

# HEALTH REFORM IMPACT

## What you need to know NOW

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

### Treatment of Part-Time Employees Under Health Reform

April 15, 2010

Following enactment of the recent health reform legislation, many employers are concerned about how the law will affect health coverage for their part-time employees. Employers are particularly interested in whether part-time workers may be excluded from consideration under the new law or, alternatively, may be provided lesser health benefits than those provided to full-time employees.

It is important to note that the reform legislation does not impose any new requirement to cover part-time employees. To the extent part-time employees are excluded from coverage under an employer-sponsored health plan, they may continue to be excluded. However, if health coverage is made available to part-time employees, the reform legislation does not distinguish between part-time and full-time employees for purposes of its expanded coverage requirements. Thus, most of the substantive provisions of the law -- including those limiting pre-existing condition exclusions and lifetime/annual dollar benefit maximums and extending coverage of adult child dependents to age 26 -- apply equally to part-time and full-time employees, assuming part-time employees are eligible for participation in the employer-sponsored health plan.

The reform law does distinguish between part-time and full-time employees for one important purpose: the class of employees to whom coverage must be offered under the new "play-or-pay" mandate. Effective January 1, 2014, employers having at least 50 "full-time" employees in the preceding calendar year must offer full-time employees and their dependents the opportunity to enroll in employer-sponsored coverage. Full-time status is determined on a monthly basis and means employment averaging 30 or more hours per week during the month.<sup>1</sup>

Although the mandate to provide employer coverage only applies with respect to full-time employees, part-time employees' hours of service are counted proportionally for purposes of determining whether the employer has at least 50 "full-time" employees and is thereby subject to the mandate. Specifically, part-time employees' aggregate hours of service are divided by 120. Thus, if an employer had six part-time employees working 20 hours/week, the part-time employees would be counted as four full-time

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<sup>1</sup> If the employer does not offer the required coverage during a month in which it had full-time employees, a fine applies. The fine equals \$166 multiplied by the number of full-time employees on the employer's payroll during the month (excluding the first 30 employees). If the employer offers coverage in any month in which a full-time employee is receiving subsidized coverage via one of the new health "exchanges" established in the reform law, the fine increases to \$250 per month multiplied by the number of full-time employees receiving the subsidized exchange coverage. Whether a full-time employee is eligible to purchase subsidized coverage will depend on several factors, including the individual's income and the relative affordability of the employer-provided coverage, as determined under regulations to be issued by the Secretary of Health and Human Services (HHS).

employees (4 weeks x 20 hours/week x 6 employees = 480 hours; 480/120 = 4 full-time employees).<sup>2</sup> Counting part-time employees for this limited purpose does not cause them to become eligible for participation in the employer plan, nor does it affect the number of “full-time” employees for purposes of calculating any fines.

An additional distinction between part-time and full-time employees arises with regard to the reform law’s automatic enrollment provision. If an employer has more than 200 full-time employees and maintains one or more group health plans, the employer must automatically enroll new full-time employees in one of those plans (subject to permissible plan waiting periods). By contrast, part-time employees are not eligible for auto-enrollment. What constitutes full-time employment for this purpose is left to employers to determine in good faith, but, pending any future regulations issued under the Fair Labor Standards Act (FLSA), the 30 hour standard need not be used. The reform law does not identify an effective date for the auto-enrollment requirement, but compliance is effectively delayed until HHS issues implementing regulations.

A final provision in the reform law that has received some attention is the extension of the Code Section 105 “non-discrimination” rules to insured arrangements. For the first time, fully-insured plans (other than grandfathered plans) will be subject to these requirements. Self-insured plans (whether or not grandfathered) have been and continue to be subject to the non-discrimination rules. Code Section 105 generally requires a plan to benefit a significant portion of all employees (between 56 percent and 70 percent, depending on several factors) in order for benefits to be excludable from the taxable income of highly compensated employees. If an employer’s plan excludes part-time employees, and part-time employees constitute a significant percentage of the employer’s workforce, discrimination under Code Section 105 could occur. Part-time employees can often be disregarded when applying these tests, but employers should consult qualified benefits counsel and the issuer of the specific policy to determine the ultimate effect of the non-discrimination rules on their insured plans.

Treatment of part-time employees under the new reform law deserves special attention from employers. However, the rules are fairly straightforward and accessible and, in most cases, should not require employers to revamp their existing benefit structures.

If you have questions regarding the information in this alert, or with respect to other provisions of the health reform legislation as it relates to your employee benefits plans, please contact any of the attorneys in our Employee Benefits Practice Group listed below.

Also, please [click here](#) to visit our special web page for Health Reform IMPACT.

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<sup>2</sup> The Secretary of the Treasury, in consultation with the Secretary of Labor, will issue regulations defining “hours of service” for purposes of these calculations, including rules for determining hours of service of part-time employees not compensated on an hourly basis.