The Internal Revenue Service (IRS) recently published final guidance on Section 4980H of the IRS Code, governing the Employer Shared Responsibility Provision of the Affordable Care Act (ACA). The regulation addresses the calculation of adjunct faculty and student employee hours in determining eligibility for employer-based coverage under the ACA.

BACKGROUND
The Patient Protection and Affordable Care Act (Public Law 111-148) subjects businesses employing at least 50 individuals to tax penalties if they fail to offer health insurance to any full-time employee whom then purchases government-subsidized healthcare with premium tax credits, federal subsidies, or other health reform incentives—commonly known as the employer mandate. Last year, the Obama administration postponed enforcement of the employer mandate until 2015 to give impacted businesses an extra year to comply with the law.

In defining a full-time employee, Section 4980H(4) initially offered only the definition of “an individual employed on average at least 30 hours per week with respect to any month.” A clarified definition, recently issued as part of a complex 227-page final rule in the Federal Register, illustrates how to calculate creditable out-of-classroom time performed by adjunct faculty, as well as service performed by students under federal or state-sponsored work-study programs in determining whether they qualify as full-time employees.
ADJUNCT FACULTY
The new guidance is more definitive as to what constitutes a reasonable method for calculating adjunct hours (see, Sec. VI. Hours of Service, C. Application of Hours of Service to Certain Employees, 1. ADJUNCT FACULTY). Specifically, the rule states:

Until further guidance is issued, employers of adjunct faculty (and of employees in other positions that raise analogous issues with respect to the crediting of hours of service) are required to use a reasonable method for crediting hours of service with respect to those employees that is consistent with section 4980H. With respect to adjunct faculty members of an educational organization who are compensated on the basis of the number of courses or credit hours assigned, the commenters noted that a wide variation of work patterns, duties, and circumstances apply in different institutions, academic disciplines, and departments, and apply to different courses and individuals, and that this might factor into the reasonableness of a particular method of crediting hours of service in particular circumstances.

... one (but not the only) method that is reasonable for this purpose would credit an adjunct faculty member of an institution of higher education with (a) 2 1/4 hours of service (representing a combination of teaching or classroom time and time performing related tasks such as class preparation and grading of examinations or papers) per week for each hour of teaching or classroom time (in other words, in addition to crediting an hour of service for each hour teaching in the classroom, this method would credit an additional 1 1/4 hours for activities such as class preparation and grading) and, separately, (b) an hour of service per week for each additional hour outside of the classroom the faculty member spends performing duties he or she is required to perform (such as required office hours or required attendance at faculty meetings).

The College and University Professional Association for Human Resources provides this example: “According to the rule, a college or university could deem an adjunct faculty member who teaches 12 credits as having worked 27 hours a week (12 x 2.25). If the institution required the adjunct to hold office hours for 2 hours per week, it would need to credit that adjunct with 29 hours (27 for the 12 credits and 2 for the office hours). If the institution also required an adjunct to attend a one-hour faculty meeting each week, it would need to credit that adjunct with 30 hours (27 for the 12 credits, 2 for the office hours and 1 for the faculty meeting).” Therefore, institutions must carefully consider and factor-in all required work outside of the classroom.

Lastly, the IRS states that under the rule, employers may use other “reasonable methods” for crediting hours of service for adjunct faculty. The IRS specifically states in the rule that the example it provides is not the only reasonable method of crediting hours of service and “whether another method ... is reasonable is based on the relevant facts and circumstances.”
STUDENT EMPLOYEES
The IRS deemed the federal work study program, as a federally subsidized financial aid program, to be distinct from traditional employment in that its primary purpose is to advance education. Consequently, hours worked as part of a federal work study program are not creditable in determining a student’s eligibility for an offer of employer-based healthcare coverage under the ACA.

Notably, however, all hours of service for which a student employee is paid, from an educational organization or an outside employer, must be counted collectively in determining a student’s eligibility for an offer of employer-based healthcare coverage under the ACA. Any hours worked through the federal work study program are not creditable.

In light of the aforementioned, each institution must determine, based upon the guidance provided above, if its adjunct faculty and student employees meet the threshold to be offered healthcare benefits under the ACA. ADEA recommends each institution consult with its general counsel to ensure compliance with this new guidance.

ADEA will continue to monitor future guidance issued on the Employer Shared Responsibility Provision under the Affordable Care Act. If you should require additional information regarding the above, please do not hesitate to let us know. Contact Yvonne Knight, J.D., ADEA Senior Vice President for Advocacy and Governmental Relations, ADEA Policy Center at KnightY@adea.org or at (202) 289-7201.