

Reminder: Exclusion of Interns from Health Coverage Could Trigger ACA Penalties

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PRACTICES Employee Benefits and Executive Compensation

Before the first intern walks through the door this summer, employers should determine whether their health plan strategy could expose them to significant penalties under the Affordable Care Act (the “**ACA**”). Paid interns who average at least 30 hours per week are full-time employees under the ACA. Excluding them from group health plan coverage could trigger employer shared responsibility penalties in two ways. First, if excluded interns (combined with any other uncovered full-time employees) push the employer past the five-percent threshold of its total full-time workforce in any given month, the largest penalty (currently \$2,900 per full-time employee annually) can apply. Second, even if the employer covers 95% or more of its full-time employees, a penalty can still attach for each excluded intern who obtains a premium subsidy through the Health Insurance Marketplace.

There is a path forward. Full-time paid interns may be excluded from coverage without penalty exposure if they qualify as seasonal employees under a properly structured measurement period. The key word is “properly.” Employers that assume they have this protection in place without confirming the mechanics of their measurement period are gambling with penalty liability.

Employers bringing on summer interns should review their measurement period design and verify that it supports the intended exclusion before the first paycheck is issued, not after a penalty notice arrives.