

Affordable Care Act: 2015 Transition Rules

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Don't Fret Yet

**IRS final
regulations for
employer mandate
issued
Feb. 2014**



2014

**Transition relief
provided for 2015
Interim Period**



2015

**Employer Shared
Responsibility
Rules take effect**



2016

Perspective

- Approximately 96% of employers have fewer than 50 employees.
- Thus, 96% of employers are exempt from the employer mandate.

Employer Mandate: Refresher

- An **applicable large employer** is liable for a shared responsibility payment (i.e., penalty) in any calendar month that it—
 - **Fails to offer** “minimum essential coverage” (MEC) under an eligible employer-sponsored plan to at least 95% (2016) of its full-time employees
- OR**
- Offers MEC but it is **unaffordable** or does not provide the required minimum value (MV)
- AND**
- At least one of the employer’s full-time employees receives a premium tax credit for purchasing health insurance through an exchange.

Who is an applicable large employer (ALE)?

- An applicable large employer (ALE) employs 50 or more full-time employees (FTEs) or full-time equivalent employees (FTEEs) on a business day during prior calendar year.
 - Include ALL employees (even part-time).
- Counting employees for each month:
 - Full-time employees (FTEs): 30 hours a week.
 - Full-time equivalent employees (FTEEs): 1 FTEE = monthly hours worked by all part-time employees/120.
- If the result is 50 or more, then the employer is an ALE.

Full-Time Employees (FTEs)

- Employee who performs at least 30 hours of service a week (includes not only hours worked but also hours for which the employee is paid or entitled to payment even though no work is performed, such as vacation, PTO, jury duty, military duty, disability or leaves of absence); OR
- Employee who performs 130 hours of service in a calendar month (which is 1,560 annually).

Full-Time Equivalent Employees (FTEEs)

- 1 FTEE = monthly hours worked by all part-time employees/120.
- For example: 12 PTEs who each work 20 hrs. per month = 2 FTEEs ($12 \times 20 = 240$; $240/120 = 2$).
- FTEEs are calculated solely for purposes of determining whether an applicable large employer, but only FTEs count for purposes of determining the penalty.
 - Employers are not required to provide coverage for part-time employees.

Pay or Play: The Penalties

- Penalty A: “Offering Requirement.”
 - ALE does not offer coverage.
- Penalty B: “Affordability Requirement”
 - ALE offers coverage but is unaffordable or does not provide MV.

Penalty A: Offering Requirement

- An ALE **must offer** coverage to 95% of FTEs.
- For each calendar month, the monthly penalty is equal to: $1/12 \times \$2,000 \times (\text{Number of FTEs} - 30)$.
- For example, an ALE has 100 FTEs but fails to offer coverage to 95% of its FTEs and one FTE receives a premium tax credit for purchasing health insurance through an Exchange for one month in 2015. Penalty A is $1/12 \times \$2,000 \times (100 - 30) = \$11,667$ for that month.

Penalty B: Affordability Requirement

- ALEs who do offer coverage but the plan is unaffordable or does not provide MV will be subject to a \$3,000 penalty for each employee who enrolls in the exchange and receives a premium tax credit.
- For each calendar month, the monthly penalty is the lesser of—
 - A. $1/12 \times \$3,000 \times \text{Number of FTEs receiving a tax credit}$ **OR**
 - B. $1/12 \times \$2,000 \times (\text{Number of FTEs} - 30)$.
- In most cases, the lesser will be A.

General Notes About Penalty

- Penalty is NOT tax deductible.
- Employer cannot be liable for BOTH penalties—Type A and Type B—for the same calendar month.
- Only liable for penalty if at least one FTE obtains coverage through Exchange and receives premium tax credit.
- FTEEs and PTEs not included in penalty calculations.
- No penalty if employee fails to pay insurance premium and is dropped from coverage. Employer is not required to provide coverage for the unpaid period and the employer is treated as having offered coverage for the remaining period.

Will employers pay penalty for 2014?

The employer mandate provision (known as the Employer Shared Responsibility Rules) was set to take effect on January 1, 2014.

- However, in July 2013, the Treasury announced that reporting requirements would be delayed one year until 2015.
- In February 2014, the Treasury announced a further delay for some employers (50-99 FTE/FTEE) and an interim amendment for other applicable large employers (100+ FTE/FTEE).
- **Three** key provisions are affected by the delay and amendment.

100 NOT 50

70 NOT 95

80 NOT 30

2015

1. ALE employs 100+ FTEs, or equivalents.
 - For employers with 50-99 FTEs or equivalents, the entire mandate is **delayed until 2016**.
2. ALE must offer coverage to 70% of FTEs.
3. ALEs can disregard 80 FTEs when calculating monthly assessments.

2016

1. ALE employs 50+ FTEs, or equivalents.
2. ALEs must offer coverage to 95% of FTEs.
3. ALEs can disregard 30 FTEs when calculating monthly assessments.

100 not 50 (< 100 employees)

- Treasury announced in February 2014 that some ALEs will **not** need to comply with these provisions until the **first day of their 2016 plan year** provided that the ALE—
 - Employs fewer than 100 employees (using the applicable ALE determination methodology).
 - Maintains current workforce and aggregate hours of service (meaning the employer cannot reduce its workforce for the purpose of taking advantage of the relief).
 - Maintains previously offered health insurance and related provisions (plan value, employer contribution, eligibility, etc.).

70 not 95: Offering FTEs Minimum Essential Coverage

“Offering Requirement” for 2015:

- ALE – must have 100 or more FTEs in 2014.
- ALE – must offer coverage to 70% of its FTEs.

80 not 30: Calculating Monthly Assessment

- **ALEs with 100+ FTEs for 2015 only:**
 - The number of FTEs that can be disregarded in calculating the monthly assessment is increased from 30 to 80 FTEs.
- **Offering Requirement:** If an employer fails to offer coverage to 70% of its FTEs (95% in 2016), then it is subject to Penalty A.
 - For each calendar month, the monthly penalty is equal to $1/12 \times \$2,000 \times (\text{Number of FTEs} - 80)$.

80 not 30 (cont.)

- **Affordability Requirement:** If an employer fails to offer coverage that is affordable or provides MV, then it is subject to Penalty B.
 - For each calendar month, the monthly penalty is the lesser of—
 - A. $1/12 \times \$3,000 \times \text{Number of FTEs receiving a tax credit}$
OR
 - B. $1/12 \times \$2,000 \times (\text{Number of FTEs} - 80)$.
 - In most cases, the lesser will be A.

Will the employer pay a penalty?

Are you a large employer?

2015: At least 100 FTEs

2016: At least 50 FTEs

- Includes full-time [30+ hours per week] and part-time employees
- Excluding seasonal workers [Up to 120 Days]

Yes

No

Did at least one full-time employee receive a premium tax credit or cost-sharing subsidy in an exchange?

No

Yes

2015: Does the employer have more than 80 FTEs?

2016: Does the employer have more than 30 FTEs?

No

There is **no penalty** payment required of the employer.

Yes

Does the employer offer health insurance coverage to its workers?

Yes

No

Pay monthly penalty B, *lessor of*:

2015: $1/12 \times \$2000 \times (\# \text{ of FTEs} - 80)$

2016: $1/12 \times \$2000 \times (\# \text{ of FTEs} - 30)$

OR

$1/12 \times \$3000 \times (\# \text{ of FTEs who receive credit for exchange coverage})$

Pay monthly penalty A:

2015: $1/12 \times \$2000 \times (\# \text{ of FTEs} - 80)$

2016: $1/12 \times \$2000 \times (\# \text{ of FTEs} - 30)$



Transition Relief

- For purposes of determining whether applicable large employer in calendar year 2015, an employer may use a period of 6 consecutive calendar months in 2014 instead of the entire 2014 year.
- Employer can select when this 6-month period begins.
- Solely for purposes of the stability period beginning in 2015 for determining FTE status, employers may use a look-back measurement period that is shorter than 12 months even if it plans on using a 12-month look-back measurement period going forward.
- This short, transition look-back measurement period must be at least 6 months long, must begin no later than July 1, 2014, and end no earlier than 90 days before the first day of the 2015 plan year.

Transition Relief (cont.)

- Large employers with non-calendar year plans as of December 27, 2012, can wait until the first day of the 2015 plan year to offer affordable, MV coverage without being assessed a penalty for the months in 2015 preceding the start of their plan year.
- To help these plans synchronize with the January 1, 2015, effective date, these employers may permit certain mid-year election changes for health coverage in 2014.
- Employer contributions to multi-employer plan coverage can satisfy mandate.
- An employer will not be treated as failing to offer coverage if (1) the employer contributes to a multiemployer plan for FTEs pursuant to a collective bargaining agreement or participation agreement; (2) coverage under the multi-employer plan is offered to FTEs and their dependents; and (3) the coverage is affordable and provides MV.

Transition Relief: Non-Calendar Year Plans

- Employers with non-calendar year plan years **will not be required** to comply with the shared responsibility requirement until the beginning of their 2015 plan year so long as they satisfied certain conditions on February 9, 2014 (the day before the final regulations were issued).
 - In general, for a non-calendar year plan to meet the transition relief, employer must have (a) maintained a non-calendar year plan on December 27, 2012; and (b) have since not modified the plan's year to begin on a later date.
 - No penalties for months preceding mid-year renewal if the employees who were eligible or enrolled under the plan rules existing as of February 9, 2014 are offered affordable, minimum value coverage **on the first day of the 2015 plan year.**

Example: Non-Calendar Year Plans

- Company with 250 full-time employees has used a non-calendar plan since before December 27, 2012, and a new plan year started on July 1, 2014. Employees are eligible for coverage based on the eligibility terms in effect on February 9, 2014, but the plan is unaffordable or does not meet MV.
- If, by July 1, 2015, employees are offered affordable, minimum value plan, the company will not face a penalty. However, if the plan does not offer affordable, minimum value coverage on July 1, then it would be subject to penalties beginning January 1, 2015.

Non-Calendar Year Plans: Relief for Other Employees

- Transition relief is provided when employers have a significant percentage of employees eligible for or covered under one or more non-calendar year plans that have the same plan year as of December 27, 2012.
- To qualify for this relief, in addition to having a non-calendar year plan that has not been modified since December 27, 2012, the employer must have either—
 - 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 February 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 February 9, 2014.

Non-Calendar Year Plans: Relief for Other Employees (cont.)

- If this relief applies, the employer will not be liable for a penalty for any period prior to the 2015 plan year so long as its employees are offered affordable, minimum value coverage no later than the first day of the 2015 year plan and would not have been eligible for coverage under any calendar year group health plan maintained by the employer as of February 9, 2014.

Employers of 50-99 FTEs or FTEEs: Additional Transition Relief

- No Employer Shared Responsibility penalty will apply for any calendar month during 2015. For employers with non-calendar year plans, this applies to any calendar month during the 2015 plan year, including months during the 2015 plan year that fall in 2016.

Employers of 50-99 FTEs/FTEEs: Additional Transition Relief (cont.)

- To be eligible for the relief, an employer must certify that it meets the following conditions:
 - **Limited workforce size:** The employer must employ at least 50 but fewer than 100 FTEs/FTEEs on business days during 2014.
 - **Maintenance of workforce and aggregate hours of service:** During February 9, 2014 to December 31, 2015 (or the last day of the 2015 year plan), the employer may not reduce the size of its workforce or the overall hours of service of its employees to qualify for the transition relief. (Reductions for bona fide business reasons are still eligible for the relief.)
 - **Maintenance of previously offered health coverage:** During February 9, 2014, to December 31, 2015 (or the last day of the 2015 year plan), the employer does not eliminate or materially reduce the health coverage, if any, it offered as of February 9, 2014.

Dependent Coverage

- Transition relief provided for plan years that begin in 2014 extends to plan years that begin in 2015 if—
 - Employer takes steps during its 2014 plan year toward offering adequate dependent coverage

AND

 - Employer does not drop coverage previously offered for dependents.
- This extended relief applies to employers for 2015 plan years under which—
 - Dependent coverage is not offered,
 - Dependent coverage is offered, but does not constitute MEC,

OR

 - Dependent coverage is offered for some, but not all dependents.

Questions?

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