

Topic 4:
Recommendations:
Complying with ACA

Employees who return
after certain unpaid breaks

- ◆ For a continuing employee who resumes work after certain unpaid leave (FMLA, USERRA, jury duty only), the employer must determine the average hours of service per week for the employee excluding the unpaid leave period and use that average as the average for the entire measurement period; or
- ◆ The employer may credit the employee with hours of service for the unpaid leave period at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not unpaid leave.

Summer Break

- ◆ Under the current guidance, when determining whether ongoing employees are full time, schools must exclude employment breaks of at least four consecutive weeks (such as the summer break) from the calculation.
- ◆ Alternatively, the school may credit the average weekly hours the employee previously worked to these weeks when the employee is not working, but the proposed regulations limit this credit to 501 hours.

Either way, this means that a paraprofessional who averages at least 30 service hours per week for nine months, and no hours for three months, would still be considered a full-time employee of the school.

New Variable Hour and Season Employees

- ◆ Because schools do not need to offer coverage immediately to new variable-hour or seasonal employees, each school should develop a method for classifying new employees in these categories, unless they intend to offer coverage regardless of classification.
- ◆ The final regulations provide that a seasonal employee is one who works in an industry where the customary annual employment period is less than six months.

New Variable-Hour Employee Example: Mid-month & 90-day Conflicts

- ◆ School A hires a substitute whose first day of work for the school is November 15, 2015.
- ◆ School A has adopted an initial measurement period for new variable-hour employees of 12 months.
- ◆ For this employee, the initial measurement period begins December 1, 2015 (the first day of the month that immediately follows the start date), and ends November 30, 2016.
- ◆ Because the one-year anniversary of the substitute is November 15, 2016, the initial administrative period cannot run longer than December 31, 2016 (the last day of the first calendar month beginning after the employee's anniversary date).
- ◆ In this case, the initial administrative period can last only one month, from December 1 through December 31, 2016 (the 90-day option is not available).

Transitioning New Variable-hour Employees Example:

- ◆ To transition the new substitute to School regular plan year, the school will continue to provide him with coverage through his initial stability period.
- ◆ However, the school will also analyze the substitute's hours during the standard measurement period from just as it does for other ongoing variable-hour employees.
- ◆ If the substitute averages 30 or more hours of service per week during that time period, the school will contact the substitute during the standard administrative period, and offer him health coverage for the period of offered to other employees.
- ◆ The substitute would then be on the same schedule as other school employees.

EXEMPT / SALARIED EMPLOYEES

CERTAIN EMPLOYEES CAN BE SALARIED AND BE EITHER FULL-TIME OR
PART-TIME
(WHAT DO YOU DO?)

Executive, Administrative, & Professional Employees

- ◆ The **Fair Labor Standards Act** mandates that employers pay the minimum wage, and overtime compensation, to employees who work for an enterprise engaged in commerce.
- ◆ There is no exception for religious organizations, but there are exceptions for certain classifications of employees.

CHRISTIAN SCHOOLS ARE COVERED BY FLSA

- ◆ In 1966, Congress amended the Act to include within the definition of "enterprise" any "preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such ... institution or school is public or private or operated for profit or not for profit)."
- ◆ The Act now provides that schools and preschools, even those operated by churches, are "deemed to be activities performed for a common business purpose."

ACA AND Employees

Exempt Employees (exempt from the Fair Labor Standards Act) are not required by law to keep timecards and are not paid on an hourly basis, so schools are not exactly sure how many hours these employees work.

OBAMACARE IS HOURS DRIVEN. The ACT gives employers the option to select one of three methods for determining whether an exempt employee is considered full time under the law:

1. Counting the actual hours worked; or use either "equivalency" test:
2. Assuming eight hours of service for each day that the employee works; or
3. Assuming 40 hours of service for each week the employee works.

Exempt Employee - In the past had no regulatory need to track hours. ACA has provided that need.

The best way for a school to insure compliance with the Act and avoid penalties is to have all employees clock in and out and track hours.

Hourly employees hours must be tracked.'

Exempt Employee can use the optional "Equivalency Methods" or count hours with a "look back" period to determine exempt employee's hours.

“Equivalency Hours”

If you do not document
actual time worked

8-Hours
per day

40-Hours
per week

Exempt Employee Example

Employer uses "Days worked" Standard

Ivan is a salaried employee. During the 6/1/14 - 5/31/15 standard measurement period, Ivan works 185 days and uses 10 days of PTO.

Employer uses days - worked standard for salaried employees.

$$(185 \times 8) + (10 \times 8) \div 52 = 30 \text{ hrs/wk} - \text{Ivan is FT}$$

Exempt Employee Example “Weeks Worked” Standard

Ellen is a salaried employee. During the 6/1/14-5/31/15 standard measurement period, Ellen works 39 weeks and receives no PTO.

Employer uses weeks-worked for commissioned employees.

$$(39 \times 40) \div 52 = 30 \text{ hrs/wk} - \text{Ellen is FT}$$

Automatic use of Equivalency Hours can have unintended consequences

- ◆ If an employee works less than an 8-hour day or a 40-hour week, automatic use of equivalency hours can overstate an employees hours and erroneously lead to a full-time decision.

How Many days in your School Year?

- ◆ 365 Days in a year; 261 days in a 5-day -week year.
- ◆ Summer Break? 54 days (June 15 - August 27)? [1st day to last day off]
- ◆ What other days might a sub not work?
Holidays? Teacher work days?

One Option:

To calculate the eligibility break point using 8 hours of service per day.

30 hours per month = 1560 hours per year

1560 hours per year / 261 days = 5.997 hours per day

Multiply 5.997 by the number of days excluding break(s)

Every School should go through this exercise:

8-hour day calculation

- ◆ Step 1: Determine the number of days:

Number of week days per year: 261

Number of > 4 week break days: -54

Number of days without breaks: 207

- ◆ Step 2: Maximum days a sub can work: Multiply
 $5.997 \times 207 = 1,238$ hours a year
- ◆ $1,238 \text{ hours} / 8 \text{ - hours per day} = 154 \text{ days!}$

Therefore an employee could work up to 154 days, crediting 8 hours of service per day, before an offer of insurance must be made.

If an employee is not expected or permitted to work more than this number of days, the eligibility determination will not change regardless of whether or not actual hours worked are documented.

NOTE: Each School must discount the number of days in all breaks of more than 4 consecutive weeks occurring during the measurement period from their year. The 54 days used above is merely an example. Each School's actual number of break days will be different.

Our Subs work on Stipends (3.5 hour days)

The ACA guidelines do not permit a school to use an equivalency for hours worked other than 8 service hours per day.

For example, if an employee is contracted to work 3.5 hours per day, the employee must document actual hours worked as 3.5 hours or the employee will be credited for 8 service hours each day to determine eligibility under ACA!

School hires a Coach who works only during the Football Season

School employs a head football coach at the high school who works 185 days throughout the year. One day during the week, the coach reviews game film for 2 hours and conducts a 2 hour practice. The coach completes a timesheet (or sign in/sign out sheet).

Hours worked as documented by timesheet: 4

Hours of service used to determine ACA eligibility: 4

If actual hours worked are not properly documented the coach must be credited with 8 service hours for this day worked.

Example 3:

School employs an individual to work 3 hours per day in the School after-school daycare for 175 days. This employee also works 1.5 hours per day as the lunch monitor in the same school. This employee completes a timesheet (or a sign-in/sign-out sheet).

Hours worked per week as documented by timesheet 22.5

Hours of service used to determined ACA eligibility 22.5

If the actual hours worked are not properly documented the employee must be credited with 8 hours of service credit each day, or 40 service hours for the week.

3.5 hours or 8 hours?

School employs a part-time Instructional Assistant. The contract states the employee will work 3.5 hours per day for 175 days, therefore this employee does not maintain a timesheet.

Hours worked per week according to the contract: 17.5

Hours of service used to determine ACA eligibility: 40

Since the actual hours worked are not documented, the employee must be credited with 8 hours of service for each day worked, or 40 hours of service per week. This employee must be offered health coverage.

Different rules apply to ongoing employees vs. new hires.

- Ongoing Employee: An employee who has been employed at least one complete standard measurement period.
- ◆ New employees and Rehires have different rules

Special Cases

Coaches and Long-term subs

- ◆ How do you pay currently?
- ◆ Stipends? Hourly? Independent Contractor?
- ◆ Long-term Subs may qualify over 3-months and must be offered insurance for the following 12-month period. What if they are not being paid? How do you collect premiums?

Issues Related to Coaches

- ◆ Coaches present unique issues under the employer mandate, primarily because their work hours tend to be variable but ongoing throughout the year.
- ◆ During their particular sport's season, coaches will likely be working an average of 30 or more hours per week.
- ◆ During the off-season, many coaches work far less, perhaps in other roles, or not at all.
- ◆ Although it is not clear in the final regulations, the employment break period rule (whereby breaks of 4 weeks or greater do not "count" for purposes of counting average hours worked) appears to be limited to "academic breaks".
- ◆ This rule would therefore not appear to apply to coaches during an off-season period that is not an academic break.

- ◆ Thus, the measurement period for a coach would likely include any off-season period (except for academic breaks) during which the coach works reduced or zero hours.
- ◆ For some coaches, this means that the entire off-season (except for academic breaks) may be included in the measurement of their average hours worked, which will necessarily bring their average down.
- ◆ This appears to be a reasonable approach under the final regulations, even though the effect of this approach will be that many coaches will average less than 30 hours per week and can therefore be excluded from health plan coverage.

- ◆ Otherwise, coaches are subject to the same rules that apply to other employees.
- ◆ That is, coaches who are reasonably expected at the time of hire to average 30 or more hours per week during periods in which they will be working must be offered coverage within 3 months of their hire.
- ◆ Coaches whose hours are reasonably expected to be variable and coaches who are only expected to work for one discrete season likely do not need to be offered coverage upon hire.
- ◆ These coaches only need to be offered coverage if they are credited with an average of 30 or more hours per week during a measurement period.

“Adjunct Faculty” Our substitute Teachers?

- ◆ The most challenging category of employee for many schools under the employer mandate is adjunct faculty - those hired to teach a single course.
- ◆ The final regulations offer a “safe harbor” option of crediting adjunct faculty with 2.25 hours of service for each hour of classroom or teaching time.
- ◆ This safe harbor equivalency approach only covers classroom time, class preparation, and grading; it does not cover additional time spent on other required administrative tasks, such as required office hours or departmental meetings.
- ◆ Remember to apply the other rules: “reasonableness”; part-time; short-duration, etc.

REMINDER:

What Do Employers Have to Tell Employees About the Exchange?

- ◆ Employers subject to the Fair Labor Standards Act (FLSA) must provide each employee with certain information about Exchanges, including:
 - ◆ Information about the existence of the Exchanges;
 - ◆ Exchange contact information;
 - ◆ Description of services provided by the Exchanges;
 - ◆ Information about the possibility of subsidies (premium tax credits and cost-sharing reductions); and
 - ◆ Information about losing tax-free employer contribution—if you make such a contribution to your employer-sponsored coverage.

Offering Coverage

- ◆ ACA requires coverage for full-time employees and dependent children – not spouses
- ◆ Coverage must begin Jan 1, 2015 for Schools with 100 or more full time & FTEs
- ◆ Coverage must begin Jan 1, 2016 for Schools with 50 or more full time & FTEs
- ◆ Offer must be made, employee can decline
- ◆ Maintain documentation
- ◆ Annual requirement