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JULIE MIX McPEAK
COMMISSIONER

TO: Tennessee Education Association

FROM: Julie Mix McPeak, Commissioner *Julie Mix McPeak*

RE: Compliance with the Affordable Care Act

DATE: September 29, 2015

The Insurance Division (Division) of the Tennessee Department of Commerce and Insurance (Department) has been notified that there has been confusion among numerous Tennessee school districts about whether employees are full-time and must be offered minimum essential coverage. In addition, the Division understands that there has been confusion about whether the varying benefits offered to school employees are considered discriminatory in violation of non-discrimination laws therefore triggering penalties. This Memorandum is being issued in an attempt to clarify application of the Affordable Care Act (ACA) as it pertains to these issues.

Determining Whether an Employee is Full-time and Must be Offered Minimum Essential Coverage

The ACA requires that a large employer offer reasonably affordable minimum essential coverage to substantially all of its full-time employees. A large employer is an employer with over 50 full-time and full-time equivalent employees¹. An employee that works an average of at least 30 hours a week is a full-time employee. If a large employer does not offer coverage to a full-time employee and the employee purchases coverage on the Exchange and receives the premium tax credit, the employer will be penalized. An employee that works less than 30 hours a week is considered part-time.

If an employer is unable to determine whether a new hire, seasonal, or variable hour employee will work full-time hours, the employer may apply what is referred to as the look-back measurement method. The look-back measurement method allows an employer

¹ A large employer will change to over 100 employees for plan years beginning in 2016. This is due to a change in the definition of small employer to include those with up to 100 employees for plan years beginning in 2016 (the current definition includes those employing up to 50 employees). Efforts are being pursued in Congress to prevent this change, but as of the drafting of this memo legislation has not been enacted.

to choose a standard measurement period to look-back at the employees' hours and determine if they have worked an average of 30 or more hours. The standard measurement period must be between three and 12 months and must be applied consistently. Educational organizations generally may not include employment breaks that exceed four consecutive weeks in the employer's standard measurement period. Below are examples applying the look-back measurement method to determine full or part-time status.

Example 1, Full-time Employee: A teacher's aide, on an hourly salary, works 180 days out of the year and seven hours a day. The teacher's aide has numerous one to two week breaks throughout the year and a ten week break period during the summer season. The employer, a school district, applies the look-back measurement method to determine whether the employee is full-time using a 12 month standard measurement period. The ten week summer break period may not be used in calculating the average. The teacher's aide has worked a total of 1,260 hours (seven hours a day x 180 days). The eligible weeks to determine the average weekly hours is 42 (52 weeks in a year – ten weeks of summer break). The teacher's aide works an average of 30 hours a week (1,260 total hours ÷ 42 eligible weeks) and is therefore a full-time employee.

Example 2, Part-time Employee: A transportation employee, on an hourly salary, works 180 days out of the year and six hours a day. The transportation employee has numerous one to two week break periods and a ten week break period during the summer season. The employer, a school district, applies the look-back measurement method to determine whether the employee is full-time using a 12 month standard measurement period. The ten week summer break period may not be used in calculating the average. The transportation employee has worked a total of 1,080 hours (six hours a day x 180 days). The eligible weeks to determine the average weekly hours is 42 (52 weeks in a year – ten weeks of summer break). The transportation employee works an average of 25.7 hours a week (1,080 total hours ÷ 42 eligible weeks) and is therefore a part-time employee.

Employer Compliance with Non-Discrimination Laws

The Division has also been made aware that there has been a misunderstanding as to the correct application of certain IRS non-discrimination laws. Most notably, there is a misunderstanding that an employer, specifically school districts operating under a self-insured group health plan, may not offer employees different benefits. In addition, there is a misunderstanding that offering varying benefits would result in the employer being penalized for violating the IRS's non-discrimination laws. Non-discrimination laws, as applied specifically to a self-insured group health plan, have not been changed by the implementation of the ACA. ***An employer may offer different benefits to different employee classifications if the classification is reasonable and based on objective criteria.*** If a self-insured group health plan is found to be discriminatory, the employer is not penalized. Rather, the highly compensated employees would have to include a portion of their benefits as part of their taxable income.

Any questions regarding the Memorandum should be directed to the Director of Insurance, 7th Floor, Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243, by email at lauren.dantche@tn.gov, and/or by phone at (615) 741-3450.