

The Affordable Care Act on Campus

You've Got Questions, We've Got Answers



Earlier this year, CUPA-HR hosted a webinar entitled “The Affordable Care Act on Campus in 2015: Are You Prepared?” (if you missed it, the archive is available for on-demand viewing at www.cupahr.org). The webinar examined the ACA’s employer mandate rules (also referred to as the employer shared responsibility or “pay or play” rules) and the unique application of those rules to specific employment categories in higher ed, including student employees, adjunct faculty, graduate assistants and others; the methods for determining the full-time status of these unique employee categories for ACA purposes; and other related ACA issues, such as the new annual IRS reporting requirements that go into effect this year and the Cadillac tax that goes into effect in 2018.

Nearly 1,200 people attended the webinar, and more than 100 follow-up questions were submitted, which seems to reflect just how top-of-mind the ACA is for higher education HR professionals (and how difficult the ins and outs of the Act can be to maneuver!). After the webinar, we sat down with presenter Dan Salemi, an employee benefits attorney at Franczek Radelet P.C. in Chicago, to discuss in further detail some of the issues many in higher ed are dealing with related to the ACA.

CUPA-HR: Thanks for speaking with us Dan. Higher ed HR folks are struggling with many aspects of the ACA, and your presentation and this discussion should provide some much-needed guidance.

Dan Salemi: Happy to do it. The ACA's impact on higher ed is truly unique. The regulatory agencies have not provided clear answers to a lot of the questions higher ed has been asking, and so those working in colleges and universities are left with the very difficult task of complying with regulations that are written for a very different type of employer.

CUPA-HR: What's the most frequent question you get from your clients in higher ed as they try to navigate the ACA?

Salemi: One major headache for higher ed has been determining what constitutes a full-time employee, which can be quite convoluted due to the nature of the work and

the remainder of the year, unless the adjunct has no hours for a 26-week period or unless the summer semester is longer than the adjunct's period of employment prior to the break. In either of those cases, an institution could treat the employee as having terminated and thus would not be required to credit hours during the summer semester.

CUPA-HR: Another issue that institutions are dealing with is how to handle faculty that have summer assignments compared to those who do not. In other words, can the institution treat them differently for purposes of the academic break?

Salemi: Yes. Institutions should be able to impute hours for some faculty and not for others.

CUPA-HR: Are employment break periods for educational employers cumulative? For example, if an adjunct faculty member teaches four courses every spring and the institution does not

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the many different types of employees on a college campus. Institutions should be working now to determine how they are going to count hours of service for every category of employee, particularly those who don't work on an hourly or salaried basis, and who haven't been considered "employees" in the past. Complicating this task is the fact that many of these categories of employees don't work the entire year or don't work the same hours throughout the year.

CUPA-HR: On that note, we received several questions after the webinar about the ACA's "employment break period" rules. One question many institutions are asking is whether they need to credit hours of service to adjunct faculty members who do not to work during the summer semester.

Salemi: In that circumstance, the institution would need to either credit hours for the summer semester or not consider the summer semester when averaging hours over

count the summer break, and the fall semester is less than 26 weeks, does that adjunct become full-time?

Salemi: If the adjunct has a 26-week break in total (i.e. summer plus fall semester), then you can treat him/her as a new hire each spring and thus not offer coverage until he/she averages 30 hours over an initial or standard measurement period.

CUPA-HR: Many institutions have employees who have breaks in service that are unrelated to the summer break. Are they required to credit hours of service for those non-summer breaks, or can they credit hours for only those breaks related to the academic year?

Salemi: We get that question a lot. Under the regulations, the breaks don't need to be part of the academic calendar in order to be employment break periods. The break simply needs to be four or more consecutive weeks off.

CUPA-HR: Another topic those in higher ed are asking about is the interaction between the ACA's 90-day waiting period rule and the employer mandate.

Salemi: Unfortunately, any confusion here is perfectly understandable. The regulatory agencies (primarily DOL and IRS) have not made it easy to understand how these two separate sets of rules interact. So the best thing an institution can do here is to consult an expert, as it is very complicated and there are a number of different scenarios that might need to be addressed.

CUPA-HR: If an administrative period is being used, how does the 90-day waiting period rule work with this? Is the waiting period incorporated into the administrative period, or can it begin with the stability period?

Salemi: Under the regulations, the waiting period would generally need to be incorporated into the administrative period.

CUPA-HR: Can institutions use different eligibility waiting periods for different categories of employees — for example, can regular full-time employees have a 60-day wait period and adjunct faculty a 90-day wait period?

Salemi: Yes, but bear in mind there could potentially be nondiscrimination issues under the Internal Revenue Code with this type of structure. I should also mention that the IRS has not yet written regulations on the nondiscrimination rules for fully-insured plans, and does not typically enforce the current nondiscrimination regulations that exist for self-insured plans. Therefore, many higher ed institutions and other employers do not currently see this nondiscrimination risk as a material issue (perhaps rightfully so at this point).

CUPA-HR: There are so many moving parts among all of these issues! Moving on to what is probably the biggest issue on higher ed employers' minds — counting hours worked. Can you talk a little about the types of policies institutions should be creating to deal with those employees whose hours of service are difficult or impossible to measure?

Salemi: Absolutely. Every institution that has categories of employees who don't work a traditional schedule or whose hours are difficult or impossible to track should

create a policy or set of policies that establishes the institution's methods for measuring those employees' hours of service for ACA purposes. These policies can take many forms, and there is no one-size-fits-all approach. At the very least, the policy should address adjunct faculty, student employees, graduate assistants, coaches and any other seasonal employees who do not work on an hourly or salaried basis. Policies should establish reasonable measurement methods that would withstand IRS scrutiny. There are fairly clear measurement rules in the IRS regulations about adjunct faculty, but no clear measurement rules for the other categories. Therefore, it is very important for institutions to understand the standard measurement rules and how the IRS will likely view any given alternative measurement method.

CUPA-HR: Many institutions have employees who have more than one job assignment (either at the same institution or at two or more institutions that are commonly controlled by a single board or related boards). Do they need to determine total hours worked based on all jobs, or can they count hours worked in different jobs separately?

Salemi: Unless the person is working for two or more institutions that are not commonly controlled (a complicated question in itself), all hours for all jobs with the same employer or commonly controlled employers must be added together.

CUPA-HR: Graduate assistants who are engaged in other activities besides teaching (e.g. research) present a particularly difficult challenge in tracking hours. Any advice here?

Salemi: Many graduate assistants are paid off of a grant and spend a lot of time doing research that may be used for both teaching and their own educational program. I think a reasonable position to take for these types of graduate assistants is that time spent doing research as part of their educational program does not count as hours worked for ACA purposes. Because it's not always clear what purpose the research is serving, it is important for institutions to develop a method of crediting work hours for graduate assistants (for example, a standard equivalency method akin to what is used for adjunct faculty) and to put it in a policy. The same type of analysis would apply for many other types of student employees, and institutions' policies should address each of those unique situations. 

Disclaimer: This summary should not be construed as, and is not, legal advice.