

HEALTH CARE REFORM: NEW GUIDANCE ON CREDITING HOURS OF SERVICE

The Affordable Care Act (ACA) added section 4980H to the Internal Revenue Code (IRC). Under IRC section 4980H, an Applicable Large Employer may be subject to a penalty if it fails to offer its ACA defined full-time employees, and their dependents, minimum essential coverage that is affordable and provides minimum value. Employers must calculate an employee's hours of service in order to determine their full-time status.

A full-time employee is one who averages at least 30 hours of service per week (or 130 hours of service per month). An hour of service includes each hour an employee: (1) is paid, or is entitled to payment, for the performance of duties, and (2) is paid, or is entitled to payment, for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

NEW GUIDANCE ON CREDITING HOURS OF SERVICE

Until recently, it was unclear if employers needed to credit hours of service when employees were receiving short-term or long-term disability payments through an insurance arrangement. Similarly, it was unclear to what extent an employee out on workers' compensation needed to be credited with hours of service. The IRS recently clarified the circumstances in which employers must credit hours of service.

- If an employee is not performing services but is receiving disability payments under an arrangement that the employer contributed to directly or indirectly, then the employee must be credited with hours of service for the period during which payments are made. A disability arrangement paid with employee after-tax contributions will be treated as an arrangement that the employer did not contribute to and payments from the arrangement will not give rise to hours of service. However, if the employee used pre-tax dollars to pay for the arrangement, then it will give rise to hours of service.
- If an employee is not performing services but is receiving workers' compensation wage replacement benefits under a plan maintained solely to comply with state or local workers' compensation laws, then the employee does not need to be credited with hours of service for the period during which no services are performed.

Please contact your Keenan Account Manager for questions regarding this *Briefing* or if you require any additional information regarding the Affordable Care Act.

Keenan & Associates is not a law firm and no opinion, suggestion, or recommendation of the firm or its employees shall constitute legal advice. Clients are advised to consult with their own attorney for a determination of their legal rights, responsibilities and liabilities, including the interpretation of any statute or regulation, or its application to the clients' business activities.