

FINAL RULES – Employer Shared Responsibility Rules

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The IRS has released final regulations in regard to the employer shared responsibility rules set forth under section 4980(H) of the Affordable Care Act (ACA). In addition to formally adopting many of the proposed regulations that were provided back in January 2013 (e.g. the optional look-back measurement method), the final rules also provide several clarifications and amendments, including various transition relief provisions.

One particularly significant transition rule delays enforcement of the shared responsibility rules until 2016 for employers with fewer than 100 full-time equivalents (FTEs). To determine the number of full-time equivalents (FTEs), the employer must use the existing 4980(H) counting methodology, but can use 6 consecutive months of 2014 employment data, rather than the entire 2014 calendar year as normally required.

Transition rules and delays applicable to the 2015 plan year only include:

- No 4980(H) employer penalties for employers with fewer than 100 FTEs so long as there isn't a reduction in workforce or hours of service solely to avoid compliance or a material reduction in benefits offered;
- No penalty 4980(H)(a) for employers with 100 FTEs or more so long as the employer offers coverage to at least 70% (formerly 95%) of all full-time employees;
- When calculating penalties under 4980(H)(a), a waiver of the penalty for the first 80 full-time employees (rather than 30);
- When calculating penalties under 4980(H)(b), penalty is capped at total potential penalty under 4980(H)(a) including the waiver of the first 80 full-time employees; and
- No penalty for plans that do not currently offer coverage to dependent children if the plan is taking steps during 2015 to do so in 2016.

Other transition relief previously provided in the proposed regulations for 2014 was extended and now applies for 2015:

- For those employers subject to the rules in 2015 (i.e. employers with 100 or more FTEs):
 - Non-calendar plan years do not have to comply until the plan's 2015 renewal so long as certain criteria are met; and
 - If using the optional look-back measurement method, the first standard measurement period to determine eligibility for 2015 may be shorter than 12 months but not less than 6 months and must begin no later than July 1, 2014.

In addition to the various transition relief provisions offered, the final rules provided clarification and amendments on several other issues, including the following (this list is not exhaustive):

- Hours of service
 - Clarification on use of the equivalency methods for non-hourly employees
 - Examples illustrating the reasonableness of various methods for determining full-time status of adjunct faculty, layover hours, and on-call hours
 - Exclusion for hours of service provided by bona fide volunteers, work study students, and members of a religious order
- Short-term employees – in general, no special exceptions for short-term or temporary employees are allowed when determining full-time status. Consequently, a full-time temporary or short-term employee will need to be offered coverage after no more than three months of employment to avoid potential 4980(H) penalties.

- Break in Service Rules
 - Clarification: The break in service rules apply whether the employer uses a month-to-month determination or the optional look-back measurement method to determine full-time status; and
 - Employers must treat employees as continuing employees rather than new hires if an employee resumes employment within 13 weeks (rather than 26 weeks as previously required), except for educational organizations, which must continue to use 26 weeks.
- Look-Back Measurement Method
 - Factors are provided to consider when determining an employee's status as a full-time versus variable hour employee;
 - Seasonal employee is defined as an employee in a position for which the customary annual employment is 6 months or less;
 - Further guidance is provided for temporary staffing firms; and
 - Clarification is provided on the treatment of changes in employment status.
- Affordability safe harbors – clarifications on the rate of pay and federal poverty level safe harbors

The long-awaited final rules provide detailed guidance for the largest employers (100 or more FTEs) to transition into compliance with the employer shared responsibility rules ("pay or play" rules) in 2015, and for all applicable large employers (50 or more FTEs) to be compliant by 2016. This alert highlights some of the key clarifications and amendments. We are continuing to review the rules in detail and will provide a more comprehensive analysis of their impact on employers very soon.

A copy of the final regulations can be found [here](#). The IRS also provided a fact sheet summarizing the various provisions that can be found at:

<http://www.treasury.gov/press-center/press-releases/Documents/Fact%20Sheet%20021014.pdf>

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