

# **System Implementation of the Affordable Care Act**

March 2014

The System Implementation of the Affordable Care Act (“ACA”) attempts to address the collective issues identified throughout the various publications, federal guidance, and TBR committee meetings and conversations to date. As further federal guidance is provided and best practices become available, TBR will reassess its procedures and adapt them as necessary.

## **I. Short Description of Coverage:**

Effective January 2015, the Affordable Care Act (ACA) requires employers to offer affordable health insurance to employees who work an average of 30 hours per week over a defined measurement period. This includes temporary hourly and adjunct employees.

The insurance coverage must be effective within 90 days of the end of the measurement period and become effective within 13 months of the eligible employee’s start date. Once an eligible employee accepts coverage, the insurance must be in place for a stability period that is at least as long as the measurement period, provided the employee continues to be employed.

Please Note: The State Benefits Administration requirement of receiving the required paperwork within 31 days of determining eligibility is still in effect. In most cases the total administrative period should be within 60 days. Under the ACA, the administrative period may be up to a maximum of 90 days. This is the total amount of time allowed to calculate eligibility, notify the employee, receive necessary waiver or choice of employee coverage options, and process the coverage. The administrative period begins the day after the measurement period ends and ends immediately before the effective date and subsequent stability period. The coverage must be effective by the 91<sup>st</sup> day.

## **II. Implementation:**

### **A. Employees who are expected to work an average of 30 hours per week or more.**

If an employee is reasonably expected to work an average of 30 hours per week or more at the time of hire, then the employee must be provided coverage upon hire. If the employee elects coverage, the coverage will be effective the first of the month following hire, just like other regular benefited employees.

### **B. Variable Hour Employees.**

If the number of hours an employee will work cannot be determined at the time of hire, then the employee is considered a “variable hour employee”. Under these circumstances the employer may calculate the hours worked over an established measurement period to determine eligibility. The effective date of coverage for eligible employees cannot exceed 13 months from the date of hire.

1. Initial Measurement Period.

To determine insurance coverage eligibility, use a 10-month measurement (“look back”) period from January 1, 2014 – October 31, 2014 for the initial implementation year. If a variable hour employee has worked the requisite number of hours during that period, s/he is eligible for coverage. If the variable hour employee elects coverage, it must become effective on January 1, 2015.

2. On-going Measurement Period.

After the initial identification and enrollment for January 1, 2015 coverage, institutions must use a rolling 10 month measurement period (“on-going measurement period”) that corresponds to the school’s payroll periods to determine eligibility for coverage. If a variable hour employee is eligible and elects coverage, the coverage must be effective no later than 90 days after the end of the on-going measurement period, and within 13 months of the employee’s hire date. Institutions must identify eligible employees monthly at the time payroll is finalized. Employees will need to be notified by the institution and given the option to enroll. See attached chart.

3. Special considerations for adjunct faculty and student workers.

a. Adjunct Faculty

The Internal Revenue Service (IRS) published a rule in February 2014 providing more definitive guidance related to employers’ obligations to calculate eligibility for adjunct faculty under the Affordable Care Act.

The IRS rule provides the following as a reasonable method of calculation for determining hours worked for adjunct faculty: credit 2.25 hours of service (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers) per week for each hour of teaching or classroom time, as well as adding an hour of service per week for each additional hour outside of the classroom the adjunct faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings).\*

Thus, according to the rule, a college or university who has an adjunct faculty member who teaches 12 credits would calculate their hours worked as 27 hours a week (12 x 2.25). If the institution required the adjunct to hold office hours for 2 hours per week, in addition to the teaching responsibilities, it would need to credit that adjunct with 29 hours (27 for the 12 credits and 2 for the office hours). If the institution also required an adjunct to attend a one-hour faculty meeting each week, it would need to credit that adjunct with 30 hours (27 for the 12 credits, 2 for the office hours and 1 for the faculty meeting). In other words, institutions must carefully assess all *required* work outside of the classroom.\*\*

The Tennessee Board of Regents (TBR) schools are encouraged to follow the IRS rule. Although the IRS may issue further guidance at a later date, the IRS rule above will be applicable at least through the end of 2015.

TBR schools are advised to carefully review existing institution policies and practices related to adjunct faculty responsibilities. Required activities outside of the classroom will need to be included in the total hours worked to determine eligibility for healthcare coverage under the ACA.

Source:

\*Federal Register/Vol. 79, No. 29/Wednesday, February 12, 2014/Rules and Regulations

\*\*CUPA-HR – Affordable Care Act News, 2/11/14

#### b. Student Employees

While most student employees will not meet the averaged 30 hours a week threshold for eligibility, there may be some who do meet the eligibility requirements. Under the Fair Labor Standards Act (FLSA), students who are employed as part of their overall educational programs are not considered employees. This requires reviewing the nature of the responsibilities. As a general rule, resident advisors (RAs) in the dormitories are an example of students who are not considered an employee for the purpose of the FLSA. Additionally, students participating in the Work-Study program who are enrolled at least half time would be excluded from eligibility.

Please note: The exclusion is only for the hours worked on the positions considered to be part of students' overall educational program. Work performed in any other positions may need to be calculated to determine eligibility. A student who is otherwise eligible for coverage under the ACA who is covered under a parent's insurance plan or the student health plan must still be offered insurance under the ACA. They may choose to waive the coverage offered as an employee.

### **III. Gaps in Hours Actually Worked During Any Measurement Period:**

#### A. Separation from employment.

If the employee's employment has ended but is later rehired, the employee begins a new measurement period.

#### B. Paid leave during any measurement period.

In determining eligibility, all hours of work, as well as each hour an employee is paid even if no work is performed, such as annual leave, sick leave, jury duty, etc. is used

in the calculation to determine whether the employee is eligible for coverage under the ACA.

C. Unpaid leave during any measurement period.

1. Academic year appointments or similar arrangements

An Employment Break Period (EBP) of at least 4 consecutive weeks is excluded in determining eligibility. To determine the average hours of service per week for the employee during the measurement period, the employer excludes the EBP and uses that average as the average for the entire measurement period. Alternatively, the employer may treat employees as credited with hours of service for EBPs at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not an EBP.

2. Worker's Comp and FMLA/TFLA

Worker's comp and Unpaid Family Medical Leave (FML) are considered "Special Unpaid Leave." Aon Hewitt, the State of Tennessee's Health Insurance consultant provided two approved methods for calculating hours of service under these situations, as follows:

- a. Determine the average hours of service per week for the employee during the measurement period excluding the special unpaid leave and use that average as the average for the entire measurement period, **or**
- b. Treat employees as credited with hours of service for special unpaid leave at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not an special unpaid leave.

Check with your legal counsel for guidance.

**IV. Stability Period:**

The stability period is the period of time the insurance coverage is in effect, once determined eligible by the employer and elected by the employee. The stability period must be at least as long as the measurement period, or 10 months. As a result, once an employee is determined eligible and insurance is elected by the employee, employees will remain eligible until the employing institutions' Office of Human Resources is notified there has been a significant change in the employee's working hours that is expected to be in duration at least as long as the measurement period. Example: Reduction in FTE from 80% time to 50% time, or adjunct only teaching one semester. In circumstances where the employee no longer meets the eligibility criteria, once the stability period has been met, the institution may notify

the employee coverage will end as of the end of the stability period. Institutions must be consistent in application of this procedure.

In all cases, the employee must be actively employed to be eligible for continuation of coverage.

**V. Coverage Offered:**

Health insurance must be offered to eligible employees with coverage effective January 1, 2015. All insurance options will be offered to eligible employees, including dependent coverage. Other voluntary insurance products will also be available to the eligible employees and their dependents.

Regardless of whether the eligible employee elects health insurance coverage, the employee is eligible for basic life insurance through the state. For entry into Edison: Enter the employee as fulltime in Edison. If the employee is a variable hour employee without a set salary, multiply the hourly wage x 30 hours per week x 52 weeks per year to annualize the rate.

**VI. Affordability Requirement:**

The ACA requires the cost of single coverage be less than 9.5% of the employee's gross wages, as reflected in the employee's W-2. Each school must review and monitor the wages of eligible employees and make adjustments as necessary to be in compliance. This affordability requirement includes adjuncts.

**VII. Notice of Health Exchange to Employees:**

A. Current Employees.

The ACA required employers to notify current employees with notice of coverage options through state insurance exchanges by October 1, 2013.

B. New Employees.

New employees must be notified at the time of hire, beginning October 1, 2013. A notice is considered to have been provided at the time of hire if the notice is provided within 14 days of an employee's start date.

Notices may be mailed or emailed. Separate notices are not required for dependents. According to the Employee Benefits Security Administration, a division of the Department of Labor, the notice must provide the following elements:

- Informing the employee of the existence of state insurance exchanges, including a description of the services provided by the exchanges and the manner in which the employee may contact exchanges to request assistance;
- Outlining that if the employer's health plan share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs, the employee may be eligible for a premium tax credit if the employee purchases a qualified health plan through an exchange; and
- Stating that if the employee purchases a qualified health plan through an exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer, and all or a portion of such contribution may be excludable from income for federal income tax purposes.

A sample notice letter has been provided for each school to use for distribution to current and new employees.

### **VIII. Resources:**

- A. Sample script to determine potential eligibility – To be provided
- B. Chart of rolling 10 month measurement period, administrative period, and stability period
- C. Sample employee notification letter
- D. Federal Register <http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf>
- E. IRS-ACA Webpage - <http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions>
- F. DOL- ACA Webpage - <http://www.dol.gov/ebsa/healthreform/>