

Employers Cannot Afford To Wait To Determine Which Employees Are Full-Time Under The Affordable Care Act

Legal Alert

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Many employers already know that if they have 50 or more full-time equivalent employees, beginning January 1, 2014, they will likely need to offer health insurance to full-time employees or pay a penalty under the Patient Protection and Affordable Care Act (ACA). However, employers should not wait to start identifying whether employees are full-time under the ACA. This is because the implementation of the ACA will likely allow employers to take advantage of a "look back" period of up to 12 months to determine whether workers are full-time (generally defined under the ACA as an average of 30 hours per week, or at least 130 hours in a month).

While the Department of Treasury and the Internal Revenue Service (IRS) have not yet finalized the mechanics of the proposed look back, they are currently considering possible alternatives to requiring a month-by-month analysis of full-time employee status to determine the employer's obligations under the ACA. One alternative under consideration would give applicable employers the option to employ a look back period to provide stability as to which employees would be considered full-time for a particular coverage period. The purposes of using a look back period would be to give effect to the ACA while giving employers a measure of predictability. Under the possible look-back period being considered, an employer would assess each employee's full-time status by looking back at a period of not less than three but not more than twelve consecutive calendar months — as chosen by the employer — to determine whether the employee averaged at least 30 hours per week (or, at least 130 hours per month) during the measurement period.

Based upon the current proposal, if a given employee qualifies as a full-time employee during the measurement period, then the employee must be treated as a full-time employee during a subsequent "stability period," regardless of the number of the employee's hours of service during the stability period, so long as he or she remained an employee. The stability period would be a period of at least six consecutive calendar months that follows the measurement period and is no shorter in duration than the measurement period. On the other hand, if an employee is not a full-time employee during the measurement period, the employer would be permitted to treat the employee as not a full-time employee during a stability period not to exceed the measurement period.

Whether and how the look back option will be available to employers is still developing, but employers who are required to offer health insurance to full-time employees or pay a penalty under the ACA should start looking at their employment patterns to determine if using a look back period offers advantages under the ACA and, if so, they should consider adopting amendments to benefit plans to define the look back period. This is particularly important for employers who hire seasonal workers.

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Navigating the post-ACA world will be complex for many employers, but the attorneys of Flaster Greenberg are here to offer guidance and to identify ways in which employers can minimize their exposure.