



Transition Relief for 2015

February 24, 2014

The Affordable Care Act (ACA) imposes a penalty on applicable large employers (ALEs) that do not offer affordable, minimum value coverage to full-time employees and their dependents. These penalties are often referred to as the “employer shared responsibility” or “pay or play” penalties.

On Feb. 10, 2014, the U.S. Treasury Department released [final regulations](#) implementing the employer shared responsibility provisions of the ACA. Under the final regulations, a package of limited transition rules provided for 2014 in the proposed regulations is extended to 2015. The final regulations also include a number of new transition rules for employers.

As these limited transition rules take effect, the Treasury and the IRS will consider whether it is necessary to further extend any of them beyond 2015.

NEW TRANSITION RELIEF FOR 2015

-Delay for Medium-sized Businesses

The final rules will delay implementation of the employer shared responsibility provisions for medium-sized employers that are covered by the employer mandate. ALEs that have fewer than 100 full-time employees will have an additional year, until 2016, to comply with the pay or play rules.

Thus, the employer shared responsibility provisions will generally apply to:

- Employers with **100 or more** full-time employees starting in **2015**; and
- Employers with **50-99** full-time employees starting in **2016**.

-Offer of Coverage to Substantially all Employees to Avoid Penalties

Under the proposed rules, applicable large employers would need to offer coverage to at least 95 percent of their full-time employees (and dependents) to avoid the most significant penalties. The final rule provides transition relief that will phase in this requirement over two years, beginning in 2015.

- To avoid a payment for failing to offer health coverage in **2015**, applicable large employers will need to offer coverage to **70 percent** of their full-time employees.
- In **2016 and beyond**, applicable large employers will need to offer coverage to **95 percent** of their full-time employees to avoid these penalties.

-Calculating the Penalty for Failing to Offer Coverage

In general, the penalty for not offering coverage to substantially all full-time employees (and dependents) is equal to the number of all full-time employees (minus 30 full-time employees) multiplied by one-twelfth of \$2,000 for each calendar month. The final regulations include transition relief for 2015 that allows employers with 100 or more full-time employees (including full-time equivalent employees) to reduce their full-time employee count by **eighty (80)** when calculating the penalty.

This relief applies for 2015 plus any calendar months of 2016 that fall within the employer's 2015 plan year.

-Transition Relief for New Applicable Large Employers

The final regulations provide a transition rule for employers that qualify as applicable large employers for the first time. These employers have until April 1 of the first year of being an applicable large employer to offer coverage to a full-time employee who was not offered coverage at any point in the prior calendar year. If this requirement is met, the employer will not be subject to a shared responsibility penalty by reason of its failure to offer coverage to the employee for January through March of that year, as long as the coverage offered on or before April 1 provides minimum value.

-Offer of Coverage for January 2015

The final regulations provide, in general, that if an applicable large employer fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not being offered coverage during that entire month. However, the Treasury and the IRS understand that many employers offer coverage for a new year effective as of the first day of the first pay period beginning on or after the first day of the year.

Solely for purposes of January 2015, if an applicable large employer offers coverage to a full-time employee no later than the first day of the first payroll period that begins in January 2015, the employee will be treated as having been offered coverage for January 2015. This transition guidance applies only for January 2015.

-Shorter Re-Hire Period

The final regulations provide that an employee who resumes working for an employer after a period during which the employee was not credited with any hours of services may be treated as having terminated employment and having been rehired (and thus being treated as a new employee) if the employee did not have an hour of service for a period of at least **thirteen** consecutive weeks (half of the proposed twenty-six).

2014 TRANSITION RELIEF EXTENDED TO 2015

-Determining Employer Size for 2015

Applicable large employer status is determined for each calendar year using employee information from the prior calendar year. Specifically, an employer that employed an average of at least 50 full-time employees (**100 for 2015 only**), including full-time equivalents, or FTEs, on business days during the preceding calendar year will be an ALE.

The proposed regulations included a special rule for determining applicable large employer status in 2014, which allowed an employer to measure the number of full-time employees using any consecutive six-month period in 2013, rather than using the full 12 months.

The final regulations extend this transition relief to apply for the 2015 calendar year. Under this transition relief, an employer may determine its status as an ALE by reference to a period of **at least six consecutive calendar months**, as chosen by the employer, during the 2014 calendar year (rather than the entire 2014 calendar year).

Under the extended transition rule for 2015, employers can determine whether they had at least 100 full-time and FTE employees in 2014 by reference to a period of at least six consecutive months, instead of the full year.

-Dependent Coverage

In order to avoid a potential employer shared responsibility penalty under the ACA, an ALE must offer coverage to its full-time employees and the full-time employees' dependents.

To provide employers sufficient time to expand their health plans to add dependent coverage, the proposed regulations provided that any employer that takes steps during its 2014 plan year toward satisfying the dependent coverage requirement will not be liable for any employer shared responsibility penalty solely on account of a failure to offer coverage to the dependents for that plan year.

Under the final regulations, this relief is extended to plan years that begin in 2015. It applies to employers for the 2015 plan year with respect to plans under which:

- Dependent coverage is not offered;
- Dependent coverage is offered, but the coverage does not constitute minimum essential coverage; or
- Dependent coverage is offered for some, but not all, dependents.

The relief is not available if the employer had offered dependent coverage during either of those plan years and later dropped that offer of coverage.

If coverage was offered to some, but not all, dependents during the 2013 or 2014 plan year, the relief as extended applies only with respect to dependents who were not offered coverage at any time during the 2013 or 2014 plan year.

In addition, the relief is available only if the employer takes steps during the 2014 or 2015 plan year (or both) to extend coverage under the plan to dependents not offered coverage during the 2013 or 2014 plan year (or both).

-Measurement and Stability Periods

Under the ACA, the term "full-time employee" means, with respect to any month, an employee who is employed on average at least 30 hours of service per week with an employer. The proposed regulations included transition relief for purposes of determining full-time employee status in 2014.

The final regulations extend this transition relief to apply, on a one-time basis in 2014 preparing for 2015, for employers using the look-back measurement method to determine full-time status. Thus, for purposes of stability periods beginning in 2015, employers may adopt a transition measurement period that:

- Is shorter than 12 consecutive months, but not less than six consecutive months; and
- Begins no later than July 1, 2014, and ends no earlier than 90 days before the first day of the plan year beginning on or after Jan. 1, 2015 (90 days being the maximum permissible administrative period).

This transition guidance applies to a stability period beginning in 2015 through the end of that stability period (including any portion of the stability period falling in 2016), and applies to individuals who are employees as of the first day of the transition measurement period. For employees hired during or after the transition measurement period, the general rules for new employees under the look-back measurement method apply.

For more information on the employer shared responsibility regulations, see the most recent [IRS Questions and Answers](#).

This Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.