

AFFORDABLE CARE ACT
Guidance for large employers under the law

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The transitional relief provided in the final regulations released on Feb. 10 was welcoming news for all employers subject to the Affordable Care Act. While the transitional relief allows employers more time to implement and refine their plans, it is imperative for employers, especially for smaller "large employers," which include employers with an average of 50 to 99 full-time employees who were allowed to delay compliance with ACA for one more year, to make sure that they are in compliance with the final regulations.

While the final regulations do not depart drastically from the proposed regulations, they do provide needed clarification and suggested approaches to help employers comply with certain requirements until the Internal Revenue Service issues its final guidance. The following guidance should be particularly helpful to area employers.

Are seasonal workers taken into account in determining whether an employer is a "large employer" and subject to employer shared responsibility under ACA?

Yes, seasonal workers are taken into account in determining the number of full-time employees. However, if an employer's workforce exceeds 50 full-time employees, including full-time equivalents, for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, the employer is not considered an applicable large employer.

How do we calculate hours of service for full-time "seasonal employees," like seasonal tax preparers, holiday retail help or summer resort staff?

Hours of service for seasonal employees are calculated under the same rules applicable to variable hour employees. In general, a seasonal employee is an employee whose customary annual employment is six months or less.

Do employers need to count hours worked by student employees in determining whether they are large employers and subject to employer shared responsibility under ACA?

Yes, the final regulations did not adopt a special rule for student employees working as interns or externs for an outside employer. All hours of service for which a student employee is paid or entitled to payment in a capacity other than through the federal work study program or a state or local government's equivalent, are required to be counted as hours of service. Therefore, student interns/externs who work full-time for more than 90 days may have to be offered insurance to avoid penalties.

How are hours of service for adjunct faculty members credited in determining whether they are full-time employees?

While final guidance on this issue is still pending, a reasonable method would credit an adjunct faculty member of an institution of higher education with 2-1/4 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.

In other words, in addition to crediting an hour of service for each hour teaching in the classroom, this method would credit an additional 1 1/4 hours for activities such as class preparation and grading and, separately, 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.

Based on this, an instructor who taught four 3-credit classes per week with one hour of office time per course would be considered full-time and should be offered coverage.

As a member of a controlled group may an employer use different measuring methods or periods to determine the status of an employee as a full-time employee during a future period?

Yes, final regulations confirm that members of a controlled group may use different starting and ending dates and lengths of measurement and stability periods. Also, they may use different measurement methods - the look-back measurement method or the monthly measurement method. For example, a parent company could measure hours using a monthly method and its subsidiary could measure hours using a look-back method.

What dependents need to be offered coverage to avoid being subject to employer shared responsibility under ACA?

Under the final regulations, an employer does not have to offer coverage to stepchildren or foster children. Employers should be cautious about excluding these two categories

of children from coverage, as the exclusion may subject the employer to other penalties under ACA.

When does a dependent child cease to be considered a dependent for purposes of the employer shared responsibility under ACA?

The final regulations clarify that a child is considered a dependent until the end of the calendar month in which the child turns age 26. Employers cannot terminate coverage for a dependent child on the day in which the dependent child attains age unless it falls on the last day of a calendar month.

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Want to Learn More? Willcox Savage is offering a complimentary workshop with limited seating on the Affordable Care Act on Wednesday, May 7, from 8:00 am until 10:30 am. The workshop will focus on practical issues faced by employers with 50 or more employees. Learn more at: www.willcoxsave.com.