MISSOURI SCHOOL BOARDS' ASSOCIATION
HELPING SCHOOL BOARDS SUCCEED

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School District Obligations Under the New Federal Health Care Law:

Is Your District Going to Play or Pay the Penalty?

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In 2014, the part of the federal Patient Protection and Affordable Care Act ("Affordable Care Act") that requires certain employers to offer eligible employees health coverage went into effect, although the federal government has announced that it will not begin enforcement until 2015. This article attempts to answer some common questions school districts may have based on final regulations issued by the Internal Revenue Service (IRS). For more specific guidance, please contact the district's private attorney or the MSBA Legal Department.

What is required by the law?

"Large" employers are required to offer full-time employees (and their dependents) the opportunity to enroll in an employer-sponsored group health plan or health insurance coverage ("health coverage") that qualifies as providing "minimum essential coverage" and is affordable as defined by the federal government.

If a "large" employer does not satisfy this requirement and any full-time district employee uses a federal tax credit or cost-sharing premium reduction to purchase coverage through the federal health care exchange, the employer must pay a penalty (also called an assessable payment) to the IRS.

The penalties vary depending on whether the employer provides its full-time employees:

1. no health coverage at all, or
2. inadequate health coverage or adequate health coverage that is too costly for the employee.

If your district is a "large" employer and is considering paying the penalty rather than offering health coverage to a group of employees, please make sure you obtain accurate information on the district's potential financial risk. The penalties are discussed in more detail below.

When does my district have to comply with the law?

The law went into effect in 2014, but the IRS has announced that it will not begin enforcement until January 1, 2015. However, most districts will not need to comply until the first date of the employer's health coverage plan year in 2015; or the first date of the employer's health coverage plan year in 2016, because of two important exceptions:

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Quick Notes

Some smaller districts will not need to comply until the beginning of the district's health coverage plan year in 2016.

Most districts will not need to comply until the beginning of the district's health coverage plan year in 2015.

Exception #1: Fewer than 100 Full-Time and FTE Employees

If your district will employ on average at least 50 full-time and FTE employees, but fewer than 100 full-time and FTE employees in 2014, your district will not be required to meet the requirements of the law until the beginning of the district's health coverage plan year in 2016. However, to be eligible for this deadline extension, your district must certify to the IRS that:

1. The district did not reduce the number of employees until after December 31, 2014, except for legitimate business reasons; and
2. The district did not eliminate or materially reduce health coverage it offered as of February 9, 2014 (the date the regulations came out), until the beginning of the health plan year in 2016.

The law requires that employers use the staffing numbers from the previous calendar year when determining the average number of employees they employed. However, the IRS is allowing employers to use any consecutive six-month period in 2014 to determine whether the employer is "large" or whether the employer qualifies for this exception in 2015.

So, if your district is close to 50 or 100 employees, you should look carefully to see if your district's employment numbers were higher in the spring than in the fall and whether using a different six-month period of time will make a difference.

Exception #2: Already Offering Insurance to a Percentage of Employees

Employers may begin compliance on the first date of the health plan year in 2015 (which for many districts is July 1 or some date other than January 1) if one of the following applies:

1. ***The district is already offering its full-time employees health insurance, but the insurance is not considered affordable or does not meet federal expectations because it does not provide minimum value.***
2. ***The district is already offering insurance to a percentage of all employees.***
   If your district has not previously offered all of your full-time employees health insurance but on any single day during the period of time beginning February 10, 2013, and ending February 9, 2014, the district:
   a) had at least one quarter (1/4) of all of the district's employees (even part-time) covered on the district's health plan, or
   b) the district offered coverage to at least one third (1/3) or more of the district's employees (even part-time) during the open enrollment period.

Most districts already provide access to affordable coverage to teachers, who are typically a large percentage of the district's employees.

3. ***The district is already offering insurance to a percentage of full-time employees***.
   If on any single day during the period of time beginning February 10, 2013, and ending February 9, 2014, the district:
   a) had at least one third (1/3) of its full-time employees covered under the district's health plan, or
   b) offered coverage to one half (1/2) or more of its full-time employees during the open enrollment period.

Realistically, most school districts that are considered "large" employers are going to meet one of these three categories because most districts offer insurance to their teachers, who are typically a large percentage of the district's employees. Once again, for more information on how the IRS defines a full-time or FTE employee, see the next section of this guidance.

Quick Notes

"Large" employer: defined as an employer that employs an average of at least 50 full-time and full-time equivalent employees (FTEs) on business days during the preceding calendar year.

$$\frac{\text{All service hours of part-time employees in a month}}{120} = \text{\# of FTEs in a month}$$

Add up all full-time and FTE employees for each month in the calendar year and divide by 12 to determine if "large" employer.

"Large" Employer

Is my district a "large" employer that is required to offer health coverage to full-time employees?

Only "large" employers are required to offer full-time employees health coverage, so the first step is to determine whether your district is a large employer. A "large" employer is defined as an employer that employed an average of at least 50 full-time and full-time equivalent employees (FTEs) on business days during the preceding calendar year. Full-time employees are those who work at least 30 hours per week or have at least 30 "hours of service" in a week. Hours of service include not only hours actually worked by the employee but also hours for which an employee is paid or entitled to be paid by the employer due to vacation, holiday, sick leave, incapacity (disability), jury duty, military leave or other leave of absence. If an employee is not scheduled to work for a period of time such as summer break, the employee is not considered to have provided service during those times for the purposes of determining if the district is a "large" employer. Additional information on the definition of an employee and how to determine whether an employee is full time is discussed in more detail later in this guidance.

Part-time employees are also considered when determining whether a district is a large employer. The district needs to add up the hours of service for all part-time employees for a calendar month (but not more than 120 hours per employee) and then divide that number by 120 to determine the number of FTEs to use when determining whether the district is a large employer.

Large Employer Example: District Z employs 45 employees who regularly work over 30 service hours per week and 10 employees who work part time, 4 service hours a day (20 service hours per week). The district knows 45 employees are full-time, so it must determine whether the number of FTEs will make it a large employer.

To determine the number of FTEs the district has, the district adds up the number of hours worked in a month (not more than 120 hours per employee) of all the part-time employees and divides that number by 120. In this case, let's assume the month consisted of 20 working days and that each of the 10 part-time employees worked (or was paid for) every day that month. So, 10 employees x 4 hours a day x 20 working days = 800 total hours in a month. Then divide 800 by 120 to get 6.6 full-time equivalent employees.

This means that in this particular month the district employed 45 full-time employees and the equivalent of 6.6 full-time employees, for a total of 51.6 full-time and full-time equivalent employees.

Remember that to be a large employer the district must have an average of at least 50 full-time and full-time equivalent employees throughout the preceding calendar year, not just a particular month. So, the district must add the number

of full-time employees and full-time equivalent employees it has each month in the calendar year and divide by 12. The result, if not a whole number, is then rounded down to the next lowest whole number. For example, 49.9 would be rounded down to 49.

If the average is 50 or above, the district is a large employer and is subject to the portion of the law imposing penalties for failing to offer health coverage.

If you are unsure whether your district will be considered a large employer, please seek help! There is additional detailed guidance on these calculations and you need to be certain whether the law applies to your district.

When determining the number of employees the district has, do we use the school year, a calendar year, or something different?

You use the calendar year, not the school year, to determine the average number of employees the district has. However, the IRS has made one exception for employers transitioning into the new law. For the purposes of determining whether the district is a "large" employer for 2015 compliance and for determining if the district is small enough to wait until 2016 to comply (50 or more employees, but fewer than 100), the district may use any 6-month consecutive period in 2014 as opposed to the entire calendar year.

This means that in 2014 districts could intentionally select a 6-month period that includes the summer months when fewer employees are working to determine whether the district is a "large" employer. The regulations do not require the district to count 9-month employees during the summer for the purpose of determining large employer status, so some smaller districts might average fewer than 50 employees if these months are considered. However, this will only work for one year! All of the months in 2015 will be considered to determine whether the district is large and therefore subject to the law in 2016.

A person who performs services for the district will either be 1) a district employee or 2) an independent contractor or an employee of an independent contractor.

Who is an employee of the district?

This is sometimes a surprisingly difficult question to answer. A person who performs services for the district is either 1) a district employee or 2) an independent contractor or an employee of an independent contractor. School districts frequently mistake the two. If a person fits the IRS definition of an employee, the district cannot magically change that fact by labeling the person an independent contractor.

An employment relationship exists when the district "has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished."

According to the IRS, an employment relationship exists when the district "has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished." This means that if the district can tell the person what to do and also direct exactly how a task is performed, the person could be an employee subject to the law – even if the district does not exercise the authority.

For example, if the district needs a building cleaned and provides a person the tools to do so, trains a person how to use those tools, and supervises the work, that person is an employee. If the district pays someone to clean the building, does not provide the tools or the training, and does not directly supervise the work, that person is an independent contractor.

Of course, not every person or position is easy to categorize, so seek help if there are questions. It is extremely important for districts to accurately classify employees for tax purposes as well as the application of the Affordable Care Act.

Include substitute employees and extra duties in the calculation.

Do substitute employees or employees with extra duties paid by stipends count toward the large employer calculation?

Yes. All hours of service rendered by any district employee must be considered in the calculation. The Fair Labor Standards Act requires the district to keep records of the hours worked by non-exempt employees. See the next section for information on calculating hours for exempt employees who do not keep records of hours worked.

"Full-Time" Employees

Which of the district's employees are considered "full-time" and therefore eligible to be offered health coverage?

Once the district determines that it is "large" and therefore subject to the law, the district must determine which specific employees are eligible for health coverage under the new law. Remember, the district is only required to offer health coverage (or pay a penalty for not doing so) to "full-time" employees. The hours worked by part-time employees count when determining whether a district is a large employer, but the district is not required by law to offer part-time employees health coverage.

"Full-time" employees for the purposes of determining which employees are eligible for health coverage are those who average at least 30 hours of service per week. The regulations also allow employers to consider an employee full time if the employee has 130 hours of service in the calendar month, as long as the employer uses this measurement consistently and does not change the method of determining whether an employee is full time simply to avoid paying for health coverage for an employee.

Please note that the IRS regulations use 130 hours of service per month when determining if a person is a full-time employee, whereas 120 hours of service per month is used to calculate the FTEs to determine whether an employer is "large."

Quick Notes

Hours of service: hours actually worked by the employee and hours for which an employee is paid or entitled to be paid by the employer due to vacation, holiday, sick leave, incapacity (disability), jury duty, military leave or other leave of absence.

What is an "hour of service"?

"Hour of service" is defined the same for determining whether an employer is "large" and determining whether an employee should be provided access to health coverage. Hours of service include not only hours actually worked by the employee, but also hours for which an employee is paid or entitled to be paid by the employer due to vacation, holiday, sick leave, incapacity (disability), jury duty, military leave or other leave of absence.

These hours are relatively easy to calculate for employees in positions that are not exempt from the Fair Labor Standards Act (typically called hourly employees) because the district is required by law to keep records of the hours those employees actually work. These records will be useful in determining how many hours to attribute to these employees during vacation, holidays, sick leave, or other leaves that are also considered hours of service.

However, some district employees (exempt from the Fair Labor Standards Act) are not required by law to keep timecards and are not paid on an hourly basis, so districts are not exactly sure how many hours these employees work. The federal regulations give employers the option to select one of three methods for determining whether an exempt employee is considered full time under the law:

1. Tracking the actual hours worked;

Practice Tip:

Track the hours of all employees who are not offered district health coverage. The district will need this information if an employee ever claims that he or she was entitled to health coverage or the IRS attempts to penalize the district for failing to offer health coverage.

2. Assuming eight hours of service for each day that the employee works; or
3. Assuming 40 hours of service for each week the employee works.

The district does not need to use the same method for all non-hourly employees as long as the district is consistent within each job category.

Our district pays a number of individuals a nominal stipend to supervise extracurricular activities. Are these persons considered employees of the district under the ACA?

The time spent on extracurricular activities might not count toward "hours worked" under the ACA if the right conditions exist. Under the new regulations, if a person's only compensation from the district is a reimbursement or an allowance for reasonable expenses incurred or a customary, nominal fee, the person may be considered a "bona fide volunteer" and the time spent on these activities is not considered an "hour of service" under the law. This could mean that individuals paid as coaches or extracurricular activity sponsors are not subject to the ACA as long as they are is not also employed in another capacity with the district. Please discuss the details of the stipend with the district's attorney before declaring that a person with a stipend is a "volunteer" for the purposes of the ACA.

Measurement Methods For Determining Full-Time Status

When the district employs a person to work in a position that the district reasonably expects to be full time (averaging 30 hours per week or more), the district is required to provide that employee access to qualifying health coverage automatically. Likewise, when the district employs a person to work in a position that the district reasonably expects to be part-time, the district is not required to provide that employee access to health coverage. The IRS will consider the following factors when determining whether the district's expectations are reasonable:

- Whether the employee is replacing an employee who worked full-time
- Whether employees working in comparable positions qualify as full-time
- Whether the district advertised or communicated the position as full-time, including job descriptions and contracts

Will your district use the monthly measurement method or the look-back measurement method?

Unfortunately, many school districts have employees that work such varied hours that it is difficult to determine or predict the number of hours of service the employee will ultimately provide the district. Examples include substitute teachers and other substitute employees, bus drivers who work extra-duty routes, personal care aides whose charges attend sporadically, or employees who provide extra duties to the district such as coaching outside the regular work day. If the district does not reasonably know whether an employee is full-time, the law provides employers two methods for determining (or proving to the IRS) that an employee is or is not a full-time employee: the monthly measurement method and the look-back measurement method.

The monthly measurement method could be used by districts that only provide and pay for insurance during the school year.

Method #1: The Monthly Measurement Method

The monthly measurement method is the only method used to determine whether a district employs enough full-time or full-time equivalent employees to be a large employer. It can also be used to determine whether an employee is considered "full-time" for IRS penalty purposes. Under this method, the district would determine each employee's full-time status by counting the employee's actual hours of service for each calendar month.

While this determination is quick and easy, it is impractical for employees to move in and out of insurance coverage on a monthly basis. Further, once a district determines that an employee has worked full time and is eligible for insurance for the month, the month has already passed and the district could already be out of compliance if the district did not provide access to insurance that month. Employers will not be penalized for the first three calendar months an employee first becomes eligible for insurance, but that exception can only be used once each time an employee is hired or is moved to a position where he or she is eligible for insurance.

Quick Notes

MSBA recommends that districts tie the standard administrative period to the district's open enrollment for health coverage. MSBA also recommends that the district's standard stability period coincides with the district's regular health coverage plan year – i.e. the 12-month period districts contract for health coverage, during which time the premiums and employee contributions are stable.

This method is best used in situations where the district has already determined it will not provide the employee insurance, but the district needs to track employee hours and understand the penalty risk if the IRS comes knocking.

That said, this method might be useful for districts that provide access to and pay for insurance for 9-month employees during the school year but not during summer months. Unlike the look-back measurement method described below, the district does not exclude summer months or credit the average weekly hours over the summer months or break periods to the employee when determining whether the employee is a full-time employee. Under the monthly measurement method, if there are no hours of service during a month or the employee works fewer than 130 hours in the month, the employee is not entitled to health insurance and the district cannot be penalized for not providing access to insurance during those months.

Method #2: The Look-Back Measurement Method

The look-back measurement method is more complicated than the monthly measurement method, but it is more practical for districts that want to avoid paying penalties for failing to provide insurance to variable-hour employees.

The IRS determined that it would be disruptive to employees and employers if employees who work irregular hours are offered health coverage sporadically from month to month because the employee sometimes works an average of at least 30 service hours per week and sometimes does not. For that reason, the IRS has created a system where employers may designate a time period during which the employer will measure the hours actually worked by such employees. If an employee does ultimately average at least 30 service hours or more per week, the employer must offer the employee health insurance for a set period of time (not just month to month) to give the employee and the employee's dependents some health coverage stability.

Under the variable-hour system, the district adopts a ***standard measurement period*** over which the district determines whether an employee works an average of 30 or more hours per week. The standard measurement period designated by the district must be at least 3 months long, but no longer than 12 months.

After the standard measurement period, the district determines whether the variable-hour employee has averaged at least 30 service hours per week during that period of time. If so, the employee must be considered full-time and is offered health coverage for a ***standard stability period*** designated by the district. The standard stability period must be at least 6 months, but no shorter than the standard measurement period. To avoid a potential penalty, the district will offer the employee health coverage during this standard stability period regardless of the number of hours the employee works during the standard stability period (although coverage may be terminated if the employee terminates employment during this time period).

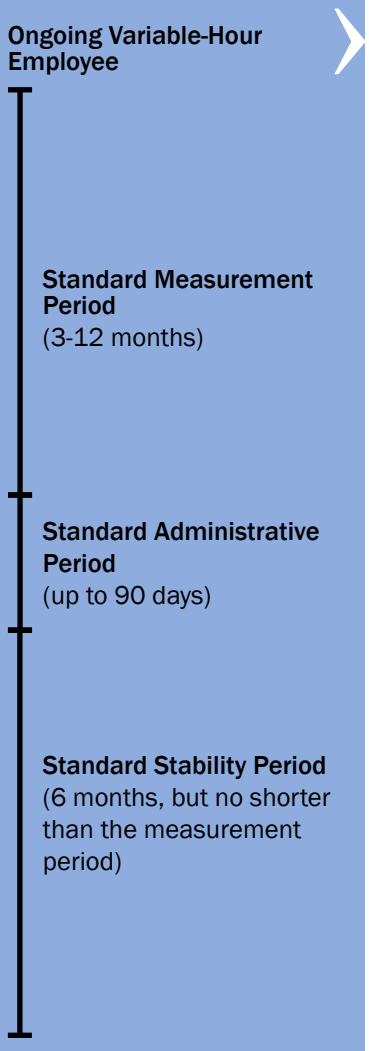
Likewise, if the employee does not work an average of 30 service hours per week during the standard measurement period, the district is not required under the

Method #2: The Look-Back Measurement Method, continued.

law to offer the employee health coverage during the standard stability period.

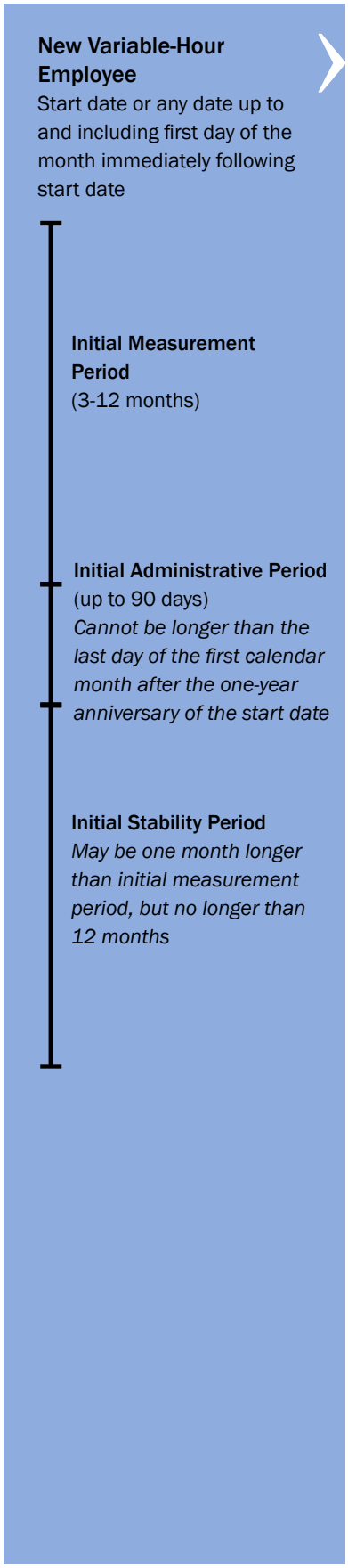
If a district chooses, it may separate the standard measurement period and the standard stability period with a ***standard administrative period.*** The standard administrative period may last as long as 90 days. During the standard administrative period, the district has time to notify the variable-hour employee that he or she is eligible for health coverage, explain the options to the employee, and enroll the employee in coverage before the standard stability period begins. The standard administrative period cannot reduce or lengthen the standard measurement or stability periods.

To avoid any gaps in health coverage, the standard administrative period must overlap with the prior standard stability period, so that ongoing employees who are already covered under a plan will continue to receive coverage while the district determines whether the employee will receive coverage during the next standard stability period.



Ongoing Variable-Hour Employee Example #1: District A's health plan operates on a plan year beginning September 1. District A uses a 12-month standard measurement period from July 1 through June 30, followed by an administrative period coordinated with open enrollment from July 1 through August 31. Employees eligible for coverage based on the measurement period (and their dependents) are offered health insurance from September 1 through August 31. From July 1 through August 31, variable-hour employees and their dependents who are enrolled in the district's health plan will continue to receive health coverage while the district again determines whether those employees are again entitled to coverage for the next plan year based on the July 1 through June 30 measurement period. If the employees are entitled to such coverage, this will give the district time to contact the employees and conduct open enrollment. This process will continue every year for District A.

Ongoing Variable-Hour Employee Example #2: Mary is an ongoing employee of District A, but her hours vary from week to week and month to month so that the district does not reasonably know whether she works an average of 30 service hours per week. From July 1, 2015, through June 30, 2016, she worked at least 30 service hours per week for District A and therefore was offered health coverage for the health plan year September 1, 2016, through August 31, 2017. However, from July 1, 2016, through June 30, 2017, she did not work at least 30 service hours per week. She will continue to be eligible for coverage through August 31, 2017, but she will not be eligible for district-paid insurance during the plan year running from September 1, 2017, through August 31, 2018, regardless of how many hours she works during that time. A new calculation will be made in July 2018 to determine whether she is eligible for coverage from September 1, 2018, through August 31, 2019. Under COBRA, she may stay on the district's insurance at her own expense.



Method #2: The Look-Back Measurement Method, continued.

FMLA Leave, Military Leave and Jury Duty

All employers using the look-back method must exclude periods of unpaid leave authorized under the FMLA, the federal military leave laws, or jury duty when determining whether an employee works full time. Alternatively, employers may credit to those unpaid time periods where the employee is absent the average weekly hours an employee has previously worked. There is no limit to the number of hours that may be credited under these leaves. In other words, these leaves do not alter an employee's full-time status or jeopardize an employee's entitlement to health coverage. ***This rule does not apply if the district is using the monthly measurement period.***

Summer and Other Employment Break Periods

When determining whether ongoing employees are full time under the look-back measurement period, educational employers such as school districts must exclude an "employment break period" from the calculation. An "employment break period" is at least four consecutive weeks during which an employee is not credited with any hours of service. Alternatively, the district may credit the average weekly hours the employee previously worked to these weeks when the employee is not working, but the proposed regulations limit this credit to 501 hours per calendar year. Either way, this means that a paraprofessional or teacher who averages at least 30 service hours per week for nine months, and no hours for three months, would still be considered a full-time employee of the district and must be offered access to affordable health insurance. ***Please note that this employment break period rule does not apply if the district uses a monthly measurement period.***

New Variable-Hour Employees

If the district reasonably knows a new employee will work at least 30 service hours per week, it must provide health coverage without a measurement period. However, if the district does not know at the time of the hiring whether a new employee will average at least 30 service hours per week, the district could provide the employee health coverage just to be certain to comply with the law. Alternatively, if the district uses standard measurement, administrative and stability periods for ongoing variable-hour employees, it may instead set up a similar system for new variable-hour employees so that it does not need to pay for health coverage unless there is proof the new employee will have the requisite number of service hours. However, the rules are slightly different for new employees.

The ***initial measurement period*** for new variable-hour employees must begin on the employee's start date, or any date up to and including the first day of the month immediately following the start date, and last a minimum of 3 months but not more than 12 months. The district is not required to provide health coverage to new variable-hour employees during this initial measurement period.

Summer break and other employment break periods of 4 consecutive weeks or more will not impact an employee's entitlement to health coverage under the look-back measurement period.

The district may separate the initial measurement period from the initial stability period with an ***initial administrative period*** of no longer than 90 days. For the initial administrative period (as opposed to the standard administrative period), that 90 days includes not only the days between the measurement and stability periods but also any time between the employee's start date and the beginning of the initial measurement period if the district does not begin the initial measurement period on the employee's actual start date. Again, the purpose of the initial administrative period, just like the standard administrative period, is to give the district time to notify the variable-hour employee and allow the employee to enroll in health coverage before the initial stability period begins. However, under the new rules the initial measurement period and the initial administrative period combined may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date.

After the initial measurement period, the district determines whether the variable-hour employee had an average of at least 30 service hours per week (or 130 hours per month) during that period of time. If so, the employee is considered full time and is offered health coverage during an ***initial stability period.*** The initial stability period must be the same length as the stability used for other employees. The employee must be considered full time during this initial stability period, regardless of the number of hours worked during that time period. Likewise, if the employee does not work an average of 30 service hours per week (or 130 hours per month) during the initial measurement period, the employee is not considered full time and is not entitled to health coverage during the initial stability period.

New Variable-Hour Employee Example: District A hires a substitute teacher whose first day of work for the district is November 15, 2017. District A has adopted an initial measurement period of 12 months for new variable-hour employees. For this employee, the initial measurement period begins December 1, 2017 (the first day of the month that immediately follows the start date), and ends November 30, 2018. Because the one-year anniversary of the substitute is November 15, 2018, the initial administrative period cannot run longer than December 31, 2018 (the last day of the first calendar month beginning after the employee's anniversary date). In this case, the initial administrative period can last only one month, from December 1 through December 31, 2018.

Using the example above, during the initial administrative period, the district will determine whether the substitute had an average of 30 hours of service per week (excluding the summer weeks when no substitutes are needed because there is no school and any period of time of four or more consecutive weeks where the substitute is not required to work) during the initial measurement period. If the substitute was paid for enough hours, the district will notify the employee and give the substitute an opportunity to enroll in health coverage for himself or herself and any dependents (unless

Quick Notes

Districts are required to transition new variable-hour employees onto the district's standard measurement, administrative and stability periods.

Method #2: The Look-Back Measurement Method, continued.

the district decides to risk a penalty). That coverage would be available to the employee for the entire initial stability period, regardless of how many hours the employee works during the initial stability period. Because the initial measurement period was 12 months, the initial stability period must be at least 12 months as well. This means the employee, if eligible, would be offered health coverage (or the district could be required to pay a penalty) from January 1, 2018, through December 31, 2018, regardless of how many hours the substitute works for the district during that time.

Because it is unwieldy for each variable-hour employee to have his or her own measurement period, the regulations require employers to transition new employees into standard measurement, administrative and stability periods that are the same for other ongoing employees.

Transitioning New Variable-Hour Employees Example: To transition the new substitute discussed above to District A's regular plan year, the district will continue to provide him or her with coverage through December 31, 2019. However, the district will also analyze the substitute's hours during the standard measurement period from July 1, 2018, through June 30, 2019, just as it does for other ongoing variable-hour employees. If the substitute averages 30 or more hours of service per week during that time period, the district will contact the substitute during the standard administrative period of July 1, 2019, through August 31, 2019, and offer the employee health coverage for the period of September 1, 2019, through August 31, 2020. The substitute would then be on the same schedule as other district employees.

In the example above, if the substitute did not have enough hours to be considered full time during the period from July 1, 2018, through June 30, 2019, but had been a full-time employee during his or her initial measurement period of December 1, 2017, through November 31, 2018, he or she would be considered full-time and offered health coverage through the initial stability period that ends December 31, 2019, but would not be considered full time and eligible for coverage for the rest of that school year. A new determination would be made in July, 2020 for the next school year.

If your district has any variable-hour employees who may qualify as full-time and are therefore eligible for health coverage under the new law, MSBA strongly encourages your district to plan ahead and set the district's initial and standard measurement, administrative and stability periods so that the district is able to explain the process to employees.

Method #2: The Look-Back Measurement Method, continued.

Could a 9-month employee be considered a full-time employee for an entire calendar year if he or she does not work over the summer?

Yes, but only if the district uses the look-back measurement method for determining whether an individual employee is considered "full-time." Under the look-back measurement method, summer breaks or breaks in service of four consecutive weeks or more are either excluded from the calculation or the average number of hours an employee typically works is credited during this time, up to 501 hours.

Could a district use both the monthly measurement method and the look-back measurement method, depending on the employee classification?

Yes. A district can use different measurement methods for the following categories of employees:

1. Collectively bargained employees and those who are not;
2. Employees covered by a separate collective bargaining agreement; and
3. Salaried employees and hourly employees.

In addition, if the district uses the look-back measurement method, the district can create separate measurement and stability periods based on these categories as well.

If a variable-hour employee receives health coverage one year, but is not eligible for the next year, does the employee simply go without health coverage?

That is up to the employee. There are tax consequences on individuals who do not obtain health coverage. However, the employee does have options. Under the Public Health Services Act (frequently referred to as COBRA) employees who lose health coverage due to a reduction in hours are eligible to remain on the employer's health insurance if the employee pays the entire premium. The employee may also seek coverage under the public exchange.

Keep track of a part-time employee's hours of service to prove the employee is not eligible for health coverage if challenged.

What do I do with this employee?

Look at the hours of service!

Employee is reasonably expected to provide at least 30 hours of service per week (including all duties and extra duties).	Offer health coverage (or be prepared to pay a penalty). The district will not be penalized as long as the employee is offered coverage no later than the first day of the fourth full calendar month of employment with the district, as long as the coverage offered meets the requirements of the law.
Employee does not regularly provide 30 hours of service per week (including all duties and extra duties).	Not required to offer health coverage, but hours must still be used to calculate whether the district is a large employer. Keep track of hours of service to prove the employee is not eligible for health coverage if challenged.
Employee has variable hours, and it is unclear how many hours of service he or she will provide in a year (including all duties and extra duties).	Use the monthly measurement method or the look-back measurement method to determine whether the employee is eligible for access to health insurance. The district will need to decide whether it will provide insurance or risk paying a penalty. Even if the employee is not ultimately considered full time, the hours of service must still be used to calculate whether the district is a large employer.

Questions to Ask and Decisions to Make as Soon as Possible

1. Is your district a large employer subject to the law?

☐ Which months in 2014 will your district use to make this determination?

2. If your district is a large employer, when is your district required to comply with the law?

3. Which employees are full time and entitled to health coverage?

☐ Are any of these employees not offered health coverage now?

☐ If there are full-time employees who are not offered coverage, do they exceed 5% of the district's full-time employees? (See section on Penalties)

4. Does your district have any variable-hour employees who you are not sure work full time?

5. Will the district use the monthly measurement method, the look-back measurement method or both to determine whether district employees are entitled to insurance under the law?

Quick Question, Short Answer

My district provides health coverage to employees who do not qualify as "full time" under this new law. Is this a problem?

No. The district may always provide more benefits than are required by law.

Must the district immediately offer health coverage to new employees who are reasonably expected to work 30 or more hours per week?

No, but the law prohibits waiting periods over 90 calendar days and the district could be penalized if the district does not offer an employee health coverage no later than the first day of the fourth full calendar month of employment.

What if the district offers insurance to a full-time employee for most, but not all, of a month?

If the district fails to offer health coverage to a full-time employee on any day of a calendar month the employee should have been offered coverage, the IRS will treat it as though the district had not offered coverage for the entire month for the purpose of calculating penalties.

What kind of insurance is my district required to provide?

The federal government is still working out the details of what constitutes "minimal essential coverage" and many of the regulations are very technical. However, the plan must include all of the following unless the plan is considered "grandfathered" under the law:

- The plan must pay at least 60% of the medical expenses covered under the terms of the plan.
- The plan cannot exclude coverage based on pre-existing conditions.
- It must provide coverage for essential health benefits as defined by law.
- It cannot impose annual or lifetime limits.
- It must cover preventative health services.
- It must allow dependents to be covered until age 26.
- There must be an appeals process.

Most school district health coverage plans are more than adequate to meet this definition. However, districts should seek written assurance from their carriers that the district's plan meets the requirements of the law. Self-insured districts should seek written legal guidance on the status of their coverage.

In addition, the insurance must be affordable – as defined by the IRS. This is discussed in more detail later in this article.

☐ What method will the district adopt to ensure that its coverage is affordable to its employees?

Is dental or vision coverage considered "health coverage"?

No, as long as the dental or vision coverage is provided under a separate policy, certificate or contract from the district's health insurance policy. Most districts contract separately for this type of coverage. However, the law now requires that health insurance plans provide some dental and vision coverage for children.

Is the district required to offer health coverage to an employee's family?

The law requires the district to offer health coverage not only to full-time employees, but also their dependent children under the age of 26. A "child" includes a son, daughter, and an adopted child. Notably, districts are not required to provide spouses with access to health coverage.

May the district require employees to pay for a portion of the insurance?

Yes, but the employee's contribution for individual coverage (not including dependent coverage) cannot exceed 9.5% of the employee's modified adjusted household income. Household income includes the "modified adjusted gross income" of the employee and any members of the employee's family, including the spouse and dependents, who are required to file an income tax return. "Modified adjusted gross income" refers to adjusted gross income that has been increased by specified elements, such as the amount of tax-exempt interest the taxpayer receives and Social Security benefits.

Because it is difficult for an employer to know the income of an employee's entire household or even all the income one employee earns other than what the employee earns at the district, the IRS has created three "safe harbors" districts may use. The district will be in compliance if it meets one of the following options:

1. **Form W-2 Wages**
   If the employee's contribution toward individual health insurance for the lowest cost health insurance option the district provides does not exceed 9.5% of the wages the employer pays to the individual employee as reflected in Box 1 of the W-2 form issued by the district for the current calendar year (not the previous year).
2. **Rate of Pay**
   A district may multiply the lower of the employee's hourly rate of pay as of the first day of the coverage period (usually the plan year) or the employee's lowest hourly rate of pay during the calendar month by 130 hours to determine a "monthly wage amount." If the individual employee premium contribution for the lowest cost health plan the district offers the employee does not exceed 9.5% of this amount, the district will be considered in compliance. If the employee is exempt, rather than hourly, the employer will be in compliance if the premium does not exceed 9.5%

Quick Notes

An employee's contribution for individual coverage cannot exceed 9.5% of the employee's modified adjusted household income.

of the employee's monthly salary. Employers may use this safe harbor only if an employee's hours are not reduced over the course of the year.

3. **Federal Poverty Line**
   Employers are also in compliance if an employee's premium for the lowest cost individual coverage under the plan does not exceed 9.5% of the federal poverty line for a single individual. Employers are permitted to use the most recently published poverty guidelines as of the first day of the health plan year. For 2014, the federal poverty line in Missouri is $11,670.

Districts that use the monthly measurement method might not have to pay for the insurance of 9-month employees in the summer.

May the district require employees to pay for the complete cost of health insurance over the summer when the employee is not working?

We are not sure. Neither the law nor the existing guidance addresses this question directly. This is clearly prohibited if the district uses the look-back measurement period because employment break periods like summer school are either excluded in the calculation of full-time employee or the employer is required to assume that the employee worked the same number of hours during that time, both of which would result in an obligation of the district to provide "affordable" coverage during those months.

However, if the district uses the monthly measurement method, the district cannot be penalized for failing to provide those employees affordable coverage in any month in which they have not worked 130 hours of service, including the summer break. If the district is able to use the monthly measurement period for this employee classification, there is a strong argument that the district can continue this practice. MSBA encourages districts to contact their private attorney to discuss this issue.

What if an employee fails to pay his or her portion of the health premium? May the district cancel the employee's coverage even if he or she is considered full time?

Yes, so long as the district has provided sufficient notice of the deficiency and given the employee time to fix the problem before dropping the employee from coverage.

My district provides premium health coverage to the teachers and administrators. Now the district realizes it must offer health coverage to many more employees and it could get quite expensive. Is the district required to provide the same health coverage package to all district employees as long as the coverage offered is considered "adequate" under the law?

Not necessarily, but the district needs to be careful about the IRS nondiscrimination rules. The IRS for years has prohibited self-funded health plans from providing better benefits for "highly compensated" employees than

As long as the district offers insurance to at least 95% of the district's full-time employees, the district will avoid the most serious penalties.

for others. That prohibition will also apply to other health plans as soon as the IRS issues the necessary guidance to enforce the law.

Highly compensated employees are generally defined as the highest paid 25 percent of an employer's workforce. However, the law currently excludes from this definition employees who have not completed 3 years of service, employees who have not attained age 25, part-time or seasonal employees, and employees under a collective bargaining agreement. While most of these exclusions are not particularly relevant, many districts do have collective bargaining agreements with teachers, which make up a large percentage of the district's workforce.

By providing premium health coverage to the district's more highly paid employees, the district might violate this prohibition. For self-funded health plans, the individual employee suffers tax consequences. For other insured plans, the law will impose a $100 per day excise tax against the district! So it is extremely important to consult an attorney to make sure the district does not violate this law.

To confuse the matter further, if the district's health insurance is "grandfathered" under the new law, the highly-compensated rules do not apply and the district may provide different health insurance benefits for highly compensated and other employees. Your district's insurance broker should know whether your district's health coverage is "grandfathered."

What if the district accidentally forgets to offer health insurance to a full-time employee?

Accidents happen and even the IRS recognizes this. Current guidance gives a break to employers if they offer coverage to all but 5% of their full-time employees or 5 employees, whichever is greater. The employer could still be penalized, but to a lesser degree. See the section on penalties below.

Is there paperwork involved?

Yes! The IRS will require all large employers to report information regarding health coverage although some reporting requests are on hold until the IRS issues guidance. In addition, districts will want to keep accurate records as to the number of employees they employ and the number of hours worked or paid for so that they can adequately defend themselves if the IRS claims the district owes a penalty.

How can I learn more?

You may read the final regulations at:
http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf

MSBA also strongly recommends that districts discuss the new law with the district's insurance broker and private attorney. As always, MSBA's legal staff is glad to assist as well.

Penalty Information

Would It Be Cheaper for the District to Pay the Penalty?

It could be cheaper for districts to pay the penalty (or assessed payment) rather than increasing the number of employees offered health coverage – and districts certainly should consider this possibility when deciding whether to increase the number of employees who will receive health coverage.

Keep in mind, the IRS may only assess a penalty to the district if at least one full-time district employee receives a federal premium tax credit or cost-sharing reduction to purchase health coverage for himself or herself (not a dependent) through a public exchange. This means that there might not be immediate consequences if the district is out of compliance. However, a "wait and see" attitude is probably not the best strategy!

There are two ways for employers to be assessed a payment or penalty under the law. They are discussed below in Section A and Section B. An employer may incur a penalty under Section A or Section B, but cannot be penalized under both sections for any given month.

A. Failing to Provide Insurance

The first way an employer may be assessed a payment or penalty by the IRS is to fail to offer a full-time employee (or the employee's dependents) the opportunity to enroll in a health plan. As stated above, the IRS is hoping for at least 95% compliance, and the district will not be assessed a penalty under Section A if the district fails to offer coverage to no more than 5% of its full-time employees (or up to 5 employees, if greater). However, the district could still incur a penalty under Section B for these excluded employees.

If the district offers coverage to fewer than 95% of all its full-time employees (or fails to offer coverage to more than 5 such employees) and any full-time employee receives a premium tax credit or a cost-sharing reduction to purchase coverage through an exchange, the IRS will look to the district for a penalty payment. The penalty is calculated by taking the number of full-time district employees for the month of the violation (all of them, not just those excluded from health coverage), subtracting 30, and then multiplying the remainder by the monthly penalty amount. The initial penalty amount for each month is 1/12 of $2,000 (about $167). The penalty amount will be adjusted for inflation in future years. This calculation is done for every month in which any full-time employee receives a tax credit or cost-sharing reduction.

As long as the district offers health coverage to at least 95% of its full-time employees, it will not be liable for the penalty under Section A, even if the coverage is considered inadequate or unaffordable. The penalty for offering only inadequate or unaffordable coverage is described in Section B below.

Section A Penalty

$$\left(\text{\# of all full-time employees in a month} - 30\right) \times \$167$$

Section B Penalty

# of full-time employees who receive tax credit or cost sharing reduction x $250

B. Providing Insurance, But It Is Inadequate or the Employee Is Charged Too Much (or the Employee Is One of the 5% Who Was Missed in Section A)

Employers may be assessed a payment or penalty if the employer offers health coverage to its full-time employees, but that coverage is considered inadequate or too expensive. There are three ways a district can be liable under this Section B:

1. The health coverage that the district offers is not designed to pay at least 60% of the plan's covered expenses, and is therefore considered inadequate.
2. The district's coverage is adequate, but the employee is being charged too much for it, as determined by the federal law.
3. Some full-time employees were not offered coverage, but too few (5% or less) for the district to be penalized under Section A.

The Section B penalty is calculated by multiplying the number of full-time district employees who receive a premium tax credit or cost-sharing reduction in a given month by the monthly penalty amount of $250 (1/12 of $3,000). This penalty amount will be adjusted for inflation in subsequent years.

Please note that this penalty under Section B is based on the number of full-time employees actually receiving a premium tax credit or cost-sharing reduction to purchase coverage through an exchange, rather than all of the district's full-time employees, as in Section A. In addition, any amount assessed under this section is capped at the amount that would have been assessed under Section A if the district had not offered any insurance at all.

C. Penalty Relief for the 2015 Insurance Plan Year

The final regulations provide some penalty relief for employers to help ease into the new law. School districts will not be subject to the penalty in Section A in the 2015 insurance plan year if the district provides at least 70% of full-time employees access to insurance (as opposed to 95%). Because most districts provide full-time teachers access to insurance and teachers constitute the largest employee group, this effectively means most districts will not be subject to the Section A penalty the first year of compliance, though they may still face the penalty in Section B.

Even if a district is subject to a Section A penalty for the 2015 plan year, the penalty will be reduced. In the usual calculation, the number of the district's full-time employees is reduced by 30 before applying the penalty. For 2015, the number is reduced by 80.

For more information on the Affordable Care Act
Contact the School Laws Department at 800-221-MSBA (6722).