



**WEDNESDAY, MAY 18, 2011**

**HEALTH CARE REFORM UPDATE**

**COMMENTS SOUGHT ON HEALTH CARE REFORM'S SHARED RESPONSIBILITY PROVISIONS**

The Internal Revenue Service (IRS) recently issued [Notice 2011-36](#) requesting public comments to “initiate and inform the process of developing regulatory guidance regarding the shared employer responsibility provisions”. These provisions, which are part of the Internal Revenue Code created by the Patient Protection and Affordable Care Act (PPACA), become effective beginning 2014. They refer to certain standards that affect the way employers offer health coverage to their full-time employees.

As part of the process of putting these provisions into effect, the Department of the Treasury, the Department of Labor and the Department of Health and Human Services—or the “three Departments”—are developing regulations and other administrative guidance that will assist stakeholders. This recent Notice is designed to support the three Departments and the IRS in getting sufficient input from those affected—that includes an understanding of how best to implement these shared responsibility (or “pay or play”) provisions, providing employers with the flexibility they seek and minimizing burdens.

This notice does not constitute guidance. It describes potential approaches, particularly the issue of who is a full-time employee, and invites comments. Comments are also welcome on the interpretation of the 90-day limitation on waiting periods for group health plans and automatic enrollment. You can read the highlights of the notice below.

We hope you find this information helpful and invite you to review past issues of our *Health Care Reform Update* at <http://www.trion.com/healthreform>. As your partner, we are committed to keeping you apprised of developments regarding the PPACA rulemaking process and helping you understand and comply with the guidelines. We encourage you to continue sending your questions and comments to us at [health.reform@trion.com](mailto:health.reform@trion.com) or by calling 610.945.1198.

**Highlights of IRS Notice 2011-36**

**Definition of Terms**

Comments are invited regarding the following definitions:

- Of the terms employer, employee, hours of service, and on the methods for calculating hours of service for both hourly and non-hourly employees.
- Of whether an employer is an applicable large employer
- Of full-time employees, full-time employee equivalents, seasonal employees and the method of calculating the number of full-time employees

**Determination of “Applicable Employers”**

The PPACA does not specifically mandate employers to offer acceptable health insurance to their employees. However, applicable large employers with at least 50 full-time equivalent employees (FTEs) will face penalties—or an “assessable payment”—beginning in 2014 if one or more of their full-time employees certifies to enrolling in health insurance through a State Exchange that allows for a premium tax credit, a cost-sharing reduction of the PPACA, or an advance payment of such credit or reduction.

For purposes of determining whether an employer is an applicable large employer, FTEs, (which are determined based on the hours of service of employees who are not full-time), are taken into account. The regulations provide that a full-time employee with respect to any month is someone who is employed an average of at least 30 hours of service per week.

**Methods of Determination of Full-Time Employee**

An applicable large employer’s potential liability is determined by reference to both:

- The number of full-time employees employed for a given month
- The number of full-time employees who are able to receive an applicable premium tax credit or reduction in cost-sharing.

Determining full-time employee status on a monthly basis may cause practical difficulties for employers, employees, and the State Exchanges—especially in those cases where employees hours and schedules vary (e.g., they're different each month or are only employed for a limited time).

To make it easier for employees and employers, and to give plan sponsors flexible and workable options, the Treasury and the IRS are considering alternatives to this month-by-month determination of full-time employee status for purposes of calculating an applicable large employer's potential assessable payment.

### **90-Day Waiting Period Limitation**

The three Departments request comments on the following:

- The 90-day limitation on any waiting period, including which employees are subject to the limitation, when a waiting period may apply consistent with the limitation, and how the 90-day limitation should be calculated.
- The application of the 90-day waiting period to common employer eligibility and enrollment practices and the interaction between the interpretation of the employer responsibility provisions and the calculation of the maximum permissible waiting period.

The submission deadline is June 17, 2011.

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