CAPLAW *FAQ*

A series of common legal questions and answers for the CAA network

Applying the ACA to Short-Term Employees

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1. Does the ACA require us to offer health coverage to individuals who are employed for a limited period of time?
2. If an employee does not fit within the "seasonal employee" definition, are there other rules that apply to individuals employed for a limited period of time?
3. Our job training program is open to young adults. If trainees or employees otherwise qualify for coverage but are under age 18, do we have to offer them coverage?
4. How much could we owe the IRS if we do not offer coverage to eligible short-term employees?

With summer approaching and the Affordable Care Act (ACA) in full swing, CAAs may be faced with questions about how the ACA applies to summer or other temporary workers. This set of Frequently Asked Questions addresses the applicability of the ACA to employees who are not traditional year-round employees. Specifically, we address the applicability of the ACA to participants in job training programs, but the analysis could also apply to other types of limited-time employees, such as LIHEAP intake workers hired on a temporary basis.

I Does the ACA require us to offer health coverage to individuals who are employed for a limited period of time?

For example, our CAA runs a youth job training program each summer. Job trainees are paid by the CAA and placed with an outside organization for 30 hours per week from early June through late August. Does the ACA obligate us to offer health coverage to these trainees?

The ACA does not contain a blanket exception for short-term employees such as summer job training program participants. Whether your CAA must offer coverage will depend on whether the employees qualify as "full-time employees" and, if so, whether they remain employed with your CAA on the date by which they must be offered coverage.

The ACA requires applicable large employers (ALEs)[1] to offer health coverage that is affordable and provides minimum value <u>only to their full-time employees</u>. Therefore, the first question to address is whether or not the trainees are full-time.[2] The term "full-time employee" is defined as an employee who is employed an average of at least 30 hours of service per week with respect to a calendar month, or 130 hours of service in a calendar month.[3] The ACA regulations provide two methods for measuring full-time employee status: (i) the **monthly measurement method**, under which employers identify full-time employees based on the hours of service for each calendar month, and (ii) the **look-back measurement method**, under which employers may determine the status of an employee as a full-time employee during a future period (referred to as the "stability period"), based upon the hours of service of the employee in a prior period (a period of three to 12 months designated by the employer that is referred to as the "measurement period").[4] If your CAA uses the monthly measurement method to determine employees' full-time status, the special rules in this question do not apply; please see Question #2 of this FAQ for more information.

If your CAA uses the look-back measurement to determine full-time status, the regulations create a special rule for determining whether "seasonal employees" are considered full-time employees.[5] Under this rule, even if the CAA expects a seasonal employee to work 30 hours or more per week during the season in which she is employed, the CAA is permitted to average the employee's hours of service over the entire measurement period that begins on the employee's start date to determine whether she qualifies as a full-time employee. The CAA must only offer the employee coverage if her weekly hours average 30 more over the measurement period and she is employed on the first day of the following stability period.[6]

A "seasonal employee" is defined as "an employee who is hired into a position for which the customary annual employment is six months or less."[7] "Customary" means that by the nature of the position, an employee in that position typically works for a period of six months or less, and the employment period begins each calendar year in approximately the same part of the year, such as summer or winter.[8] In this example, the CAA hires trainees around the same time each year (early June) and employs them for three months at a time. The nature of the position for these trainees fits the "seasonal employee" definition in the ACA. (To understand how the ACA applies if the trainees do not meet the "seasonal" definition, see Question #2 below.)

A "seasonal employee" is defined as "an employee who is hired into a position for which the customary annual employment is six months or less."

However, two factors make it unlikely a CAA will be required to offer health coverage to a trainee who fits the ACA's definition of seasonal employee. First, if the CAA uses the maximum 12-month measurement period (which many employers do), upon averaging the trainee's hours over the course of the entire period starting from the trainee's date of hire, it is unlikely that the average hours worked per week will be 30 or more. In this example, if the CAA uses a 12-month measurement period and the trainees work 30 hours per week for 12 weeks, the trainees will work a total of 480 hours. When averaged out over 52 weeks, this comes out to 6.92 hours of service per week—well below the ACA threshold of 30 hours. Note, however, that using a shorter measurement period, such as three or six months, will increase the likelihood that the trainee's hours will average out to more than 30 hours per week and the CAA will be required to offer coverage.

Second, seasonal employees are often no longer employed on the date on which they would become eligible for coverage. An extreme example illustrates this point: A trainee works 60 hours per week for six months for a CAA with a 12-month measurement period. When the trainee's hours of service are averaged out over the measurement period, the trainee will have worked an average of 30 hours per week and therefore be a full-time employee who must be offered coverage by the first day of the following stability period. However, because the trainee only worked for six months, she is not employed by the CAA on the first day of the stability period. Therefore, the CAA is not obligated to offer her coverage. If a CAA uses a shorter measurement period, however, it will be more likely that the employee will be employed on the date she becomes eligible for coverage.

2 If an employee does not fit within the "seasonal employee" definition, are there other rules that apply to individuals employed for a limited period of time?

For example, our CAA runs a job training program throughout the year. Job trainees are paid by the CAA and placed with an outside organization for three to four months for 30 hours per week. The trainees begin their training whenever a placement is available and not at regular parts of the year.

If employees are hired for a limited period of time but are not hired in approximately the same part of the year each year, the employees will not meet the ACA definition of "seasonal." Whether or not the CAA must offer health coverage will depend on how long the individual is employed.

Regardless of whether a CAA uses the monthly or look-back measurement method, the ACA requires the CAA to treat as a "full-time employee" and offer health insurance coverage to any employee whom the CAA reasonably expects to be full-time (i.e., to work an average of at least 30 hours per week or 130 hours per calendar month) and is not a seasonal employee, regardless of how long the CAA expects the employee to be employed.[9] However, as with all of the CAA's other full-time employees, the CAA is not required to offer coverage immediately but must offer it by the first day of the fourth full calendar month after the employee's start date.[10] This initial three-month period, referred to as a "limited non-assessment period," essentially functions as a grace period during which an employer will not be penalized for failing to offer coverage.[11] This limited non-assessment period begins on the first day of the first full month of employment (e.g., if an employee began working on August 15, 2016, the three month limited non-assessment period would begin on September 1, 2016, which means that the CAA will be obligated to offer the trainee health coverage by December 1, 2016).

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In this example, some trainees will not be employed long enough to make it out of the limited non-assessment period. For instance, if a trainee begins employment on January 15 and is reasonably expected to work at least 30 hours per week, the CAA must offer coverage by May 1. If the training period ends before May 1, the CAA is not obligated to offer coverage. If the training period ends on June 1, however, the CAA must offer coverage for the last month of employment.

If a CAA intends to take advantage of the limited non-assessment period, management should ensure that this practice is consistent with the CAA's personnel policies and health plan documents regarding eligibility for health insurance coverage. A CAA's own eligibility requirements may, for example, provide that all full-time employees are eligible for health insurance benefits beginning on the first day of the first calendar month following the employee's start date. If the CAA decides it does not want to offer health coverage during certain employees' first three months—whether the employees can be categorized as "seasonal" or not—the eligibility requirements should explicitly carve out these categories of employees. Also, the plan's definition of "full-time employee" should conform to that in the ACA (i.e., an employee who works an average of 30 hours per week, rather than the typical 35 or 40 hours per week that is often thought of when referring to "full-time employees").

If a CAA knows or expects that trainees or other employees will not be eligible for an offer of health coverage, the CAA should still track the trainees' hours to verify that the trainees are not, in fact, eligible for an offer of coverage, and to ensure that the CAA has all of the information necessary to complete the ACA information reporting forms required by the IRS. For more information about ACA reporting, see the [IRS's website on information reporting by applicable large employers](#) and watch CAPLAW's August 2015 webinar, [Understanding the Employer Mandate's Reporting Requirements](#).

3 Our job training program is open to young adults. If trainees or employees otherwise qualify for coverage but are under age 18, do we have to offer them coverage?

Yes. The ACA does not include any exceptions that allow employers to not offer coverage to minors. The ACA does, however, require plans and issuers that offer coverage to children on their parents' plan to make that coverage available until the adult child reaches the age of 26,[12] which may increase the likelihood that young adults will be covered under their parents' plan and therefore decline the CAA's offer of coverage.

4 How much could we owe the IRS if we do not offer coverage to eligible short-term employees?

Failing to offer health insurance to full-time, short-term employees who are eligible for coverage could subject your CAA to either of two kinds of "assessable payments."[13] The first kind of payment, referred to in this article as the "A" payment, would be triggered if the CAA's failure to offer coverage to its eligible short-term employees causes the CAA to offer coverage to fewer than 95% of its full-time employees and at least one of the CAA's full-time employees receives a premium tax credit to help pay for coverage they purchase on the individual marketplace.[14] The second kind of payment, referred to in this article as the "B" payment, is triggered if the CAA does offer health coverage to at least 95% of its full-time employees, but at least one full-time employee receives a premium tax credit to help pay for coverage they purchase on the individual marketplace, which may occur because the employer did not offer coverage to that employee or because the coverage the employer offered that employee was either unaffordable to the employee or did not provide "minimum value."[15]

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The two types of assessable payments are calculated in different ways. For a CAA that is subject to the "A" payment for not offering coverage to at least 95% of its full-time employees, the payment is equal to the number of the CAA's full-time employees (minus 30), multiplied by $2,000 (as indexed for inflation).[16] For example, the 2016 calculation for a CAA with 100 employees is: (100 – 30) X $2,160 (the 2016 indexed amount) = $151,200. It is important to remember that an employer is only subject to this payment if it fails to offer at least 95% of its full-time employees and their dependents coverage **and** at least one full-time employee receives the premium tax credit. If the employer fails to offer coverage but no employees receive the premium tax credit, no "A" payment will apply. CAAs should also note that this payment is calculated according to the number of full-time employees (minus 30) and not according to the number of employees not offered coverage. In other words, if an employer offered coverage to 90% of its full-time employees, it has not met the ACA's mandate to offer coverage to 95% of full-time employees and will be subject to an assessable payment of $2,000 (as indexed for inflation) times the total number of full-time employees (minus 30).

A CAA is subject to the "B" payment even though it offered coverage to at least 95% of its full-time employees if (i) the coverage offered was not affordable, (ii) the coverage did not provide minimum value[17], or (iii) the employee was not offered coverage at all (i.e., the employer offered coverage to at least 95% of its full-time employees and the employee was one of the less than 5% not offered coverage). Unlike the "A" payment, which is based on the total number of the CAA's full-time employees, the "B" payment is based on the number of full-time employees eligible for coverage who receive a premium tax credit. The amount of the payment is $3,000 (as indexed for inflation[18]) per such employee.

Both the "A" and "B" payments are calculated on a monthly basis. For the "A" payment, if the CAA offered coverage to at least 95% of the CAA's full-time employees for some months but not others, the payment is prorated to reflect a payment for only the months where coverage was not so offered. Similarly, the "B" payment is prorated to reflect only the months in which the employee was not offered coverage and received a premium tax credit. The total amount of assessable payments for any calendar month is capped at the "A" payment, which ensures that the payment for an employer that offers coverage can never exceed the payment that an employer would owe if it did not offer coverage to at least 95% of the CAA's full-time employees.[19]

Endnotes

[1] If an employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is an ALE for the current calendar year. 26 C.F.R. § 54.4980H-1(5). For rules relating to the determination of ALE status, see 26. C.F.R. § 54.4980H-2 and the IRS's website on "How to determine if you are an ALE."

[2] This FAQ assumes that the CAA's youth trainees are considered employees of the CAA. If a CAA wants to take the position that the trainees are not employees of the CAA but instead are employees of the organization the trainees are placed with, it should consult with an attorney who is well-versed in the ACA rules.

[3] 26 C.F.R. § 54.4980H-1(a)(21). For purposes of determining full-time employee status, employers may choose to calculate hours on the basis of 30 hours per week or 130 hours per month. If an employer chooses to use the monthly equivalent of 130 hours per month, it must apply this equivalency rule on a reasonable and consistent basis. Preamble to the Treasury Regulations, 79 F.R. 8553. This FAQ assumes that the employer uses the 30 hours per week basis, although the analysis does not change if the employer uses the 130 hours per month basis.

[4] 26 C.F.R. § 54.4980H-3(a).

[5] 26 C.F.R. § 54.4980H-3(d)(3).

[6] 26 C.F.R. §§ 54.4980H-3(d)(3)(i), (iii).

[7] 26 C.F.R. § 54.4980H-3(a)(38).

[8] Preamble to the Treasury Regulations, 79 F.R. 8557.

[9] 26 C.F.R. § 54.4980H-1(a)(21).

[10] 26 C.F.R. § 54.4980H-3(d)(2)(iii).

[11] Another way to understand the seasonal employee rules described in Question #1 is as an exception to the rule that any employee reasonably expected to work full-time must be offered coverage by the first day of the fourth full month of employment.

[12] 29 C.F.R. § 2590.715-2714.

[13] 26 U.S.C. § 4980H(a).

[14] 26 C.F.R. § 54.4980H-4.

[15] 26 C.F.R. § 54.4980H-5.

[16] The ACA requires that the assessable payment amounts be adjusted for inflation each year. For calendar year 2015, the adjusted $2,000 amount is $2,080 and for calendar year 2016 is $2,160. IRS Notice 2015-87.

[17] For more information about the requirements of affordability and minimum value, see this IRS website: https://www.irs.gov/affordable-care-act/employers/minimum-value-and-affordability

[18] For calendar year 2015, the adjusted $3,000 amount is $3,120 and for calendar year 2016 is $3,240. IRS Notice 2015-87.

[19] 26 C.F.R. 54.4980H-5(a)

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