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Employer Shared Responsibility Final Regulations Issued

February 11, 2014

The Affordable Care Act (ACA) imposes a penalty on large employers that do not offer minimum essential coverage to full-time employees and their dependents. Large employers that offer this coverage may still be liable for a penalty if the coverage is unaffordable or does not provide minimum value. The ACA's employer mandate provision is often referred to as the "employer shared responsibility" or "pay or play" rules.

On Feb. 10, 2014, the U.S. Treasury Department released final regulations implementing the employer shared responsibility provisions of the ACA. The regulations are effective upon publication in the Federal Register.

Delay for Medium-sized Businesses

According to the Departments, approximately 96 percent of employers are small businesses that have fewer than 50 workers and are exempt from the employer responsibility provisions. The employer shared responsibility provisions apply only to applicable large employers that have 50 or more full-time employees.

The final rules will delay implementation for medium-sized employers that are covered by the employer mandate. Applicable large employers 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**.

To qualify for this delay, the employer must provide an appropriate certification as described in the final rules.

Extension of 2014 Transition Relief

In addition to the two forms of 2015 transition relief noted earlier, a package of limited transition rules that applied for 2014 under the proposed regulations is extended to 2015 under the final regulations, including:

- ***Employers first subject to shared responsibility provisions:*** Employers can determine whether they had at least 100 full-time or full-time equivalent employees in the previous year by reference to a period of at least six consecutive months, instead of a full year.

- ***Non-calendar year plans:*** Employers with plan years that do not start on Jan. 1 will be able to begin compliance with the employer mandate at the start of their plan years in 2015 rather than on Jan. 1, 2015, and the conditions for this relief are expanded to include more plan sponsors.

- ***Dependent coverage:*** The policy that employers offer coverage to their full-time employees' dependents will not apply in 2015 to employers that are taking steps to arrange for such coverage to begin in 2016.

- ***Measurement and Stability Periods:*** On a one-time basis, in 2014 preparing for 2015, employers using the look-back measurement method to determine full-time status may use a measurement period of six months, even with respect to a stability period—the time during which an employee with variable hours must be offered coverage—of up to 12 months.

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.

Provisions for Businesses That Offer Coverage to Most, but Not All, Employees in 2015
Under the proposed rules, applicable large employers would need to offer coverage to at least 95 percent of their full-time employees 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.

This rule is intended to provide relief to employers that, for example, may offer coverage to employees working 35 or more hours per week, but not yet to those employees who work 30 to 34 hours per week.

Various Employee Categories
The final regulations provide clarifications—many of which are based on comments on the proposed regulations—regarding whether employees of certain types or in certain occupations are considered full-time.

- ***Volunteers:*** Hours contributed by bona fide volunteers for a government or tax-exempt entity, such as volunteer firefighters and emergency responders, will not cause them to be considered full-time employees.

- ***Educational employees***: Teachers and other educational employees will not be treated as part-time for the year simply because their school is closed or operating on a limited schedule during the summer.

- ***Seasonal employees:*** Those in positions for which the customary annual employment is six months or less generally will not be considered full-time employees.

- ***Student work-study programs***: Service performed by students under federal or state-sponsored work-study programs will not be counted in determining whether they are full-time employees.

- ***Adjunct faculty:*** Until further guidance is issued, employers of adjunct faculty are to use a method of crediting hours of service for those employees that is reasonable in the circumstances and consistent with the employer shared responsibility provisions. However, to accommodate the need for predictability and ease of administration, and consistent with the request for a "bright

line" approach suggested in a number of the comments, the final regulations expressly allow crediting an adjunct faculty member with 2 ¼ hours of service per week for each hour of teaching or classroom time as a reasonable method for this purpose.

Full-time Employee Status Determinations

Like the December 2012 proposed regulations, the final rules allow employers to use an optional **look-back measurement method** to make it easier to determine whether employees with varying hours and seasonal employees are full-time.

In responding to comments, the final regulations also clarify the application of this method and the alternative monthly method of determining full-time status.

Affordability Safe Harbors

Like the proposed regulations, the final rules provide safe harbors that employers can use to determine whether the coverage they offer is affordable to employees.

These safe harbors permit employers to use the wages they pay, their employees' hourly rates, or the federal poverty level in determining whether employer coverage is affordable under the ACA.

Next Steps: Final Rules Simplifying Employer Information Reporting

Many comments on the proposed employer information reporting regulations have urged that final rules provide streamlined ways to comply with employer information reporting—especially for employers that offer highly affordable coverage to all or virtually all of their full-time employees.

Others have asked for a single form for employer and insurer reporting provisions when possible. The Treasury and the IRS will issue final regulations shortly that aim to substantially simplify and streamline the employer reporting requirements.

More Information on Large Employer Status

For more information on the employer shared responsibility regulations, see the most recent IRS Questions and Answers.