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# Employer Pay or Play Rules Under Health Care Reform

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# Employer Pay or Play Rules Under Health Care Reform

# Topics We Will Cover

What are the penalties?

Are you a large employer, subject to the penalties?

What is your compliance date?

Who are your FT employees that must be offered coverage?

What are your options with respect to the penalties?

How do these rules impact Sheltered Workshops?

# What are the penalties?

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## Overview

In 2015, large employers (50+ FT employees) may be subject to 2 types of penalties:

**No Coverage Penalty** – failure to offer coverage to all FT employees and their dependent children

**Unaffordable Coverage Penalty** – coverage is offered, but isn't *affordable* or does not provide *minimum value*

In order to trigger penalty, at least one FT employee must receive a subsidy through the Exchange/Marketplace

# What are the penalties?

## **No Coverage Penalty**

Employer does not offer coverage to all FT employees and their dependent children; and

At least one employee must receive a subsidy on the Exchange for the penalty to apply

Penalty = \$2,000 x total number of FT employees – 30  
For 2015 only: minus 80 employees

Employer will receive notice of employee subsidy with right to appeal

Important to document offer and waivers

# What are the penalties?

## **No Coverage Penalty**

### **95% coverage rule**

Important: \$2,000/FT employee will apply unless coverage is offered to at least 95% of FT employees

If less than 95% of the FT employees are offered coverage – must pay penalty for all (minus the 30)(minus 80 for 2015)

For 2015 only, no penalty if 70% or more FT employees are offered coverage

# What are the penalties?

## Unaffordable Coverage Penalty

If coverage is offered to all FT employees, the next question—

Is the coverage *affordable* and does it provide *minimum value*?

If not, unaffordable coverage penalty may apply



# What are the penalties?

## **Unaffordable Coverage Penalty**

If coverage is either not affordable or does not provide minimum value, then—

Penalty = \$3,000 x number of FT employees who receive a subsidy to purchase coverage on Exchange

# What are the penalties?

## Affordability Test For Unaffordable Coverage Penalty

### 9.5% Affordability or Premium Test

Employee's share of premium, for *self-only* coverage, cannot exceed 9.5% of employee's income

Example—employee earns \$30,000 per year (\$2,500 per month)

Employee's share of premium may not exceed \$237.50 per month

9.5% x monthly income of \$2,500

Additional Affordability Safe Harbors

# What are the penalties?

## **Minimum Value Test For Unaffordable Coverage Penalty**

Plan must pay for at least 60% of covered benefits

Meaning the covered person is responsible for no more than 40% of the cost of all covered benefits

60% benefits test – three methods

MV calculator;

Design-based safe harbor; and

Actuarial certification

**Large employer status:  
Are you subject to the pay or  
play penalties?**

# Are you a large employer subject to the pay or play penalties?

50 FT employees (taking into account FT equivalents) is the key

If less than 50 FT employees – no penalty

If 50 – 99 FT employees – penalties start in 2016, if employer qualifies for relief

If 100+ FT employees – penalties start in 2015

# Are you a large employer subject to the pay or play penalties?

## **Step 1: Determine Monthly Average of FT Employees for the Preceding Year**

FT employee is an employee who works 30 hours per week (or 130 hours per month)

Non-hourly employees, use equivalency

Total the number of FT employees for each month  $\div$  12 (or 6 in 2014 if using 6 month period in 2014)

# Are you a large employer subject to the pay or play penalties?

## **Step 2: Determine the Monthly Average of FT Equivalents (FTEs) for the Preceding Year**

Employees working less than 30 hours per week  
(or 120 hours per month)

Total the hours worked for each month  $\div$  120  
 $\div$  12 (or 6 if using 6 months period in 2014)

# Are you a large employer subject to the pay or play penalties?

## **Step 3: Determine Total Monthly Average Number of Employees**

Step 1 total + step 2 total

Fractions are disregarded



# Are you a large employer subject to the pay or play penalties?

## Step 4: Determine Employer Status

If Step 3 is less than 50 – **STOP**. Not a large employer, not subject to penalties

If Step 3 is 50 or more, the employer is a large employer and is subject to the pay or play penalties.

**You're a large employer,  
now what?**

# What is your compliance date?

## 2015 “Smaller” Employer Transition Relief

No penalties for the 2015 plan year if:

Step 4 result is 50-99 full time employees and full time equivalents during 2014;

Workforce and overall hours have not been reduced between 2/9/14 and 12/31/14 (unless for a business activity unrelated to the relief – ex. sale); *and*

Health coverage offered as of 2/9/14 has not been materially reduced or eliminated

# What is your compliance date?

## **2015 “No Coverage” Penalty Transition Relief**

Large Employer not subject to the “no coverage” penalty for each month in 2015 (and any months in the 2015 plan year that fall in 2016) if coverage offered to 70% of full time employees and dependent children

For 2016, must offer to at least 95% of full time employees and their dependent children

# What is your compliance date?

## 2015 Non-Calendar Year Transition Relief

3 transition relief options in 2015 with specific requirements for non-calendar year plans

If eligible, compliance date is first day of 2015 plan year

General requirements for all options:

Non-calendar year plan as of 12/27/12;

Have not modified the plan after 12/27/12 to begin at a later calendar date; *and*

Must offer coverage to at least 70% of full time employees and their dependent children as of first day of 2015 plan year.

**Who are your full-time  
employees that must be offered  
coverage?**

# Who are your FT employees that must be offered coverage?

Pay or play penalties **ONLY** triggered by FT employees who go to Exchange and obtain a subsidy

So who is considered a FT employee?

Remember – large employer status test is different

# Who are your FT employees that must be offered coverage?

## Categories of Employees

Full time – employee averaging 30 hours/week

Variable Hour – employer cannot determine whether employee is expected to be full time at start date (Special Rules)

Part Time - New employee who is reasonably expected to be employed on average less than 30 hours/week

Seasonal employee - customary annual employment is 6 months or less



# Who are your FT employees that must be offered coverage?

## 2 Ways to Measure Who Are FT Employees

### Monthly Measurement Method

Full time status determined by calculating hours during the calendar month (or weekly)

### Look Back Measurement Method

Full time status is determined by “looking back” at the employee’s hours during the measurement period

Must use same method for all employees in same category (i.e., salary vs. hourly, employees working in different states)

# Who are your FT employees that must be offered coverage?

## Monthly Measurement Method

FT status determined separately for each month

Employee who is credited with 30+ hours per week during this period is treated as FT

## “Limited Non-Assessment Period”

Employer not subject to penalties if it doesn't offer coverage prior to end of 3 months, provided coverage is offered no later than 1st day following 3 month period

# Who are your FT employees that must be offered coverage?

**Look Back Measurement Method: 3 periods**

**Measurement Period:** Measure employees hours of service for 3-12 months

**Administrative Period:** Optional 90-day administrative period. Employer should offer coverage and process enrollment for those employees found to be FT during measurement period.

**Stability Period:** Follows Administrative Period. Employee treated as FT regardless of hours during stability period. Stability Period must be at least 6 months, or the length of measurement period, whichever is greater.

# Who are your FT employees that must be offered coverage?

## Look Back Measurement Method

### Example:

#### Measurement Period:

10/2/13 – 10/1/14 (calculate employee's hours for 12 months)

#### Administrative Period:

10/2/14 – 12/31/14 (90 days)(offer coverage and process enrollment)

#### Stability Period:

1/1/15 – 12/31/15 (12 months)(Employee has coverage during this period)

# Who are your FT employees that must be offered coverage?

## Hours of service

Each hour for which an employee is paid or entitled to pay for performance of duties or for:

Vacation, holiday, sick days, jury duty, military duty or paid leaves of absence

Hourly employees – must calculate actual hours

Special issues for 14(c) workers

Calculate hours worked that are compensable

# Employer options with respect to penalty

# What are your options with respect to penalty?

## *Options for Employer who currently does not offer coverage*

Offer coverage or not offer coverage and pay penalty

Factor in 30 employee credit (80 for 2015)

But note that penalty is a non-deductible excise tax

# What are your options with respect to penalty?

## ***Options for Employer who offers unaffordable coverage because employee premium greater than 9.5%***

Increase employer's portion of the contribution

Reduce benefits (but stay within 60%) so that employee contribution is also reduced

Reduce employee's share of premium and increase employer's share, BUT also reduce wages to pay for the higher employer share



# What are your options with respect to penalty?

## ***Options for Employer who offers unaffordable coverage because employee premium greater than 9.5%***

Factor in likelihood of employees who will qualify for subsidy in exchange

(Medicaid eligible employees not able to receive subsidy)

Factor in employees who will not participate in exchange

# How do these rules impact Sheltered Workshops?

# How do these rules impact the Sheltered Workshops?

No exception for Sheltered Workshops

No exception for FLSA 14(c) workers, but only calculate hours worked that are compensable to determine whether eligible for coverage

# How do these rules impact the Sheltered Workshops?

Generally, Medicaid eligible employees are not entitled to subsidy and will not trigger penalty

BUT, if another employee obtains subsidy and triggers penalty, IRS will calculate “No Coverage” penalty based on total FT employee population, including Medicaid eligible employees.

# Closing Thoughts

Big year ahead, probably more than a year

Stay on top of Developments, including efforts  
made by ACCSES