ACA UPDATE: How to Handle Employee Status Changes

Options under Employer Shared Responsibility Rules

The Employer Shared Responsibility requirements of the Affordable Care Act (ACA) require that employers calculate full-time employees as those who work an average of 30 hours per week or more. One of the measurement methods available to employees is the Look Back Measurement Method (LBMM) for purposes of calculating average employee hours worked.

Employers utilizing the LBMM to identify full-time employees (average of 30+ hours per week) may find that the first year of utilizing a “stability period” may create some challenges; primarily for employees who change status from full-time to a position that requires less than 30 hours per week. This fact sheet identifies the process employers can use to remove someone from a stability period and also addresses situations in which an employee with reduced hours wishes to voluntarily drop the health coverage.

Under the look back measurement method employers can select a period of time between 3-12 months to measure employee hours for purposes of determining full-time status for an employee; this is known as the “measurement period”. The measurement period is followed by an optional administrative period of up to 90 days and then a stability period. The employer must treat any employee who averaged at least 30 hours per week during the measurement period as a full-time employee for the entire stability period. The length of the stability period must be at least as long as the measurement period. Employers with a 12-month measurement period would also have a 12-month stability period.

What happens when an on-going employee changes employment status during the stability period?

Typically a change in status does not affect whether an employee is eligible as a “full-time” employee for purposes of health benefits for the remainder of the stability period. However, regulations do include a special rule for certain employees that have continuously been offered minimum value coverage.

The special rule allows the employer to take an employee out of the stability period that is associated with the look back measurement method and start applying a monthly measurement method. This process would begin with the first day of the fourth full calendar month following the calendar month in which the employee experiences the status change, provided that the new position is considered a non-full-time, non-30+ hour position. However, employers can only utilize this rule IF the employee was offered minimum value coverage by the first day of the calendar month following the employee’s initial three full calendar months of employment. Also, the employee must average less than 30 hours per week for each of the three full calendar months following the status change. The employer would then continue to apply the monthly measurement method through the end of the first full measurement period (and any associated administrative period) that would have applied had the employee remained under the look back measurement method.

Unfortunately, this rule may not exactly line up with the employer’s eligibility provisions as outlined in benefit plan documents. If the plan documents specify the special rule, then coverage is not lost until the first day of the fourth month following the status change and COBRA would be offered at that time. However, if the plan documents merely refer to eligibility as an hourly requirement and the employee goes below that hourly requirement COBRA is generally offered right away. If coverage is lost and COBRA offered at the time of the status change, the employer may be exposed to penalties for the months the employee is not covered.
Whether or not a “disconnect” between plan documents and the shared responsibility requirements would result in penalties will depend on whether or not a termination of coverage would cause the employer to be exposed to “Penalty A” otherwise known as the “sledgehammer penalty.” If an employer is above the 95% threshold (or 70% in 2015), the risk for this penalty is minimal. However, there would still be exposure for a potential “Penalty B” if affordable/valuable coverage is not available to the status change employee.

What about an employee that wants to voluntarily drop coverage during a stability period?

Historically, a voluntary drop of coverage was allowed under the plan but issues would arise in terms of the Section 125 irrevocable election rule. Based on regulations issued in September 2014, the IRS permits employers to amend their Section 125 plans to allow an employee whose hours of service are reduced from above the qualifying 30 hours to below the threshold to revoke the election of group health coverage. To take advantage of this qualifying event, the employee must have the intent to enroll in another plan providing minimum essential coverage no later than the first day of the second month following the date the coverage is revoked.

Employers can also allow employee to revoke the Section 125 election if the employee is eligible for a special enrollment period in a Marketplace plan or wishes to enroll in a Marketplace plan during open enrollment. The employee must have the intent to enroll in a Marketplace plan to later than the day immediately following the last day the employer coverage was revoked. Employers that wish to allow for these qualifying events MUST amend the Section 125 written plan document.

Employees who take advantage of these disenrollment opportunities will most likely not qualify for subsidies and therefore should not be a penalty risk for the employer. In these situations, no COBRA would be offered.

What about employees in a stability period that fail to pay their portion of the premium?

Employers will not be penalized for failing to offer any full-time employee the opportunity to enroll in minimum essential coverage for employees whose coverage is terminated during the coverage period due to non-payment of premium. However, the employer must give the appropriate amount of time for payment of premium as allowed under the COBRA rules.

Key takeaway:

During the first year of Employer Shared Responsibility implementation, questions will continue to arise regarding the application of penalties, the 30+ hour requirement and the effect of the measurement and stability periods on eligibility. This is normal for the implementation of any new law and we will handle any and all questions as they arise.

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