



***Healthcare Reform  
Employer Shared Responsibility Requirements***

Revised 1/23/13

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**How will an employer determine if it is an “applicable large employer” and subject to the employer shared responsibility requirement?**

1. Employers who employed an average of 50+ full-time equivalent employees on business days during the preceding calendar year would be considered an applicable large employer. Full time = 30 hrs per week average.
2. All FT **and** FTE employees must be added together to determine size of employer.
  - a. To determine the number of full time equivalent employees, the employer must take the total number of monthly hours worked by part time employees and divide by 120 to get the number of “full time equivalent” employees. The employer would then add those “full-time equivalent” employees to the number of full-time employees.
3. Full time equivalent employees are used solely for the purpose of determining whether or not an employer is an applicable large employer. Only full time employees (30 hrs +) are used to calculate penalties as described below.
4. Employers that have more than 50 full-time employees solely due to seasonal workers may avoid being treated as an applicable large employer if
  - a. The employer's workforce only exceeds 50 full-time employees for 120 days, or fewer, during the calendar year; **and**
  - b. The employees in excess of 50 who were employed during that 120-day (or fewer) period were seasonal workers. “Seasonal worker” means a worker who performs labor or services on a seasonal basis as defined by the DOL.

**Once an employer has determined it is an applicable large employer, how will it then determine which ongoing employees (not newly hired) are “full-time”?**

1. Employers may use a month by month determination method or the optional look-back (measurement)/stability period safe harbor which allows employers to determine each employee’s full time status by *looking back* at a defined period of time of not less than 3 months but not more than 12 months to see if that employee worked an average of 30 hours. This is the employer’s standard measurement period or SMP.
2. If the employee is determined to be full time during the SMP then they must be treated as full time during a subsequent stability period regardless of the number of hours worked during that stability period.
  - a. The stability period must be at least 6 months but no less than the SMP.
  - b. Stability periods may differ in length for different categories of employees such as collectively and non-collectively bargained employees, salaried and hourly employees, employees of different entities, and employees located in different States.
3. If the employee is deemed to not be a full time employee then the employer can treat the employee as not being full time during the stability period, provided the stability period does not exceed the SMP.

**Will there be time between the SMP and the stability period to determine eligibility and to facilitate the notification and enrollment of employees?**

1. Employers have the option to use an administrative period under the safe harbor rule in between the SMP and the stability period, however, this may not reduce nor lengthen the SMP or stability period and may not exceed 90 days.
  - a. Ongoing employees who are eligible for benefits would continue to be offered coverage during this administrative period.

**What about new employees that are full time?**

1. If an employee is reasonably expected to work full time and is offered coverage the employer will not be subject to the employer shared responsibility penalty if coverage is offered within or up to the 90 day waiting period.

**What about new employees that are seasonal or will work varied hours?**

1. Employers are able to use an “*initial measurement period*” of between 3 and 12 months and an administrative period to determine whether or not an employee is full time.
  - a. The measurement and administrative periods combined may not extend past the last day of the first calendar month beginning on or after the one year anniversary of the employee’s start date (13+ months).
  - b. If an employee is determined to be full time the stability period for that employee must be the same as ongoing employees.
2. After the initial measurement period, new employees will be tested for full time status with other ongoing employees.

**How will employees that are rehired be handled?**

1. The proposed regulations include rules for determining when a rehired employee may be treated as a new hire for purposes of the measurement period. If the period for which no hours of service are credited is at least 26 consecutive weeks, an employer may treat an employee who has an hour of service after that period, for purposes of determining the employee’s status as a full-time employee, as having terminated employment and having been rehired as a new employee. Alternatively, the employer can choose to apply a rule of parity for periods of less than 26 weeks under which an employee may be treated as having terminated employment if the period with no credited hours of service (of less than 26 weeks) is at least four weeks long and is longer than the employee’s period of employment immediately preceding that period with no credited hours of service.

**If an employer has determined that it is an *applicable large employer*, what are the potential penalties?**

1. If “minimum essential coverage” **is not** offered to substantially all (95%) FT employees **and any** FT employee enrolls in an Exchange plan and receives premium assistance from the federal government, the employer would be responsible for **\$2,000 annually** for each FT employee (first 30 free) Example: 150 FT minus 30 = 120 FT, 120 FT x \$2,000 = \$240,000.
2. If “minimum essential coverage” **is** offered to substantially all (95%) FT employees **but any** FT employee enrolls in an Exchange plan and receives premium assistance from the federal government, the employer would be responsible for **\$3,000 annually** (\$250 per month) for

each FT employee receiving premium assistance, capped at amount equal to \$2,000 for all FT employees (less first 30). Example: 150 ft, 25 FT go to exchange and receive premium assistance – 25 FT x \$3000 = \$75,000.

3. The IRS has proposed an affordability *safe harbor*. Under the proposed safe harbor, if the employer offers its full-time employees (and their dependents) the opportunity to enroll in *minimum essential coverage*, and if the employee portion of the *self-only premium for the employer's lowest cost coverage* that provides *minimum value* (the employee contribution) does not exceed *9.5 percent of the employee's W-2 wages* then the employer would not be subject to the payment provisions. Application of this safe harbor would be determined after the end of the calendar year and on an employee-by-employee basis.

**Notes:**

1. When calculating the amount of penalty/tax due by employers not offering coverage to substantially all FT employees, employers may exclude the first 30 full-time employees. However, when determining whether an employer will be an applicable large employer, the 30-employee reduction rule *does not apply*.
2. There is no penalty/tax owed by employers that offer coverage to substantially all FT employees for failure to offer coverage to part-time employees working fewer than 30 hrs.

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The intent of this analysis is to provide you with general information regarding the status of, and/or potential concerns related to, your current employee benefits environment. It does not necessarily fully address all of your specific issues. It should not be construed as, nor is it intended to provide, legal advice. Questions regarding specific issues should be addressed by your general counsel or an attorney who specializes in this practice area.