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## Implications of the Affordable Care Act for Contingent Faculty

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Starting in 2014, the Affordable Care Act levies penalties against large employers who do not offer affordable insurance coverage to their full-time employees. The Act defines a “full time” employee as one who is employed on average at least 30 hours per week. The penalties apply when an employee receives a subsidy to buy insurance in a state’s exchange.

Employers can calculate their number of full-time (at least 30 hours per week) employees monthly, or may use a “look-back measurement method” to determine FT status (30hrs/week).

If using the “look-back” method, employers can choose a measurement period that is anywhere from three months to twelve months long. If the employee averaged 30 hours per week or more during the measurement period, the employee would be considered full time for a subsequent “stability” period. Conversely, if the employee were considered part time during the measurement period, he or she would be considered part time during the stability period. The stability period would generally be the greater of six months or the length of the measurement period.

The U. S. Department of the Treasury recently addressed the question of how to calculate hours worked by contingent faculty for the purpose of determining employer penalties under the ACA. In a section titled “Employees Compensated on a Commission Basis, Adjunct Faculty, Transportation Employees and Analogous Employment Positions,” Treasury wrote, “Until further guidance is issued, employers ... must use a reasonable method for crediting hours of service.” [emphasis added]

The rules also say that “it would not be a reasonable method of crediting hours ... in the case of an instructor, such as an adjunct faculty member, to take into account only classroom or other instruction time and not other hours that are necessary to perform the employee’s duties, such as class preparation time.”

In short, unless more specific regulations come out, colleges and universities are allowed to decide for themselves whether any contingent faculty work thirty or more hours per week, as long as the institution claims its standard is “reasonable,” and considers time spent working outside the classroom.

The January 2, 2013, *Federal Register* excerpted above is the only official guidance on adjuncts or contingent faculty anywhere in the ACA or federal regulations related to ACA implementation.

Federal regulators have not determined an equivalency between credit hours taught and hours worked per week. The only guidance from the federal government says that the employer must use a “reasonable” method of translating credit hours into hours worked per week, and that the employer cannot include only “classroom or other instruction time.” Beyond those stipulations, colleges appear to have considerable latitude in how to define “full time” for adjunct faculty. Until such time as more precise guidance is available from the federal government, institutions are bound only by the requirement to use a “reasonable” standard to measure adjunct workload that takes into account time worked outside the classroom.