

# INFOBRIEF



## TOPIC: HEALTH INSURANCE REQUIREMENTS FOR EMPLOYERS WITH INTERNS & TEMPORARY WORKERS

ISSUED 10/23/18

Businesses that employ interns or other temporary workers may question whether they are obligated to offer health insurance to these employees. The answer to this question may depend on a number of factors, including whether the intern or temporary work is paid or unpaid, full-time or part-time, and whether the employer is an applicable large employer under the Affordable Care Act (ACA). These limits vary based on whether an individual has self-only or family coverage under an HDHP.

### **Offers of Coverage by Non-Applicable Large Employers**

For employers that are not applicable large employers (ALE) under the ACA, determining whether an intern or temporary worker should receive an offer of coverage requires reviewing the terms of the plan document. What are your eligibility provisions? Do the interns or temporary workers meet those eligibility requirements? Are there any exclusions for temporary or seasonal workers? The answers to these questions should generally allow a non-ALE to determine eligibility under its plan for interns and temporary workers.

### **Offers of Coverage by Applicable Large Employers**

The ACA's employer shared responsibility provision requires ALEs to offer minimum essential coverage that is affordable and provides minimum value to substantially all of its full-time employees. To avoid a potential penalty, an ALE should offer coverage to any full-time employee who it anticipates will work 30 or more hours of service per week. An hour of service includes all hours paid and hours entitled to payment. Because unpaid interns and unpaid temporary workers have no paid hours or hours entitled to payment, they are not full-time employees under the ACA and require no offer of coverage.

Generally, however, no later than the maximum 90 day waiting period, an ALE should make an offer of coverage to paid interns or temporary workers who the employer anticipates will work 30 or more hours per week. For some employers, this requirement may pose challenges as it can be administratively cumbersome to offer coverage to an employee whose employment may be short-term. Yet, the ACA does not permit an employer to take into account the employee's anticipated length of service with respect to eligibility. So, what options are available to ALEs with interns and other temporary workers?

### ***Interns Ineligible or Limited Eligibility***

Failure to offer minimum essential coverage to substantially all (95%) of the ALE's full-time employees may result in a penalty of \$2,500 per year for every full-time employee, when at least one full-time employee receives a subsidy on the Exchange. When an employer meets the 95% threshold but still fails to offer coverage to certain employees, a penalty of \$3,750 per year may apply for each employee that enrolls in Exchange coverage with a subsidy. While risky, the employer could use the 5% cushion to avoid offering coverage completely or offer a minimum essential coverage (MEC) "skinny" plan to interns or temporary workers if the number of full-time employees excluded does not exceed 5% of the employer's total full-time employee count. However, employers should seek legal counsel before employing this strategy because in some instances it may run afoul of other legal requirements, such as ERISA fiduciary duties or nondiscrimination rules.



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Example: Employer A has 75 regular full-time employees and hires paid Intern B to work full-time for three months during the summer. All full-time employees are eligible for coverage on their date of hire but Employer A does not offer coverage to Intern B. Intern B has coverage on his parent's plan. Employer A is not subject to the \$2,500 penalty because it offered minimum essential coverage to substantially all of its full-time employees. Additionally, Employer A does not owe a penalty of \$937.50 (3/12 of \$3,750) for Intern B because he did not enroll in Exchange coverage with a subsidy during his 3 months of full-time employment with Employer A.

### *Short-Term Interns and Temporary Workers Do Not Satisfy Waiting Period*

Employers have the option of establishing a separate class for interns or temporary workers with the maximum 90 day waiting period as a condition of eligibility. Due to the often short-term nature of an intern's or temporary worker's employment, many of these individuals will not satisfy the requisite waiting period before their employment terminates. Thus, the employee never gains eligibility for coverage. As always, when establishing separate classes of employees that are treated differently, it is important to ensure that you comply with the HIPAA nondiscrimination rules and nondiscrimination testing requirements under Section 125 for cafeteria plans and Section 105(h) for self-insured plans.

### *Look-Back Measurement Method for "Seasonal" and "Variable Hour" Employees*

Under the ACA, an employer is permitted to apply one of two measurement methods to "variable hour" employees and "seasonal" employees – look-back method or monthly method. If an employer is unsure at the employee's time of hire whether he or she will work full-time hours, that employee can be deemed a variable hour employee. A seasonal employee is an employee who is hired into a position for which the customary annual employment is six months or less and occurs during approximately the same part of the year, such as summer or winter. It is possible, but not always true, that an intern or temporary worker can fit into either of these categories.

If the paid intern or temporary worker qualifies as a "seasonal" employee or "variable hour" employee, the employer may apply the look-back measurement method. Under the look-back measurement method, the employer is permitted to take 3-12 months from the time of hire to evaluate the employee's status before making an offer of coverage. If, during this time period, the intern or temporary worker averages 30 or more hours per week, the employer is required to make an offer of coverage. As a practical matter, however, by the time the intern's or temporary worker's measurement period ends, he or she often is no longer employed by the employer. Alternatively, if the employer applies the monthly measurement method, the employer must offer coverage to any employee averaging 130 or more hours per month, including variable hour employees and seasonal employees.

### *Offer Coverage to Interns or Temporary Workers*

The final option for employers is to simply offer the intern or temporary worker coverage. With interns in particular, the risk of the individual enrolling in your plan is relatively low as they often still have coverage through their parent's plan or a student plan. Even with temporary workers, there is a possibility that they will forego your plan because they are enrolled in a spouse's plan or other coverage. In offering the coverage, you remove the risk of a penalty under the ACA, as well as employee relations issues, and potential nondiscrimination issues associated with not offering coverage, offering limited coverage, or applying different waiting periods. Even if the intern or temporary worker does enroll in your plan, the risk is usually no greater than offering coverage to a permanent full-time employee who is later terminated.