

New Affordable Care Act Regs and Higher Education: Delays, Clarifications and Adjunct Hours Calculation

The Department of Treasury recently issued final regulations on the Affordable Care Act (ACA) that attempt to answer several questions for colleges and universities, including when adjunct faculty, coaches and students must be offered health coverage to avoid penalties. The new regulations provide these answers in the context of the ACA's employer shared responsibility provisions, which require certain employers with more than 50 employees – most higher educational institutions – to offer health insurance to their full-time employees and their dependents.

Some highlights in the final regulations for educational institutions include:

Enforcement Delays

Shared responsibility penalties delayed until 2015 plan year.

Employers that sponsor non-calendar year health plans are not subject to shared responsibility penalties until the first day of the plan year beginning in 2015, provided that certain requirements are met. Health plans for many educational institutions run on a non-calendar year basis (e.g., July 1 to June 30), so this should come as welcome news.

Lower coverage percentage thresholds for 2015. Employers will not be subject to penalties for the plan year beginning in 2015 if the employer provides coverage to at least 70 percent of its full-time employees. Beginning

with the first plan year beginning in 2016, employers will need to provide coverage to at least 95 percent of full-time employees to avoid penalties.

Narrower Definition of Children Dependents

Stepchildren and foster children need not be covered. The ACA mandates that coverage be offered to both full-time employees and children dependents. The proposed regulations stated that coverage must be offered to biological children, adopted children, stepchildren, and foster children. The final regulations eliminate the requirement to offer coverage to stepchildren and foster children.

Formula for Faculty, Coaches and Staff as “Full-Time Employees”

Adjuncts: 2.25 hours per classroom hour plus additional required hours. Adjunct faculty hours must be tracked using a reasonable method. The final regulations state that one reasonable method is to credit adjunct faculty with (i) 2.25 hours of service per week for each classroom hour plus (ii) an additional hour of service for each required non-classroom hour worked (e.g., office hours and required faculty meetings). Because employees working 30 hours or more per week must generally be offered health coverage, educational institutions might want to closely monitor both classroom hours and non-classroom hours, as 12 classroom hours (counted as 2.25 hours per hour) plus three required non-classroom hours equals 30 hours.

Vacations count. Faculty and staff of educational institutions cannot be treated as part-time merely because the institutions are closed or operated on a limited basis during parts of the year (e.g., summer or winter vacation).

No coach-specific guidance. The final regulations do not clarify how hours should be credited for coaches. It may not be necessary to offer coverage to coaches if they are “seasonal employees”; generally, seasonal employees are those employees whose customary annual employment is six months or less.

Potential Student Coverage

Student employees may be full-time employees. The ACA does not mandate that educational institutions offer coverage to students; however, if a student also works for the educational institution, then the educational institution might be subject to penalties if the student-employee

meets the 30-hour per week test and is not offered coverage.

Work study does not count. Hours worked by students participating in federal or state-sponsored work study programs are *not* counted toward the 30-hour per week test.

Paid internships count. Hours worked by students as unpaid interns or externs are *not* counted toward the 30-hour per week test; however, if the intern or extern is paid, then those paid-hours do count toward the 30-hour per week test.

What This Means to You

In the wake of the new regulations, as a college or university you should:

Determine how the enforcement delays impact your potential for employer shared responsibility penalties;

Examine your health plan eligibility rules and employment policies for all employees and dependents, but especially adjunct faculty, coaches, and students; and

Consider revising policies and procedures as needed in 2014 to avoid penalties in 2015.

Contact Us

If you have questions about this issue or other education issues, contact your Husch Blackwell attorney or any attorney in our Higher Education group.