UPMC HEALTH PLAN

Health Care Reform: Employer Shared Responsibility

Beginning in 2014, an **applicable large employer** may be subject to a monthly, non-deductible penalty if any **full-time employees** receive a premium tax credit and/or cost-sharing reduction payment through the Health Insurance Exchange. Generally, this may occur where:

1. An applicable large employer does not offer **minimum essential coverage** to its full-time employees and their dependents; OR

2. An applicable large employer offers **minimum essential coverage** to its full-time employees and their dependents, but that coverage either does not provide **minimum value** or is not **affordable** for a given employee.

This document provides an overview of rules for counting employees, determining whether an employer is an applicable large employer, evaluating whether an employer's sponsored coverage satisfies requirements to avoid a penalty, and calculating any employer penalties that may apply.

The IRS proposes to define "dependent" as the child of an employee who is not yet 26 years of age or older. REG-138006-12 provides transitional relief to employers who currently offer coverage only to employees and not to their dependents. Under this regulation, any employer that takes steps to offer coverage to dependents will not be liable for penalties solely for failure to offer dependent coverage during the 2014 plan year.

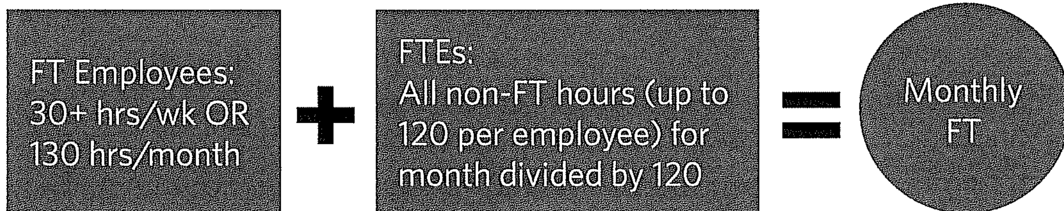
CAUTION: This document was prepared in February 2013 based on then-available regulatory guidance. The information contained herein is based in part on proposed regulations or intended approaches to implementation of the Employer Shared Responsibility requirements. Such regulations and guidance are explicitly subject to change. This document is offered for informational purposes only and should not be relied upon as a source of tax, legal, or other professional advice.

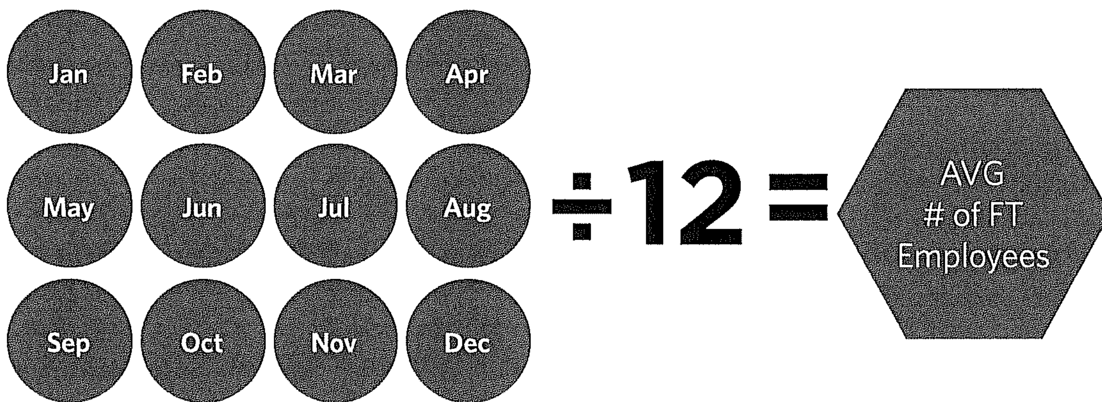
Classifying and Counting Employees

Although an applicable large employer may only incur a financial penalty with respect to **full-time employees**, for purposes of classifying an employer as large or small, both full-time (FT) and full-time equivalent (FTE) employees are counted. Applicable large employer status for the calendar year is based on employee counts from the previous calendar year. The IRS has proposed the following approach to counting employees:

- For a given month, an employee who has an average of at least 30 hours of service per week OR 130 hours of service in a calendar month would be classified as an FT employee.
- Hours of service include both paid hours of work and paid non-work hours (vacation, holiday, sick leave, etc.).
- For salaried (non-hourly) employees, hours of service may be calculated as:
  - Actual hours of service from records of hours worked

- "Days-worked" equivalency of 8 hours for each day where the employee would otherwise be credited with at least 1 hour of service
  - "Weeks-worked" equivalency of 40 hours for each week where the employee would otherwise be credited with at least 1 hour of service
- See REG-138006-12 for proposed special rules regarding seasonal employees, teachers, and other employees of educational organizations, as well as employees who are compensated on a commission basis and under other special circumstances.
- To calculate the number of FTE employees:
  - Count total hours of service (up to 120 hours per employee) for all non-full-time employees in a month
  - Divide total hours by 120; the result is the number of FTEs for the month
  - Note: IRS Notice 2011-36 provides special rules for counting Seasonal Employees
- Total FTEs are added to FT employees to determine an employer's total FT count for the month.
- All 12 monthly counts are added together and then divided by 12; the result is the employer's average number of FT employees for the preceding calendar year.





Employers whose final average full-time count is above 50 for 120 days or less due to counting of seasonal employee hours should carefully review IRS Notice 2011-36 and REG-138006-12 for details on special rules for counting seasonal employees in determining "applicable large employer" status.

The IRS provides transition relief for purposes of determining applicable large employer status for the 2014 calendar year. Employers may determine their 2014 status using a period of at least six consecutive months in 2013 rather than the entire 2013 calendar year. More information is available in REG-138006-12.

Affordability

Affordability is based on an employee's **household income**, which may also include the income of an employee's spouse and dependents. If the employee's **required contribution** to the cost of self-only employer-sponsored coverage exceeds 9.5 percent of his or her household income, such coverage will be deemed unaffordable. The employee may claim a premium tax credit from the Health Insurance Exchange and the employer-sponsor of the coverage would be required to pay a penalty.

Affordability Safe Harbors

Because an employee's household income is not something an employer typically knows, the IRS has proposed several safe harbors that employers may use to determine if their offer of coverage is affordable for a particular employee. Use of any safe harbor is optional, and employers may rely on these safe harbors pending the issuance of final regulations or other guidance, which, if more restrictive, will be applied prospectively.

1. Form W-2 safe harbor: Under this safe harbor, employer-sponsored coverage meets the above affordability test if an employer requires an employee to contribute 9.5 percent or less of his or her W-2 wages toward the cost of self-only coverage under the plan.
2. Rate of Pay safe harbor: Under this safe harbor, an employer would: (1) take the hourly rate of pay for each hourly employee eligible to participate in the health plan at the beginning of the plan year, (2) multiply that rate by 130 hours per month, and (3) determine affordability based on the resulting monthly wage amount. The employee's contribution toward the cost of self-only coverage must not be more than 9.5 percent of this monthly wage amount.
3. Federal Poverty Line (FPL) safe harbor: This safe harbor deems coverage affordable if the employee's cost for self-only coverage under the plan does not exceed 9.5 percent of the FPL for a single individual. The 2013 FPL for a single individual is $11,490.

Does your plan impose a waiting period for enrollment? Employers that do so will be permitted to continue this practice for up to 90 days following an employee's date of hire without incurring any penalty regardless of an employee's full-time status (see DOL technical release 2012-02 for more info)

Penalties

Applicable penalties vary depending on the reason that a full-time employee is eligible to claim a premium tax credit from the Health Insurance Exchange.

Employer Does Not Offer Minimum Essential Coverage

An applicable large employer that fails to offer minimum essential coverage to its full-time employees (and dependents) will incur a penalty ($167 per employee per month in 2014) based on the total number of full-time employees (excluding the first 30) if any of its full-time employees claim a premium tax credit in the Health Insurance Exchange.

Example: Rick's Roofing has 35 full-time employees and more than 15 full-time equivalents due to numerous part-time staff. The company does not offer coverage to its full-time employees at any time during the year. Rick's Roofing would pay a penalty for the five employees counted as numbers 31 - 35. In 2014, this would result in the following penalty:

[$167 Penalty] x [5 full-time employees] x [12 months] = $10,000

Employer Offers Coverage That Is Unaffordable or Does Not Provide Minimum Value

An applicable large employer that offers minimum essential coverage to its full-time employees (and dependents) may still be liable for a Shared Responsibility penalty if the coverage either does not provide minimum value or is unaffordable for any full-time employee. Such an employer will incur a penalty ($250 per employee per month in 2014) for each full-time employee who claims a premium tax credit in the Health Insurance Exchange. This penalty cannot be greater than the maximum penalty that would apply if the employer did not offer coverage.

Example 1: Paula's Plumbing has 70 full-time employees. The company offers minimum essential coverage to its full-time employees (and dependents), but the required contribution for self-only coverage under the plan is more than 9.5 percent of household income for five employees. One employee obtains coverage through a spouse, while the four other employees claim a premium tax credit in the Health Insurance Exchange for the entire year. Paula's Plumbing would pay a penalty for the four employees who claim the tax credit as follows:

[$250 Penalty] x [4 tax credits] x [12 months] = $12,000

Example 2: Paula's Plumbing has 70 full-time employees. The company offers minimum essential coverage to its full-time employees (and dependents), but the plan only pays for 50 percent of total allowed costs of benefits. Fifty of the full-time employees claim tax credits in the Health Insurance Exchange for the entire year. Penalty calculations are as follows:

[$250 Penalty] x [50 tax credits] x [12 months] = $150,000**

**Because $150,000 is more than the maximum penalty that would apply if Paula's Plumbing did not offer coverage, the company will instead pay the maximum penalty, calculated as:

[$167 Penalty] x [40 full-time employees] x [12 months] = $80,160

Determining Full-Time Employee Status for Penalty Purposes

As outlined above, an applicable large employer's potential Shared Responsibility liability for a given month is based on either the number of full-time employees (when coverage is not offered) or the number of full-time employees who claim a premium tax credit in the Health Insurance Exchange (when employer coverage is unaffordable or does not provide minimum value). Recognizing that it may be impractical for employers to calculate full-time employee status on a month-by-month basis, the IRS has established safe harbor methods that employers may use as an alternative. Employers may rely on the following safe harbor methods at least through the end of 2014.

Safe Harbor Method for Ongoing Employees

Employers may use a safe harbor method to determine an ongoing employee's full-time status by looking back at a standard measurement period of between three and 12 months to assess whether the employee worked an average of at least 30 hours per week. If the employee averages at least 30 hours per week during the standard measurement period, he or she must be treated as full-time during a subsequent stability period, regardless of the actual number of hours worked during the stability period, which must be at least six months long and no shorter than the measurement period.

Employers are also permitted to establish an administrative period of up to 90 days between the measurement and stability periods in order to calculate employee status and to notify and enroll eligible employees in coverage.

Example: Gary's Garage uses a standard measurement period of nine months from January 1, 2013, through September 30, 2013. Gary's also uses a 90-day administrative period from October 1 through December 31 to determine employee classifications and engage in open enrollment activities for the following plan year. Gary's stability period runs from January 1, 2014, until December 31, 2014. Two mechanics started the stability period as full-time based on the previous measurement period, but are actually working less than full-time as of April 2014. They must still be treated as full-time employees for plan purposes through the end of the stability period on December 31, 2014.

New Seasonal and Variable Hour Employees

The IRS has also established a similar safe harbor method that employers may use to determine whether new seasonal and **variable hour employees** are treated as full-time employees. Employers may determine whether a seasonal or variable hour employee works an average of at least 30 hours per week during an initial measurement period of between three and 12 months. If the employee averages at least 30 hours per week during the initial measurement period, he or she must be treated as full-time during a subsequent stability period, regardless of the actual number of hours worked during the stability period. An administrative period is also permitted, as described above.

The IRS has also established methods by which employers may transition new employees being measured under this safe harbor to the ongoing employee safe harbor described above. For more details on the safe harbor rules, see IRS Notice 2012-58.

Definitions

Affordable - Coverage under an employer-sponsored plan for which a given employee's required contribution is not more than 9.5 percent of the employee's annual household income.

Applicable large employer - An employer who employs, on average, 50 or more full-time (FT) or full-time equivalent (FTE) employees.

Full-time (FT) employee - An employee who works on average 30+ hours per week.

Household income - Modified adjusted gross income of the employee and any members of the employee's family (including spouse and dependents) who are required to file an income tax return.

Minimum essential coverage - Coverage offered under a government-sponsored program (Medicare, Medicaid, etc.) or employer-sponsored coverage in the small or large group market.

Minimum value - Coverage in which the plan's share of the total allowed costs of benefits provided under the plan is at least 60 percent of such costs.

Required contribution - Portion of annual premium paid by an employee for employer-sponsored coverage.

Variable hour employee - An employee for whom it cannot be determined at his or her start date that he or she is reasonably expected to work an average of at least 30 hours per week.

Other Resources

- U.S. Department of Labor Technical Release 2012-01/IRS Notice 2012-17: Frequently Asked Questions From Employers Regarding Automatic Enrollment, Employer Shared Responsibility, and Waiting Periods (http://www.dol.gov/ebsa/pdf/tr12-01.pdf, http://www.irs.gov/pub/irsdrop/n-12-17.pdf)
- IRS Notice 2012-31: Minimum Value of an Employer-Sponsored Health Plan (http://www.irs.gov/pub/irs-drop/n-12-31.pdf)
- IRS Notice 2011-73: Request for Comments on Health Coverage Affordability Safe Harbor for Employers (http://www.irs.gov/pub/irs-drop/n-11-73.pdf)
- IRS Notice 2011-36: Request for Comments on Shared Responsibility for Employers Regarding Health Coverage (http://www.irs.gov/pub/irs-drop/n-11-36.pdf)
- IRS Notice 2012-58: Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage (§ 4980H) (http://www.irs.gov/pub/irs-drop/n-12-58.pdf)
- U.S. Department of Labor Technical Release 2012-02 / IRS Notice 2012-59: Guidance on 90-Day Waiting Period Limitation Under Public Health Service Act § 2708 (http://www.dol.gov/ebsa/pdf/tr12-02.pdf, http://www.irs.gov/pub/irs-drop/n-12-59.pdf)
- U.S. Department of the Treasury and IRS Notice of Proposed Rulemaking / REG-138006-12: Shared Responsibility for Employers Regarding Health Coverage (http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf)

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