

SB 1543

Oregon Community College Association opposes SB 1543 as written and offer the following concerns:

I. Section 2 of the proposed bill makes it an unlawful employment practice to reduce the work hours of a full-time employee for the sole purpose of preventing the employee's eligibility for coverage under PPACA.

Section 2 Issues:

1. Presumably full-time is intended to mean full-time under the PPACA, versus full-time at 40 hours per week, but it's not clearly defined.
2. Institutions need the flexibility to be able to reduce staffing levels to respond to fluctuating business and student demands. Institutions also need to be able to manage their budgets, which may include reducing staffing costs by curtailing work hours of employees. The proposed amendment creates the potential for the filing of numerous complaints whenever there is a reduction in staff hours and assignments and places the burden on the employer to prove that the reduction was for a legitimate business reason.
3. Institutions hire casual and seasonal employees and part-time faculty to help meet fluctuating business and student demand. With the exception of part-time faculty with assignment rights, these employees are "at will" and have no right to, or expectation of, ongoing employment. The proposed language has the effect of limiting "at will" status and potentially creating rights to continued employment.
4. ERISA section 510 and FLSA section 18C, may already impact an employer's ability to reduce an employee's hours below thirty hours a week, solely to avoid providing benefits under the ACA.

II. Section 4, paragraph (3) of the proposed bill aggregates the work hours of part-time faculty employed at more than one public institution of higher education. If the aggregated hours equal at least 30 hours per week, the part-time faculty member is considered full-time.

Section 4, paragraph (3) issues:

1. Again, the impact of the proposed language is unclear. If the intent is to extend PPACA eligibility to a part-time faculty member with aggregated hours that meet the PPACA's 30 hour requirement, it's not explicit. The amendment refers to consistency with 26 U.S.C. 4980H, and would amend ORS 351.704, which already aggregates part-time faculty hours for purposes of purchasing health benefits on a self-pay basis (administered by OEGB). If the intent to create a definition of full-time solely for purposes of ORS 351.704, then it sets a higher eligibility threshold (30 hours per week) than 351.704 sets (600 hours based on a PERS factor).
2. If the intent is PPACA coverage, the look back period is not defined. Under the ACA, institutions can choose a "look back" period to determine the thirty hour threshold. Look back periods may differ

among institutions. It is unclear how a look back period would apply under the amendment, or how a consistent period could be administered.

3. There are a host of administrative issues presented by the bill:

- Not all public institutions have the same insurance programs or carriers
 - Most community colleges offer OEBC, but do not all offer the same programs
 - One college does not use OEBC as their insurance provider
 - The amendment would also cover work done at public four-year institutions which do not use OEBC as their benefits provider
- Not all institutions calculate hours worked in the same manner
The ACA requires institutions to calculate hours associated with teaching (i.e. prep time). Institutions are still looking at ways to calculate those hours and methods may differ
- Who would calculate the aggregated hours? OEBC had agreed to administer benefits under ORS 351.704, but does it on an annual basis. OEBC may not agree to extend this to a monthly review, or to offer the service to institutions that do not participate in OEBC.

(Currently under ORS 351.704, adjunct faculty that work at multiple public higher educational institutions and meet PERS thresholds are eligible to purchase benefits on a self-pay basis. OEBC has agreed to administer this and benefits are purchased directly through OEBC. Each year PERS sends a list to OEBC with those employees who meet the 600 hours worked criteria (aggregated from all colleges) to each institution. The institution responds to OEBC with how many teaching hours the employee worked. OEBC collates the hours and notifies the employees of their rights to purchase insurance. The institutions have no other involvement.)

- If an adjunct works for more than one institution, meets the 30 aggregated hours, and then employment with one of the institutions ends what's the impact to that employer? What's the impact to the remaining employers if the 30 hours is still met?
- Each insurance program is written to a specific institution with specific requirements for eligibility
 - This would require all plans to be re-written
 - Insurance companies do not have to agree to have the eligibility requirements we may request
 - Could cause significant increase in plan costs, if carriers agree to eligibility changes
 - Could increase member pool
 - Could increase administration costs
 - Waiting periods can be up to 90 days for programs, longer than a term
 - Employee may no longer be working after the waiting period has been fulfilled
 - No consistency between colleges and benefits start dates, i.e. first of the month after date of hire, first of the month following 30 days of service, etc.
 - Institutions may have different open enrollment periods

- If there is to be a benefits “Cap” how would it be determined which institution would cover the Cap? Would there be a cost sharing? How would it be determined which plan the adjunct would be on? Would s/he be able to choose among the institutions s/he worked for?
- Adjunct hours may vary greatly from term to term causing more administrative burden to manage coverage.
- Who would administer COBRA when adjuncts lose coverage or drop below 30 hours.
- Covering previously uninsured employees could increase utilization of benefits leading to higher premiums. Premiums could also increase as a result of adjuncts using benefits but only staying on a plan for a short period, which then does not allow an offset to plan costs through payment of premiums over a longer period time.

Other Legal Issues include:

- Coordination with section 125 of the IRS tax code for pre-tax benefits regarding elections and changes
 - When an employee leaves an employer sponsored pre-tax benefit plan and returns to the same plan with less than a thirty day break in service, s/he must be enrolled in the same benefits s/he had before s/he left. Would require monitoring and coordination between institutions
 - Hours changes that affect eligibility would need to be coordinated as there are different implications depending on the type and extent of the hours changes. A reduction of hours causing a significant cost change, in some cases, is qualified event allowing an employee to add or drop coverage
 - Terminations from one institution and another
 - How would terminations from one institution, while maintaining eligibility through other institutions be coordinated
 - What if the termination is from the institution providing the benefits
 - Pretax benefits are not effective retroactively; complex monitoring must be instituted
 - Multiple errors in administration of pre-tax section 125 programs can jeopardize the pre-tax status of a plan. Too many mistakes and the IRS will not allow you to offer the benefits as a pre-tax
4. Institutions have established benefit eligibility for part-time faculty through the collective bargaining process. The proposed amendment has the effect of extending benefit coverage to employees not currently covered by collective bargaining agreements and interfering with the bargaining process.