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## Circular Letter

May 2, 2013

**TO: CALPERS CONTRACTING AGENCIES and CALIFORNIA STATE UNIVERSITIES (CSU)**

**SUBJECT: EMPLOYER SHARED RESPONSIBILITY REGARDING HEALTH COVERAGE**

The purpose of this Circular Letter is to inform you that, under the Affordable Care Act and beginning in 2014, large employers will be subject to an assessable payment if they do not do the following:

- Offer health coverage to their full-time employees and their dependent children,
- Ensure that coverage is affordable, and
- Ensure that coverage provides minimum value

Employers with 50 or more full-time (or full-time equivalent [FTE]) employees are subject to these provisions and are strongly urged to review the [proposed regulations](#) and [questions and answers](#) issued by the Internal Revenue Service.

It is important for all large employers to understand how the new provisions may impact them. Employers are encouraged to analyze these regulations to determine the specific policy decisions needed by your agency to ensure that you avoid penalty assessment. As your health benefits purchaser, CalPERS is unable to assess the regulatory impacts of these provisions on individual employers. CalPERS does not set employer/employee premium contribution amounts, have access to employee counts and necessary administrative information required, or have the authority to set internal policies for individual employers. The following organizations have volunteered to serve as resources on these regulatory provisions. Please visit their web sites for additional information and resources:

- League of California Cities: <http://www.cacities.org/>
- California State Association of Counties: <http://www.csac.counties.org/>

**Assessable Payments**

Components of the proposed regulation on Employer Shared Responsibility are summarized below.

An assessable payment applies if the:	AND	THEN
Employer <b><u>DOES NOT</u></b> offer substantially all (95%) of its full-time employees and their child dependents the opportunity to enroll 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 for purchasing individual coverage through a Health Benefits Exchange	The assessment is \$2,000 for each full-time employee (whether or not offered coverage), minus the first 30 employees
Employer <b><u>DOES</u></b> offer coverage to substantially all (95%) of its full-time employees and their child dependents, BUT the coverage is either not affordable or does not provide minimum value	One or more full-time employees receives a premium tax credit or cost-sharing reduction for purchasing individual coverage through a Health Benefits Exchange	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).

A large employer is defined as employing 50 or more full-time employees (including FTEs). A full-time employee is an employee working, on average, 30 or more hours per week. 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 web site at the following address:  
[www.calpers.ca.gov/index.jsp?bc=/employer/faqs/health/home.xml](http://www.calpers.ca.gov/index.jsp?bc=/employer/faqs/health/home.xml)

**Look-back Measurement Method**

Instead of requiring a monthly calculation of hours worked, the proposed regulations provide 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, under the look-back method 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 non-spousal 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 Form 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 public agency and CSU 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 over the measurement period a permitting event outside of open enrollment.

CalPERS recognizes that the proposed Employer Shared Responsibility regulations will require many employers to provide health coverage for employees that they have never had to cover before. CalPERS staff continue to analyze the federal regulations to determine impacts to the Public Employees' Medical and Hospital Care Act (PEMHCA) program. Please visit us at CalPERS online to access the most current information available on these and other regulations relating to the Affordable Care Act.

As referenced earlier in this letter, additional information and resources can be found on the League of California Cities or the California State Association of Counties web sites, or check the [CalPERS Employer web site](#) under Health FAQs for periodic updates.

Sincerely,

DOUG P. McKEEVER, Chief  
Health Policy Research Division