GRADUATE STUDENT EMPLOYEE HEALTH INSURANCE
AND THE PATIENT PROTECTION AND AFFORDABLE CARE ACT

PURDUE UNIVERSITY
OFFICE OF THE VICE PRESIDENT FOR HUMAN RESOURCES
November 4, 2014

(Annotated by Trenten D. Klingerman, Director, Employee Relations, November 10, 2014)

The Purdue Graduate Student Government ("PGSG") has asked the Office of the Vice President for Human Resources ("OVPHR") to clarify the reasoning behind OVPHR's preparation for potential changes to the health insurance plans for graduate student employees. OVPHR is preparing for these potential changes in light of the final regulations promulgated under the Patient Protection and Affordable Care Act ("PPACA"), which outline an employer's responsibility to provide affordable and compliant coverage to its employees.

The following summarizes the salient analytical points.

1. Under PPACA, employees who work on average more than 30 hours per workweek must be offered compliant coverage.\(^1\)

2. PPACA provides certain "safe harbor" coverage thresholds for large employers like Purdue. It requires that employers offer 70% of full-time employees (FTE) and their dependent children compliant group coverage in plan years encompassing January 1, 2015.\(^2\) That number increases to 95% of FTE and their dependent children for plan years encompassing January 1, 2016.\(^3\)

3. Failure to meet the coverage thresholds could result in fines to the University. Those fines are substantial, and are currently calculated at $2,000 per FTE and an additional $3,000 per employee who received a subsidy on the exchange.\(^4\)

4. Under PPACA, any individual who receives a W-2 is classified as an employee for the purposes of offering health care.\(^5\)

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\(^1\) 26 U.S.C. § 4980H(a),(c)(4); 26 CFR § 54.4980H-1(a)(21).


\(^3\) 26 CFR § 54.4980H-4(a).


\(^5\) The final regulations define "employee" as "an individual who is an employee under the common-law standard." The term is defined with reference to IRS regulations that define "employee" for income tax purposes. See 26 CFR § 31.3401(c)-1. Those regulations set forth the analytical framework from which one can determine whether an individual who works for an employer is an "employee" (and, therefore, is issued a W-2) or an independent contractor (and, therefore, issued a 1099). These are highly fact sensitive tests predicated on the behavioral and financial realities of the relationship as well as how the relationship is documented and treated by the parties. See IRS Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax.
5. Therefore, graduate assistants and other paid graduate student employees who receive a W-2 are subject to the PPACA employer mandate, and must be offered compliant coverage. There is currently no exception from PPACA for "student employees." There are (and, have been) several such exceptions proposed, and we remain hopeful that one will be adopted. Still, we must prepare as if no exception will be granted because that is the current state of the regulations.

6. The current graduate staff coverage is not PPACA compliant. A compliant plan must be:

   a. an eligible employer-sponsored group coverage

Withholding (providing a good checklist of the various factors to consider in the determination of who is an "employee" for income tax purposes). A simple, bright-line test of who are "employees" for purposes of PPACA is to count the individuals who are issued a W-2.

See Note 5, supra.

7 In our discussion on November 4, 2014 and in other fora prior to that meeting, PGSG referenced \S 1560(c) of PPACA, which sets forth one of several rules of interpretative construction for the law. Section 1560(c) provides that:

Nothing in this title (or an amendment made by this title) shall be construed to prohibit an institution of higher education (as such term is defined for purposes of the Higher Education Act of 1965) from offering a student health insurance plan, to the extent that such requirement is otherwise permitted under applicable Federal, State or local law.

42 U.S.C. \S 18118(c). Purdue is unaware of any interpretation of \S 1560(c) that would support a conclusion that graduate student employees, who otherwise meet the common-law test as employees are exempt from the final employer shared responsibility regulations.

See, e.g., H.R. 5262, 113th Cong. (2014) (proposing that students who are employed by an institutions of higher education and carrying a full-time academic workload should be excluded from the calculation of "full-time employees" for purposes of the institution's employer mandate calculation). H.R. 5262 enjoyed some bi-partisan sponsorship support, and was co-sponsored by Reps. Messer and Rokita from the Indiana Congressional Delegation. It was referred to the House Ways and Means Committee on July 30, 2014.

"Eligible employer-sponsored" coverage is defined by the final regulations to have "the same meaning as" \S 5000A(f)(2) (26 U.S.C. \S 5000A(f)(2)) of the Internal Revenue Code and the regulations promulgated under that section. The regulations define "eligible employer-sponsored plan" as:

(i) Group health insurance coverage offered by, or on behalf of, an employer to the employee that is—

   (A) A governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act (42 U.S.C. 300gg-91(d)(8)));

   (B) Any other plan or coverage offered in the small or large group market within a State; or

   (C) A grandfathered health plan (within the meaning of paragraph (e) of this section) offered in a group market; or

   (ii) A self-insured group health plan under which coverage is offered by, or on behalf of, an employer to the employee.
b. “affordable” (i.e. employee-only coverage does not exceed 9.5% of the employee’s household income).\textsuperscript{10}

c. “minimum value” (i.e. health plan pays at least 60% of costs incurred under the plan)\textsuperscript{11}

7. The University has worked with its student healthcare carrier to design a plan that meets criteria 6(b) and 6(c).

8. Still, the current graduate student employee coverage is an “individual” plan that does not (and, cannot) meet the current PPACA definitions of “eligible employer-sponsored group health coverage.”\textsuperscript{12}

9. Therefore, graduate student employees must either work on average fewer than 30 hours per workweek (by design and as tracked) or be offered PPACA compliant coverage.

10. Thus, the University is considering the following options to address PPACA compliance as it relates to graduate student employees:

   a. Offer all graduate staff a compliant, group health insurance plan separate from regular active employee health plan options and not require the tracking of hours

      • **Pros:** Full legal compliance, administrative ease, coverage offered for those graduate student employees who are currently without coverage

      • **Cons:** Potential for a different plan with slightly higher premiums and reduced coverage, leading to increased cost to students and to the

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26 CFR § 1.5000A-2(c).
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\textsuperscript{11} 26 U.S.C. § 36B(c)(2)(C)(ii)

\textsuperscript{12} The federal regulations define “student health insurance coverage” as:

   a type of individual health insurance coverage (as defined in § 144.103 of this subchapter) that is provided pursuant to a written agreement between an institution of higher education (as defined in the Higher Education Act of 1965) and a health insurance issuer, and provided to students enrolled in that institution of higher education and their dependents, that meets the following conditions:

   (1) Does not make health insurance coverage available other than in connection with enrollment as a student (or as a dependent of a student) in the institution of higher education.

   (2) Does not condition eligibility for the health insurance coverage on any health status-related factor (as defined in § 146.121(a) of this subchapter) relating to a student (or a dependent of a student).

   (3) Meets any additional requirement that may be imposed under State law.

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45 C.F.R. § 147.145(a).
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University. The University would have to change vendors from the current undergraduate student plan.

b. Limit hours worked and track hours via a timecard

- **Pros:** Able to keep current grad plan, no extra cost to student employees or to University
- **Cons:** Difficult to administer, for certain classes of graduate student employees it is difficult to separate worked hours from academic hours; would require a considerably more expensive group health plan for those who cross over 30 hours and difficult to administer two separate options

c. Make no changes to the grad staff plan or administration

- **Pros:** Able to keep current grad plan, no extra cost to graduate student employees or the University (outside of potential medical inflation), 2 bills currently submitted to Congress to exempt students could make changes unnecessary
- **Cons:** Incurred risk of penalties described in 3, above. Potential risk is approximately $29 million if audited.