

TO: Participating Employers in the Diocese Health Plan  
FROM: James P. Gulick, Finance Officer  
DATE: April 9, 2018  
RE: IMMEDIATE ATTENTION NECESSARY

REMINDER - Employer Shared Responsibility Rules

As you know, several compliance measures of the Affordable Care Act (ACA) are now in place for Applicable Large Employers (see below for explanation of Applicable Large Employers) and must be complied with annually. As previously communicated to all Participating Employers, Administrators and Business Managers, tracking of employees' hours in accordance with government regulations under the ACA is required for employers to determine healthcare eligibility and for reporting to the government and to employees.

FOR THE 2018 OPEN ENROLLMENT, YOU ARE REQUIRED TO:

- Determine which part-time and variable-hour employees must be treated as full-time employees under the ACA. Employees with an average of 30 or more hours per week during the April 15, 2017, to April 14, 2018, twelve-month look-back period *must be offered healthcare under the same conditions as all full-time employees* for the entire 2018 plan year even if their average hours drop during the plan year.
- Notify all employees who average 30 or more hours per week during the April 15, 2017, to April 14, 2018, look-back period that they are eligible for coverage and provide them with the open enrollment materials for the plan year commencing July 1, 2018.
- Notify full-time employees and employees who average 30 or more service hours per week during the look-back period that *any employee who declines coverage* for the plan year starting as of July 1, 2018, *must sign a waiver of healthcare coverage. Note, no waiver of healthcare coverage is needed for any full-time employee who provided a waiver last year.*
- *All waivers must be collected and retained by the employer and a copy sent to the health benefits office. **NOTE:** Employers must notify the Benefits Office whenever any employee who has signed a waiver of coverage incurs a termination of employment.*

GOVERNMENT REQUIRED REPORTING FOR CALENDAR YEAR 2018:

Given the extensive and cumbersome IRS reporting requirements for employers, the Cleveland Diocese intends to continue to provide assistance by completing the necessary reporting forms and filing the forms on behalf of the parishes and other institutions related to the Church. In order to do this, it is necessary for the participating employers to:

- Continue to track *all employees covered by healthcare and their healthcare-covered dependents* in order to report (*month by month* from January through December) to the government for the 2018 calendar year.
- Employers must track and report (by month) *all employees who were offered healthcare and declined.*

As was the case for the 2017 reporting, the information will start to be transmitted to the Diocese in November and December of this year. The reporting to IRS for each month of 2018 is due in February of 2019 for manual reports or March of 2019 for digital reports. Written statements of employer-sponsored healthcare coverage provided during 2018 must be given to covered employees by January 31, 2019.

## PENALTIES

Note that the penalties on employers who do not offer minimal essential health care coverage to substantially all of its full-time employees can be severe. Very generally, the penalty is equal to either: (i) \$2,320 times the total number of full-time employees, less certain adjustments, or (ii) if the coverage is not “affordable,” the penalty is \$3,480 per employee who receives government assistance to purchase coverage through an exchange.

Additionally, an employee who waives Diocesan healthcare coverage may be subject to penalties if he or she does not obtain medical coverage elsewhere.

## DETERMINING “APPLICABLE LARGE EMPLOYER” STATUS UNDER THE ACA.

Generally, all participating employers who are under the control of, or closely affiliated with, the Catholic Diocese of Cleveland (such as the parishes, parish schools and administrative offices of the Diocese) are considered to be part of the Diocese controlled group and are therefore considered to be an “Applicable Large Employer”. If a controlled group as a whole has 50 or more employees, then each member of the controlled group is considered to be an “Applicable Large Employer” subject to the Employer Shared Responsibility (Pay or Play) rules even though individually they may have less than 50 employees.

A participating employer who is invited to participate in the Health Plans (i.e., an employer who is associated with the Roman Catholic Church, but not under the control of or closely affiliated with the Catholic Diocese of Cleveland), may be part of a different controlled group which employs 50 or more employees. If so, then such participating employers would also be subject to these rules, even though individually they may have less than 50 employees. Note, in determining whether at least 50 employees are employed for any calendar year, the monthly average of “full-time” and “full-time equivalent” employees during the preceding year must be determined. Consequently, each employer not under the control of the Catholic Diocese of Cleveland must determine their average employees for 2017 to see whether the “Pay or Play” rules will apply to them in 2018.

## TRACKING HOURS TO DETERMINE FULL-TIME EMPLOYEES UNDER THE ACA.

We expect that generally most all employers participating in the Diocese Health Plans would be considered to be “Applicable Large Employers” subject to the Employer Shared Responsibility rules. (If you do not believe that you are subject to these rules you need to consult with your legal advisor.) Each participating employer who is an Applicable Large Employer (including small employers who are part of a controlled group - see explanation above) must continue to track hours to determine who its full-time employees are in order to ensure that all its full-time employees, as defined by the ACA, are offered health care. A full-time employee is an employee who is paid for an average of 30 or more Hours of Service per week, or a monthly equivalent of 130 hours. Hours of Service include all hours for which an employee is paid and includes hours worked, paid lunch hours, holidays, vacation, paid leaves of absences including illness or disability. *See attached explanation entitled “Determination of Full-Time Employee” for more detailed information on how to track hours.*

## MORE INFORMATION

If you have any questions regarding this information or related to the healthcare plans and reporting, please contact the Employee Benefits Office at (216) 696-6525, extension 5040 or [hbo@dioceseofcleveland.org](mailto:hbo@dioceseofcleveland.org).

## IMPORTANT NOTICE

### Revoke Health Care Plan Election

The Diocese health care program was amended to add two additional limited circumstances for which an employee participating in the Diocese Health Care Plans may revoke his or her health care plan election (*but not an FSA election*) during the plan year. The IRS has added these additional permitted circumstances because of changes made by the Affordable Care Act (“ACA”) Employer Shared Responsibility rules which affect some Participating Employers under the Diocese Health Care Plans.

**1. An employee of an Applicable Large Employer under the ACA who has a change in employment status from full-time to part-time, but continues to be treated as full-time because of the stability period**

An employee who has a change in employment status from full-time to part-time, but continues to be treated as full-time during the stability period, may elect to revoke his or her Health Care Plan election (*but not an FSA election*) prospectively and drop his or her medical plan coverage only if:

- Such employee had been reasonably expected to work on average 30 hours or more per week as a full-time employee and, after the change to part-time, such employee is reasonably expected to work on average less than 30 hours per week, but because of the ACA rules continues to be treated as full-time for purposes of the Health Care Plan; *and*
- Such employee signs a representation that he or she has either already enrolled in, or intends to enroll in, other healthcare coverage which provides minimum essential coverage for himself or herself (and any dependents if he or she had elected family coverage) effective no later than the first day of the second month after the month in which the Diocesan Health Care Plan coverage is revoked.

Other minimum essential healthcare coverage might be provided under another employer’s healthcare plan, a spouse’s healthcare plan, or a government program including Medicare or Medicaid. It is suggested that an employee check eligibility and effective date for enrollment in other coverage when considering revoking his or her Diocesan Health Care Plan election. Note that generally enrollment in the Marketplace Exchange would not be available unless it coincides with the Marketplace open enrollment, or the circumstances meet the Marketplace Exchange special enrollment rights. Any revocation of the Diocesan Health Care Plan election is effective on a prospective basis only and must be submitted timely.

**2. Marketplace Exchange Open Enrollment**

Any participant may elect to revoke his or her Diocesan Health Care Plan election (*but not an FSA election*) prospectively in order to enroll in a Qualified Plan through the Marketplace Exchange either because of a Special Enrollment Period or during the Marketplace Exchange open enrollment period. The Marketplace Exchange open enrollment period typically starts in November of each year for health care coverage effective starting the following January 1. The Diocesan Health Care Plan coverage would remain in effect through to the day before the Marketplace Exchange coverage takes effect. In the case of the open enrollment period, the Diocesan Health Care Plan coverage would remain in effect through December and the Marketplace Qualified Plan would be effective immediately thereafter on January 1. In the event the employee revokes his or her election for family coverage, his or her dependents must also be enrolled in a Qualified Plan.

Generally, the Diocesan Health Care Plan coverage is affordable minimum essential coverage; consequently, an election to drop it in order to obtain coverage in a Qualified Plan through the Marketplace Exchange most likely would not entitle an employee to receive the tax credit subsidy.

## DETERMINATION OF FULL-TIME EMPLOYEE TRACKING HOURS

The Affordable Care Act (ACA) requires that all “large” employers, *including small employers who belong to a controlled group of employers who in the aggregate employ at least 50 full-time employees* (or a combination of full-time and part-time which would be the equivalent of 50 full-time employees), *offer* healthcare coverage to all full-time employees and their dependents. The rules define a full-time employee as one that has an average of 30 Hours of Service per week. Hours of Service include *all* hours for which an employee receives payment. (See section on Tracking Hours for what to include as Hours of Service.) Under the Diocese Health Plans, any “large” employer that does not offer coverage to an employee meeting the number-of-hours requirement exposes itself to a penalty equal to \$2,320 times an adjusted number of all their full-time employees. These requirements and penalties are the Employer Shared Responsibility rules under ACA which are also known as the “Pay or Play” rules.

This is a general explanation which summarizes very complex rules for tracking time to determine whether an employee is a “full-time” employee because he has an average of 30 Hours of Service and thus must be offered healthcare coverage in order to avoid the penalties for not offering healthcare coverage to substantially all full-time employees. There are also penalties for not offering *affordable* coverage. Generally, coverage is considered affordable if self-only coverage does not exceed 9.56% of the employee’s household income for the 2016 plan year. (Note: There is an affordability safe harbor using a threshold of 9.56% of an employee’s wages for the 2018 plan year.) Generally, if the coverage is not “affordable,” the penalty is \$3,480 per employee who receives government assistance to purchase coverage. The rules and penalties for not offering affordable healthcare coverage are not covered in this explanation.

The calculation of “full-time equivalent” employees is only for the purpose of determining whether an employer or controlled group of employers is a “large” employer subject to the “Pay or Play” rules. Such determination is done on a calendar year basis and is not covered in this explanation. See the “Important Notice - Immediate Attention Necessary Determination Of Large Employer Status And Full-Time Employees - Tracking Hours” for more information on determination of whether an employer is a “large” employer.

### Employees

In general, under the final regulations there are two categories of employees: “On-Going” employees and “new employees” who may be “Full-Time,” “Variable-Hour,” “Seasonal,” or “Part-Time” employees.

- An “On-Going” employee generally is any employee who has been employed for an entire Standard Measurement Period.
- A new “Full-Time” employee is one for whom it can be reasonably expected when hired that he or she will have on average at least 30 Hours of Service per week during the Initial Measurement Period.
- A new “Variable-Hour” employee is one for whom it cannot be determined when hired whether the employee will be reasonably expected to have on average at least 30 Hours of Service per week during the Initial Measurement Period because the employee’s hours are variable or otherwise uncertain.

- A new “Seasonal” employee is one who is hired into a position for which the customary annual employment period is six months or less, and the employment period occurs at approximately the same time each year.
- A new “Part-Time” employee is one for whom it can be reasonably expected when hired that the employee will have on average less than 30 Hours of Service per week during the Initial Measurement Period.

See the section on Measurement Periods for an explanation of Standard and Initial Measurement Periods.

**Q1: What about teachers and other employees of educational organizations?**

**A1:** There are special rules for teachers and other employees who typically work during an academic year and experience a break in service for the summer months. Specifically, an averaging method should be used for employment break periods that generally will result in an employee who works full-time during the active portions of the academic year being treated as a full-time employee. See the example under the Breaks in Service section.

**Q2: What about employees who are hired as full-time employees?**

**A2:** Generally, employees expected to be full-time when hired would simply be credited with the hours with respect to which they are paid each week. The actual number of hours of a full-time employee would only become significant if the employee were to have a change in employment status from full-time to part-time. New full-time employees are offered coverage under the Diocese Health Plans at their date of hire and must enroll within 30 days.

**Tracking Hours**

Hours of Service include hours when work is performed as well as all hours for which an employee is paid or entitled to payment (e.g., paid time for sick leave, vacations, holidays, etc.).

**Q3: How are hours counted?**

**A3:** For employees paid on an hourly basis: payroll records may be used to calculate hours for which payments are made or due for hours worked, vacation, holiday, illness or disability.

For employees paid on a non-hourly basis, employers may generally use one of the following 3 methods set forth under the Pay or Play rules as long as they do **not** understate the employee’s number of hours:

1. Count the *actual* Hours of Service for which payment is made (see Q&A 4 and 5);
2. Credit the employee with 8 Hours of Service for each day the employee was paid for at least one Hour of Service;
3. Credit the employee with 40 Hours of Service for each week the employee was paid for at least one Hour of Service;

As with hourly employees, all hours paid for work, vacation, holiday, illness or disability must be included. If an employee is paid for his lunch breaks, then they are required to be included in his Hours of Service, for instance: an employee receives payment for an 8 hour day which includes one hour for lunch. An employer is not required to use the same method for all non-

hourly employees. It may apply different methods for different classifications of non-hourly employees as long as the classifications are reasonable and consistently applied.

**Q4: What about employees who work part-time for more than one employer?**

**A4:** Employees who are shared among related employers must have their hours with all employers counted. For example, an employee who works 6 hours a day, 2 days a week for 2 parishes and 1 day a week for a third parish (for a total of 5 days a week) would have an average of 30 hours per week and therefore be full-time.

**Q5: What about employees who are paid on a non-hourly basis for which the hours are not easily determined, such as a salary to teach 5 classroom hours a week or a flat fee to coach a sport (and for which methods 2 and 3 under Q&A 3 are not reasonable)?**

**A5:** A reasonable method for counting *all* hours necessary to perform the employee's duties needs to be developed if either the daily or weekly alternative described under A3 above is not appropriate. For example, employers would need to count as Hours of Service: a reasonable number of hours of preparation time for each classroom hour of teaching, plus all time that a teacher or other employee is required to be at school or a school event, as well as travel time to and from sports or other events that the employee is required to attend held at a location other than the school. The IRS has determined that counting 1.25 hours of preparation time for each hour an adjunct faculty member spends in the classroom will be deemed reasonable in addition to any other hours that the employee spends performing required duties or attending required meetings. With respect to part-time high school teachers for which a reasonable method for counting hours has not been determined, the IRS method should also be an acceptable default method for crediting hours for part-time teachers until further guidance is issued. With respect to part-time elementary teachers, the Superintendent and Associate Superintendent have determined that counting one hour of preparation time for each hour a part-time elementary teacher spends in the classroom would generally be reasonable, in addition to any other hours that the employee spends performing required duties or attending required meetings.

**Q6: What time periods should be used for tracking hours?**

**A6:** The rules define two time periods: a Standard Measurement Period and an Initial Measurement Period. The Standard Measurement Period is used for On-Going employees; the Initial Measurement Period is used for new hires.

**Standard Measurement Periods**

A Standard Measurement Period means a time period of at least 3 but not more than 12 months selected by the employer that the employer uses in determining whether an ongoing employee is a full-time employee under the Pay or Play rules.

Due to the complexity of the rules and the fact that open enrollment occurs annually, our Health Plan consultant advises that generally the participating employers use a 12-month Standard Measurement Period, starting on April 15 of each calendar year and ending on April 14 of the following calendar year. Such a Standard Measurement Period gives the employer time after the end of the period to determine which employees meet the full-time employee definition so that they can receive the May/June open enrollment materials for participation on July 1.

The basic concept is that, *if* an employee has an average of at least 30 Hours of Service per week during a 12-month Standard Measurement Period, then the employee earns plan eligibility rights as a full-time employee to participate in the plan for the entire following plan year, even if his hours were to drop below the 30-hour average during the plan year.

Example: On-Going Employee

Facts: Mary is an On-Going employee who is not known to be full-time. Based on tracking her Hours of Service during the Standard Measurement Period that begins April 15, 2017 and ends April 14, 2018, it is determined that she averaged 30 Hours of Service per week and is therefore employed full-time.

Conclusion: Mary is eligible to participate in the Diocese Health Plan for the *entire* plan year beginning July 1, 2018, even if the number of her Hours of Service from April 15, 2018 through June 30, 2019, drops below an average of 30 Hours of Service per week.

Mary's hours will continue to be tracked during the following Standard Measurement Period, from April 15, 2018 through April 14, 2019, to determine her plan eligibility for the following 2019 plan year. If Mary's status changes so that it is known ahead of time that she is a full-time employee, her known full-time hours would be credited to her.

### **On-Going Measurement Period - 2018 Plan Year and thereafter**

Employees who are full-time during the standard measurement period are eligible to enroll in the Diocese Health Plan during open enrollment for the immediately following plan year and remain eligible throughout the Stability Period, unless their employment is terminated.

The following diagram illustrates the Standard Measurement Period, Administrative Period and Stability Period for the next two plan years for On-Going employees.

#### **2018 Standard Measurement Period**

**April 15, 2017 - April 14, 2018**

**Administrative Period plus  
Open Enrollment**

**April 15, 2018 - June 30, 2018**

**Stability Period = Plan Year**

**July 1, 2018 - June 30, 2019**

#### **2019 Standard Measurement Period**

**April 15, 2018 - April 14, 2019**

**Administrative Period plus  
Open Enrollment**

**April 15, 2019 - June 30, 2019**

**Stability Period = Plan Year**

**July 1, 2019 - June 30, 2020**

### **Variable-Hour/Part-Time Employees Initial Measurement Periods**

An Initial Measurement Period may be from 3 to 12 consecutive months as selected by the employer. Variable-Hour and Part-Time employees qualify during their Initial Measurement Period for eligibility to participate under the Plan during their Initial Stability Period of a minimum of 6 months up to 12 months (but the Initial Stability Period cannot be less than the Initial Measurement Period). Due to the complexity of the rules and the fact that open enrollment occurs annually, our Health Plan consultant advised that the participating employers use a 12-month Initial Measurement Period. If the Variable-Hour or Part-Time employee is determined to average at least 30 hours per week during the Initial Measurement Period, he will be deemed a full-time employee and must be offered medical coverage with the ability to enroll by the end of the month following the end of his Initial Measurement Period. His coverage would then take effect on the first day of the following month and be effective for a minimum of 12-months (his initial Stability Period).

Example:

#### **Variable-Hour or Part-Time Employee**

Facts: John is hired on September 9, 2016. It cannot be determined at that time whether he will average 30 Hours of Service for the next year. John's Initial Measurement Period would be the 12-month period starting on his date of hire, September 9, 2016 and ending on September 8, 2017. During this Initial Measurement Period, John averages 30 Hours of Service per week.

Conclusion: John will be given until October 31, 2017 to enroll in the Diocese Health Plan and will be eligible to participate in the Plan for a minimum of 12-months (his initial Stability Period) starting November 1, 2017 through at least October 31, 2018, even if the number of his Hours of Service drop below an average of 30 Hours of Service per week.

John's hours will also be tracked during the Standard Measurement Period from April 15, 2017 through April 14, 2018 to determine his plan eligibility for the 2018 plan year. If his average number of Hours of Service drops below 30 Hours of Service per week during his first Standard Measurement Period, his eligibility to participate under the Plan would cease on November 1, 2018, the first day after his initial Stability Period under the Plan. Otherwise, if his Hours of Service continues to average at least 30 per week during his first Standard Measurement Period, he would be eligible to participate in the Plan's open enrollment for the July 1, 2018 Plan year and would be covered through June 30, 2019, even if his average hours during his second Standard Measurement Period drops below 30 Hours of Service per week.

The following diagram illustrates the Initial Measurement Period, Initial Open Enrollment Period and Initial Stability Period.

**Initial Measurement Period**

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**Sept. 9, 2016 - Sept. 8, 2017**

**Initial Open  
Enrollment Period**

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**Sept. 9, 2017 - Oct. 31, 2017**

**Initial Plan Stability Period**

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**Nov. 1, 2017- Oct. 31, 2018**

**Breaks in Service**

**Q7: What constitutes a break in service which would cause an employee to be treated as a new hire?**

**A7:** There are two separate rules to determine if a break in service has occurred.

1. A period of no Hours of Service for at least 13 consecutive weeks (26 consecutive weeks if an educational organization), or
2. The period of no Hours of Service is at least 4 consecutive weeks and is longer than the employee's period of employment immediately preceding that period with no credited Hours of Service, but shorter than 13 consecutive weeks (or 26 consecutive weeks if an educational organization).

Example:

Facts: Employee works 3 weeks, terminates employment and is rehired by that employer 10 weeks after the termination of employment.

Conclusion: Employer may treat the employee as a new hire because the 10-week period with no Hours of Service is longer than the immediately preceding 3-week period of employment.

**Q8: How is the period of No Hours of Service treated if the employee is not treated as a new hire?**

**A8:** Generally, if the period of No Hours of Service is due to an unpaid leave under the Family Medical Leave Act (FMLA), the Uniformed Services Employment and Reemployment Rights Act (USERRA) or on account of jury duty, then the employer may either exclude (ignore) such period and determine the average Hours of Service per week based on the balance of the Measurement Period, or allocate the same number of average Hours of Service per week the employee has during the rest of the Measurement Period to those weeks. If the period of No Hours of Service is NOT due to unpaid leave under FMLA, USERRA or on account of jury duty, then the employer would *include* such period of No Hours of Service in determining the average.

- Q9: What about teachers and other employees of educational organizations who generally only work during an academic year and do not work during the summer?

**A9:** Generally, the employer may either exclude (ignore) the summer employment break period not included in the academic year and determine the average Hours of Service per week based on the academic year, or may credit the employee with the same number of average Hours of Service per week that the employee has during the academic year to each week during the summer employment break period not included in the academic year. (A summer employment break period must be at least 4 consecutive weeks.)

Example:

Facts: Joseph is employed by St. Mary's School. Joseph is employed for 33 Hours of Service per week on average from August 15, 2016 through June 15, 2017, and then does not provide services (and is not otherwise credited with an Hour of Service) during the summer break when the school is generally not in session except for limited summer classes and activities. Joseph resumes providing services for St. Mary's on August 15, 2017, when the new school year begins.

(ii) Conclusion. Because the period from June 16 through August 14, 2017 during which Joseph is not credited with an Hour of Service does not exceed 26 weeks, and also does not exceed the number of weeks of Joseph's immediately preceding period of employment, Joseph is treated as if he were continuously employed for the entire measurement period including the summer break. For purposes of determining Joseph's average hours per week for the measurement period, Joseph is credited, under the averaging method for employment break periods applicable to educational organizations, as either (1) having an average of 33 hours per week for the weeks between June 16 and August 14, 2017, during which Joseph otherwise would have no Hours of Service terminated on June 15, 2017, or (2) his summer break is ignored and his average hours are based only on his average hours from April 15, 2016 to June 15, 2016, and from August 15, 2016, to April 14, 2017.