

Date of Hearing: May 6, 2014

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Das Williams, Chair
ACR 95 (Gomez) – As Amended: April 28, 2014

SUBJECT: California Community Colleges: part-time faculty and classified employees.

SUMMARY: States legislative intent that community college districts (CCD) not reduce the hours of part-time faculty or part-time classified employees for the purpose of avoiding implementation of the federal Patient Protection and Affordable Care Act (PPACA).

Specifically, this resolution:

- 1) Makes the following declarations and findings:
 - a) The provisions of the federal Patient Protection and Affordable Care Act (PPACA) relating to employer shared responsibility require large employers, including California community college districts, to provide minimum essential health care coverage for anyone working an average of at least 30 hours per week;
 - b) Assembly Concurrent Resolution (ACR) 138 (Chapter 142, Statutes of 2010), expressed the intent of the Legislature that part-time and temporary faculty receive pay and benefits that are equal to those of specified tenured and tenure-track faculty, to the extent funding is provided;
 - c) The Internal Revenue Service's (IRS) final ruling in the Shared Responsibility for Employers Regarding Health Care Coverage defines service hours to include work paid outside of the classroom, including office hours and preparation, for purposes of calculating full-time employment status; and,
 - d) Individual college and university employers across the United States have reduced the hours of part-time faculty and part-time employees specifically to avoid compliance with the provisions of the PPACA relating to employer shared responsibility, the operation of which has been delayed until January 1, 2015.
- 2) Resolves that it is the intent of the Legislature that CCDs not reduce the hours of part-time faculty or part-time classified employees for the purpose of avoiding implementation of the federal PPACA.

EXISTING LAW requires, among many, that businesses with at least 50 full-time and/or full-time equivalent employees to provide affordable health care coverage that meets a minimum level of coverage to their employees, or otherwise pay a penalty. Defines full-time employees as an employee who works an average of 30 hours per week (42 U.S.C. 300gg-11).

FISCAL EFFECT: Unknown. This resolution is keyed non-fiscal by the Legislative Counsel.

COMMENTS: Background. The IRS, in its interpretation of PPACA, as signed into law by President Obama on March 23, 2010, issued final regulations on February 10, 2014, on the Employer Shared Responsibility provisions under Section 4980H of the Internal Revenue Code.

Shared Responsibility for Employers Regarding Health Care Coverage. Beginning in the year 2015 and after, employers employing at least a certain number of employees (generally 50 full-time employees or a combination of full-time and part-time employees that is equivalent to 50 full-time employees) will be subject to the Employer Shared Responsibility provisions under section 4980H of the Internal Revenue Code (added to the Code by the Affordable Care Act). As defined by the statute, a full-time employee is an individual employed on average at least 30 hours of service per week. An employer that meets the 50 full-time employee threshold is referred to as an applicable large employer.

Under the Employer Shared Responsibility provisions, if these employers do not offer affordable health coverage that provides a minimum level of coverage to their full-time employees (and their dependents), the employer may be subject to an Employer Shared Responsibility payment if at least one of its full-time employees receives a premium tax credit for purchasing individual coverage on one of the new Affordable Insurance Exchanges, also called a Health Insurance Marketplace.

To note, the IRS regulations define service hours to include work paid outside of the classroom, including office hours and preparation, for purposes of calculating full-time status.

Purpose of the resolution. According to the author, in February 2014, the U.S. Department of the Treasury issued final regulations and rules regarding the determination of full-time status for the purpose of the employer penalty for failing to provide full-time employees with health coverage. The author states, "The final regulations mention the situation of adjunct faculty, but do not resolve the question of how their full-time status should be determined. Until further guidance is issued, by the U.S. Department of Treasury or the IRS, employers are required to use a "reasonable method" for crediting hours of service for adjuncts."

The author contends, "This new ruling has caused some districts to open up the discussion to move employees from employer based health care, or to simply reduce the number of hours faculty and classified employees teach in order to avoid having to provide them with health care." The author argues, "Part-time faculty and classified employees who are represented by a union have significantly more protection through local collective bargaining agreements, but districts may still avoid providing benefits through the hiring of additional part-time faculty and instructional aids as new courses become available, rather than offering them to current employees so they can be eligible for the maximum amount of benefits and any coverage that would include them in PPACA requirements."

This resolution expresses that the Legislature does not support any practice by a CCD that would reduce the employment and benefits of part-time faculty and classified employees in an attempt to avoid compliance with PPACA.

Composition of community college faculty. According to the Faculty Association of California Community Colleges Education Institute's "Faculty Profiles 2012 Community Colleges," as of fall 2012, the California Community Colleges had a faculty headcount of 55,383. To note, 38,135 were part-time faculty.

Arguments in support. The California Labor Federation argues that, "The PPACA penalty does not apply to part-timers who work less than an average of 30 hours per week. This loophole in the PPACA creates a perverse incentive for employers to reduce workers' hours below 30 per week and eliminate benefits, thus not paying for health care and shifting the cost onto taxpayers....Faculty, whether part-time or not, teach the state's future leaders and workforce; they deserve the dignity of sufficient hours and employer-sponsored coverage."

Related legislation. AB 2705 (Williams, 2014), which will be heard in this committee today, changes the name "part-time" faculty to "contingent" faculty.

ACR 138 (Nava, Resolution Chapter 142, Statutes of 2010), which expressed the intent of the Legislature that part-time and temporary faculty receive pay and benefits that are equal to those of specified tenured and tenure-track faculty, to the extent funding is provided.

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, AFL-CIO
California Teachers Association
Faculty Association of California Community Colleges (sponsor)

Opposition

None on file.

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