

Health Care Reform: Employer Shared Responsibility Requirements and the Impacts on the District and Trust

Presented by:

Melanie Curtice, Partner



MONDAY, MAY 5, 2014 • EVERETT

Agenda

- Summary of issues for the Cabinet to consider
- Summary of the employer shared responsibility requirements
- Discussion and next steps

Issues to Consider

- The District's risk tolerance approach to compliance with the employer shared responsibility requirements
- Whether to change eligibility for health coverage due to the availability of federal subsidies for plans offered by the public exchange (Washingtonhealthplanfinder)
- Implications of the decisions made on these issues, including bargaining, staff time and communication

Employer Shared Responsibility

- Known as “pay-or-play penalties”
- Imposed under Code § 4980H on ALEs if one or more FTEs receive federal subsidy at Exchange
- Eligibility for premium tax credit
 - Household income in between Medicaid eligibility and maximum for premium tax credit
 - 100% or 138% -- 400% of federal poverty level
 - Employer doesn't offer affordable, MV GHP
 - No premium tax credit if person has other coverage

4

Who Must Pay-or-Play?

- Pay-or-play penalties apply to ALEs
 - Averaged 50 or more full-time equivalents (“FTEQs”) on business days during previous calendar year*
 - Full-time: 30 hours/week or 130 hours/month
 - Includes non-profits, governments and churches

*Transition relief applies: six months in previous year

5

What Types of Penalties Are There?

- Two types of pay-or-play penalties
 - No coverage penalty: Code § 4980H(a)
 - Insufficient coverage penalty: Code § 4980H(b)
- Only apply if failure to offer coverage to FTEs
- Only apply if FTE purchases Exchange coverage and receives federal subsidy

FTEs and New Hires

- FTEs must be offered coverage to avoid pay-or-play penalties
 - New FTE hires must be offered coverage by the first day of the month immediately following the conclusion of the FTE's initial three full calendar months of employment
- Employees in part-time positions need not be offered coverage

FTEs: Counting Hours

- Employee working 30 hours per week or 130 hours per month is considered FTE
- Hours of service include all hours for which an employee is paid or entitled to payment, including:
 - Vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or other paid leave of absence

FTEs: Counting Hours (cont.)

- Special rules for some unpaid leave (i.e., FMLA)
- Exclusions for hours in certain capacities
 - Bona fide volunteers
 - Student employees paid through federal work study

FTEs: Counting Hours (cont.)

- Hourly employees: must count actual hours worked
- Salaried and other non-hourly employees: optional equivalency methods
 - Days-worked equivalency: 8 hours a day
 - Weeks-worked equivalency: 40 hours a week
- May apply different methods of calculating hours for different categories of non-hourly employees
- Cannot use a method that would substantially understate an employee's hours of service

10

Determining FTEs: Measurement Periods

- Two permitted measurement methods for determining FTE status
 - Monthly measurement method (new)
 - Look-back measurement method
 - Special initial measurement method allowed for variable hour, part-time and seasonal employees

Monthly Measurement Method

- Monthly measurement method identifies FTEs based on the hours of service for each calendar month
 - Means of determining pay-or-play penalty liability rather than a planning tool
- Employer would have potential 4980H penalties for any month in which employee is FTE and no compliant offer of GHP coverage made

Look-Back Measurement Method

- Different rules apply for new versus ongoing employees
 - Initial measurement period allowed for employer to measure FTE status of VHS employees (including part-time employees)
 - Cannot be used for employees hired into full-time positions
 - Ongoing standard measurement periods for all employees
- New period of employment starts after 13-week break in service (26 weeks for educational institutions)

13

Issues to Consider

- The District's risk tolerance approach to compliance with the employer shared responsibility requirements
- Whether to change eligibility for health coverage due to the availability of federal subsidies for plans offered by the public exchange (Washingtonhealthplanfinder)
- Implications of the decisions made on these issues, including bargaining, staff time and communication

Helpful Websites

- IRS resources:
<http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-Home>
- DOL resources:
<http://www.dol.gov/ebsa/healthreform/>
- HHS.gov/HealthCare
- www.wahbexchange.org