

<b>HUMAN RESOURCES MEMORANDUM 15-001</b>		DATE ISSUED: January 5, 2015
SUBJECT: <b>Employer Responsibilities Under the Affordable Care Act</b>		REFERENCE: PML 2014-038
TO: Personnel Officers, Personnel Transactions Managers and Supervisors, Personnel Transactions Staff, Personnel Liaisons and Attendance Clerks		SUPERSEDES:

**PLEASE ENSURE THAT THIS INFORMATION IS SHARED WITH YOUR EMPLOYEES**

**Purpose** The purpose of this memo is to provide an update on the provisions and responsibilities of the Affordable Care Act to all human resources offices within the Department of General Services.

**Affordable Care Act (ACA)** The Patient Protection and Affordable Care Act (ACA) was enacted in March 2010 to ensure that individuals have access to quality and affordable health care. There are several provisions of the ACA that impact employers, such as the State of California. This memorandum provides information to departmental Human Resources (HR) staff on the provisions of the ACA that impact the state.

The California Department of Human Resources (CalHR) is overseeing statewide ACA implementation efforts to ensure that the state’s human resources practices and processes align with the ACA. CalHR has worked closely with the State Controller’s Office (SCO), California Public Employees Retirement System (CalPERS) and departmental subject matter experts to review the ACA provisions, identify impacts, and develop necessary processes and procedures to ensure that the state complies with the ACA mandates.

The state has already implemented some provisions of the ACA and is now implementing other provisions, which will require changes to how departments administer employee health benefits. The following provides an overview of the provisions that impact the state and explains key implementation activities critical to the departmental role in ensuring the state’s compliance.

**Provisions Already Implemented** *W-2 Reporting on Employer-Sponsored Health Coverage—*  
In 2013, the state implemented the W-2 reporting on the cost of employer-sponsored health coverage. This reporting is for informational purposes only to inform employees of the value of their employer-sponsored health care benefits.

**Provisions  
Already  
Implemented  
(Continued)**

*Health Insurance Marketplace Coverage Options Notice Requirements—*

The ACA requires employers to provide notices to employees with information about the Health Insurance Marketplace, known as Covered California, and employer-sponsored health coverage.

In 2013, the state implemented the Health Insurance Marketplace Coverage Options Notice requirements. Departments are required to provide this Notice to all new employees, regardless of their health plan enrollment or eligibility status, within 14 days of the employee's hire date (reference [PML 2013-030](#)).

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**Provisions  
Effective  
Immediately**

*Summary of Benefits and Coverage Notice Requirements—*

The ACA requires group health plans, health plan administrators, and employers to issue a [Summary of Benefits and Coverage Notice](#) to employees eligible for health coverage with information on the health plan options available to them so they can make informed decisions about the health plan they choose (Attachment A).

Effective immediately, Attendance Clerks (AC) and Personnel Liaisons (PL) are required to issue the [Summary of Benefits and Coverage Notice](#) to all employees newly eligible for health benefits no later than the first day the employee is eligible to enroll in health coverage. For example, if a health benefit-eligible employee is hired on August 12, departments must provide this Notice, along with the health enrollment forms (HBD-12 and HBD-12A) to the employee no later than September 1 (the earliest effective date of coverage).

*ACA Notification Checklist—*

To ensure the timely distribution of the *Health Insurance Marketplace Coverage Options* and [Summary of Benefits and Coverage Notices](#), CalHR has developed the [ACA Notification Checklist \(CalHR Form 782\)](#). Effective immediately, AC/PL's must use this form to document the distribution of these notices (Attachment B). The two-part Checklist includes the following:

- **Part I** documents the distribution of the legally required [Health Insurance Marketplace Coverage Options Notice](#). This section must be completed by the AC/PL's responsible for providing the Notice to a newly hired employee within 14 days of the employee's hire date.
- **Part II** documents the distribution of the [Summary of Benefits and Coverage Notice](#) along with the health benefit enrollment forms ([HBD 12](#) and [HBD 12A](#)) to employees newly eligible for health benefits. This section must be completed by the AC/PL's representative responsible for providing the Notice and enrollment forms to the employee.

**Provisions Effective Immediately (Continued)**

Departmental HR staff must review and sign the Checklist to certify that the Notices were issued to employees within the specified time frames. Departments shall retain this document in the employee's Official Personnel File.

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**Provisions to be Implemented**

*Employer Shared Responsibility Provisions—*

Beginning January 1, 2015, the state will be subject to the ACA's Employer Shared Responsibility provisions. These provisions require large employers<sup>1</sup> to offer health coverage to 95 percent of full-time employees,<sup>2</sup> defined as those who average 130 hours of service per month,<sup>3</sup> and their dependent children to avoid penalty assessment. For ACA purposes, how the state appoints employees by tenure and time base is irrelevant (e.g., Permanent/Full-Time, Intermittent, etc.).

Failure to comply with the Employer Shared Responsibility provisions could result in significant penalties to the state if at least one full-time employee receives a premium tax credit for purchasing individual coverage through Covered California. The health coverage offered must also meet the ACA's affordability and minimum value standards. CalHR and CalPERS are responsible for ensuring the state's health plan products meet the law's affordability and minimum value requirements.

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**Penalties**

Currently, the state meets the ACA's requirements pertaining to the offer of health coverage threshold required for 2015. However, if the state fails to meet these requirements on an annual basis, the state may be subject to the following penalties, which may impact departmental budgets:

- Penalty A: No Coverage Penalty—The state may be subject to an annual \$2,000 penalty for each full-time state employee (minus the first 30 full-time employees) for failure to offer health coverage to at least 95 percent of its full-time employees.
- Penalty B: Inadequate Coverage Penalty—Even if the state offers health coverage to at least 95 percent of its full-time employees, it may be subject to a \$3,000 annual penalty for each full-time employee that receives a premium tax credit for purchasing individual coverage through Covered California, if the health coverage offered does not meet the law's affordability or minimum value standards.

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<sup>1</sup> The ACA defines a "large employer as having 50 or more full-time employees. All state departments/agencies are considered one employer for the purposes of the ACA's Employer Shared Responsibility provisions.

<sup>2</sup> In 2015, the state is only required to offer health benefits to 70 percent of its full time employees to avoid penalty assessment.

<sup>3</sup> Hours of service includes any hour in which an employee is paid or entitled to payment during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

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**Annual Reporting to the Internal Revenue Service (IRS)**

To demonstrate compliance with the Employer Shared Responsibility provisions, the state will be required to file annual reports with the IRS, beginning January 2016, with information on each full-time employee and the health coverage that was offered to the employee and their dependent children.

The state will be required to report a number of data elements that are not currently captured by the SCO, such as an offer of health coverage. Currently the state only captures data on employees who are enrolled in health coverage, not whether an offer of coverage was made.

Although the state is not changing the eligibility rules for participation in the state's health benefits program, CalHR and SCO will implement processes and procedures to capture the data on the offer of health coverage to comply with the employer reporting requirements. This information is necessary to help the IRS make determinations about premium tax credits (for purchasing coverage through Covered California) and determining penalties.

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**Affordable Care Act System (ACAS) Database for Tracking Employee Health Benefit Status Information**

To produce the reporting required by ACA, the SCO has developed the ACAS, which will capture the data elements the state will report to the IRS. Beginning in January 2015, departmental HR staff will be required to enter specific health benefit status information for all employees into the ACAS. Following are examples of the health benefit status information to be entered:

- Distribution date of the *Health Insurance Marketplace Coverage Options Notice*;
- Offer of health coverage based upon eligibility;
- Acceptance or decline of health coverage; and
- Late enrollment or loss/cancellation of coverage.

The ACAS will be accessed like SCO's other online personnel and payroll systems (e.g., PIMS, HIST) and will have similar screen views. Instructions for obtaining ACAS access can be found in SCO's Personnel Letter #14-011. SCO will issue a Personnel Letter later this year with detailed instructions on entering employees' health benefit status information into the ACAS. SCO Personnel Letters can be found at:

[http://www.sco.ca.gov/ppsd\\_sco\\_letters.html](http://www.sco.ca.gov/ppsd_sco_letters.html).

Departments are vital in implementing and administering these business process changes. Specifically, departments will be responsible for ensuring the timeliness and accuracy of the data captured on all employees in the ACAS by entering the health benefit status information in the pay period in which they are effective. Departments may also be required to assist SCO in validating data on employees in the ACAS in response to IRS inquiries.

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**Compliance Program**

The state must ensure ongoing compliance with the ACA requirements. An ACA compliance program will be developed to ensure proper notification is provided to employees and that ACA-related business processes and procedures are followed to minimize the state's risk of penalties.

Departments, CalHR, and SCO will jointly monitor departmental compliance efforts. A variety of reports will be created to assist in monitoring activities (e.g., View Direct, etc.). Information about the ACA compliance program will be issued in Spring 2015.

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**Annual Employee Statements**

In addition to fulfilling the state's annual compliance reporting to the IRS, the state is required to furnish a written statement to each full-time employee with information on the health coverage that was offered for each calendar year. These statements will be issued by January 31 each year and will assist employees in determining whether they may qualify for a premium tax credit if they purchase coverage through Covered California.

SCO will be providing this statement to employees on behalf of the state. The first statements will be issued by January 31, 2016, with information about the health coverage offered to the employee in 2015.

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**Instructions for AC/PL's Affordable Care Act (ACA)**

The checklist is mandatory for all new employees hired (or who become eligible) after January 1, 2015. The top section has space to complete the employee's name, hire date, position number, social security number and tenure/time base.

Part I: Document the date the notice was given to the employee about the Health Insurance Marketplace Coverage Options and Health Cover Notice. This is a one-time notice that must be given to every new employee to your department/agency within 14 days of their hire date.

Part II: If the employee is eligible for health benefits, the employee must be provided with three forms:

1. The new form [Summary of Benefits and Coverage](#),
2. [Health Benefits Enrollment \(HBD 12\)](#), and
3. [Declaration of Health Coverage \(HBD 12A\)](#)

Health benefit documents must now be provided to a newly eligible employee by the first day the employee is eligible to enroll in coverage.

Submit all documents to Office of Human Resources (OHR) after completion.

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**Additional Information**

The analysis of the ACA regulations and IRS reporting requirements is ongoing. Other provisions, including automatic enrollment of new hires and implementation of the 40 percent excise tax on high-cost benefits, are set to take effect over the next few years. Updates on these provisions and any changes to business processes will be provided to departmental HR offices as necessary.

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**Questions or Assistance**

For additional information on the ACA's Employer Shared Responsibility provisions, please refer to [Internal Revenue Code §4980H](#).

Questions regarding this memorandum may be directed to your assigned Personnel Specialist.

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**ANGIE BOLDRINI**, Personnel Officer  
Office of Human Resources

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- Attachment A: [2015 Summary of Benefits and Coverage Notice](#)
- Attachment B: [Affordable Care Act Notification Checklist \(CalHR 782\)](#)
- Attachment C: [Health Benefits Enrollment \(HBD 12\)](#)
- Attachment D: [Declaration of Health Coverage \(HBD 12A\)](#)
- Attachment E: [Health Insurance Marketplace Coverage Options Notice](#)