The concepts of "hours of service" and "full time" loom large in the Affordable Care Act's "employer shared responsibility" mandate (also known as the "employer mandate" or "pay or play mandate"). An employee who works 30 "hours of service" per week is considered to be "full time" under the mandate. Whether an employer is subject to the employer mandate at all depends on the number of its "full time" and "full time equivalent" employees; and whether the employer might be liable for a penalty depends on whether it makes an ACA-compliant offer of coverage to each of its "full time" employees.

But what happens when "hours of service" are not easily captured as is the case with adjunct faculty members?

Adjunct faculty members are compensated not based on tracked hours worked, but on the number of classes or credit hours taught. Must an employer count non-classroom hours (office hours, preparation time, faculty meetings and so forth) towards an adjunct’s "hours of service," and if so, what non-classroom hours must be counted? In the IRS’s proposed employer shared responsibility regulations, the IRS recognized this conundrum but did not provide a definitive solution. Rather, the IRS stated that, until further guidance was issued, employers were to use a “reasonable method for crediting hours of service” and that any method that took into account “only classroom and or other instruction time and not other hours that are necessary to perform the employee’s duties, such as class preparation time” would not be considered a reasonable method.

Following the issuance of the proposed regulations, a period of confusion and speculation ensued. What, exactly, would the IRS consider to be a "reasonable method" of counting adjuncts' hours? Adjuncts advocated that time spent on a wide range of activities should be included in the hours count, including teaching time, class preparation, grading, orientation, departmental and other college meetings, keeping current in the field (e.g. conference attendance), student meetings and responding to student inquiries, mentoring students/advising clubs, and participating in accreditation reviews. Schools proposed that an adjunct could be considered full-time if his or her course load met or exceeded 75% of
the course load for a full-time, non-tenure-track faculty member in his or her department. A faculty member could also be credited with additional hours of service in ratio to his or her classroom time (for example, one additional hour of service for each hour in the classroom) although opinions on the appropriate ratio varied widely.

The IRS continues to require in its final employer shared responsibility regulations that a “reasonable method” be used for crediting adjuncts’ hours pending additional guidance. However, the IRS also provides that, until further guidance is issued, a method will be “reasonable” if it credits an adjunct with (1) 2-1/4 hours of service per week for each hour of classroom time; and (2) one hour of service per week for each additional hour outside the classroom the faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings). The IRS also notes that employers are free to credit more hours of service than would result under the safe harbor calculation. (Notably, the IRS has not indicated whether a methodology that credits fewer hours than the safe harbor could be reasonable; accordingly, any such methodology would be ill-advised.)

Employers of adjunct faculty are urged to discuss this new ACA guidance with their legal advisors to determine whether they will apply the new safe harbor with respect to adjuncts, and inform their internal and external payroll managers of the decision as soon as possible so that administrative processes may be implemented before employer shared responsibility mandate takes effect.

Authors