

The Affordable Care Act: Where Things Stand

Hurry up and wait — that’s the feeling many institutions are experiencing as they try to decipher and prepare for the Affordable Care Act (ACA). Although there is plenty to be done prior to January 2014, some critical details are still up in the air.

CUPA-HR’s government affairs team in D.C., with input from members and CUPA-HR’s Public Policy Committee, has provided leadership on the issues unique to the higher ed workplace. The following round-up provides summaries of what has already been discussed and proposed regarding the ACA.

August

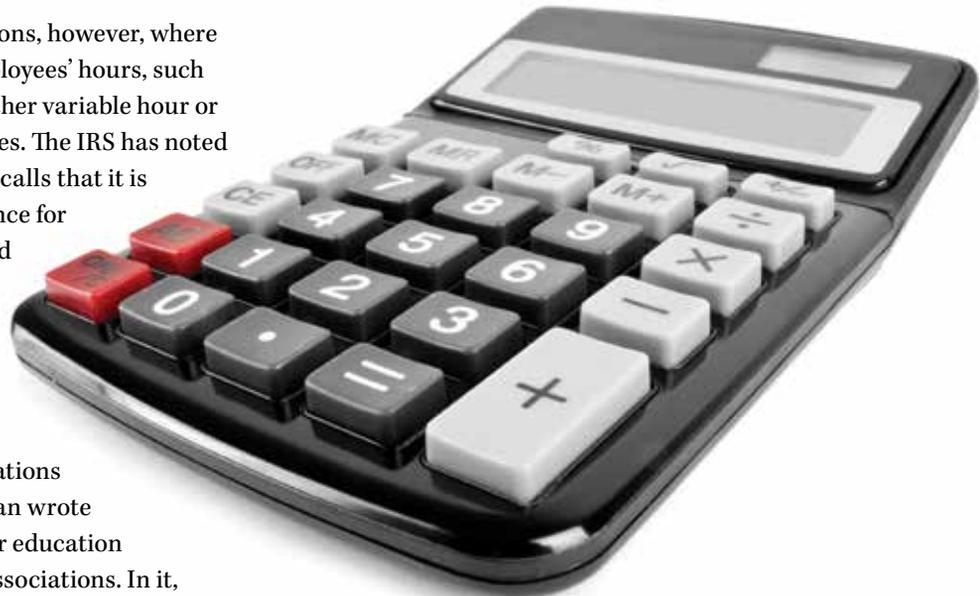
2012

The IRS released guidance creating a “safe harbor” for employers trying to determine whether variable-hour and seasonal employees meet the 30-hour threshold (a variable-hour employee is one where the employer cannot

determine beforehand whether the employee will meet the 30-hour weekly average). That guidance can be found in Department of Treasury Notice 2012-58. Following are the key elements of the notice:

- Employers may use a three-month to 12-month measuring period to determine whether a variable-hour or seasonal employee meets the 30-hour threshold.
- Employers will not be required to provide the employee with coverage during the measuring period, but will need to provide coverage to the employee during a subsequent stability period, if the employee continues working for the employer and meets the 30-hour-a-week threshold during the measuring period.
- The stability period must be equal to or greater than the measuring period.
- Employers need to provide coverage during the stability period to an employee that met the 30-hour-a-week threshold during the measuring period regardless of whether the employee meets the 30-hour threshold during the stability period.
- A second measuring period would run concurrently with the stability period to determine benefits eligibility for a second stability period and so on.

The guidance did not address situations, however, where the employer is not tracking the employees' hours, such as in the case of adjunct faculty or other variable hour or seasonal part-time salaried employees. The IRS has noted publicly in seminars and conference calls that it is working on a second round of guidance for employment situations not addressed in the August guidance, including adjuncts.



November

2012

CUPA-HR Chief Government Relations Officer Josh Ulman wrote a memo to higher education employers and associations. In it, he outlined the challenges posed

by trying to calculate hours worked by adjunct faculty, who are typically paid on a per-course basis, with no accounting of hours spent in preparation or working with students outside of class, and often have course loads that change, sometimes on short notice.

In preparation for the guidance CUPA-HR was developing to send to the IRS, the memo invited higher ed associations and CUPA-HR members to provide input on the proposed guidance.

January

2013

The IRS and Department of Treasury issued a Notice of Proposed Rulemaking (NPRM) and a related questions and answers document on section 4980H. In the NPRM, the agencies acknowledged concerns

raised by CUPA-HR and other higher education associations, but did not provide any specific guidance on adjuncts.

The NPRM states that the government may provide additional "guidance to address potentially common challenges arising in determining hours of service for certain categories of employees ..." Until further guidance is issued, the NPRM states that employers with such employees "must use a reasonable method for crediting hours of service that is consistent with the purposes of section 4980H." The NPRM, however, provides little guidance as to what is reasonable, simply noting that it would not be reasonable to "take into account only classroom or other instruction time and not other hours

that are necessary to perform the employee's duties, such as class preparation time."

March

2013

Exchange notification to employees — originally required by March 1, 2013 — was delayed indefinitely. In the meantime, CUPA-HR joined the American Council on Education and other higher education organizations

in filing comments on the NPRM. In our comments, we asked the agencies to adopt "safe harbor" methods for determining when students who work on campus and adjunct faculty are entitled to benefits under the ACA. Specifically, with respect to students working on campus, we requested guidance clarifying that:

- For purposes of calculating the hours worked by a student under ACA Section 4980H, an institution of higher education may exclude the hours worked by a student who is enrolled in classes at least half-time at the institution and who receives a wage as part of a job under a work-study program.
- For purposes of calculating a student's hours under ACA Section 4980H, institutions of higher education may apply the standards set forth in the U.S. Department of Labor (DOL)'s Field Operations Handbook at sections 10b03(e), 10b11, 10b14, 10b18, and 10b24.
- To the extent a student works more than one job (either for the college or university or as part of a

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work-study program), each job should be evaluated independently to determine whether it meets the DOL standards.

- An individual college or university that receives a ruling or determination specific to that institution with respect to the status of a particular group of students may rely on that specific ruling.

The agencies acknowledged in the NPRM concerns that CUPA-HR and others previously raised about difficulties employers are encountering in determining when adjunct faculty work 30 or more hours per week on average and are thus entitled to benefits.

While we appreciated the agencies acknowledging the difficulty with tracking adjunct faculty hours and

permitting higher education employers some flexibility in this regard, we urged them to provide greater clarity by also adopting specific “safe harbor” provisions as follows:

- Adjunct faculty should be classified as full-time employees if the course load they teach meets or exceeds three-quarters of the course load for a full-time, non-tenure track teaching faculty member; or
- A second method of calculating the total hours worked by adjunct faculty would be to credit adjunct faculty members with one hour of work outside the classroom for each hour teaching in the classroom.

We hope the agencies will act on our recommendations in the near future and provide further guidance on these topics. We will continue to provide you updates. 

CUPA-HR’s ACA CENTRAL

The ACA now has a dedicated space in the Advocacy and Compliance section of CUPA-HR’s website: www.cupahr.org/aca.

Here you’ll find:

- ACA News — links to ACA Alerts and other recent developments
- ACA Resources — helpful links and information
- ACA FAQs — answers to questions we’re receiving from our members
- ACA Glossary

For the very latest developments, look for CUPA-HR ACA Alerts, which are sent via e-mail as soon as we have details to share. If you have an ACA question or a suggestion for improving the ACA portion of CUPA-HR’s website, contact us at aca@cupahr.org.