Employer Shared Responsibility
Frequently Asked Questions

Blue Cross Blue Shield of Rhode Island

One of the more significant provisions of the Affordable Care Act is the requirement that large employers offer coverage to full-time employees (called the employer shared responsibility requirement). On July 2, 2013, the IRS announced that this requirement would not be enforced until 2015. While employers were encouraged to comply with the employer shared responsibility provisions in 2014, there will not be any penalties until 2015.

The frequently asked questions and answers below summarize the current information published by the IRS and other federal agencies. Please note this information is based on proposed regulations; it may not address all employers' concerns, and the IRS may revisit the counting methods described below. For the most up-to-date information, please visit the IRS at www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions-for-Employers.

1. **How do I know whether an employee is full-time?**
   Generally, an employee is considered to be full-time if he/she works, on average, 30 or more hours per week or 130 hours per month. You have several options for determining whether an employee is (or will be) full-time and whether you must offer coverage to that employee.

   Ongoing employees: For ongoing employees where it is not clear that the employee works more than 30 hours per week, you can use the proposed "look-back measurement" method. You select a measurement period of 3-12 months in which to average the employee's weekly hours. If the employee averaged at least 30 hours per week during the measurement period, you must treat the employee as a full-time employee during a period (called a stability period) that is at least as long as the measurement period. For example, if the employee averaged 30 hours per week during a 6-month measurement period, you must treat the employee as full-time for at least 6 months. You can also use an administrative period between the measurement period and the stability period to determine eligibility and enroll employees. This period cannot be longer than 90 days.

   New employees: For a new employee, you should first consider whether, as of the employee's start date, the employee is "reasonably expected" to work full-time for the foreseeable future. If it is not clear that the employee will work 30 or more hours per week, you measure the new employee's hours looking forward using a measurement period, administrative period, and stability period. This is the same as the "look-back measurement" method, but you are looking forward instead.

   Please note: If you expect that an employee will work full-time hours but for less than three months, you can determine that the employee is not full-time.

2. **How are part-time employees counted?**
   Part-time employees are counted to determine employer size, but you are only required to offer coverage to full-time employees and their dependents.

   To determine if you are a large employer, add up all of the hours worked by part-time employees in a month and divide by 120. This provides the number of full-time equivalent employees (FTEs). The number of FTEs is then added to the number of full-time employees (those working an average of 30 or more hours per week). If the number of full-time employees plus FTEs is more than 50, you are considered a large employer and are required to offer coverage.

3. **Do seasonal workers count for purposes of determining status as a large employer?**
   While the term "seasonal employee" is not defined in the employer shared responsibility regulations, the definition for "seasonal employee" in existing Department of Labor regulations can be used in a reasonable, good faith interpretation, with the warning that it not be limited to agricultural or retail workers. Please note that employees of educational entities who work only during the active portions of the academic year are not considered seasonal employees. The government will likely define "seasonal employee" in more detail in the future. It may define a specific time limit or period to help identify that category of employee.

   If you employ 50 or more full-time employees (or full-time equivalent employees) for 120 days (or 4 calendar months) or fewer during a calendar year solely due to seasonal workers, you are not considered a large employer. This means you are not required to offer coverage. The 120 days/4 calendar months do not need to be consecutive. This time limit applies only for determining your status as a large employer and not for determining whether a seasonal employee is full-time for purposes of assessing a penalty.

   A seasonal worker who works more than 30 hours per week may be considered a full-time employee to whom you must offer coverage (see question 4, below).

4. **How do I count employees who are hired for a short period of time, terminate employment, and may be rehired sometime later?**
   Employees rehired within 26 weeks of their termination date cannot be treated as new employees. They must be given credit for their prior employment to determine their full-time status under the "look-back measurement" method described in question 1. You would treat the returning employee just as he/she was being treated when he/she stopped working. For example, if the returning employee was in a stability period in which he/she was being treated as a full-time employee, you would have to offer that employee coverage.

   If the period of absence is less than 26 consecutive weeks but more than four consecutive weeks, you may apply a rule of parity. Under the rule of parity, if the period of absence is longer than the immediately preceding period of employment, the employee may be treated as a new hire upon return to employment. Special rules apply for unpaid leaves under the FMLA, USERRA, and jury duty. Special rules also apply for educational entities under which an employment break period is a period of at least four consecutive weeks.

5. **If I contribute to a multi-employer health and wellness fund on behalf of my employees, does that fulfill my requirement to offer coverage?**
   Even before the delay in enforcement of the penalty was announced, transitional relief was provided through 2014 if: (1) you are required to contribute to a multi-employer plan for a full-time employee under a collective bargaining agreement or participation agreement; (2) coverage under the multiemployer plan is offered to full-time employees (and the employee's dependents); and (3) the coverage offered to the full-time employee is affordable[1] and provides minimum value.[2] In this situation, large employers will not be treated as failing to offer coverage to full-time employees (and their dependents) and will not be subject to a penalty.

This transitional relief is available only with respect to multi-employer plans and does not apply to single employer plans to which contributions are made as the result of a collectively bargained agreement.

When the IRS delayed the requirement to offer coverage until 2015, it did not include a comment on the impact of the delay on this transitional policy. The IRS is expected to provide guidance in the future.

6. **What about employees leased from an employment agency? How are they accounted for?**
Leased employees are not considered employees of your business for determining your status as a large employer or assessing penalties. Historically, leased employees, or employees assigned by staffing agencies, have been considered common-law employees of the staffing agency that assigns them and should be counted by the staffing agency according to the methods outlined above. While employees of staffing agencies frequently have short periods of employment with significant gaps between assignments, they are not all necessarily variable hour employees. The staffing agency should apply the look-back measurement method to determine their full-time status, just as it does with other employees.

   Future regulations may target potential abuse of this approach to leased employees. For example, a staffing agency and a client firm could each report employing a leased employee for 20 hours per week. This could result in neither the staffing agency nor the client firm appearing to employ the individual as a full-time employee. Future regulations could require that all hours of service performed for the client firm be attributed to the client firm for purposes of applying the employer shared responsibility obligations.

[1]Coverage is considered affordable when an employee's required contribution for self-only coverage for the lowest cost plan offered by the employer does not exceed 9.5 percent of the employee's household income for the year.

[2]A health plan is considered to provide minimum value if it pays at least 60 percent of the estimated total cost of medical services for a standard population.

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