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Benefit Minute

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Interns and the ACA

As we enter the time of year when employers hire summer interns, questions arise as to whether health coverage should be offered. This issue of the Benefit Minute reviews Affordable Care Act (ACA) requirements that may apply to interns.

Background Information

Under the ACA, Applicable Large Employers (those with 50 or more full time equivalent employees in the prior calendar year) must offer affordable minimum value coverage to at least 95% of full time employees or risk exposure to employer mandate penalties under the ACA. A full time employee is one who is expected to average 30 hours of service per week (or 130 hours of service per month). The ACA does not include any special exception for short-term employees who work full time hours (unless the employee is a seasonal employee as described below). Set forth below are some ACA-compliant options for interns.

Offer Health Coverage to Interns

The safest course of action for an employer who hires full time interns is to make an offer of health insurance coverage under the same terms and conditions available to other full time employees. This includes having the same waiting period and payroll deductions. In many cases, interns will waive coverage because they are covered under a parent’s plan, but the offer is sufficient to avoid exposure to the “no offer” penalty under the ACA employer mandate.

Limit Hours of Service for Interns

There is no ACA requirement to make an offer of coverage to a new employee who does not have 30 or more hours of service per week. By hiring interns with a schedule of 29 or less hours of service per week, they will not be considered full time under the ACA initially.

However, scheduled hours cannot be a "sham" to avoid ACA requirements, and the hours worked by interns should be carefully monitored to ensure that they do not exceed 130 in a calendar month.

Treat as Seasonal Employees under the Lookback Measurement Method

As stated above, the ACA does not include any special exception for short-term employees who are scheduled to work 30 or more hours per week, unless they can be properly classified as seasonal employees. Under the ACA, a seasonal employee is one who is employed for a period of six months or less and whose employment begins at approximately the same time each calendar year, such as summer or winter. Typical examples of seasonal employees are swimming pool staff or ski resort workers. However, there is no requirement that the work be of a seasonal nature. An intern may be seasonal if internships are only available during a certain time of the year due to external factors, such as hiring interns during summer or winter break as part of a recruiting program or to meet staffing needs when other employees are on summer vacation.

When the lookback measurement method is used to determine full time status, a seasonal employee is placed in an initial measurement period at the time of hire. The initial measurement period will generally last between six and twelve months, and full time status is determined on a prospective basis at the end of the measurement period.

The result is that an intern will generally terminate employment before the end of the initial measurement period, so there is no requirement to offer health coverage. If the intern is rehired, they can be placed in a new initial measurement period as long as the break in service was at least 13 weeks. If the intern is subsequently hired as a full time employee during an initial measurement period, coverage should be timely offered under the same terms and conditions available to other full time employees.

The lookback measurement method cannot be used solely for seasonal employees or other variable hour employees. At a minimum, it must be used for all hourly paid employees. Therefore, this approach will not work if an employer only uses the monthly measurement method and has not established measurement periods and related stability periods under the lookback measurement method.

Utilize the ACA's 95% Offer Requirement

The ACA employer mandate requires that an Applicable Large Employer make an offer of coverage to at least 95% of full time employees for each month of the calendar year to avoid exposure to the substantial "no offer" penalty. For an employer with less than 100 full time employees, the offer must be made to all but five full time employees. If an employer is only hiring a few interns and does not wish to offer health coverage, this is permissible as long as the 95% offer requirement is met. If coverage is not offered to interns who had 130 or more hours of service in a calendar month, the employer could still be exposed to the "not affordable" penalty with respect to any intern who receives subsidized Marketplace coverage. This approach should only be used by an employer who is carefully monitoring ACA compliance and who is comfortable that not offering coverage to interns will not breach the 95% offer requirement.

Considerations

When reviewing internship arrangements and determining whether to offer health coverage, the following items should be considered:

- Any intern that meets the ACA definition of a full time employee should receive a Form 1095-C.
- No Form 1095-C is required if an intern terminates employment before 1) meeting the plan's waiting period (if coverage would otherwise be offered) or 2) completing the initial measurement period.
- If offering health coverage to interns, confirm that the insurance contract does not specifically exclude them. If it does, an amendment is needed.
- If interns will be classified as seasonal employees and placed in an initial measurement period, document how that determination was made, including the factors that support their status as seasonal.
- Carefully monitor the hours worked by interns and the duration of employment. Changes in the terms of employment may require reconsideration of their status and an offer of health coverage.