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Circular Letter

May 9, 2014

TO: **CALPERS CONTRACTING AGENCIES, SCHOOLS, AND CALIFORNIA STATE UNIVERSITIES**

SUBJECT: **FINAL RULE: SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE**

This Circular Letter (CL) is to inform personnel staff of recently issued final regulations, titled Shared Responsibility for Employers Regarding Health Coverage, from the Department of the Treasury and the Internal Revenue Service (IRS). This rule is generally effective for applicable large employers[1] beginning in 2015. In May 2013, the California Public Employees' Retirement System (CalPERS) issued CL 600-016-13 (contracting agencies and CSU) and CL 600-020-13 (schools) regarding the proposed version of this regulation which summarized the main provisions. This CL highlights some of the changes from the proposed rule.

Please note that while CalPERS makes every effort to assist our contracting agencies in the implementation requirements of the Affordable Care Act (ACA), contracting employers with 50 or more full-time (FT)[2] or full-time equivalent (FTE)[3] employees are subject to these provisions and are strongly encouraged to thoroughly review the final regulations with their legal counsel to understand potential impacts and determine specific policy decisions needed to avoid an assessable payment. As your health benefits purchaser, CalPERS is unable to interpret the regulations for individual employers or assess the impacts of these provisions. CalPERS does not establish employer/employee premium contribution amounts, have access to employee counts or the necessary administrative information required, or the authority to set internal policies for individual employers.

Below are some of the highlights contained in the final rule that contracting agencies should utilize when conducting their own analysis:

- Provisions apply to employers with 100 or more FT or FTE employees starting in 2015, and employers with 50 or more FT or FTE employees starting in 2016. The

[1] The 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] 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.
[3] 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.

proposed rule required all employers with 50 or more employees to begin offering coverage in 2015 to avoid an assessable payment.

- Employers subject to the provisions in 2015 must offer coverage to at least 70 percent of their FT employees. The proposed rule required that large employers offer coverage to at least 95 percent of FT employees to avoid an assessable payment.

- Beginning in 2016, all applicable large employers must offer coverage to 95 percent of their FT employees to avoid an assessable payment.

Please note that while employers with between 50 and 100 FT or FTE employees do not have to offer coverage until 2016 to avoid an assessable payment for failure to offer coverage, these employers must still report to the IRS in 2016 for the 2015 calendar year under the Section 6056 reporting requirements to avoid an information reporting penalty assessment (CalPERS will issue CL 600-020-14 on the reporting requirement final rules soon).

The following bullets provide highlights from the U.S. Treasury Department's Fact Sheet regarding the following groups:

- Volunteers: Hours contributed by bona fide volunteers for a government or tax-exempt entity, such as volunteer firefighters and emergency responders, will not cause them to be considered full-time employees.

- Educational employees: Teachers and other educational employees will not be treated as part-time for the year simply because their school is closed or operating on a limited schedule during the summer.

- Seasonal employees: Those in positions for which the customary annual employment is six months or less generally will not be considered full-time employees.

- Student work-study program participants: Service performed by students under federal or state-sponsored work-study programs will not be counted in determining whether they are full-time employees.

- Adjunct faculty: Until further guidance is issued, employers of adjunct faculty are to use a method of crediting hours of service for those employees that is reasonable in the circumstances and consistent with the employer responsibility provisions. The final regulations, however, expressly allow crediting adjunct faculty members with 2 ¼ hours of service per week for each hour of teaching or classroom time as a reasonable method for this purpose.

For additional information issued by the U.S. Treasury Department on the final rule, please see their Questions and Answers.

Again, CalPERS cannot interpret the impacts of this rule to your organization. Please ensure that your health benefit administrators and legal counsel have thoroughly reviewed the requirements to avoid penalty assessments and other applicable provisions to remain in compliance with the IRS.

PEMHCA and the ACA

As part of CalPERS effort to help our large contracting employers avoid assessable payments for not offering health coverage to employees meeting the FT employee definition under the ACA and who were otherwise not eligible for enrollment in the Public Employer Medical and Hospital Care Act (PEMHCA) health benefits program, CalPERS sought statutory relief to permit employers to offer PEMHCA health benefits to these individuals. Senate Bill 215, effective January 1, 2014, amended the definition of an employee under Government Code (GC) Section 22772(a)(6)(A) and (B) to include:

> (A) A "full-time employee" of the state or a contracting agency within the meaning of Section 4980H of Title 26 of the United States Code and applicable United States Treasury Department regulations and interpretive guidance.
>
> (B) Designated in writing as an employee for purposes of this section by the state or the contracting agency, as applicable.

Under GC Section 22772(a)(6)(A) and (B), enrollment of these ACA-eligible employees in PEMHCA health benefits is permitted with a written designation by the employer. The written designation required by this section is separate from a contracting agency's current resolution for PEMHCA health benefits. Once an employer designates these ACA-eligible employees as PEMHCA-eligible, all other PEMHCA rules apply. CalPERS will issue separate guidance in fall 2014 on this designation and the enrollment process for large contracting agencies wishing to provide PEMHCA health benefits to this group of newly eligible individuals.

Conversely, large contracting agencies choosing not to utilize GC 22772(a)(6)(A) and (B), allowing them to offer PEMHCA health to employees newly eligible for coverage under the ACA by written designation, may purchase coverage for this group of individuals (and this group only) and their dependents outside of CalPERS to avoid assessable payments for failure to offer coverage.

In addition, the Shared Responsibility for Employers proposed rule included foster children in the definition of a dependent for whom a large employer must provide coverage or incur an assessable payment. We mentioned in earlier CLs (600-051-13 and 600-052-13) that we would modify PEMHCA to include foster children. The final rule removes the foster children requirement; therefore, no change is necessary to the PEMHCA regulations to comply with this portion of the rule.

CalPERS staff continue to analyze the federal regulations to determine impacts to the PEMHCA program. We endeavor to provide assistance when we can, and in those cases in which we cannot, we will provide as much guidance as possible. Please visit us at CalPERS On-Line to access the most current information available on these and other regulations relating to the ACA. Please contact the CalPERS Customer Contact Center at 888 CalPERS (or 888-225-7377) if you have further questions.

Sincerely,

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