Counting Employees – ERISA and ACA Compliance Update
Final Shared Responsibility Regulations

- Issued on February 10, 2014
- Not really final
- Applies to employers whether or not subject to ERISA due to corresponding changes in ERISA, PHSA and IRC
- But employers with plans subject to ERISA have additional fiduciary duty to make sure they are in compliance
- Followed in March by final Reporting Regulations
What did Final Regulations do?

- Added Transition Relief for employers with 50-99 employees
- Did not make changes to calculations for determining employer size
- Made changes to calculations required to determine which employees are full-time and must be offered coverage
- Other Changes
  - Requirements for offering coverage to children
  - Penalty calculations and full-time employee coverage % for 2015
Final Regulations Establish New Large Group(s) Definition

- **50 - 99 Employees** – Now Considered “Mid-Size” Large Employer
  - Must Include FTE Determination
  - Can Request Transition Relief for 2015
  - Must Comply with ACA Play or Pay By 2016
  - Other Reform Mandates Still Apply (including reporting requirements)

- **100+ Employees** – Considered Large Employer
  - Must Include FTE Determination
  - No Transition Relief for 2015
  - Must Comply with ACA Play or Pay By 2015
  - Other Reform Mandates Still Apply
2015 Transition Rule Requirements

Maintain Workforce, Hours of Service Rule & Health Coverage

- You Cannot Reduce Number of Employees as of 2/9/2014 To get Below 50 FTE or 100 FTE Count to Avoid Compliance
  - Must Show “Bona Fide” Business Reason and Documentation

- You Cannot Reduce Overall Hours of Employees as of 2/9/2014 To Avoid Compliance
  - Must Show “Bona Fide” Business Reason and Documentation

- You Cannot Eliminate or Materially Reduce Group Coverage as of 2/9/2014
Determining Employer Size

- **Rules**
  - Count all employees even if seasonal
    - Seasonal Worker – 120 days per year
    - Seasonal Employee – position typically six months or less
  - Count employees of all related employers
  - Count by the month
  - Count each FT employee once (do not count hours)
  - Count all other employees’ hours for the month but limit the hours to 120 in any month
  - 2014 calculation – applies in 2015 – use any six months
    - All following years must use entire year
## Determining Employer Size

<table>
<thead>
<tr>
<th>Month - 2014</th>
<th># FT EEs</th>
<th># Part-time EES</th>
<th>Total # hours worked by Part-Time (assume all work 80 per month)</th>
<th>Divide hours by 120 to get FTE</th>
<th>Add FT + FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan</td>
<td>74</td>
<td>27</td>
<td>2160</td>
<td>18</td>
<td>92</td>
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<tr>
<td>Feb</td>
<td>77</td>
<td>28</td>
<td>2240</td>
<td>18.667</td>
<td>95.667</td>
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<tr>
<td>Mar</td>
<td>79</td>
<td>28</td>
<td>2240</td>
<td>18.667</td>
<td>97.667</td>
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<tr>
<td>Apr</td>
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<td>29</td>
<td>2320</td>
<td>19.333</td>
<td>99.333</td>
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<tr>
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<td>84</td>
<td>30</td>
<td>2400</td>
<td>20</td>
<td>104</td>
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<tr>
<td>June</td>
<td>86</td>
<td>33</td>
<td>2640</td>
<td>22</td>
<td>108</td>
</tr>
</tbody>
</table>

**TOTAL = 596.667 or avg 99.569**
Which Employees are Full-Time?

- Anyone reasonably expected to work 30 or more hours per week
- All others
  - Variable hour employees, part-time employees and seasonal employees – count hours or use safe harbor
  - Salaried v. Hourly
    - Salaried – Count Hours or use Safe harbor
      - Days worked equivalency
      - Weeks worked equivalency
    - Hourly – have to use actual hours
Which Employees are Full-Time?

- Counting hours
  - Count all hours paid for working or entitled to be paid
  - Include
    - Sick
    - Disability
    - Vacation
    - Leave
    - Jury duty
  - Do not include:
    - Hours worked outside the US
    - Hours worked by bona fide volunteers
Which Employees are Full-Time?

- Special Unpaid Leaves and Employment Break Periods
  - Special unpaid leaves include FMLA, USERRA, Jury Duty
  - Exclude this unpaid time from the calculation
  - Otherwise can include unpaid time in Measurement Period and count no hours for those weeks
  - Employment break periods are unpaid breaks of at least 4 weeks for employees of educational institutions
Which Employees are full-time?

Two methods to determine if current employees are full-time

- Monthly measurement method
  - Count hours each month and if average 30 hours per week offer coverage by first day of the 4th month after month in which first full-time

- Look-back measurement method
  - Set Measurement Period (3-12 months)
  - Set Administrative Period (up to 90 days) following measurement period
  - Set Stability Period (6-12 months, but at least as long as Measurement Period)

- For employees who are determined to NOT be full-time - Stability Period cannot be longer than the Measurement Period

- Except for counting in 2014 for 2015 eligibility – employer can use a shorter measurement period as long as it starts no later than July 2, 2014 and ends within 90 days of the Stability Period
Which Employees are Full-Time?

- Can use a different set of periods for:
  - Ongoing v. new employees
  - Within those groups
    - Collectively bargained (by contract) v. non-collectively bargained
    - Hourly v. salaried
  - Employees working in different states
What happens when a FT employee leaves and then returns?

- If break is 13 weeks or more:
  - Treat employee as a new employee and then either offer coverage within 90 days or count hours as new employee

- If break is less than 13 weeks:
  - Treat employee as ongoing employee
    - If employee was enrolled in plan when employment terminated, must offer coverage by the first of the month after re-hire
    - If employee was not enrolled, do not have to offer coverage

- NOTE: For educational organizations, break must be 26 weeks or more to consider new employee
Which Employees are Full-Time?

- New Employees
  - If reasonably expected to work 30 or more hours per week, must offer coverage within 90 days
  - If variable, seasonal or part-time – begin to count hours over measurement period (called Initial Measurement Period)
    - Can begin counting on date of hire or any day up to the first of the next month.
    - If employee changes position to one that is reasonably expected to be 30 or more hours per week must offer coverage within 90 days of change
    - Must offer coverage by first day of the fourteenth month after date of hire.
  - Stability Period following Initial Measurement Period can be no more than one month longer
  - If Stability Period during which employee was not offered coverage overlaps with Standard Measurement Period and employee is considered full-time during this period, must offer coverage at next regular stability period.
What other changes were made to the Shared Responsibility Requirements?

- Children must be offered coverage until the end of the month in which they turn age 26 or employer will NOT be considered to have offered coverage.
- Step and foster children no longer have to be included in definition of child
- Penalty for not offering coverage
  - 2015 – must offer coverage to 75% of all FT employees or pay a penalty of $2,000 times number of FT employees after subtracting the first 80
  - 2016 - must offer coverage to 95% of FT employees or pay a penalty of $2,000 times number of FT employees after subtracting the first 30
Questions? Comments?

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We are happy to help!