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Do You Have Any "Variable Hour" Employees? Here's Why It May Matter

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The Affordable Care Act (ACA) requires employers with at least 50 full-time employees to provide certain health plan coverage to their full-time employees, or face penalties. The ACA defines a full-time employee as one who is regularly scheduled to work 30 hours per week or more. Employers, therefore, must accurately count the total number of full-time employees, and, if the number exceeds 50, determine which of its workers qualify for coverage.

Most employers either clearly exceed the threshold (e.g., those with hundreds of employees) or are obviously beneath it (e.g., those with only 10 employees). Some, however, may be hovering right around 50 full-time employees, and it is important for them to accurately tally up the numbers. The count to 50 includes those who make up the company's "control group," "full-time equivalent" employees (which includes some part-time employees), and full-time employees who are regularly scheduled to work 30 hours per week or more. Typically, it's easy to identify employees who are regularly scheduled to work 30 hours per week or more, but some employees, called "variable hour" employees, may have irregular schedules fluctuating above and below 30 hours per week.

So how can an employer determine if a variable hour employee should be considered full-time? Employers have two options for making this determination: the monthly measurement method and the look-back measurement method.

Monthly and Look-Back Measurement Methods

The monthly measurement method is a month-to-month analysis. Full-time employees are those who work an average of 30 hours per week (or 130 hours per month) within the month under consideration. Though this method is more straightforward in application, it lacks flexibility for employers who have many variable hour employees whose statuses aren't easily captured in a 30-day snapshot.

A more common approach is the look-back measurement method, which allows an employer to implement a broader timeline for evaluating an employee's status in advance of a coverage period. A variable hour employee is not covered by the health plan during the measurement period.

Where this approach varies is between new and current employees. For new employees, the basic framework involves:

- selecting a measurement period of three to 12 months to determine if an employee averaged at least 30 hours per week;
- implementing a stability period of not less than six months (and not less than the measurement period), during which coverage is provided to those identified as full-time employees during the measurement period;
- and utilizing an administrative period that gives employers an added cushion of time for evaluating the information and implementing coverage.

For existing employees, the look-back measurement method is fairly straightforward. For example, if the employee worked, on average, at least 30 hours per week during the previous 12 months, the employee is considered a full-time employee during the stability period immediately following the measurement period.

For a new employee whose status cannot be reasonably determined based on the circumstances of the date of hire, an employer can similarly implement an initial measurement period (the same length as the measurement period for current employees) to evaluate his or her full-time status. Depending on the length of the measurement period, an employer may not need to offer a variable hour employee health insurance for up to 13 months.

Because implementing measurement, stability, and administrative periods is a technical task, subject to precise rules, it is important for employers to consult an attorney for guidance. A misstep that results in an inaccurate employee count can mean the difference between complying with the ACA and violating the ACA. And violations can result in significant monetary penalties.