Leavitt Group Benefit Trends

HEALTH CARE REFORM – SPECIAL EDITION

Most Employers with "Variable Hour" Employees Must Start Counting Hours Very Soon!

LEGISLATIVE BRIEF

March 28, 2013

ALERT! Employers who will track hours of variable hour and seasonal employees: If you have a calendar-year plan, you MUST start tracking hours by July 1, 2013, at the latest, and you might want to start tracking as of June 1 or earlier. This benefit trends explains why.

In summary: Under the special transition Rule for 2013, you can use a six-month Measurement Period for 2013 to track hours worked by variable hour and seasonal employees, and you can use a 12-month Stability Period in 2014. The latest the six-month 2013 Measurement Period can start for an employer with a calendar year plan year is June 1, 2013, if the employer wants to have an administrative period of one month before the start of the 2014 Stability Period. If you elect to forego an Administrative Period, you can have a six-month measurement Period from July 1 – December 31, 2013, and start your Stability Period on January 1, 2014.

Explanation of the Issue

In 2014 large employers face potential penalties under the Affordable Care Act (ACA) if they do not offer health coverage to at least 95% of their full-time employees , or they do but that health coverage doesn't meet certain affordability and minimum value requirements. Large employers are those who employed at least 50 full-time employees or "full-time equivalents" on business days during the prior year. "Full-time" employees are those who work on average at least 30 hours per week or 130 hours per month. As of the 2014 plan year, the ACA also will prohibit plans sponsors from imposing a waiting period of more than 90 days on eligible employees.

Variable Hour and Seasonal Employees

The determination of which employees are full-time and must be offered coverage is straightforward if employees consistently work more than 30 hours or fewer than 30 hours per week. For employers who have "variable hour" or seasonal employees, however, the issue is how to determine which of these employees worked on average at least 30 hours per week? The proposed regulations (issued December

28, 2012) provide for a “safe Harbor” method under which an employer can track the hours worked by such employees during a “Measurement Period,” and then must offer coverage during an associated “Stability Period” for those employees who were determined to be full-time during the Measurement Period, even if those employees work on average fewer than 30 hours per week during the Stability Period. (If an employee terminates during the Stability Period, however, the employer is no longer required to offer coverage, but must offer COBRA.)

General Rule and Special Transition Rule for 2013

Generally, the Measurement-Stability Period safe harbor requires that the Stability Period must be at least as long as the Measurement Period. The safe harbor also allows employers to have an optional Administrative Period (generally not to exceed 90 days) before the first day of the Stability Period, during which time the employer can determine which employees were full-time during the Measurement Period, notify employees, distribute enrollment materials and ensure that eligible employees have time to enroll before the first day of the Stability Period. Under the general rule, for example, an employer who elects to use a 12-month Stability Period also must use a 12-month Measurement Period.

Since the proposed regulations were not issued until December 28, 2012, they include a **special transition rule for 2013 only**. This rule allows an employer who intends to use a 12-month Stability Period in 2014 to select a *shorter* Measurement Period for 2013. The 2013 Measurement Period MUST:

- Be at least six months, and
- Begin no later than July 1, 2013, and
- End *no earlier* than 90 days before the first day of the first 2014 plan year
  - » This means the employer cannot leave more than a 90-day gap (Administrative Period) between the end of the 2013 Measurement Period and the start of the 2014 Stability Period.
  - » An employer *can* have a gap that is *less than* 90 days between the Measurement Period and the first day of the 2014 Stability Period, and could even have no gap between them.

Calendar-Year Plan:
Examples of Six-Month Measurement Period Start Dates with Various-Length Administrative Periods

An employer with a January 1 plan year must start tracking hours of variable hour and seasonal employees no later than July 1, 2013. The matrix below shows the dates by which an employer with a January 1 plan year *must* start tracking hours of variable hour and seasonal employees in 2013, if the employer wants to have a six-month Measurement Period in 2013. The dates vary depending on how long an Administrative Period the employer wants.

Date by Which 6-Month Measurement Period MUST Start	Gap (Administrative) Period	First Day of Stability Period (also first day of 2014 plan year)
July 1, 2013	No gap	January 1, 2014
June 1, 2013	1-month gap (December 2013)	January 1, 2014
May 1, 2013	2-month gap (November-December)	January 1, 2014
April 1, 2013	3-month gap (Oct-Nov-Dec) *	January 1, 2014

** The regulations actually allow a maximum of 90 days and this would be 92 days.*

Non-Calendar Year Plans:
Examples of Various-Length Measurement Periods and Administrative Periods

Date by Which Measurement Period MUST Start	Gap (Administrative) Period	First Day of Stability Period (also first day of 2014 plan year)
July 1 2013 - Feb. 28, 2014 (8 months)	1-month gap (March 2014)	April 1, 2014
July 1, 2013 - Dec 31, 2013 (6 months)	3-month gap (January 1-March 31, 2014)	April 1, 2014
July 1, 2013 - May 31,2014 (11 months)	1-month gap (June 2014)	July 1, 2014
July 1, 2013 - March 31, 2014 (9 months)	3-month gap (April-May-June 2014)	July 1, 2014
July 1, 2013 - June 30, 2014 (12 months)	2-month gap (July-August 2014)*	September 1, 2014
July 1, 2013-May 31, 2014 (11 months)	3-month gap (June-July-August 2014)	September 1, 2014

** No need for special transition rule, because the Measurement Period is 12 months in this example*

Delayed Effective Date for Non-Calendar Year Plans

Note that if an employer with a non-calendar year plan uses a full 12-month Measurement Period, such employer is *not* required to begin the Measurement Period by July 1, 2013 IF the employer qualifies for a delayed effective date of the Employer Shared Responsibility provisions. The criteria for a delayed effective date are summarized in the following paragraph. The earliest plan year for which an employer could use a 12-month Measurement Period and start tracking hours *after* July 1, 2013 would be an August 1 plan year. Such employer could track hours of variable hour and seasonal employees from August 1, 2013 to July 31, 2014, have *no* Administrative Period, and then start complying with the Employer Shared Responsibility provisions as of August 1, 2014.

Requirements of Delayed Effective Date Rule

The proposed regulations also allow a special delayed effective date for non-calendar year plans that meet certain criteria. The gist of the delayed effective date rule is that if a non-calendar year plan *covered* at least one-quarter of its total employees (both full- and part-time) or *offered* coverage to at least one-third of total employees as of the most recent open enrollment date prior to December 27, 2012, the employer is not required to comply with the Employer Shared Responsibility rules until the first day of the 2014 *plan* year, so long as the employer offer coverage to at least 95% of its full-time employees (and their dependents) as of the first day of the 2014 plan year.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.