



A Union of Professionals

AFT Higher Education

The Affordable Care Act: Implications for Contingent Faculty

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Initiatives

Webinar overview

- Background and Context
 - Exchanges and subsidies
 - Individual mandate and employer “shared responsibility” penalty
- Employers cutting course loads and blaming the ACA
 - What the law and regulations say
 - What employers say the law and regulations say
- Possible union strategies
- Questions



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The ACA expands coverage

- A primary goal of the ACA is to reduce the number of the uninsured
- By 2014, most people must have health insurance or pay a penalty
- In 2014, exchanges and the prohibition of discrimination based on preexisting conditions will make it easier for individuals to gain coverage



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Exchange subsidies

- In 2014, exchange subsidies will be available to those without an offer of employer-sponsored coverage if the employee's household income is at or below 400% of the federal poverty line, which in 2012 was approx. \$44,680/single; \$92,200/ family of 4
- Those with an offer of employer-sponsored coverage could receive exchange subsidies if (a) individual-only coverage costs them more than 9.5% of their income, and (b) household income is at or below 400% fpl.



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Employer Penalties

- The ACA requires large employers (at least 50 or more FT equivalents employed on business days during preceding calendar year) to either:
 - Offer insurance to full-time employees (FT=30 or more hours per week on average), OR
 - Pay a penalty



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Employer Penalties

- If the employer does not offer insurance and one or more FT employee gets an exchange subsidy, the penalty is \$2000/yr x number of FT employees minus 30
 - If no FT employee receives a subsidy, no penalty will be levied against the employer
- Recent regulations say that the penalty only applies if less than 95% of FT employees are offered coverage



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Who is full time?

- the ACA requires large employers to offer insurance to FT employees or pay a penalty.
- Employers can calculate FT ees monthly, or use a “look-back measurement method” to determine FT status (30hrs/week).
- Employers can choose a measurement period of 3-12 months.
- If the employee was full-time during that period, he/she is considered FT for a subsequent “stability” period (the greater of 6 mos. or the length of the measurement pd.)



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Are contingent faculty considered full time? (cont.)

- Do colleges and universities have to insure their contingent faculty or pay a penalty?
- A recent federal proposed rule addresses this question for the first time:



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Federal Register, Jan. 2, 2013

“Employees Compensated on a Commission Basis, Adjunct Faculty, Transportation Employees and Analogous Employment Positions”

“Until further guidance is issued, employers ... must use **a reasonable method** for crediting hours of service...” [emphasis added]



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Federal Register, Jan. 2, 2013

“A method of crediting hours would not be reasonable if it took into account only some of an employee’s hours of service with the effect of recharacterizing, as non-fulltime, an employee in a position that traditionally involves more than 30 hours of service per week.”



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Federal Register, Jan. 2, 2013

“For example, it would not be a reasonable method of crediting hours ... in the case of an instructor, such as an adjunct faculty member, 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.”

<http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf>



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What does that mean?

- It means that unless more specific regs come out, colleges and universities are allowed to decide for themselves whether any contingent faculty work 30 or more hours per week, as long as the institution claims its standard is “reasonable.”
- The section of the Jan. 2, 2013, *Federal Register* excerpted in the previous slides is the only official mention of adjuncts or contingent faculty anywhere in the ACA or federal regulations related to ACA implementation.



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AFT Comments

- Because the ACA's definition of full time is 30 hours per week, or $\frac{3}{4}$ of full time as it is usually understood,
- the AFT previously suggested that Treasury consider Carnegie units, and require institutions to offer health coverage to all contingent faculty who teach at least 12 credits per semester.
- However, Treasury dismissed that suggestion



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Institutions Cutting Courseloads: Possible Strategies

- Know what the government does and does not require.
 - If the institution claims that the law sets a clear threshold for “full time” status for contingent faculty, challenge them.
- Collect information
 - How many in your bargaining unit have household income at or below 400% fpl?
 - How many are currently uninsured?
 - How many credit hours are members teaching?



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Collect information, continued

- How many contingent faculty at your institution do you think could “reasonably” be said to work at least 30 hours per week?
 - Is that number less than 5% of the employer’s full-time workforce?
 - The employer would not owe a penalty if it insures 95% of its full-time employees, according to the Jan. 3 proposed rule



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Possible Strategies, cont.

- Offer insurance?
 - How much would it cost the institution to offer minimum essential coverage? Is there a low-premium (possibly high-deductible) group plan that institutions could offer to contingent faculty?
 - One consultant says that the “\$2,000-per-worker penalty...is really closer to \$3,500 once the underlying tax breaks for coverage are thrown into the mix”
 - Such a plan could cover those who need it, allow the institution to do the right thing, and resolve the issue of course load limits

<http://www.politico.com/politicopulse/1012/politicopulse9362.html>



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Possible Strategies, cont.

- Shame on them.
 - The ACA requires people to have insurance, and requires large employers to offer coverage to their full-time workers.
 - Are colleges and universities really gaming the system like a fast-food restaurant?
 - Can a communications strategy be developed around this point?



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Sources and additional information

- Full text of the proposed rule:
<http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf>
- IRS Frequently Asked Questions:
<http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>
- Timothy Jost, *Health Affairs* blog, summary of the proposed rule:
<http://healthaffairs.org/blog/2012/12/29/implementing-health-reform-the-employer-mandate/>



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← Kaiser Family Foundation: **kff.org**

Health Reform Source

Search Health Reform Source **GO**

Implementation Timeline

The implementation timeline is an interactive tool designed to explain how and when the provisions of the health reform law will be implemented over the next several years.

You can show or hide all the changes occurring in a year by clicking on that year. Click on a provision to get more information about it. Customize the timeline by checking and unchecking specific topics.

Customize by Topic	Provisions by Year
<input type="checkbox"/> Provisions in Effect or in Progress <input type="checkbox"/> Provisions Not in Effect <input type="checkbox"/> Affordability and Subsidies <input type="checkbox"/> Employers <input type="checkbox"/> Financing and Taxes <input type="checkbox"/> Fraud and Abuse <input type="checkbox"/> Insurance <input type="checkbox"/> Long Term Care	2010 (26 total, 26 in effect) [+] 2011 (20 total, 17 in effect) [+] 2012 (11 total, 10 in effect) [+] 2013 (15 total, 5 in effect) [-] <ul style="list-style-type: none"> State Notification Regarding Exchanges [+] Closing the Medicare Drug Coverage Gap [+] Medicare Bundled Payment Pilot Program [+]

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← **HealthCare.gov**

HC Timeline of the Affordable Care Act | HealthCare.gov

January 7, 2013

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What's Changing and When

View items by selecting blocks on the timeline, or click the arrows.
You can also see all of the timeline items on one page in printable format.
[Read the Affordable Care Act in full or browse it section by section.](#)

2010 2011 2012 2013 2014 2015

IMPROVING QUALITY AND LOWERING COSTS

Improving Preventive Health Coverage

Effective January 1, 2013

To expand the number of Americans receiving preventive care, the law provides new funding to state Medicaid programs that choose to cover preventive services for patients at little or no cost.

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