

REDUCING HOURS TO ELIMINATE ACA

Even though the Employer Shared Responsibility mandate and reporting under the Affordable Care Act (ACA) were delayed until 2015, many employers are already starting to plan strategies for minimizing or reducing their exposure to penalties.

ONE APPROACH

... is to reduce the hours of a significant number of employees so they are no longer considered full-time (i.e., 30 hours per week).

The theory is that you do not have to pay a penalty for part-time employees.



If an employer systematically reduced the hours of a significant portion of its workforce for the primary purpose of avoiding the ACA (resulting in their loss of health benefits), an argument can be made that it was unlawful ERISA interference.



Of course, employers sometimes do reduce hours for business-related reasons. Those situations would not appear to be objectionable under ERISA.

Another risk has to do with the

ECONOMIC SUBSTANCE DOCTRINE



Violations are subject to a **40% PENALTY**

This doctrine allows the government to deny tax benefits for transactions lacking economic substance. The argument would be that a reduction of hours for the primary purpose of avoiding the ACA is a transaction that lacks economic purpose.