

Source: Pension & Benefits Daily: News Archive > 2012 > November > 11/29/2012 > Health Care & Benefits > Plan Administration: Employers Should Establish Procedures Now For Identifying Part Timers, Practitioner Says

### **Plan Administration**

## **Employers Should Establish Procedures Now For Identifying Part Timers, Practitioner Says**

*By Florence Olsen*

Employers should begin identifying their part-time employees now, well in advance of a Jan. 1, 2014, deadline, after which employers that hire seasonal or variable-hour employees must pay an excise tax penalty or offer those employees health insurance if they qualify as full-time employees under the Affordable Care Act, an attorney said during a Nov. 27 teleconference.

Between now and the end of the 2012, employers should be meeting with their attorneys or advisers to establish procedures for answering the important question of whether those employees are full time or part time, said attorney Henry Talavera, a shareholder at Polsinelli Shughart in Dallas.

"It's really critical for advisers and for clients to start tackling these issues," Talavera said during a teleconference sponsored by the American Bar Association's Joint Committee on Employee Benefits.

Talavera said he interprets guidance from the Internal Revenue Service and Department of Labor to mean that a "look-back" period of up to 12 months is to be used only for determining whether seasonal or variable-hour employees qualify as "full time" under ACA's definition of 30 hours as a full-time workweek.

### **Plan Amendments**

An employer should consider adopting a plan amendment that documents whatever look-back period the employer selects for determining the full-time or part-time status of seasonal and variable-hour employees, Talavera said during the teleconference titled Countdown to Year End: What You Need to Do to Keep Your Plans in Compliance.

IRS has not recommended adopting an amendment for that purpose, but as a precaution, it might be advisable to do so by 2014, Talavera said. From that date forward, employers will be exposed for the first time to ACA's excise tax penalties and potential lawsuits filed by employees who expect health insurance coverage, he said.

Variable-hour employees most likely would be retail, restaurant, and temporary employees, Talavera said. Seasonal employees might be workers hired for a specific period during a year, probably not more than six months, he said.

Based on examples provided in the guidance, an employer would be "very aggressive" if it tried to classify as "seasonal" any employee who worked for the employer eight or nine months of the year, Talavera said.

Guidance on determining full-time and part-time employees under ACA is available in IRS notices 2012-58 and 2010-59 (170 PBD, 9/4/12; 39 BPR 1676, 9/4/12) and in DOL technical releases 2012-01 (27 PBD, 2/10/12; 39 BPR 299, 2/14/12) and 2012-02 (170 PBD, 9/4/12; 39 BPR 1676, 9/4/12).

### **BNA Snapshot**

#### **Report on ABA Teleconference on Year-End Plan Compliance**

**Key Topic:** Employers should consider amending their health plans by 2014 to reflect procedures for identifying part-time workers under the Affordable Care Act.

**Key Takeaway:** An amendment could afford some protection for employers exposed to excise tax penalties and potential lawsuits filed by employees who expect health insurance coverage.

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