

**FREQUENTLY ASKED QUESTIONS ABOUT CONTINGENT FACULTY MEMBERS
AND THE ACA'S EMPLOYER PENALTY**

April 26, 2013

Q1: Does the Affordable Care Act (ACA) require that institutions of higher education provide health insurance to full-time contingent faculty members?

A1: No. Large employers are not required by the ACA to provide health insurance to contingent faculty members, whether they are full or part time. In this context, "large" means an employer with an average of at least 50 full-time employees, including full-time equivalents, on business days during the prior calendar year. This part of the ACA doesn't apply to small employers.

Q2: Won't employers who don't offer health coverage to full-time contingent faculty members face a penalty under the ACA starting January 1, 2014?

A2: Not necessarily. The ACA establishes *possible* financial penalties on large employers that don't offer health coverage to full-time contingent faculty members and their dependents. However, the fact that there could potentially be a penalty if an employer fails to offer coverage doesn't mean that there will be. In addition, regulators have pushed back the start date of the penalty provision for employers with fiscal year plans; for them, the penalty provisions don't even apply until the beginning of the first plan year that starts in 2014.

Q3: If penalties aren't always certain when large employers fail to offer coverage to their full-timers and their dependents, under what circumstances are penalties going to be levied?

A3: For there to be any penalty under the provisions related to the offer of coverage, at least one full-time employee will have to be receiving federal premium tax credits for exchange-based insurance.

Q4: How will someone qualify for premium tax credits?

A4: To be eligible for tax credits, someone has to be getting coverage through a health insurance exchange and have household income between 100 percent and 400 percent of the federal poverty line, but there are other criteria. The individual can't be eligible for coverage under someone else's affordable employer-sponsored plan, Medicaid, or other government coverage, for example.

Q5: Could there be penalties for reasons other than a large employer's failure to offer coverage?

A5: Yes. If a large employer offers coverage that is unaffordable or requires too much in the way of deductibles, copayments, and other cost-sharing, the employer could face a financial penalty. For

there to be a penalty, the employee would have to be receiving federal premium tax credits for exchange-based coverage. Keep in mind, though, that regulators have created three employer safe harbors so that even if employees get tax credits, there may be no penalties. Another way there could be a penalty is if the employer meets the law's standard related to offering coverage but still fails to offer coverage to 5 percent of its full-time employees and dependents (or, for large employers with fewer than 100 full-time employees, fails to offer to as many as five). In that case, if that employee gets premium tax credits, the employer will be penalized based on that employee.

Q6: For penalty purposes, what is a “full-time employee,” and why are some employers worried about contingent faculty members’ hours of service?

A6: The law defines a full-time employee as one who works an average of 30 hours of service a week during a month, but it doesn't indicate how to tally hours of service. Regulators know that contingent faculty members spend time working beyond the hours they spend in the classroom. But if contingent faculty members are paid on a per-course basis, how to add outside-the-classroom hours to inside-the-classroom hours requires understanding how these employees actually work.

Q7: What have regulators said about counting contingent faculty members’ hours, and could what they’ve said change?

A7: Regulators have said that employers must use a “reasonable” method for counting contingent faculty members’ hours, and they’ve indicated that it would not be reasonable to take into consideration only classroom hours if a contingent faculty member also has outside-of-classroom hours. The approach taken by regulators is in effect unless and until they issue new, formal guidance. NEA is actively engaging with regulators at Treasury and the IRS to ensure that whatever comes out next will make sense for contingent faculty members, but we don't know when new rules will be issued or what they'll say.

Q8: Is it “reasonable” to assume that all contingent faculty members work the same number of hours outside the classroom?

A8: No, we don't think it's reasonable. Just like it's not reasonable to minimize a contingent faculty member's actual work hours for the employer by ignoring some or all of the hours spent preparing, grading, and doing other work for the employer, assuming that all contingent faculty members work the exact same amount of time could over- or under-estimate actual hours in most cases.

Q9: If across-the-board assumptions about contingent faculty members’ hours are not reasonable, what should employers be doing with respect to hours of service?

A9: First, they should be transparent about what they think contingent faculty members’ actual hours of service are. They should be talking about it with workers and their representatives—in advance of proposing any hours-related actions. But it's also crucial that they don't take precipitous actions that will undermine contingent faculty members, because the stakes are too high.

Q10: What's at stake if contingent faculty members’ hours are cut?

A10: Contingent faculty members get paid little enough as it is, and cutting their work hours will make it even harder for them to make ends meet. But cutting their hours could also mean that experienced faculty members teaching multiple courses give up courses that will be taught instead by new, inexperienced faculty; that would hurt students by depriving them of experienced faculty.