Affordable Care Act and Schools

Susan Goldammer
Missouri School Boards’ Association
goldammer@msbanet.org
(573) 445-9920, ext. 355

Your District Should Already Know

◊ If your district is a “large” employer: An average of 50 full-time and FTE employees in a calendar year
◊ If you are a “large” employer, you must provide access to affordable insurance to all of your full-time employees
  – An employee is full-time if he or she is credited with an average of 30 hours of service a week

Your District Should Already Know

◊ Whether each of district’s employees is:
  – Full-time
  – Part-time
  – Variable hour (we don’t know)
◊ When your district needs to be in compliance
  – January 1, 2015
  – Plan year, 2015
  – Plan year, 2016 (Less than 100 employees)
Hours of Service

- Each hour an employee is paid, or entitled to payment for performance of duties
- Each hour an employee is paid, or entitled to payment due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence
- Different than the hours we use for determining overtime under the FLSA!

Hours of Service Does NOT Include

- Bona fide volunteers whose only compensation with the district is in the form of
  a) Reimbursement for or a reasonable allowance for expenses incurred; or
  b) Reasonable benefits, and nominal fees, customarily paid by other schools in connection with the performance of service.
- Federal or state work-study programs.

Calculating Hours of Service

- Non-exempt (hourly): Use their timecards
- Exempt:
  a) Use a timecard;
  b) Assume* 8 hours every day worked; or
  c) Assume* 40 hours a week every week worked.
- * Assumption cannot be made if it would substantially understate the actual hours worked.
Penalty A (The Big One)

- Also known as 4980H(a)
- Does not apply as long as you offer qualifying coverage to all but 5% of full-time employees or, if greater, 5 employees.
- \((\text{ALL full-time employees} - 30) \times \$2000/12 \) \((\$167)\) = monthly penalty payment for each month
- The $2,000 will be adjusted for inflation

Penalty A Transition Relief

- For the 2015 plan year (which could go into 2016), not eligible for penalty A if you offer coverage to at least 70 percent of full-time employees.
  - Most districts already do this!
- In addition, when calculating penalty, subtract 80 from full-time employees, instead of 30
- Still could be liable under Penalty B

Penalty B (Less Expensive)

- Can be liable for if you do not provide insurance to a full-time employee or if what you provided does not provide minimum value, minimum essential coverage, or is too expensive.
- Multiply the number of full-time district employees who receive a premium tax credit or cost-sharing reduction by $250 \((1/12 \text{ of } \$3,000)\).
- This penalty amount will be adjusted for inflation
All Employees Fall Into One of These

1. Full-time employee
2. Part-time employee
3. Variable hour employee

Full-Time Employee
❖ Works an average of 30 hours a week or 130 hours a month or is reasonably expected to do so.
❖ Factors to consider for “reasonable” (not limited to):
  a) Replacing a full-time employee?
  b) The extent the hours of service have varied recently.
  c) How the job was advertised or communicated to the employee.

Part-Time Employee
❖ On average works less than 30 hours a week or 130 hours a month or is reasonably expected to work that amount.
❖ Not required to offer coverage – so be sure!
❖ Look at all hours of service, including extra duties.
❖ Still count hours in case you must defend to IRS!
Variable Hour Employee

- You are not sure whether this person will work an average of 30 hours of service because their hours vary dramatically through the year.
- 2 options to use to determine if full-time:
  1. Monthly measurement method
  2. Look-back measurement method

Monthly Measurement Method

- Determines employee’s full-time status by counting hours of service every month
- Also used to determine “large” employer
- Pro: You do not exclude employment break periods (like summer) or unpaid leave (like FMLA leave)
- Con: Requires monthly monitoring and once employee qualifies, month is over!

Look-Back Measurement Period

- The district sets a measurement period to determine if the employee works an average of 30 hours a week.
  - At least 3 months, but not more than 12 months
- Can separate with an administrative period.
  - No more than 90 days
- If they do, the district provides the insurance for a stability period.
  - At least 6 months, but no shorter than the measurement period
Look-Back Measurement Period Example

If your district has a plan year of July 1 – June 30 you might consider the following:
- Measurement period: May 1 – April 30
- Administrative period: May 1 – June 30
- Stability period: July 1 – June 30

For Look-Back Method
- Exclude "special unpaid leave":
  A) FMLA Leave;
  B) Military leave that is protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)
  C) Unpaid leave for jury duty
- Alternative: Credit employee with average hours during this time.
  - No limit on credit

For Look-Back Method
- Exclude any "employment break period" where the employee is not expected to work for 4 consecutive weeks.
  - Summer break
  - Period in-between substitute assignments
- Alternative: Credit employee with average hours
- Cannot exclude or credit more than 501 hours
- Anti-abuse rule: Cannot make employee work solely to avoid employment break
Measurement Method Madness

- May: 40 hours for 1 week, 0 hours 3 weeks
- June and July: 0 hours, 8 weeks
- August: 2 weeks 0 hours, 40 hours for 2 weeks.
- September: Full-time for 4 weeks (160 hours)
- October: Full-time for 4 weeks (160 hours)
- November: Full-time for 4 weeks (160 hours)
- December and January: 0 hours, 8 weeks
- February: Full-time for 4 weeks (160 hours)
- March: Full-time for 4 weeks (160 hours)
- April: Full-time for 4 weeks (160 hours)

Measurement Method Madness

- Monthly Measurement: “Full-time” for September, October, November, February, March, April
- Look-Back Measurement (credit)
  - 1341 (840 actual hours + 501) ÷ 52 weeks = 25.7 hours a week = Not “full-time”
  - 1341 ÷ 12 months = 111.75 per month = not “full-time”

Measurement Method Madness

- District provides for and pays for qualifying health insurance for 9-month support staff. However, over the summer the employee must pay for the full premiums.
- Monthly Measurement: OK
- Look-Back Measurement: Violates the law
  - Full-time over summer and not affordable
Measurement Method Madness

- District has policy that once a full-time employee has used all paid sick leave, used FMLA, and is being docked that the employee must pay premiums for insurance.
  - Monthly Measurement: OK
  - Look-Back Measurement: Could violate law if employee has worked long enough to be in stability period.

Measurement Method Madness

- The district provides qualifying insurance to all but 4% of its full-time employees, most of whom are 9-month employees.
  - Monthly Measurement: Owe penalties for 9 months
  - Look-back measurement: Owe penalties for 12 months

Monthly and/or Look-Back

- May use different methods for:
  a) Collectively bargained employees vs. not collectively bargaining
  b) Each separate bargaining unit
  c) Salaried employees vs. hourly
  - May change every calendar year
Do Your Full-Time Employees Pay for Individual Coverage?
- Cannot be more than 9.5% of “household wages”
- Safe Harbor: Pays 9.5% or less of:
  a) W-2 wages (Box 1); or
  b) Rate of pay: 130 hours x lowest hourly rate of pay in the month; or
  c) Federal poverty line for individual ($11,670)

Review Administrator Contracts
- ACA prohibits districts from discriminating in favor of highly compensated employees
- A highly compensated employee is 1) one of the five highest paid employees in the district or 2) among the highest paid 25 percent of all employees, as defined in the law.
  - Excludes persons who have not completed 3 years of service, employees under 25, part-time or seasonal employees and employees under a CBA

Review Administrator Contracts
- Many districts pay for not individual but also family coverage for superintendents
- Always been a violation for self-insured
- Now will likely be a violation for other plans unless considered “grandfathered” under the ACA
- IRS is not enforcing YET until they issue guidance
How Can We Help?

- School Personnel Information Database
  - www.msbanet.org
  - Information on insurance premiums, companies, amounts employees pay, etc.
- Articles
  - Affordable Care Act: What Do We Do With Those Substitutes?
  - School District Obligations Under the New Federal Health Care Law

Questions?