

Will Reducing Part-Time Hours Avoid the Large Employer Mandate?

SUMMARY

There has been much discussion about employers reducing hours for part-time workers to less than 30 hours per week. The argument is this will exempt employers from penalties under the ACA because penalties apply only to “full-time” workers not offered health insurance.

However, a careful reading of the Act suggests that only for purposes of assessable employer penalties, that “full-time” definition is overridden. What does apply is an aggregate 40 hour week. For instance, two part-time employees working 20 hours would equate to one full time employee.

Depending on the aggregate number of hours of part-time “non-seasonal” employees, and on whether or not a company offers health insurance to any of its employees, a company can be penalized between \$2,000 to \$3,000 per year per uninsured employee if the number of full-time workers PLUS full-time equivalent workers is 50 or more. In conclusion, switching from full-time to part-time workers of equal total hours worked may not avoid the ACA employer mandate.

REFERENCE

Following this discussion is an excerpt from the Affordable Care Act regarding employer shared responsibility. The full path to this excerpt is “**TITLE I, Subtitle F, Part II, Section 1513**”. Written in typical government legalese, it is difficult for lay persons to understand. For purposes of reference, each line in the excerpt is numbered, and key discussion points refer to the Act by those line numbers in **[bold brackets]**.

DISCUSSION

The Affordable Care Act has been shrouded in controversy since well before it even was signed into law in March, 2010. Since then, little has improved. The House of Representatives has passed 38 (and counting) laws to repeal the Act. With the Supreme Court having ruled, a continuing emphasis has been made to circumvent provisions considered onerous.

One of the ways getting media attention is companies cutting back on the hours of part-time employees to insure that they work less than 30 hours per week. 30 hours is the point at which an employee is defined as full-time **[lines 78-79]** and counts toward the large employer mandate.

Small employers remain exempt from penalties as regards offering health insurance. Large employers, though they have a one year penalty delay, must offer health insurance. An important definition in ACA is that of “large employer.” The ACA does not simply define any large employer, but rather defines an “**applicable** large employer” **[lines 41-44]** for which the ACA mandate provisions specifically apply.

For instance, an employer would NOT be considered large if its workforce was [a] less than 50 full-time employees for at least 8 months, and [b] not more than 4 months per year in which [c] seasonal employees cause employment to rise

above 50 **[lines 44-50]**. Agricultural workers bringing in the harvest and extra retail clerks during Christmas are examples of seasonal workers that would not trigger employer liability.

The issue is over smaller companies that have just over 50 full-time employees. Should they reduce hours of some employees to have less than 50 workers? Apparently, some companies are doing so to avoid the ACA mandate. But that may not work if they employ many part-time workers.

Two examples serve to test this issue. Call these companies “ACME1” and “ACME2”. Each has 35 full-time workers (30+ hours per week) and 60 part-time workers at 20 hours per week each. They differ only in that ACME1 does not offer health benefits for anyone **[lines 9-11]** while ACME2 offers benefits to its full-time workers **[lines 22-24]**.

Under ordinary worker definition, neither ACME is a “large employer”. But ACA uses a different definition to determine “**applicable** large employers” that are subject to the liabilities and penalties of ACA. For “applicable large employers”, the definition of full-time employees **INCLUDES** the aggregate number of hours of part time employees per month divided by 120, **[lines 63-68]** which is the threshold 30 hours / week.

For each ACME, the aggregate hours/month of 60 part-time workers is 4,800 or 40 full-time equivalents each. Adding 40 full-time equivalents to each ACME workforce results in 75 “full-time” workers. That is above ACA’s 50 worker cutoff and each would be defined as an “applicable large employer”.

Each of these employers is then liable for an assessment under the ACA, but their penalties are different. Both the penalty rate and the employee penalty count are different.

The liability rate for ACME1 that **did not offer** health insurance **[lines 8-11]** is \$2,000/year **[lines 38-39]** applied to ALL its employees **[lines 16-18]**. The liability rate for ACME2 that **did offer** insurance to full-time workers **[lines 19-24]** is \$3,000/year **[lines 29-31]** but applicable only to the full-time equivalents of its part-time employees.

The ACA does allow an exemption of 30 employees when determining the assessment liability **[lines 56-61]**. ACME1’s employee count would be 45 “full-time” employees (35 actual plus 40 full-time equivalents less 30 exemptions). Applied for a full year, the penalty is **\$90,000** (45 * \$2,000).

The 30 employee exemption applicable to ACME2 has a different effect. The 35 full-time employees are excluded. That leaves the 30 count exemption to apply to the full-time “**equivalents**”. Just like ACME1, the aggregate count of these full-time equivalents is 40. Exempting 30 of these 40 employees leaves 10 liable to penalty. Applied for a full year, the penalty is **\$30,000** (10 * \$3,000).

In conclusion, switching from full-time to part-time workers of equal total hours worked may not avoid the employer’s responsibility for offering its workers health insurance.

Excerpts from Employer Shared Responsibility

Excerpts from “TITLE I, Subtitle F, Part II” of the PATIENT PROTECTION AND AFFORDABLE CARE ACT SEC. 1513. SHARED RESPONSIBILITY FOR EMPLOYERS

(a) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“SEC. 4980H. SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE.

“(a) LARGE EMPLOYERS NOT OFFERING HEALTH COVERAGE.— If—

“(1) any applicable large employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

“(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

“(b) LARGE EMPLOYERS OFFERING COVERAGE WITH EMPLOYEES WHO QUALIFY FOR PREMIUM TAX CREDITS OR COST-SHARING REDUCTIONS.—

“(1) IN GENERAL.—If—

“(A) an applicable large employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

“(B) 1 or more full-time employees of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subparagraph (B) for such month and an amount equal to 1/12 of \$3,000.

“(2) OVERALL LIMITATION.—The aggregate amount of tax determined under paragraph (1) with respect to all employees of an applicable large employer for any month shall not exceed the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

“(3) SPECIAL RULES FOR EMPLOYERS PROVIDING ... VOUCHERS *{detail skipped}*

“(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) APPLICABLE PAYMENT AMOUNT.—The term ‘applicable payment amount’ means, with respect to any month, 1/12 of \$2,000.

“(2) APPLICABLE LARGE EMPLOYER.—

Excerpts from Employer Shared Responsibility

41 “(A) IN GENERAL.—The term ‘applicable large employer’ means, with respect to a calendar
42 year, an employer who employed an average of at least 50 full-time employees on business days
43 during the preceding calendar year.

44 “(B) EXEMPTION FOR CERTAIN EMPLOYERS.—

45 “(i) IN GENERAL.—An employer shall not be considered to employ more than 50 full-time
46 employees if—

47 “(I) the employer’s workforce exceeds 50 full-time employees for 120 days or fewer
48 during the calendar year, and

49 “(II) the employees in excess of 50 employed during such 120-day period were seasonal
50 workers.

51 “(ii) DEFINITION OF SEASONAL WORKERS.—The term ‘seasonal worker’ means a
52 worker who performs labor or services on a seasonal basis as defined by the Secretary of
53 Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal
54 Regulations and retail workers employed exclusively during holiday seasons.

55 “(C) RULES FOR DETERMINING EMPLOYER SIZE *{detail skipped}*

56 “(D) APPLICATION OF EMPLOYER SIZE TO ASSESSABLE PENALTIES.—

57 “(i) IN GENERAL.—The number of individuals employed by an applicable large employer
58 as full-time employees during any month shall be reduced by 30 solely for purposes of
59 calculating—

60 “(I) the assessable payment under subsection (a), or

61 “(II) the overall limitation under subsection (b)(2).

62 “(ii) AGGREGATION.— *{details of computation skipped}*

63 “(E) FULL-TIME EQUIVALENTS TREATED AS FULL-TIME EMPLOYEES.

64 Solely for purposes of determining whether an employer is an applicable large employer under
65 this paragraph, an employer shall, in addition to the number of full-time employees for any month
66 otherwise determined, include for such month a number of full-time employees determined by
67 dividing the aggregate number of hours of service of employees who are not full-time employees
68 for the month by 120.

69 “(3) APPLICABLE PREMIUM TAX CREDIT AND COST-SHARING REDUCTION.—The term
70 ‘applicable premium tax credit and cost-sharing reduction’ means—

71 “(A) any premium tax credit allowed under section 36B,

72 “(B) any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care
73 Act, and

74 “(C) any advance payment of such credit or reduction under section 1412 of such Act.

75 “(4) FULL-TIME EMPLOYEE.—

76 “(A) IN GENERAL.—The term ‘full-time employee’ means, with respect to any month, an
77 employee who is employed on average at least 30 hours of service per week.