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# Treatment of Interns for Employer Penalty Purposes

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If large employers do not offer affordable, minimum value coverage to all “full-time employees” they can be penalized beginning in 2015. A full-time employee (“FTE”) is an employee under the common law standard who works on average at least 30 hours per week, determined monthly. Under the common law standard, an employment relationship exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. Under this standard, an employment relationship exists if an employee is subject to the will and control of the employer not only as to what shall be done, but how it shall be done. Any label that the employer imposes on an individual is irrelevant.

Hours for FTE status purposes are hours for which an employee is paid or entitled to payment. Thus, unpaid interns are not FTEs. While there is no specific exception from the definition of FTE for a paid intern, there are two possible avenues of relief:

- For those who fit the seasonal employee definition, such as summer interns, an employer can use the special look back rules. In this case, with a 12-month measurement period, for example, the interns will not have 1,560 hours (30 hours X 52 weeks), so would not be considered FTEs. However, it should be noted that a different measurement method (monthly vs. look back) can only be used for specific classes of employees (collectively bargained employees and non-collectively bargained employees; salaried employees and hourly employees; employees of different entities; and employees located in different states).
- An employer can have a longer waiting period (up to 90 days) for interns than for other FTEs. Depending on the arrangement, this may not be discriminatory. Summer interns, for example, should be able to be excluded from the discrimination tests.