

# PART-TIME PROS

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PROVIDING TALENTED PROFESSIONALS

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Happy May! Healthcare reform has been top of mind for many of us and there are still a lot of questions lingering on how it will impact companies. With regards to part-time employees I came across an article in SHRM that I thought was worth sharing on the rules of part-time employees and health care benefit requirements.

“Companies that offer part-time employees health care benefits might have to start tracking part-time employees’ hours to ensure compliance with the Patient Protection and Affordable Care Act (PPACA) once the penalties take effect in 2014, Carolyn Smith, an attorney at Alston & Bird’s Washington, D.C., office, said in an April 21, 2010, interview.

There will be more tracking of part-time employees’ hours by some employers because part-time employees can be “full-time equivalent” employees for purposes of determining whether employers will have to pay the “pay or play penalty” if the plan sponsors do not offer minimum eligible benefits by 2014, Monique Warren, an attorney in Jackson Lewis’ White Plains, N.Y., office, told *SHRM Online*.

The “pay or play” penalty will kick in if plan sponsors do not offer minimum essential coverage and have more than 50 full-time employees. Full-time employees are defined by the PPACA for purposes of this penalty as generally an average of 30 hours a week, Warren added.

Employers shouldn’t think that they can get around this penalty by employing mainly part-time employees, Warren noted, because full-time equivalent employees are counted for determining who meets this threshold.

## **Calculation of Full-Time Equivalent Employees**

The number of full-time equivalent employees will be important if an employer is hovering around the 50-employee threshold.

Employers will first count whether they have 50 full-time employees. If they don't, Warren said, they then will count the number of part-time employees and take all the hours they work in a given month and divide them by 120 to figure out how many full-time equivalent employees they have.

Often employers exclude intermittent employees from health care coverage, but Smith said that if plan sponsors opt to include part-time employees in coverage, intermittent employees also will have to be counted when calculating the full-time equivalent figure.

Although this calculation is far off, Smith said she already is getting questions from employers with group health insurance about the penalty and how it will be calculated when there are full-time equivalent employees.

### **Cover Part-Time Employees?**

In light of this penalty, the PPACA will require employers that offer health care to think more about how they structure their part-time workforce, Smith noted.

Employers can exclude part-time employees from group health coverage and might decide from a strategic standpoint, for example, to offer higher salaries to part-time employees instead, she added.

But she emphasized that if part-time employees are covered and there are more than 50 employees, the penalty might kick in if there isn't minimum essential coverage and the plan isn't grandfathered in.

Consequently, Smith said, employers should "look at plans particularly for part-time employees" and see whether their plans' definition of part-time employees is in sync with the law.

### **Uncertain Penalty Exposure**

Warren took the view that it still is "really a bit early to try and gauge penalty exposure," which she said for some companies "might not be that great." The penalty calculation also is elusive, she added, because it will require somehow figuring in household income.

Warren said that "we're tending to advise clients to wait and see. Look at plans and immediate mandates for most plans," which for calendar plans take effect Jan. 1, 2011, such as the following prohibitions that apply then even to grandfathered plans:

- No lifetime maximums on essential benefits as well as bans on certain annual limits.
- No bar on the participation of adult children if the children are younger than 26 (and if the children are not eligible to enroll in other employer coverage other than a grandfathered plan).
- No pre-existing condition exclusions for children under 19 years old.
- No coverage rescissions, absent fraud or an intentional misrepresentation of a material fact.

By focusing on the most immediate requirements, plan sponsors will give service providers more time to develop tools to help analyze what the penalties might be, Warren remarked.”