

FAQs

Work Hours Limitation for Wage Employees

*This document presents a collective list of questions from stakeholders, some of which have may have provisional responses based on our current understanding of the Affordable Care Act. This document will be updated as additional questions arise, regulations stabilize, and policy impacts are better understood. **Note** – This FAQ document does not apply to state teaching hospitals that have their own health insurance plan.*

2013 Amendment t to the Manpower Control Program

§4-7.01- MANPOWER CONTROL PROGRAM, of the General Provisions of the 2013 Budget Bill was amended as follows:

"g. State employees in the legislative, judicial, and executive branches of government, the independent agencies of the Commonwealth, or an agency administering their own health plan, who are not eligible for benefits under the health care plan established and administered by the Department of Human Resource Management ("DHRM") pursuant to Va. Code § 2.2-2818, may not work more than 29 hours per week on average over a twelve month period. Adjunct faculty at institutions of higher education may not (a) work more than 29 hours per week on average over a twelve month period, including classroom or other instructional time plus additional hours determined by the institution as necessary to perform the adjunct faculty's duties; or (b) meet or exceed, on average over a twelve month period, 75% of the course load for a full-time non-tenure-track teaching faculty member at that institution. Federal regulations under the Affordable Care Act ("the Act") are currently under development, and DHRM shall provide relevant program requirements to agencies and employees, including, but not limited to, information on wage, variable and seasonal employees, prior to the effective date of the Act and any associated regulations. All state agencies/employers in all branches of government shall provide information requested by DHRM concerning hours worked by employees as needed to comply with the Act and this provision. State agencies/employers are accountable for compliance with this provision, and are responsible for any costs associated with maintaining compliance with it and for any costs or penalties associated with any violations of the Act or regulations thereunder and any such costs shall be borne by the agency from existing appropriations. The provisions of this paragraph shall not apply to employees of state teaching hospitals that have their own health insurance plan; however, the state teaching hospitals are accountable for compliance with, and are responsible for any costs associated with maintaining compliance with the Act and for any costs or penalties associated with any violations of the Act or regulations thereunder and any such costs shall be borne by the agency from existing appropriations."

What does this Amendment mean for state agencies?

- This amendment is in response to the requirements of the Affordable Care Act. It restricts the number of hours that employees who are not eligible for benefits under the

health care plan established and administered by DHRM may work. The amendment applies to agencies in the legislative, judicial, and executive branches of government, the independent agencies of the Commonwealth, and any agency administering its own health plan. It also provides options for measuring the amount of time worked by adjunct faculty at institutions of higher education.

Which employees are affected by the work hours limitation?

- Wage employees
- Part-time salaried employees currently working more than 29 hours per week, but less than 32 hours per week. *(See Section regarding Part-time Salaried and Q Status Employees)*

Who are “wage” employees?

- Employees who receive pay for hours worked rather than a fixed salary. Wage employees are sometimes referred to as hourly or P-14 employees and are employed in diverse occupations and professions.

Why is it necessary to limit the number of hours that wage employee are permitted to work?

- The amendment is necessary to ensure compliance with the Affordable Care Act. Providing health insurance to wage employees would require a significant expenditure of state funds that are not budgeted.

Which wage employees are subject to the proposed amendment?

- *All* wage employees in all branches of state government are limited to working no more than 29 hours per week *on average over the course of twelve months*.

Are there any exemptions from the amendment?

- No.

What is the basis for limiting the number of hours to 29?

- Beginning in 2014, the Affordable Care Act will require employers with 50 or more employees to provide health insurance coverage to all employees who work, on average, 30 or more hours per week.
- Since 1988, state policy has defined the maximum number of hours that wage employees are permitted to work as 1500 hours per wage “anniversary” year. 1500 hours per year = 28.8 hours per week, which is roughly equivalent to the new 29 hour limitation.

Is the intent of the amendment that all wage employees work a regimented, 29 hours per week every week?

- No. Work schedules should be consistent with business needs and workload.

- Wage employee schedules may vary from week to week provided that the average number of hours worked over the course of twelve months does not exceed 29 hours per week.

Can agencies provide pay increases to wage employees to offset the reductions in work hours?

- No. Hourly rates should not be adjusted simply because work hours are being reduced.
- Like classified employees, wage employees are subject to wage rate adjustments in accordance with State Policy 3.05, Compensation, and to their agency's Salary Administration Plan.

Employer Requirements

Does the state health plan permit participation by wage employees?

- No

What is the "Standard Measurement Period" that employers are required to designate?

- Under the Affordable Care Act, employers must identify a retroactive measurement, or "look back" period, in order to determine which employees will meet the Act's definition of "full-time" employee, and must be offered healthcare coverage in order to avoid significant tax penalties.

What is the Commonwealth's Standard Measurement Period?

- Each May 1 through April 30 of the following year. The initial Standard Measurement Period is May 1, 2013 through April 30, 2014.

What is the "Stability Period" that employers are required to designate?

- During the Stability Period, full-time employees identified during the Standard Measurement Period must be offered healthcare coverage in order for the employer to avoid significant tax penalties. The Stability Period, which cannot be of shorter duration than the measurement period, permits the employer to treat employees as full-time or not full-time, as determined during the Standard Measurement Period, throughout the Stability Period that follows.

What is the Commonwealth's initial Stability Period?

- July 1, 2014 through June 30, 2015
- This is consistent with the Health Benefits Plan Year

What is the “Administrative Period” that employers are allowed to designate?

- The Affordable Care Act provides an Administrative Period of up to 90 days to give employers time to notify and enroll employees following the Standard Measurement Period, but before the Stability Period.

What is the Commonwealth’s initial Administrative Period?

- May 1, 2014 to June 30, 2014. Subsequent Administrative Periods will fall within the last three months of the relevant stability period. For example, the July 1, 2014 through June 30, 2015 Stability Period will overlap with the May 1, 2015 through June 30, 2015 Administrative Period that follows the May 1, 2014 through April 30, 2015 Standard Measurement Period.

Can each state agency establish its own measurement periods?

- No. there will be one measurement period for health benefits purposes.
- *Note: This does not apply to state teaching hospitals that have their own health insurance plan.*

Do individual agencies have the authority to offer healthcare coverage under the state plan to wage employees if they have the funds to cover the cost?

- No. The state healthcare plan does not permit participation by wage employees.

What happens if an agency does not adhere to the 29 hour threshold and its wage employees meet the criteria for “full-time employee” under the Act?

- The budget language specifies that agencies are accountable for compliance and are responsible for *all* costs related to violations of the Act.

How will penalties be calculated?

- *Under review.*

Part-time Salaried and Q Status Employees

Will part-time classified and other *salaried* part-time employees who work more than 29 hours per week (i.e., 75% or more of full-time) be eligible for coverage in the state health plan?

- Yes

Will the criteria for Part-Time Classified and Q-Status Classified employment change?

- Yes. DHRM will re-define part-time salaried employment (P Status) as 20 – 29 hours per week per year, and quasi-full-time employment (Q Status) as 30 – 39.9 hours per week per year effective January 1, 2014.
- *NOTE: All policies impacted by the Act and the amendment will be revised when the full extent of the impacts are more certain.*

Calculating Hours Worked/Paid

How is the term “week” being defined with respect to the 29 hour limit per week?

- A week is defined as the “employee’s assigned workweek.”

How should wage hours be counted to determine employment status under the Act?

- **Only** the hours worked/paid during the Standard Measurement Period (May 1, 2013 – April 30, 2014) are to be counted to determine full-time status as defined by the Act.
- *Example: Wage employee works and/or is paid for 1,499 hours from May 1, 2013 through April 30, 2014. Divide 1,499 by 52 = 28.8 hours per week.*

What happens to the 1500 hour limit per year based on the wage employee’s anniversary date?

- The 1500 hour wage employment limitation will continue to be used as an approximation of 29 hours per week.
- **Wage anniversary dates are no longer relevant.** Effective May 1, 2013, wage employee work hours must be counted on a twelve month basis beginning on that date.
- This change effectively re-sets the clock for current wage employees to May 1, 2013. Wage employees in all agencies (all branches of government) are limited to working no more than 1500 hours per agency over the course of twelve months (May 1st through April 30th).
- There will be no exceptions to the 1500 hour limit.
- *Example: When a wage employee reaches 1500 work hours beginning on or after May 1, 2013 and before April 30, 2014, the employee must not be allowed to work again until May 1, 2014. A wage employee who reaches or exceeds 1500 hours of work since his/her last hire is fine, provided the May 1st – April 30th 1500-hour limit is not exceeded.*

Is there a difference between hours worked and hours paid?

- Yes. It is the number of hours paid that must be tracked and counted during the measurement period.
- *Example: Wage employees who receive stand-by or on call pay may receive one hour of additional pay for every eight hours on call.*
- *NOTE: DHRM has concerns with this requirement and has submitted formal comments to the IRS requesting clarification.*

How will work hours for adjunct faculty be counted?

- The existing contracts between institutions of higher education and individuals currently serving in adjunct faculty positions shall remain in place and unchanged until their designated end dates.
- All new contracts, and contract renewals for existing adjunct faculty at institutions of higher education must limit work hours to no more than 29 hours per week on average over a twelve month period, including classroom or other instructional time plus additional hours determined by the institution as necessary to perform the adjunct faculty's duties; or, in the alternative, may not meet or exceed, on average over a twelve month period, 75% of the course load for a full-time non-tenure-track teaching faculty member at that institution.

What is “seasonal work” and how are an employee’s hours counted?

- Seasonal Work is work that is exclusively performed at certain seasons or specified periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Seasonal employees may work up to, or exceed 40 hours per week during the defined season or specified period of time, provided that the employees do not work more than 29 hours per week on average over the course of twelve months.
- *Examples: Agricultural Workers, Summer Interns, Recreation/Parks Workers, Special Museum Exhibition Workers, Legislative Session Support Staff.*
- *Note: Additional federal guidance is anticipated.*

What is “variable hour work” and how are an employee’s hours counted?

- Work that is exclusively performed on an irregular and/or unpredictable basis for a limited time only, or by nature, is related to a particular piece of work or function and is usually of short duration. Employees may work up to, or exceed 40 hours per week during the assignment, provided the employees do not work more than 29 hours per week on average over the course of twelve months.
- *Examples: PRN Medical Workers, Emergency Response Workers.*
- *Note: Additional federal guidance is anticipated.*

Are student and post-doctoral workers in wage positions at colleges and universities subject to the 29 hour restriction?

- Yes

Some individuals are employed in wage positions in more than one agency. How should their hours be counted?

- Wage employees in all agencies (all branches of government) are limited to working no more than 1500 hours per agency over the course of twelve months (May 1st through April30th).

Current wage employees, particularly those who already have healthcare coverage under a private or retiree plan, are requesting insurance waivers to confirm that they do not need or want insurance coverage. Will waivers be offered, and if so, will these employees be permitted to work more than 29 hours per week?

- No. Insurance waivers have no bearing on the budget amendment which restricts the work hours of *all* wage employees to no more than 29 hours per week on average over the course of twelve months per agency.

Can an agency decide to employ only those who have health insurance in wage positions and permit them to work more than 29 hours per week?

- No. The budget amendment restricts the work hours of *all* wage employees.
- Federal law and state policy dictate that our employment decisions be based on job-related knowledge, skills, abilities, and qualification standards. An individual's health insurance status may not be inquired about or considered.

Change in Employment Status

If a wage employee is hired into a salaried position in the same or a different agency, must the Commonwealth provide insurance just from the time the employee becomes salaried? Is there liability for the time the employee was wage?

- Insurance will be provided at the time the employee enters a salaried position. There is no retro-active liability for the time the employee was in a wage position.

When an employee is laid off, the Commonwealth continues to provide the employer's portion of health insurance coverage for 12 months. If the employee does not receive severance benefits, or is no longer receiving severance benefits during that 12 month period, could the "Affordability" provision of the Act become an issue?

- No. Once an employee is placed on Leave Without Pay – Layoff, they are no longer an employee of the Commonwealth.

Will wage employees be eligible for unemployment compensation as the result of reduced work hours?

- Some employees may qualify for unemployment benefits.

Alternative Staffing Strategies

Can an agency transition its wage employees to contracts to avoid the 29 hour restriction?

- This strategy is not advised. Agencies must consult the criteria for “Independent Contractor” under [IRS Regulations](#) prior to initiating any changes in employment status.

If an agency uses a Temp Agency/Service to procure workers to perform work similar to that of the agency’s classified employees, does this “joint employment” relationship mean that both the state agency and the Temp Service are liable for the provisions of the Act?

- *Possibly. This issue is under review.*

If the Temp Service provides health insurance coverage that meets the ACA standards and is “affordable” to the temporary worker who is working more than 30 hours on average during the year, is the state agency no longer liable under Act? Does full liability reside with the Temp Service?

- This issue is under review.

May agencies convert wage positions to part-time or full-time salaried positions?

- The amendment may necessitate the redistribution of work to additional wage employees. Agencies may also request the establishment of salaried position(s) to accomplish impacted functions based on agency business need.
- Agencies must coordinate this process with their respective Cabinet Secretaries.
- Salaried positions that are established to restore former staffing levels or to succeed wage positions must be filled through a competitive hiring process.