



California Public Employees' Retirement System
P.O. Box 720724
Sacramento, CA 94229-0724
(888) CalPERS (or 888-225-7377)
TTY: (877) 249-7442
www.calpers.ca.gov

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Circular Letter

May 17, 2013

TO: CALPERS CONTRACTING SCHOOLS

SUBJECT: EMPLOYER SHARED RESPONSIBILITY REGARDING HEALTH COVERAGE

The purpose of this Circular Letter is to inform you that recently the Internal Revenue Service issued [proposed regulations](#) and [questions and answers](#) providing guidance on the Employer Shared Responsibility provisions contained in the Affordable Care Act.

Beginning in 2014, large employers¹ that do not offer the opportunity to enroll in affordable minimum essential health coverage² to at least 95 percent of their full-time employees³ and their dependent children may be penalized. Please see the table on page 2 for situations that may trigger a penalty.

CalPERS employers with 50 or more full-time (or full-time equivalent [FTE]⁴) employees are subject to these provisions and are strongly urged to review these regulations to understand potential impacts and determine specific policy decisions needed to avoid penalty assessment. As your health benefits purchaser, CalPERS is unable to assess the impacts of these provisions on individual employers. CalPERS does not set employer/employee premium contribution amounts, have access to employee counts and the necessary administrative information required, or have the authority to set internal policies for individual employers.

¹The term *applicable large employer* means, with respect to a calendar year, an employer that employed an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year.

² *Minimum essential coverage* includes coverage under an eligible employer-sponsored plan. An eligible employer-sponsored plan is a group health plan or group health insurance coverage offered by an employer to an employee that is a governmental plan, any other plan or coverage offered in the small or large group market, or a grandfathered plan offered in the group market.

³ The term *full-time employee* means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer. For this purpose, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week, provided the employer applies this equivalency rule on a reasonable and consistent basis.

⁴ The term *full-time equivalent employee* means a combination of employees, each of whom individually is not treated as a full-time employee because he or she is not employed on average at least 30 hours of service per week with an employer, who, in combination, are counted as the equivalent of a full-time employee solely for purposes of determining whether the employer is an applicable large employer.

Assessable Payments

Components of the Employer Shared Responsibility proposed regulations are summarized below.

| An assessable payment applies if the: | AND | THEN |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Employer <u>DOES NOT</u> offer substantially all (95%) of its full-time employees the opportunity to enroll themselves and their child dependents in minimum essential coverage under an eligible employer-sponsored plan | One or more full-time employees receives a premium tax credit or cost-sharing reduction ⁵ for purchasing individual coverage through Covered California ⁶ | The assessment is \$2,000 for each full-time employee (whether or not offered coverage), minus the first 30 employees |
| Employer <u>DOES</u> offer coverage to substantially all (95%) of its full-time employees and their child dependents, BUT the coverage is either not affordable ⁷ or does not provide minimum value ⁸ | One or more full-time employees receives a premium tax credit or cost-sharing reduction for purchasing individual coverage through Covered California | The assessment is \$3,000 for each full-time employee who is not offered affordable coverage providing minimum value and who receives a premium tax credit or cost-sharing reduction (in total not to exceed \$2,000 for each full-time employee, minus the first 30 employees). |

Please see the Internal Revenue Service [proposed regulations](#) and their [questions and answers](#) for additional definitions and information. You may also find this information on the CalPERS website at the following address:

www.calpers.ca.gov/index.jsp?bc=/employer/faqs/health/home.xml

⁵ Premium tax credits and cost-sharing reductions may be available for individuals and families earning between 100% and 400% of the federal poverty level. See [chart](#) for 2013 federal poverty guidelines based on household size and annual income levels.

⁶ Covered California is California's Health Benefit Exchange where, as required by the Affordable Care Act, individuals and small businesses can compare and purchase qualified health plans.

⁷ Coverage for an employee under an employer-sponsored plan is affordable if the employee's required contribution for self-only coverage does not exceed 9.5 percent of the employee's household income for the taxable year.

⁸ A plan fails to provide minimum value if the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of those costs. Note: All CalPERS health plans exceed the minimum value requirement.

Look-back Measurement Method

Instead of requiring a monthly calculation of hours worked, the proposed regulations allow for a look-back measurement method for employers to determine if their variable-hour employees are working full-time. Under the proposed rule, large employers must offer variable-hour employees, including seasonal, temporary, and permanent intermittent, health coverage if working an average of 30+ hours per week.

The look-back measurement method involves the use of:

- A “measurement period” of three to 12 months for determining hours of service,
- A “stability period” of at least six months but no shorter than the measurement period, during which the coverage must be provided if the employee works 30+ hours per week during the measurement period, and
- An optional “administration period” of, in general, up to 90 days beginning immediately after the measurement period and ending immediately prior to the stability period to allow time for enrollment and disenrollment.

The look-back requirements vary based on whether employees are new or ongoing, and in the case of new employees, whether they are full-time or variable-hour employees. For new variable-hour employees, employers must use an initial measurement period beginning any date between the employee’s start date and the first day of the following month.

Affordability

Large employers must offer health coverage to full-time employees (and their child dependents) under an eligible employer-sponsored plan. One method to determine if an eligible plan is considered “affordable” is if the required employee premium contribution for self-only coverage for the lowest cost plan option that provides minimum value does not exceed 9.5 percent of an employee’s W-2 wages for that calendar year.

For Example: For 2013, the CalPERS lowest cost plan option (PERS Select) is \$463 for self-only coverage. For state employees, the State employer contribution is at least \$495 for self-only coverage. Given these amounts, it appears all state employees have access to affordable health coverage under the proposed regulations; therefore, the California Department of Human Resources is not in danger of owing employer penalties for failure to offer affordable coverage. Because school employers have different contribution amounts based on bargaining group resolutions, it is not clear whether they may be subject to penalties under these provisions. Employers will need to assess the impact of this affordability requirement using their specific contribution levels.

Additional Information

Independent of the measurement period that an employer adopts to meet the Shared Employer Responsibility requirements, new or ongoing variable-hour employees determined to be working full-time over the measurement period are eligible for the CalPERS health benefits program in accordance with California Code of Regulations Section 599.502(b)(3). This section refers to initial enrollment within 60 days of an employee's eligibility for health benefits. CalPERS considers employees meeting health benefit eligibility requirements during the measurement period a permitting event outside of open enrollment.

For additional information and resources related to the Affordable Care Act, please visit the websites below or check the [CalPERS Employer website](#) under Health FAQs for periodic updates.

- Health and Human Services: healthcare.gov
- Internal Revenue Service: irs.gov/uac/Affordable-Care-Act-Tax-Provisions
- Department of Labor: dol.gov/ebsa/healthreform
- Covered California: coveredca.com
- Kaiser Family Foundation: healthreform.kff.org

CalPERS staff continue to analyze the federal regulations to determine impacts to the Public Employees' Medical and Hospital Care Act (PEMHCA) program. Visit us at CalPERS On-Line to access the most current information available on these and other regulations relating to the Affordable Care Act.

Sincerely,

DOUG P. McKEEVER, Chief
Health Policy Research Division