

# Employee Benefits Management

## *Directions*

Issue No. 561 • Report No. 559

In Two Parts • April 8, 2014

## Final rules give employers some breathing room to determine who is a full-time worker for mandate purposes, expert says



Kathy Bakich

The IRS issued final regulations on the Patient Protection and Affordable Care Act's (ACA) shared responsibility provisions (also known as the employer mandate) in February. Although

the rules give medium-sized employers (50-99 full-time employees) until 2016 to comply with the mandate, large employers still need to gear up for the mandate's implementation in 2015. To find out what's in the final rules and what employers should be doing now to get ready to comply, **Wolters Kluwer** reached out to Kathy Bakich, Senior Vice President and National Health Compliance Practice Leader at The Segal Company.

### **Wolters Kluwer: What does the employer mandate require?**

**Bakich:** The employer shared responsibility penalty will be imposed on "large" employers with at least 50 full-time equivalent employees under certain conditions. The amount of the employer penalty will be based on whether the employer offers health coverage to employees. A large employer will be treated as having

offered minimum essential coverage to its full-time employees and their dependents for a calendar month if, for that month, it offers coverage to 95 percent (70 percent in 2015) of its full-time employees (as long as dependent coverage was also offered). There are two branches of the employer shared responsibility penalty known as the "4980H(a)" and "4980H(b)" penalties, which are described below.

1. **The 4980H(a) penalty.** If a large employer fails to offer minimum essential coverage to its full-time employees and their dependents, and at least one full-time employee (i.e., an employee who works on average 30 or more hours per week or 130 hours per month) obtains subsidized coverage in a health insurance Exchange, the 4980H(a) penalty is \$2,000 times the total number of full-time employees employed by the employer. For purposes of calculating the 4980H(a) penalty, the number of full-time employees is reduced by 30 (80 in 2015).
2. **The 4980H(b) penalty.** If a large employer offers minimum essential coverage to its full-time employees and their dependents but the coverage is not affordable or minimum value, and at least one full-time employee obtains subsidized coverage in a health insurance Exchange,

then the employer would pay a 4980H(b) penalty. The amount would be \$3,000 times each full-time employee who receives subsidized coverage in an Exchange (with a maximum of the 4980H(a) penalty amount that would have been due if the employer did not offer coverage).

### **Wolters Kluwer: What is considered "minimum essential coverage"?**

**Bakich:** Minimum essential coverage (MEC) includes coverage under an eligible employer-sponsored plan, which means group health insurance or a self-insured group health plan. MEC does not include coverage consisting solely of excepted benefits, like dental,

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# Mandate

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vision, or AD&D. MEC is not required to meet the minimum value test – that is a separate part of the penalty rule.

## **Wolters Kluwer: What were the major changes made by the final regulations on the mandate?**

**Bakich:** The final regulations finetuned the existing rules. Significant changes included the following:

- Defining a seasonal employee as one who is hired into a position for which the customary annual employment is six months or less. This allows employers to measure seasonal workers as variable employees.
- Creating factors to use to determine whether a newly-hired employee is full-time or variable, such as who the employee replaced, historical variation in hours, and how the job was advertised.
- Modifying the dependent coverage rule to require coverage be extended through the end of the month in which the child turns 26, and eliminating a requirement to cover stepchildren and foster children.
- Changes to the break in service rules. Employees who are rehired or return from unpaid leave are addressed in the rule as well. If the period for which no hours of service is credited is at least 13 consecutive weeks, an employer may treat an employee as having terminated employment and, if new work is performed, being rehired as a new employee. If the period is less than 13 weeks, the employer may apply a “parity” rule and treat the employee as a new hire if the period with no credited hours of

service is between four and 13 weeks and is longer than the employee’s period of employment preceding that break. (For educational institutions, the time period is 26 weeks.)

- For adjunct faculty a reasonable method must be used. The Treasury Department and the IRS have determined that, until further guidance is issued, and through at least 2015, one (but not the only) reasonable method would credit an adjunct faculty member with:

1. Two and ¼ hours of service (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers) per week for each hour of teaching or classroom time and, separately,
2. An hour of service per week for each additional hour outside of the classroom the faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings).

## **Wolters Kluwer: What do you think about the alternative monthly method of determining full-time status?**

**Bakich:** Under the monthly measurement method, an employer would determine full-time status by counting the employee’s hours of service for each calendar month. Coverage must be offered to full-time employees no later than the first day of the first calendar month immediately following a period of three full calendar months beginning with the first full calendar month in which the employee is otherwise eligible for coverage. In con-

trast, under the look-back measurement method, an employer would determine full-time status by looking back at a standard measurement period and providing coverage during a subsequent and corresponding stability period. The monthly method was added for employers that wished to simply count hours of service on an ongoing basis and not have to use the look-back method. The monthly method works well for employers with largely full-time workers where there are few unique employment arrangements, and no temporary or seasonal workers.

## **Wolters Kluwer: What should employers do now to prepare?**

**Bakich:** Employers should determine who is offered coverage, and whether the coverage meets the minimum value and affordable standards. If there are employees who are not offered coverage, the employer may need to measure hours to determine whether they are full-time.

Employers also need to prepare for employer reporting as to who is a full-time employee. This reporting, under Code Sec. 6056, will begin in 2016 for 2015 data.

## **Wolters Kluwer: Which aspects of the mandate could prove challenging?**

**Bakich:** Addressing temporary, seasonal, part-time, and contractual workers is likely the biggest challenge under the final rules. Luckily, the final rules provide that the 95 percent test will be 70 percent in 2015. This allows some breathing room for employers to determine who is a full-time worker, when the regulatory guidance is still in its infancy. □