Tucker Arensberg Attorneys

Understanding and Managing Compliance with the Affordable Care Act for Schools

Articles April 28, 2015

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 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 twelve 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 his or her 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.

For more information, contact Matt Hoffman or any other member of the Municipal & School Group.