CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: 08/06/13 **Approx Start Time:** 1:30 p.m. **Approx Length:** 1 hour

Presentation Title: Patient Protection & Affordable Care Act – Shared Responsibility

Department: Department of Employee Services

Presenters: Nancy Drury, Director of Employee Services
Carolyn Williams, Benefits Manager
Mark Stotik, Labor & Employee Relations Manager
Jan Long and Wade Symons, Mercer

Other Invitees: Executive Management Team
Sam Irving, Transportation Operations Manager
Liz Garcia, WES Business Manager

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

The Patient Protection & Affordable Care Act (PPACA) was signed into law on March 23, 2010. Many of its provisions were scheduled for implementation on January 1, 2014. On June 25, 2013, the Federal government announced that certain provisions of PPACA related to employers would be postponed until January 1, 2015. This delay provides County departments with additional time to prepare for implementation based on direction from the Board of County Commissioners. We are requesting that the Board make policy decisions regarding compliance with PPACA:

1. Decide on the length of the measurement period which determines the length of the period when the County is required to offer employer-paid medical insurance.
2. Decide whether or not to establish limits on the weekly work hours or length of employment for temporary employees.
3. Decide whether to place limits or restrictions on the re-employment of retirees or other former regular employees as temporary employees.
4. Decide whether the County will allow departments to budget additional funds to pay for medical insurance for temporary employees.
5. Decide whether to enter into negotiations with the Employees Association/ Temporary Employees collective bargaining unit.

EXECUTIVE SUMMARY:

Beginning January 1, 2015, PPACA requires employers to offer affordable medical insurance to any employee regularly working 30 hours or more per week on average (including temporary/seasonal employees) or pay a substantial penalty. For Clackamas County, the penalty is estimated to be over $300,000 per month. This is referred to as the "shared responsibility" provision of the law.

The penalty comes into play if even one fulltime County employee receives a federal subsidy on the state health insurance exchange. The largest penalties are assessed if the County were to fail to offer coverage to more than 5% of full time employees. Under this law, full time employees are any employees who work an average of 30 hours per week for a defined period of time known as the "measurement period," which the employer is allowed to set.

The County employs several hundred people each year in "temporary" or "seasonal" jobs, such as road workers, lifeguards, utility workers, deputies and administrative support staff. Departments budget for temporary employees in a line item to cover their wages, but unlike regular employees, there are no funds budgeted for benefits.

The majority of these employees work for a short period of time and/or for less than 30 hours per week and PPACA will not apply. However, some departments have temporary employees who work 30+ hours per week for longer periods of time. The departments who will be affected most by the law are Transportation & Development, Business & Community Services, Water Environment Services and the Sheriff's Office.

The law will also apply to some retirees and other former employees who return to work as temporary employees, employees who change status from regular to temporary and employees on extended leaves of absence without pay.

To determine whether an employee is a full-time employee, the County is required to establish a "measurement period" between 3 and 12 months. If an employee works an average of 30 or more hours per week during the measurement period, the employee is considered full-time and the County must offer medical insurance to be effective within 90 days. The 90-day period is known as the administrative period and provides employers with time to identify their fulltime employees and conduct the enrollment process.

The insurance must be made available to the employee for a minimum of 6 months (or equal to the measurement period if it is longer). This is called the stability period. The stability period applies even if the employee's work schedule is reduced to less than 30 hours per week after the measurement period.

Measurement periods (3-12 months) and stability periods (6-12 months) must generally be the same length for all employees. However, the regulations allow application of different periods for certain categories of employees: salaried vs. hourly, union vs. non-union and employees covered under separate collective bargaining agreements.

The obligation to provide coverage ends when the employee separates from service. However, if an employee is reinstated within 6 months, the obligation may be restored.

FINANCIAL IMPLICATIONS (current year and ongoing):
There is a potential penalty of $167 per full-time employee per month for noncompliance. The penalty will be assessed on all full-time employees if less than 95% of fulltime employees are offered coverage and one full-time employee receives a federal subsidy to purchase health insurance through the state insurance exchange.

Many of the County's temporary employees would be eligible for a subsidy. Subsidies are available to individuals and families earning between 138% and 400% of the Federal Poverty Level (up to $47,401 for an individual and up to $97,815 for a family of four).

The estimated financial impact of the fine is $300,600 per month ($167 x 1800 fulltime employees). Even when coverage is offered to 95% or more of fulltime employees, smaller penalties may be assessed if at least one fulltime employee is not offered coverage. The penalty is calculated on a monthly basis and assessed annually.

The implications are that one department which is not monitoring the hours of temporary employees closely enough could cost the County a significant fine. Employee Services, Payroll and Technology Services have developed a report that can be used by the departments and DES to monitor employee hours. It will be important to share this responsibility so that there is a cross-check between DES and the departments to ensure compliance with the law.

To keep the cost low to departments, the County has $1000 deductible plans with both Providence and Kaiser. The cost of providing employer-paid coverage on for a single employee on the Kaiser plan in 2013 would be $5,275.68 per year ($439.64 per month). This is the County's least expensive medical plan.

LEGAL/POLICY REQUIREMENTS:
Complying with PPACA will require changes to some Employment Policies and Practices (EPP's):

- EPP #4 – Layoff for Inability to Perform Job Duties
- EPP #10 – Family and Medical Leave Policy
- EPP #11 – Leaves of Absence
- EPP #31 – Employment of Temporary and Limited Term Employees
- EPP #32 – Part-Time and Unallocated (Temporary) Employees
- EPP #33 – Employee Benefits

Leaves of Absence without Pay
Full-time employees who are approved for an extended leave without pay under County policy and union contracts could qualify to have their medical insurance continued during the leave. This includes employees who have exhausted their Family & Medical Leave, as well as military, personal, educational and other authorized leaves without pay. In the 2012/13 fiscal year-to-date, there have been over 200 such leaves. Most of them are for relatively brief periods, although 21 of them exceeded 100 hours. Of those 21, most were extended medical leaves.

Under the Personnel Ordinance and the collective bargaining agreements, leaves of absence without pay will be granted by departments up to 90 days for any reasonable purpose. These leaves may be extended only upon approval of the Board of County Commissioners (as delegated to the Director of Employee Services). Under the collective bargaining agreement with the Federation of Parole and Probation Officers, employees with at least 7 years of service may request up to one-year of leave of absence without pay.

Under all of the collective bargaining agreements, there are provisions for educational leave of up to one year and employees may be granted extensions of those leaves. This type of leave request occurs very rarely; we were able to identify only 3 employees who were granted education leave since 1999.

For medical and military leaves, it is also important to ensure continued compliance with other federal and state laws, such as the Americans with Disabilities Act (ADA), the Uniformed Services Employment and Reemployment Act (USERRA) and ORS 408.240 to 408.290 which requires paid leave for mandatory annual training requirements for members of the National Guard and Reserves.

PUBLIC/GOVERNMENTAL PARTICIPATION:
DES sought input from the Departments of Transportation & Development, Business & Community Services, Water Environment Services and the Sheriff's Office regarding their use of temporary employees and the impact of the PPACA on their business operations. These departments were selected because of their higher usage of temporary employees. In addition, DES provided this study session worksheet to all department directors, managers, supervisors and timekeepers.

OPTIONS:

Measurement Period
The measurement period must be between 3 and 12 months. Shorter measurement periods will result in shorter stability periods. With longer measurement periods, however, there is a greater chance that the employee will average less than 30 hours per week during the measurement period and not qualify as fulltime. The County's benefits consulting firm, Mercer, recommends a 12-month measurement period.

Hours Worked
Temporary employees could be restricted to working no more than 29 hours per week or fulltime for no longer than six months in any 12-month period. Hours worked would have to be monitored very closely to ensure the employee remained below the threshold. This is a simple method that applies equally to all departments. However, it reduces the flexibility for departments to meet their business needs with temporary employees. It could increase the amount of time that supervisors spend in recruiting and training new temporary employees.

Retirees and Other Former Employees
Many departments rehire retirees as part of their succession plans or to complete special projects, especially at higher levels and/or when there are unique skill sets. Some retirees or other former employees who return within 6 months as temporary employees may qualify for employer-paid coverage.

If the employee worked an average of 30+ hours in the measurement period immediately preceding their rehire date, they must be offered medical insurance to be effective as soon as administratively practical. There must be a minimum six-month break in service to start a new measurement period.

Offer Health Insurance
Departments could be allowed to budget funds and pay for medical insurance for temporary employees.

RECOMMENDATION:

The ultimate goal is to comply with the law and to avoid any penalties for noncompliance. We recommend a balanced approach that protects the use of taxpayer funds and provides enough flexibility for departments to meet their business needs through the use of temporary employees.

We recommend:

1. Establish a measurement period of 12 months for ***new variable hour/seasonal*** employees. Establish a measurement period of 12 months for ***ongoing*** employees from October 1 – September 30 of each year. The subsequent 90-day administration period would coincide with the County's annual open enrollment activities with coverage effective during January 1 – December 31 of the following year.

2. Allow departments the flexibility in choosing the options that best meet their business needs in relation to the employment of temporary employees, including scheduling work for less than 30 hours per week, monitoring temporary hours during the measurement period to ensure an average of less than 30 hours per week, or plan for the possibility of providing medical insurance to some employees.

3. Continue the current practice of requiring a 6-month break in service for retirees who return to work for the County as a temporary employee. The County Administrator has the authority to make exceptions and the department would be responsible for medical insurance for the retiree.

4. Implement the practice of requiring a 6-month break in service for non-retirees who return to work for the County as a temporary employee. The County Administrator would have the authority to make exceptions and the department would be responsible for medical insurance for the employee.

5. Authorize the Labor & Employee Relations Manager to enter into negotiations with the Employees Association Part-Time/Temporary collective bargaining unit as needed to implement the law.

ATTACHMENTS:
PPACA Employer Shared Responsibility Timeline
PPACA Employer Shared Responsibility Chart of Options & Recommendations

SUBMITTED BY:
Division Director/Head Approval ____
Department Director/Head Approval ____
County Administrator Approval ____

For information on this issue or copies of attachments, please contact Carolyn Williams at 503-742-5470 or Nancy Drury at 503-655-8812.

PATIENT PROTECTION AFFORDABLE CARE ACT (PPACA)
EMPLOYER SHARED RESPONSIBILITY

10/1/13-09/30/14	10/1/14-12/31/14	1/1/15-12/31/15
[illegible]	[illegible]	[illegible]
Monitor employee hours worked Employees working on average 30+ hours per week are full time (even those we consider temporary or seasonal)	Offer employer paid medical coverage to full time employees	Coverage period for full time employees (even if no longer working 30+ hours per week)

Measurement Period: This is the "look back" period to determine if an employee meets the definition of a full time employee. A full time employee is an employee who works on average 30+ hours per week over the entire Measurement Period.

Administrative Period: This is a 90-day period for the County to determine who is a full time employee, offer those employees medical coverage and enroll employees in that coverage if they elect the coverage.

Stability Period: This is the period of time in which the County must cover all employees determined to be full time employees during the Measurement Period. This applies even if the employee works reduced hours or goes on leave without pay.

PATIENT PROTECTION & AFFORDABLE CARE ACT (PPACA)

	POLICY QUESTION	OPTIONS/INFORMATION	STAFF RECOMMENDATION
1	Decide on the length of the measurement period which determines the length of the period when the County is required to offer employer-paid medical insurance.	• Any period of time between 3 and 12 months.	12 months from date of hire for **new variable hour/seasonal employees** and 12 months (October 1 - September 30) for **ongoing employees.**
2	Decide whether or not to establish limits on the weekly work hours or length of employment for temporary employees.	• Limit temporary employment to <30 hours per week. • Limit temporary employment to 6 months in any 12 month period. • Continue current practice with additional audit controls.	Allow departments flexibility in managing the work schedules of their temporary employees with the addition of the responsibility to monitor hours worked.
3	Decide whether to place limits or restrictions on the re-employment of retirees or other former regular employees as temporary employees.	• Implement a 6-month break in service before rehiring other former employees. • Remove or change the 6-month break in service before rehiring retirees. • Continue current practice on breaks in service.	Maintain current practice of requiring a 6-month break in service for retirees and implement a 6-month break in service for other full-time employees, with exceptions requiring the approval of the County Administrator.
5	Decide whether the County will allow departments to budget additional funds to pay for medical benefits for temporary employees.	• Allow departments to budget for benefits for temporary employees. • Do not allow departments to budget for benefits for temporary employees.	Allow departments to budget and pay for medical insurance for temporary/seasonal employees.
6	Decide whether the County should enter into negotiations with the EA/Temporary collective bargaining unit.	• Medical insurance is a mandatory subject of collective bargaining.	Authorize the Labor & Employee Relations Manager to enter into negotiations with the EA/Temporary collective bargaining unit.