UNDERSTANDING AND MANAGING COMPLIANCE WITH THE AFFORDABLE CARE ACT

SUMMARY AND FACTUAL BACKGROUND

Under the Patient Protection and Affordable Care Act (PPACA), employers are required to offer healthcare coverage that meets the PPACA’s definitions of “affordable” and “minimum value” to all their full-time employees (defined as employees who average at least 30 hours of “service” per week) and their dependent children. For large employers (those with 100 or more “full time equivalents”), the requirement to provide coverage is effective January 1, 2015; however, provided certain conditions are met, for non-calendar year plans, the requirements are effective on the first day of the plan year after January 1, 2015. For school districts with plan years that begin July 1st, these requirements must be met as of July 1, 2015.

The statute establishes two separate penalties for the failure to provide full-time employees with the required health care insurance. One penalty, sometimes colloquially referenced as the “doomsday” penalty, applies if an employer (1) does not offer healthcare coverage to “all” (defined as at least 70% for 2015 and at least 95% thereafter) of its full-time staff and dependent children; and (2) at least one full-time employee receives a premium tax credit to help pay for coverage obtained through the Government exchange. If these two conditions are met, then the employer must pay a penalty of $2,000 (indexed annually) for every full-time employee (whether or not any of those full time employees were offered coverage). In calculating the amount of the penalty in 2015, the first 80 full-time employees are excluded from the calculation; for future years, the first 30 full-time employees are excluded. This penalty can be avoided by the school district offering its full-time employees the opportunity to participate in the school district’s group health insurance plan, even if at the full expense of the employees.

There is also what sometimes is referenced as a “targeted” penalty which occurs if an employer offers coverage to at least 70% / 95% of all full-time employees, but at least one full-time employee receives a premium tax credit to help pay for coverage obtained through the Government exchange because the coverage offered by the school district fails the “affordable” or “minimum

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value” requirements. If that occurs, the school district would incur a penalty of $3,000 (indexed annually) for each such employee. This penalty, unlike the “doomsday” penalty, is only calculated based on the number of employees receiving a subsidy and is not based on the number of all full-time employees.

Given the potential for a large monetary penalty, school districts are especially concerned about the “doomsday” penalty. One approach to avoid this penalty is to offer healthcare coverage to all full-time employees at 100% employee cost regardless of the number of hours they work for the school district, unless they are covered by a contract or an employment agreement which covers all or part of the cost of healthcare. Such coverage would likely be determined to fail the affordability test, and could expose the school district to the targeted penalty. At present, however, the targeted penalty typically is less than the cost of the premium that a school district would pay for parent/child health insurance coverage that met the minimum value and affordability requirements.

**SUBSTITUTE TEACHERS**

A particular problem facing school districts is how to deal with substitute teachers. If a school district reasonably knows that a substitute teacher will work 30 hours a week, the teacher qualifies as a full-time employee. However, often it is difficult to anticipate whether a substitute teacher will work 30 or more hours a week in any given month. Unfortunately, federal law and applicable regulations do not specifically address the status of substitute teachers. School districts, therefore, either must manage substitute teachers within the rules applicable to full-time employees in general or rely upon temporary employment agencies to furnish day-to-day substitutes.

While the applicable regulations do not deal specifically with substitute teachers, they do provide separate rules for “variable-hour employees.” These employees work irregular hours, meaning that employers do not have a reasonable basis for knowing whether they will meet the 30 hour requirement. For ongoing variable-hour employees, the IRS created a “look-back” method of measurement to determine whether such employees are considered full-time in any calendar month. This method uses a “standard measurement period,” over which the school district can determine whether the employee works 30 hours a week. The standard measurement period may be established by the school district, at its discretion, but must be no shorter than three months nor longer than 12 months.

If the employee works an average of 30 hours per week in the standard measurement period, the school district must treat the employee as a full-time employee (and offer health care coverage) during the following “standard stability period.” During this stability period, the employee’s status as a full-time employee cannot be changed, regardless of how many hours that employee actually works during the stability period. The stability period must be at least 6 months, but cannot be shorter than the standard measurement period. Additionally, for employees determined not to be full-time, the standard stability period cannot be longer than the standard measurement period.

A school district may, but is not required to, use a “standard administrative period,” which would separate the standard measurement period and the stability period. Using the standard administrative period would provide the school district time to notify the employee that he or she is eligible for coverage, explain the benefit options, and to enroll the employee before the standard stability period begins. The standard administrative period is required to overlap with any prior stability period to ensure that ongoing employees who already receive coverage (because they were determined to be full-time) will continue to receive coverage.
For stability periods which begin in 2015, there are special transition rules which may be applied. Under these rules, a plan may adopt a measurement period which is shorter than 12 months but no less than 6 months long, which begins no later than July 1, 2014, and ends no earlier than 90 days before the first day of the 2015 plan year. However, school districts with a plan year that begins on July 1 have to use a measurement period longer than 6 months to comply with the requirements that the measurement period must start no later than July 1, 2014 and end no earlier than 90 days before the stability period. For example, the school district could use a 10 month measurement period lasting from June 15, 2014 through April 14, 2015, to be followed by an administrative period which runs from April 15, 2015 through June 30, 2015.

A school district may use an “initial measurement period” (between 3 and 12 months long) to determine if the new employee has worked at least 30 hours per week on average. This period may start on any day between the employee’s start date and the first day of the next month. If the employee has worked 30 hours or more per week on average, then coverage must be provided to the new employee during a subsequent “initial stability period.” If the employee has worked less than 30 hours per week on average, then coverage does not need to be offered during the subsequent “initial stability period.” For employees determined to be full-time, this stability period cannot be shorter than the initial measurement period; for those determined not to be full-time, it cannot be more than one month longer than the initial measurement period, and cannot extend beyond the remainder of the standard measurement period (plus the administrative period) in which the initial measurement period ends.

An “initial administrative period” of 90 days is also allowed. However, the initial measurement period and the initial administrative period combined may not total more than 13 months (plus a fraction of a month).

CONCLUSION

Unfortunately, the PPACA is highly complex legislation and its terms are not easily implemented for sporadic employees such as per diem substitutes. School districts are encouraged to work with counsel having an understanding of this rather byzantine statute to avoid unintended non-compliance and associated penalties.
TRANSPORTATION, LODGING AND HOSPITALITY

The Statement of Financial Interests must also include the name and address of the source and the amount of any payment for (or reimbursement of) actual expenses for transportation and lodging or hospitality received in connection with public office or employment where such actual expenses for transportation and lodging or hospitality exceed $650 in an aggregate amount per year from a single source. This paragraph shall not apply to expenses reimbursed by a governmental body or to expenses reimbursed by an organization or association of public officials or employees of political subdivisions which the public official or employee serves in an official capacity.

Hospitality – Includes all of the following:
- Meals
- Beverages
- Recreation and entertainment

INCOME

The following sources of income are subject to disclosure on the Statement of Financial Interests:

- The name and address of a direct or indirect source of income, including employers, in the aggregate of $1,300 or more, unless the disclosure would require the divulgence of confidential information protected by statute or existing professional codes of ethics or common law privileges.

- Income from the securities of a particular business equaling or exceeding the reporting threshold, capital gains and dividends equaling or exceeding the reporting threshold shall be listed.

- If the income generated equals or exceeds the reporting threshold, mutual funds and other financial plans for individuals may be reported as a single source if the individual has no authority to buy or sell particular assets in the fund.

- An individual or an individual and a spouse who has an investment portfolio, with a broker, other than a mutual fund, shall list individually the income from each asset to which subsection (b) applies if the asset may be bought and sold by the individual or by the individual and a spouse.

CONFLICTS OF INTEREST

Closely tied to the reporting requirements in the Ethics Act is the prohibition of any activity by a public official that would constitute a conflict of interest.

Conflict of Interest – The use by a public official…of the authority of his office…for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact.

- No person shall offer or give to a public official…anything of monetary value…based on the offeror’s…understanding that the vote, official action or judgment of the public official…would be influenced thereby.

- No public official…shall solicit or accept anything of monetary value…based on any understanding of that public official…that the vote, official action or judgment of the public official …would be influenced thereby.

PRACTICAL ADVICE

- The unconditional receipt of gifts, lodging, transportation and/or hospitality (collectively, “gratuities”) by public officials is not prohibited.

- Whether the receipt of gratuities by a public official constitutes a conflict of interest or improper influence is highly fact-specific.
Hoffman enrolled both children in Young Scholars for the 2013-14 school year, with the belief that the School District would continue providing the same method of transportation. However, faced with budget constraints, the School District informed Hoffman that it would no longer pay for the private van and offered instead to reimburse Hoffman the cost of public transportation for the children or to purchase public bus passes for them. Hoffman rejected the School District’s proposal, believing that it was unsafe and inappropriate for young children to take public transportation. Hoffman testified that in order to get to Young Scholars, her children would have to take a Port Authority bus to Steel Plaza (in downtown Pittsburgh), from there take a trolley, and then walk a mile uphill. Estimating that the one-mile walk to the school would take 42 minutes, Hoffman asserted that the trip would take an hour and a half.

Hoffman resumed driving her children to and from Young Scholars. Subsequently, the School District offered to reimburse Hoffman for her mileage at the standard IRS rate and Hoffman accepted the School District’s reimbursement for several months. After obtaining employment, Hoffman was no longer able to drive her children to and from the charter school. The School District offered either to pay the cost of public transportation for the children or to continue to reimburse Hoffman for the mileage she incurred in transporting them. Hoffman demanded that the School District provide transportation for her children via a van or bus. The School District did not provide busing or van service for any of its regular students attending schools within the district, but it provided a shuttle service for kindergarten students back and forth between its primary center and its elementary schools.

Hoffman filed a suit against the School District requesting an injunction to require the School District to provide bus or van transportation for her children’s attendance at the charter school. The trial court denied the parent’s request.

**PUBLIC TRANSIT PASSES SATISFY THE TRANSPORTATION REQUIREMENTS OF THE CHARTER SCHOOL LAW**


**SUMMARY AND FACTUAL BACKGROUND**

Laura Hoffman and her two children reside in the Steel Valley School District. In the spring of the 2012-13 school year, Hoffman enrolled her 7-year-old child in the Young Scholars Charter School of Western Pennsylvania (Young Scholars), a charter school located within 10 miles of the boundary of the School District. Initially, Hoffman transported her child to Young Scholars; for the last 20 days of the school year the School District provided van transport to the Charter School under a contract with A-1 Transit, at a cost of $130 per day, for a total of $2,600.
appeal, the Commonwealth Court affirmed the lower court’s decision and concluded that the provision of public bus passes to charter school students fulfills the requirements of the Charter School Law for the provision of transportation by the school district of residence.

**DISCUSSION**

Section 1726-A of the Charter School Law states that students who attend a charter school located within their school district of residence or a charter school located outside district boundaries at a distance not exceeding ten miles by the nearest public highway be provided free transportation to and from the charter school by their school district of residence.

Meanwhile, Section 1362 of the School Code, provides that “[t]he free transportation of pupils, as required or authorized by this act, or any other act, may be furnished by using either school conveyances, private conveyances, or electric railways, or other common carriers, when the total distance which any pupil must travel by the public highway to or from school, in addition to such transportation, does not exceed one and one-half (1 ½) miles, and when stations or other proper shelters are provided for the use of such pupils where needed, and when the highway, road, or traffic conditions are not such that walking constitutes a hazard to the safety of the child, as so certified by the Department of Transportation.”

Both the trial court and the Commonwealth Court noted that sections 1362 and 1726-A both relate to free transportation of pupils residing within a school district and should be construed together. Citing the language in section 1362 of the School Code, “free transportation, as required or authorized by this act or any other act…,” the courts concluded that Section 1362 of the School Code is applicable to Section 1726-A of the Charter School Law. The courts then reasoned that, because Section 1362 is applicable to charter school transportation, a school district has the discretion to provide free transportation to charter school students by using any of the four methods listed in that statute, as long as the total distance which any pupil must travel by public highway to or from school, in addition to such transportation method, does not exceed one and one half (1 ½) miles and there is not a safety hazard to the pupil, as so certified by the Department of Transportation. Because Hoffman’s children were not required to traverse a route that was hazardous or necessitated walking more than 1 ½ miles, the court concluded that the School District’s offer of a transit pass fulfilled the statutory mandate.

**PRACTICAL ADVICE**

Pursuant to Section 1362 of the Public School Code, school districts have the discretion to transport its students via school buses or vans, by private carrier (such as reimbursement of mileage to a parent), electric railways or common carriers (such as Port Authority buses). The Hoffman decision recognizes that a school district has the same options when determining the manner of transportation of its resident children enrolled in charter schools. Accordingly, the offer to reimburse parents for the private transportation of their children to charter schools based upon the IRS rate or for the cost of a public bus pass satisfies the requirements of the Charter School Law for the provision of transportation by the school district of residence.
for inappropriate conduct toward a student, without publicly reporting the inappropriate conduct. Confidentiality agreements which conceal this type of conduct are void and unenforceable if entered after the effective date of the Act (December 22, 2014). In addition to prohibiting these types of confidentiality arrangements, the Act requires school districts, and independent contractors, to take the steps listed below. These steps are in addition to the background check requirements which remain in effect:

1. Every applicant for a job involving direct contact with children must complete Section 1 of the Commonwealth of Pennsylvania Sexual Misconduct/Abuse Disclosure Release, created by the Pennsylvania Department of Education. The form may be obtained at the following link:

www.portal.state.pa.us/portal/http://www.portal.state.pa.us:80/portal/server.pt/gateway/PTARGS_0_148494_1464556_0_0_18/Form-DPTT.pdf.

Each applicant must fill out a separate form for each of the following: 1) the applicant’s current employer, 2) any past school employer, and 3) any past employer which employed the applicant in a position involving direct contact with children. The form asks the applicant to disclose any incidents of abuse or sexual misconduct at the applicant’s current and prior jobs. By signing the form, the applicant authorizes employers to disclose incidents of abuse or sexual misconduct, and related investigations or allegations. A school district may not hire an employee who will have direct contact with children if that employee has not completed this form for all eligible current and prior jobs.

2. After receiving completed forms from the applicant, the school district or independent contractor must forward each form to the current and previous employers identified on the forms. The current and former employers must complete Section 2 of the form, stating whether the employers have any knowledge of abuse or sexual misconduct, or related investigations or allegations. Employers must complete and return the forms within 20 days.

3. If an employer responds that the applicant did engage in abuse or sexual misconduct, the school district or independent contractor may further consider the applicant for employment. However, in order to do so, the school district or independent contractor must request additional information and all related records regarding the abuse or sexual misconduct. Former and current employers have 60 days to provide this additional information. The Pennsylvania Department of Education has created the following Sexual Misconduct/Abuse Disclosure Information Request form in order to obtain this additional information:

http://www.portal.state.pa.us/portal/http://www.portal.state.pa.us:80/portal/server.pt/gateway/PTARGS_0_148494_1464555_0_0_18/Form-%20%20DPTT%20-%20employer%20follow%20up.pdf.

4. While the procedures described above are pending, the school district or independent contractor may hire the applicant on a provisional basis for 90 days subject to the following conditions: 1) the applicant must complete the disclosure form for current and former employers, 2) the school district may not provisionally hire an applicant when the district is aware of information that would disqualify the applicant from employment, 3) the applicant must swear that he or she is not disqualified from employment, and 4) during the provisional period, the applicant may not work alone with children and must work in the vicinity of a permanent employee.

5. In addition to the disclosure procedures described above, school districts and independent contractors must search the Department of Education’s Teacher Information Management System (“TIMS”) to verify the applicant’s certification status, and determine whether the Department of Education is aware of any public professional discipline or pending criminal charges against the applicant.

6. Applicants who work as substitute employees must undergo the employment history review described above prior to initial hiring. Approval remains valid as long as the substitute is on the school entity’s approved substitute list. A
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