
  – Definition of “full-time”
  – Eligible benefits
Don’t fail to consider impact of Cadillac Plan tax

COBRA Rate ≥ $10,200 for individual or $27,500 for family

Excise Tax

= 40% of plan value that exceeds threshold

Special Provisions

• High risk professions
• Early retirees
• Age & gender
8% compounded in 2018:
- Single Coverage: $11,374 per year
- Family Coverage: $27,990 per year

2012 $7,168
2014 $8,360
2016 $9,751
2018 $11,374
Don’t fail to consider impact of Cadillac Plan tax

– Potential issues

• Medical coverage is not only coverage subject to Cadillac Plan tax
• Must also include:
  – Dental and vision unless provided under a separate policy, certificate or insurance contract
  – HRAs
  – HSA contributions
  – On-site clinic (unless limited to treating employees with minor illnesses or injuries or rendering first-aid in cases of accidents occurring during work hours)
  – Employee AND employer contributions to healthcare FSAs
Questions?
– AjgHealthcareReform.com

Are you overwhelmed by ever-evolving regulations? You aren’t alone.

Healthcare reform legislation is complex, and employer mandates are continually changing. It’s time to work with a partner who can help shoulder your compliance burdens, stem the paperwork tide and reduce the risk of noncompliance.

The dramatic change to the healthcare landscape ushered in by the passage of the Patient Protection and Affordable Care Act (PPACA) presents a daunting challenge in understanding the myriad of potential impacts on you and your employees, while achieving your business objectives. As with most major legislation, the interpretation and implementation of the regulations may bring legal challenges that can result in new or modified requirements.

Arthur J. Gallagher & Co.’s Benefits & Human Resources Consulting team approach and market-leading financial and analytical modeling tools will guide you through the healthcare reform labyrinth. As your guide and advisor, we will work with you to understand the strategic, financial and operational impacts today and in the future.
Thank you!

Sally Wineman, JD
Area Senior Vice President,
Compliance Counsel
Sally_Wineman@ajg.com

Bill Robinson
Area Senior Vice President
Bill_Robinson@ajg.com