New Guidance on Determining "Full-Time Employees" Under Health Care Reform

By Stephanie L. Hicks / Sep 11, 2012

Many key provisions of the Patient Protection and Affordable Care Act ("PPACA") become effective beginning in 2014. These include, among others, provisions for shared responsibility of employers regarding health coverage. The shared employer responsibility provisions of PPACA generally provide that a "large employer" (generally an employer with 50 or more full-time equivalent employees) is subject to a payment if either (1) the employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an employer-sponsored group health plan and any full-time employee is certified to receive a premium tax credit or cost-sharing reduction, or (2) the employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage and one or more full-time employees is certified to receive a premium tax credit or cost-sharing reduction (generally because the employer's group health plan coverage either is not affordable or does not provide minimum value). For purposes of the shared employer responsibility provisions of PPACA, a "full-time employee" is an employee who is employed on average at least 30 hours per week.

Recently, the Department of Labor, the Department of Health and Human Services, and the Internal Revenue Service (collectively, the "Departments") jointly issued new guidance on determining which employees are treated as full-time employees for purposes of the shared employer responsibility provisions of PPACA. For compliance with the employer shared responsibility provisions, at least through the end of 2014 , employers may rely on the following methods for determining which employees are treated as full-time employees, as described in Notice 2012-58:

1. Safe harbor method for on-going employees;
2. Safe harbor method for new employees reasonably expected to work full-time; and
3. Safe harbor method for new variable hour and seasonal employees.

Employers will not be required to comply with any subsequent guidance on these issues that is more restrictive until at least January 1, 2015.

1. Safe Harbor Method for On-Going Employees

An "on-going employee" is generally an employee who has been employed by the employer for at least one complete "standard measurement period" (i.e., a time period of not less than three but not more than 12 consecutive calendar months, as chosen by the employer). Under the safe harbor method for on-going employees, an employer determines each on-going employee's full-time status by looking back at the standard measurement period. If the employer determines that an employee averaged at least 30 hours per week during the standard measurement period, then the employer treats the employee as a full-time employee during a subsequent "stability period", regardless of the employee's number of hours of service during the stability period, so long as he or she remains an employee. The "stability period" is a period of at least six consecutive calendar months that is no shorter in duration than the standard measurement period and that begins after the standard measurement period ends, plus any optional "administrative period" (discussed below). If the employer determines that the employee did not work full-time during the standard measurement period, the employer would be permitted to treat the employee as not a full-time employee during the stability period that follows, but is not longer than, the standard measurement period.

Because an employer may need time between the standard measurement period and the associated stability period to determine which on-going employees are eligible for coverage, and to notify and enroll eligible employees, an employer may make time for these administrative steps by having its standard measurement period end before the associated stability period begins. This "administrative period" may last up to 90 days.

2. New Employees

A. Safe Harbor Method for New Employees Reasonably Expected to Work Full-Time

If an employee is reasonably expected at his or her start date to work full-time, an employer that sponsors a group health plan that offers coverage to the employee at or before the conclusion of the employee's initial three calendar months of employment will not be subject to the employer shared responsibility payment by reason of its failure to offer coverage to the employee for up to the initial three calendar months of employment.

B. Safe Harbor Method for New Variable Hour and Seasonal Employees

For variable hour and seasonal employees, employers are permitted to determine whether the new employee is a full-time employee using an "initial measurement period" of between three and 12 months, as chosen by the employer. The employer measures the hours of service completed by the new employee during the initial measurement period and determines whether the employee completed an average of at least 30 hours of service per week during this period. The stability period for such employees must be the same length as the stability period for on-going employees. As in the case of a standard measurement period, if an employee is determined to be a full-time employee during the initial measurement period, the stability period must be a period of at least six consecutive calendar months that is no shorter in duration than the initial measurement period and that begins after the initial measurement period (and any associated administrative period).

If a new variable hour or seasonal employee is determined not to be a full-time employee during the initial measurement period, the employer is permitted to treat the employee as not a full-time employee during the stability period that follows the initial measurement period. This stability period for such employees must not be more than one month longer than the initial measurement period and must not exceed the remainder of the standard measurement period, plus any associated administrative period in which the initial measurement period ends.

C. Transition from New Employee Rules to On-Going Employee Rules

Once a new employee, who has been employed for an initial measurement period, has been employed for an entire standard measurement period, the employee must be tested for full-time status, beginning with that standard measurement period, at the same time and under the same conditions as other on-going employees. For example, an employer with a calendar year standard measurement period that also uses a one-year initial measurement period beginning on the employee's start date would test a new variable hour employee whose start date is February 12 for full-time status first based on the initial measurement period (February 12 through February 11 of the following year) and again based on the calendar year standard measurement period (if the employee continues in employment for that entire standard measurement period) beginning on January 1 of the year after the start date.

An employee determined to be a full-time employee during an initial measurement period or standard measurement period must be treated as a full-time employee for the entire associated stability period. This is the case even if the employer is determined to be a full-time employee during the initial measurement period but determined not to be a full-time employee during the overlapping or immediately following standard measurement period. In that case, the employer may treated the employee as not a full-time employee only after the end of the stability period associated with the initial measurement period. Thereafter, the employee's full-time status would be determined in the same manner as that of the employer's other on-going employees.

If an employee is determined not to be a full-time employee during the initial measurement period, but is determined to be a full-time employee during the overlapping or immediately following standard measurement period, the employee must be treated as a full-time employee for the entire stability period that corresponds to that standard measurement period (even if that stability period begins before the end of the stability period associated with the initial measurement period). Thereafter, the employee's full-time status would be determined in the same manner as that of the employer's other on-going employees.

4. Next Steps

Although 2014 is over a year away, employers should begin thinking about how they will calculate which of their employees will be considered "full-time". Employers should choose how long the "standard measurement period", the "initial measurement period", and the "stability period" will be. Employers should also consider whether to include an "administrative period" to allow time to determine which employees are considered "full-time" and to communicate group health plan information and enroll eligible employees who are considered full-time. Employers should also consider what kinds of administrative and recordkeeping processes to put into place in order for the employer to efficie ntly calculate an employee's full-time status.

For more information, and to see examples on how to determine which employees are considered "full-time" in different scenarios, please see Notice 2012-58, available here: www.irs.gov/pub/irs-drop/n-12-58.pdf .

If you have any questions about these safe harbor methods of determining "full-time" employees, please contact Ed Hammond at (248) 988-1821 or ehammond@clarkhill.com; Kristi Gauthier at (248) 988-5854, or kgauthier@clarkhill.com; or Stephanie Hicks at (248) 988-5893 or shicks@clarkhill.com.