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## Transition Relief for Non-Calendar Year Plans

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The Affordable Care Act (ACA) imposes a shared responsibility penalty on large employers that do not offer minimum essential coverage to substantially all full-time employees and their dependents. Large employers that offer coverage may still be liable for a penalty if the coverage is unaffordable or does not provide minimum value.

On Feb. 12, 2014, the IRS published [final regulations](#) on the ACA's employer shared responsibility rules. The final rules extend to 2015 transition relief for employers sponsoring plans that have non-calendar year plan years (fiscal-year plans). **Under certain conditions, some employers with plan years that do not start on Jan. 1 (known as fiscal year plans) will be able to begin compliance with the employer mandate and avoid penalties at the start of their plan years in 2015 rather than on Jan. 1, 2015.**

### ***-Relief for Eligible Employees***

The final regulations provide transition relief with respect to employees who would be eligible for coverage as of the first day of the 2015 plan year under the plan's eligibility terms in effect on Feb. 9, 2014.

Employers will not be subject to the shared responsibility penalties until the first day of the plan year in 2015 for employees who are either enrolled or were eligible to enroll in the plan as of Feb. 9, 2014.

If these employees are offered affordable, minimum value coverage no later than the first day of the 2015 plan year, the large employer will not be liable for a penalty with respect to these employees for the months in 2015 before the plan year begins.

### ***-Relief for Other Employees***

The final regulations also provide transition relief for employers with a significant percentage of **employees** eligible for or covered under a non-calendar year plan as of Dec. 27, 2012, if the employer:

- Had at least **one quarter of its employees covered** under those non-calendar year plans as of any date in the 12 months ending on Feb. 9, 2014; OR
- **Offered coverage under those plans to one third or more of its employees** during the open enrollment period that ended most recently before Feb. 9, 2014.

The final regulations also extend this transition relief to employers that have a significant percentage of **full-time employees** eligible for or covered under a non-calendar year plan as of Dec. 27, 2012, if the employer:

- Had at least **one third of its full-time employees covered** under those non-calendar year plans as of any date in the 12 months ending on Feb. 9, 2014; OR
- **Offered coverage under those plans to one half or more of its full-time employees** during the open enrollment period that ended most recently before Feb. 9, 2014.

If either of these transition policies apply, the employer will not be liable for a penalty for months in 2015 before the 2015 plan year begins with respect to employees who are offered affordable, minimum value coverage no later than the first day of the 2015 plan year and who would not have been eligible for coverage under any calendar year group health plan maintained by the employer as of Feb. 9, 2014.

## **4980H(a) PENALTY FOR NOT OFFERING COVERAGE TO SUBSTANTIALLY ALL FULL-TIME EMPLOYEES (AND DEPENDENTS)**

Notwithstanding the three transition provisions for non-calendar year plans above, if an applicable large employer member does not offer coverage to all but five percent (or, if greater, five) of its full-time employees (and their dependents) (or, if the transition relief for applicable large employers with 100 or more full-time employees applies, if it does not offer coverage to all but 30 percent of its full-time employees (and their dependents)) as of the first day of the 2015 plan year, an assessable payment under section 4980H(a) may be due for any calendar month in 2015, without regard to the transition relief for non-calendar year plans.

## **REQUIREMENT OF NO CHANGE TO PLAN YEAR**

The transition guidance for applicable large employers sponsoring non-calendar year plans are available for a non-calendar year plan only if that plan's plan year was not modified after Dec. 27, 2012, to begin at a later calendar date. For example, if, as of Dec. 27, 2012, an applicable large employer sponsored a non-calendar year plan with a plan year starting on July 1 and later changed the start of the plan year to Dec. 1, the transition guidance for applicable large employers sponsoring non-calendar year plans would not apply.

## **CODE SECTION 6056 REPORTING FOR 2015 TRANSITION PERIOD FOR NON-CALENDAR YEAR PLANS**

Large employers subject to the ACA's shared responsibility provisions must file a return with the IRS that reports the terms and conditions of the health care coverage provided to the employer's full-time employees for the calendar year. Related statements must also be provided to employees.

Because this reporting is needed by the employee and the IRS for the administration of the premium tax credit, applicable large employers are required to report this information for the entire 2015 calendar year, even if during some calendar months in 2015 employer mandate liability will not apply by reason of the transition guidance for non-calendar year plan years. The section 6056 return instructions will provide additional information on how to report for 2015.

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.