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For Educational Institutions, Guidelines Assist with Affordable Care Act Compliance

Over the past few weeks, federal regulators have issued important guidelines on the Patient Protection and Affordable Care Act of 2010 (ACA) that affect all employers and especially educational institutions. Prompt action on the following topics might be necessary to ensure that current healthcare benefit packages are compliant:

Coverage for adjunct professors.

Effective date for employer penalties.

Student healthcare insurance.

Provision of contraceptives for women.

Notice of healthcare insurance exchanges.

Employer Shared Responsibility Penalties

Beginning in 2014, large employers (including governmental, educational and religious employers) are subject to penalties if they fail to offer healthcare coverage to full-time employees who meet certain minimum standards. Extensive regulations published on January 2, 2013, (Shared Responsibility Regulations) help clarify many issues surrounding the employer shared responsibility penalties.

Measuring full-time status: The Shared Responsibility Regulations provide a complex safe harbor for determining whether an employee who averages 30 or more hours per week must be offered healthcare coverage. These rules will be more fully discussed in a later post; however, it is important to note that the regulators specifically addressed adjunct professors.

Adjunct professors: The Shared Responsibility Regulations recognize that calculating hours for adjunct professors and applying the safe-harbor rules are problematic. Accordingly, the regulations allow educational institutions latitude to use “any reasonable method” for determining full-time status for adjunct professors. The regulations do not describe what is reasonable, except to say that counting only classroom hours is not reasonable.

Delayed effective date: Many employers will be subject to the shared responsibility penalties beginning January 1, 2014, though there is a crucial safe-harbor provision that delays employer penalties until the first day of the first plan year after January 1, 2014, for some noncalendar year plans.

What this means to you: Educational institutions should seek legal guidance to determine how the Shared Responsibility Regulations affect them. They should review their workforce, including adjunct and other variable or seasonal employees, to determine whether plan design changes are recommended in light of the new regulations. They should also evaluate their healthcare plans to determine when they must comply to avoid penalties. Answers to these questions in 2013 will affect who is eligible for coverage and whether penalties will apply in 2014.

Student Health Insurance

Educational institutions are not required to offer student health plans (SHPs) under the ACA. If an educational institution chooses to offer an SHP, and the SHP is funded through insurance, then the SHP must comply with certain reforms, such as not placing annual limits on essential health benefits, providing preventive-care services at no out-of-pocket cost, and coverage for children up to age 26. Alternatively, if an educational institution utilizes a self-insured SHP, then the SHP is required to comply with the reforms only if the state requires it.

Regulations published February 1, 2013, clarify that a student who is covered through an SHP, whether insured or self-insured, is deemed to have “minimum essential coverage” and will, therefore, not be subject to the penalty applicable to individuals who do not have healthcare coverage.

What this means to you: Educational institutions not offering an SHP should consider offering one. SHPs are expected to be cheaper than coverage offered through the state or federal exchanges, and students without access to other coverage may consider the availability of an SHP in their higher education decisions. Additionally, all educational institutions should consider self-insuring an SHP in order to avoid the ACA reforms and their associated costs.

Contraceptives

Guidelines published in 2011 required most plans and policies to cover a wide range of contraceptive services beginning with the first plan/policy year on or after August 1, 2012. A strict exemption was provided for certain religious organizations in an amendment. However, proposed regulations expand the religious exemption and apply it to:

Religious organizations as defined by the Internal Revenue Code, even if the purpose of the organization is not to inculcate religious beliefs and does not primarily employ and serve those who share its religious beliefs.

Nonprofit organizations that hold themselves out as religious and object to some or all contraceptive services on the basis of religious objections.

SHPs of religious institutions of higher education.

Organizations that meet the definition of a “religious organization” are not required to provide contraceptive services directly or indirectly. Nonprofit organizations that hold themselves out as religious and SHPs of religious institutions of higher education are not directly required to provide contraceptives as long as their insurers or third-party administrators do so and the organizations satisfy additional steps, including notice requirements.

What this means to you: Educational institutions that have any type of religious affiliation and object to providing contraceptive services should determine whether they are exempt from providing contraceptive services. If an exemption applies, the institution must ensure it takes any additional steps necessary to preserve the exemption.

Notice of Healthcare Insurance Exchanges

The ACA requires states to establish healthcare insurance exchanges to help individuals and small businesses satisfy the coverage mandates. If the state fails to establish a healthcare insurance exchange, then the federal government will establish one for it.

Employers were originally required to issue a notice of the availability of healthcare insurance exchanges to employees by March 1, 2013. Guidance has not been published on what the notice must contain, so an FAQ released by the Department of Labor (DOL) in late January delays the requirement to provide this notice until the DOL issues such guidance.

What this means to you: Educational institutions should continue to monitor guidance from the DOL and ensure that they meet the notice requirement.

Contact Information

If you have questions or for more information about the implications of this rapidly developing trend for your institution, please contact your Husch Blackwell LLP attorney.

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