

# City of Mission Viejo Personnel Policy

**Subject:** PATIENT PROTECTION AND AFFORDABLE CARE ACT (ACA)

**Statement of Intent:**

To the extent not already provided for under current health and welfare benefit policies and regulations, the City of Mission Viejo (“City”) will provide benefits for eligible employees as required by the Patient Protection and Affordable Care Act (“ACA”) enacted on March 23, 2010, including the Internal Revenue Code Section 4980H Shared Responsibility for Employers Regarding Health Care Coverage. The City is considered a “large employer” for the purposes of the Shared Responsibility Provisions (Section 4980H to Title 26 of the United States Code, the Internal Revenue Code) of the ACA.

The Internal Revenue Service will assess a penalty on the City if (1) it fails to offer “substantially all” of its benefit eligible employees (and their dependents) the opportunity to enroll in minimum essential coverage or offers coverage to “substantially all” of its benefit eligible employees (and their dependents) that is either “unaffordable” or does not provide “minimum value” and (2) any benefit eligible employee receives a subsidy for coverage through the exchange (“Penalty”).

This Personnel Policy (“Policy”) establishes the “Look Back Measurement Method Safe Harbor” (“Look Back Safe Harbor”) under the ACA. The City establishes this Look Back Safe Harbor for the purposes of managing any potential Penalty.

This policy also establishes the Affordability Safe Harbors to determine affordability for purposes of managing any potential Penalty.

**Definitions:**

For purposes of this policy, the following definitions shall apply:

1. Benefits: The Fixed Monthly City Contribution as provided under the City Council adopted City of Mission Viejo Flexible Benefit Plans and Fixed Monthly City Contribution Schedule.
2. Benefit Eligible Employee:
  - a. An employee hired into a budgeted position (as included in the Authorized Position Schedule) for an indefinite period of time and scheduled to regularly work twenty (20) or more hours per week;
  - b. A member of the City Council; or
  - c. An Hourly/Seasonal/Temporary (HST) employee that:
    - i. Is determined to have worked at least thirty (30) hours per week after the City has analyzed the total hours of work during either the employee’s Initial Measurement Period or Standard Measurement Period; or

- ii. Effective January 1, 2015, reasonably expected to work thirty (30) hours or more per week.
- 3. Variable Hour Employee: An Hourly/Seasonal/Temporary (HST) employee that at the time of hire is not reasonably expected to work an average of thirty (30) hours per week.
- 4. On-Going Employee: An employee hired on or before November 2, 2013, or has completed at least one full Standard Measurement Period.
- 5. New Employee: An employee hired after November 2, 2013, and has not completed their Initial Measurement Period.

**Policy:**

1. Look Back Measurement Method Safe Harbor –

Ongoing Employees: The City establishes the Look-Back Safe Harbor with regard to all ongoing employees as follows:

Standard Measurement Period: November 2 through November 1 (starting November 2, 2013 and continuing each year thereafter)

Administrative period: November 2 through December 31 (starting November 2, 2014 and continuing each year thereafter)

Stability period: January 1 through December 31 (starting January 1, 2015 and continuing each year thereafter.)

If an ongoing employee's employment status changes (as benefit eligible or not benefit eligible) before the end of a Stability Period, the change in status will not affect the classification of that employee's status for the remaining portion of the Stability Period.

New Employees: Beginning January 1, 2015, on the start date of a new employee the City will determine whether the employee is reasonably expected to be a benefit eligible employee. If the employee is reasonably expected to be a benefit eligible employee the City will offer health coverage before the end of the employee's first 60 days of employment.

New Variable Hour Employees: If, based on the facts and circumstances, on the start date of a new employee the City is unable to determine that the employee is reasonably expected to be employed an average of at least thirty (30) hours per week over the initial measurement period, then the employee is considered a variable hour employee.

The City establishes the following measurement periods for new variable hour employees:

**Initial Measurement Period:** Twelve months (beginning on the first of the month following the start date, unless the start date is the first of a calendar month in which case the period will start on that date)

**Administrative period:** One calendar month (beginning the first of the month following the end of the Initial Measurement Period)

**Stability period:** Twelve months following the administrative period unless the new variable hour employee does not measure as a benefit eligible employee during the initial measurement period, then the stability period associated with the initial measurement period must not exceed the remainder of the standard measurement period (plus any associated administrative period).

Transitioning from New to Ongoing Employee: The City will measure the hours of a new variable hour employee during the first complete standard measurement period for which he/she is employed. This means that a new employee's status may be tested under an initial measurement period and at the same time be measured under the overlapping standard measurement period.

- a) If an employee measures as benefit eligible during the initial measurement period, he/she will retain benefit eligible status for the entire associated stability period (even if the employee does not qualify as benefit eligible during the standard measurement period).
- b) If an employee does not measure as benefit eligible during the initial measurement period, but qualifies as benefit eligible during the standard measurement period, the employee must be treated as benefit eligible during the stability period associated with the standard measurement period (even if that means coverage must be offered before the end of the stability period associated with the initial measurement period).

Breaks In Service: When an employee experiences a break in service without providing at least one hour of service, the employee will retain the status the employee had previously with respect to any stability period, except that an employee will be treated as a new employee:

- a) if the employee resumes employment after a period of at least 26 consecutive weeks with less than an hour of service; or
- b) if the employee's period of no service (measured in weeks) is at least four consecutive weeks long and exceeds the number of weeks of that employee's period of employment immediately preceding the period of no service.

Hours of Service Calculation: Hours of service means each hour for which an employee is paid, or entitled to payment by the City for a period of time during which no duties are performed due to comprehensive annual leave, compensatory time off, holiday, jury duty, or military duty. The City will calculate actual hours of service and hours for which payment is due for hourly employees. For non-hourly employees, the City will apply one of three methods on a reasonable and consistent basis:

- a) calculate actual hours of service and hours for which payment is made or due;
- b) calculate hours of service using a days-worked equivalency (8 hours per day for each day employee is credited with an hour of service); or

- c) calculate hours of service using a weeks-worked equivalency (40 hours per week for each week employee is credited with an hour of service)

Hours Based On Payroll Periods: The City has two options for calculating hours based on payroll periods. The City may exclude the entire payroll period that contains November 2 (the first day of the Standard Measurement Period), as long as it includes the entire payroll period that contains November 1 (the last day of the Standard Measurement Period). Alternatively, the City may exclude the entire payroll period that contains November 1 (the last day of the Standard Measurement Period), as long as it includes the entire payroll period that contains November 2 (the first day of the Standard Measurement Period). The option chosen will be applied on a uniform and consistent basis for all employees.

Special Unpaid Leave: Special Unpaid Leave is defined only as unpaid leave under the Family and Medical Leave Act of 1993, unpaid leave under the Uniformed Services Employment and Reemployment Rights Act of 1994, or unpaid leave on account of jury duty. When an employee takes special unpaid leave to determine hours of service the City will compute the average after excluding any periods of special unpaid leave during the measurement period and apply that average for the entire measurement period.

## 2. Affordability Safe Harbors –

The City intends to apply the Rate of Pay Safe Harbor to determine the affordability of the minimum essential coverage that it offers its benefit eligible employees. The City in its sole discretion may also apply the Form W-2 Safe Harbor or Federal Poverty Line Safe Harbor. These affordability safe harbors will be applied on a uniform and consistent basis for all employees in a reasonable category.

### Rate of Pay Safe Harbor

- a. The City measures whether the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides minimum value exceeds 9.5 percent of an amount equal to 130 hours multiplied by the employee's hourly rate of pay as of the first day of the coverage period.
- b. The City may use this safe harbor only if the City does not reduce the employee's wages during the calendar year (with respect to the employees for whom the City applies the safe harbor).
- c. If rate of pay increases during the year, the City will use the lowest rate of pay for the year in the calculation.
- d. The coverage offered by the City will be deemed affordable if the employee's monthly contribution is equal to or less than 9.5 percent of the monthly wage.

### Form W-2 Safe Harbor

- a. The City measures whether the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides minimum value exceeds 9.5 percent of the Form W-2 wages (as reported in Box 1) for the employee from the employer for the calendar year in which coverage is offered.
- b. The coverage offered by the City will be deemed affordable if the employee's contribution is equal to or less than 9.5% of the employee's Form W-2 wages as reported in Box 1.

#### Federal Poverty Line Safe Harbor

- a. The City measures whether the employee's required contribution for the calendar month for the lowest cost self-only coverage that provides minimum value exceeds 9.5 percent of a monthly amount determined as the Federal Poverty Line (FPL) for a single individual for the applicable calendar year.
- b. The coverage offered by the City will be deemed affordable if the employee's monthly contribution does not exceed 9.5 percent of the monthly FPL for a single individual for the applicable calendar year.

#### **Administration:**

In accordance with City of Mission Viejo Municipal Code chapter 2.60 "Personnel System", this Personnel Policy is deemed not to have a direct financial impact on the City. The City Manager may implement and amend this policy subject to prior City Attorney legal review and approval, and City Council review.

Implemented: Resolution No. 13-62, November 4, 2013.