



Maine Municipal Employees Health Trust

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To: Health Trust Participating Employers
From: Anne Wright, Assistant Director, MMEHT
Date: February 14, 2014
Re: The Affordable Care Act and Health Care Reform –
This Week's Changes to "Play or Pay"

Please note: Copies of these Health Care Reform updates may be found on the Health Trust website, at www.mmeht.org. Click on the link for Health Care Reform. Updates are at the bottom of the page; simply click on the link for the update you wish to read.

My plan this week had been to send all of you a very brief email, stating that in honor of Valentine's Day, there would be no health care reform update this week. Based on this week's events in Washington, however, these plans have changed. The final regulations for the Employer Shared Responsibility provisions of the federal Affordable Care Act were announced this week, and they included a number of changes and clarifications.

The final regs were well over 200 pages long, so it will take some time to read through them in their entirety. More details will be provided in the coming weeks, but for now, here is a brief summary of some of the changes.

1. "Large employers" (i.e., those employers that might be subject to the penalty for not offering affordable coverage to at least 95% of eligible full-time employees, as explained in the January 24 update) have now been divided into two categories, with regard to implementation of the Employer Shared Responsibility ("Play or Pay") provision.
 - a. Those employers with **50-99 eligible full-time / full-time equivalent employees** will not be subject to the Employer Shared Responsibility provision until **January 1, 2016**. This is a delay of one year. Lest an employer with just over 100 employees think of reducing its workforce in order to take advantage of this delay, however, the final regs state that the delay will only apply if the employer does not reduce its workforce between February 9, 2014 and December 31, 2014, in order to take advantage of this delay (that is, to bring itself down to fewer than 100 employees). Employers with 50-99 full-time / full-time equivalent employees will also have to satisfy certain coverage maintenance requirements, and will have to certify that they have met such requirements.

- b. Those employers with **100 or more full-time / full-time equivalent employees** will still be subject to the Employer Shared Responsibility provision effective **January 1, 2015**. The penalties will still be calculated as described in last week's update, with one exception. Strictly for calendar year 2015, in order to avoid the penalty, the large employer will be required to offer Minimum Essential, Minimum Value, Affordable health insurance coverage to at least **70%** of all eligible full-time employees, rather than to **95%** of all eligible full-time employees.
2. The final regs also appear to provide some relief to governmental entities that employ "bona fide volunteers", including volunteer firefighters and emergency medical personnel, by stating that "hours of service" (to be counted in determining the number of full-time / full-time equivalent employees) do not include hours worked as a "bona fide volunteer". The final regs define a "bona fide volunteer" as:

any volunteer who is an employee of a government entity or an organization described in Section 501(c) that is exempt from taxation under 501(a) whose only compensation from that entity or organization is in the form of (i) reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) reasonable benefits (including length of service awards) and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

This would seem to indicate that municipalities and counties will not need to count the number of hours worked by volunteer and on-call firefighters and emergency medical personnel, and perhaps those worked by Boards of Selectmen, City Council members, ballot clerks, and others, when calculating the number of employees. We will continue to review the final regs on this topic, and will provide further clarification in the upcoming weeks.

Although the final regs keep the definition of a "full-time employee" as someone who works an average of 30 or more hours per week, Congress is currently considering a bill to change that definition to 40 hours per week. It is unknown at this point whether or not that bill will go anywhere, but we will provide you with updates should there be any further changes.

Oh - and Happy Valentine's Day!!

Please note that the Maine Municipal Association and the Maine Municipal Employees Health Trust are sharing this information to assist you with your compliance planning. We recommend that you contact your legal counsel with specific questions relating to this law.