

Facts for Employers

“Play or Pay” Mandate Under the Patient Protection and Affordable Care Act (PPACA)



PPACA added **Employer Shared Responsibility provisions**, also called the **“Play or Pay” mandate**, to the Internal Revenue Code. On January 2, 2013, the Internal Revenue Service (“IRS”) issued proposed rules to implement the mandate. Though the proposed rules are not finalized, the IRS has stated that employers may rely on the guidance for months after December 31, 2013. The IRS has also stated that if future guidance is more restrictive than the proposed rule, the future guidance will not be applied retroactively.

Beginning in 2014, certain large employers may be subject to a penalty if:

- They fail to offer substantially all full-time employees (and certain dependents) employer-sponsored health coverage that provides “minimum essential coverage” (MEC)
- **OR**
- The coverage offered provides MEC but it is unaffordable or does not provide minimum value
- **AND**
- At least one of the employer’s full-time employees receives a premium tax credit or cost-sharing reduction through an Exchange

Which employers are subject to the Play or Pay Mandate?

The mandate applies to employers that employ, on average, at least 50 full-time and/or full-time equivalent (“FTE”) employees during the preceding calendar year.

How do I know which of my employees is a “full-time employee?”

A full-time employee is one who performs an average of 30 hours of service per week. The following people are generally not “employees” for purposes of this calculation: sole proprietors, partners in partnerships, 2% S corporation shareholders, leased employees, and employees who work outside the United States.

How do I determine the number of FTE employees my company has in any given month?

For each month, you must add up the total number of hours of service of all employees who were not employed for an average of 30 hours per week and divide that number by 120. This is the number of FTE employees for the month.

How do I calculate the average number of full-time and FTE employees?

For each month, you determine the total number of full-time and FTE employees. Then, you add together the monthly totals and divide by 12. For any of these calculations, if your answer is not a whole number, you round down to the next lowest whole number.

What year do I look at to make the calculations?

In making the calculations, you look at the preceding calendar year. This means that you look at 2013 when determining whether the Play or Pay mandate applies to your company in 2014.

Note: For 2014 only, the IRS has adopted a transition relief rule. Under the transition relief rule, you have the option to use a reference period of between 6 and 12 consecutive months.

Who is a “dependent” that must be eligible to enroll in my company’s health coverage?

For purposes of the Pay or Play Mandate, a “dependent” is your full-time employee’s son, daughter, stepson, stepdaughter, or eligible foster child who has not reached the age of 26. Your full-time employee’s spouse is not a dependent for purposes of the mandate, nor is any other individual who may be a dependent for tax purposes. **Note:** The IRS has provided transitional relief for employers who currently do not make coverage available to their employees’ dependents. Any employer that “takes steps” toward offering coverage to employees’ dependents during its plan year that begins in 2014 will not be penalized solely for failing to make coverage available to dependents.

What percentage of full-time employees is “substantially all?”

The IRS has concluded that 95 percent is an “administrable and appropriate interpretation” of the requirement in the ACA to make coverage available to “substantially all” full-time employees and their dependents.

How do I know if the plan offered to my employees provides MEC?

Most commercially available health plans, including plans offered in the large or small group market within a state, are deemed to provide MEC. Other examples of plans that provide MEC include self-funded student health plans, Medicare Advantage plans, and any plan treated as grandfathered under PPACA.

What is considered “minimum value?”

Minimum value is coverage of at least 60% of the total allowed cost of benefits provided under a plan. This is a measure of the benefits provided, not the premiums paid.

How do I know if my company’s plan is “affordable?”

In general, coverage is considered affordable if the employee’s self-only premium for the lowest cost health coverage that provides MEC and minimum value is no more than 9.5 percent of the employee’s household income.

How can my company be sure that the self-only premium paid by an employee is no more than 9.5 percent of the employee’s income?

The IRS has provided three affordability “safe harbors.” They are:

- **Form W-2 Safe Harbor:** If the employee’s annual contribution to the self-only premium is no more than 9.5 percent of the employee’s wages, as reported in Box 1 of the employee’s Form W-2. This safe harbor is applied after the end of the calendar year and on an employee-by-employee basis.
- **Rate of Pay Safe Harbor:** If the employee’s monthly contribution to the self-only premium is no more than 9.5 percent of the employee’s monthly wages. To determine an hourly worker’s monthly wages, multiply either the employer’s lowest rate of pay or the hourly rate of pay for each individual employee by 130.
- **Federal Poverty Line Safe Harbor:** If the employee’s monthly contribution for the self-only premium is no more than 9.5 percent of 1/12 of the Federal Poverty Line for the state in which the employee is employed.

Note: For any of the safe harbors, use the self-only premium of the lowest cost health coverage that provides **both** MEC and minimum value. The affordability safe harbors are not available for plans that do not provide MEC and minimum value.

How much is the penalty that can be imposed for not complying with the Play or Pay Mandate?

The penalty, also known as the Employer Shared Responsibility Payment, differs depending on the type of noncompliance:

- If, for any calendar month, your company fails to offer substantially all of its full-time employees and their dependents health coverage that provides MEC **and** any of your full-time employees is certified to receive a premium tax credit or cost-sharing reduction for purchasing health coverage through an exchange, the Employer Shared Responsibility Payment is calculated as follows:
 - For each calendar month, $(\$2,000/12) \times (\text{Number of full-time employees} - 30)$
 - **Note:** The penalty is calculated on a monthly basis but paid annually
 - **Note:** The \$2,000 annual amount will be adjusted for inflation in future years
- If, for any calendar month, your company offers all of its employees and their dependents health coverage that provides MEC but such coverage is either a) not affordable, or b) does not provide minimum value **and** any of your full-time employees is certified to receive a premium tax credit or cost-sharing reduction for purchasing health coverage through an exchange, the Employer Shared Responsibility Payment is calculated as follows:
 - For each calendar month, $(\$3,000/12) \times$ the number of full-time employees certified to receive a premium tax credit or cost-sharing reduction
 - **Note:** The penalty is calculated on a monthly basis but paid annually
 - **Note:** The \$3,000 annual amount will be adjusted for inflation in future years
 - **Note:** The maximum amount of this penalty is the amount your company would pay if it were subject to the first penalty

The proposed rule contains more specific guidance regarding variable hour employees, employees compensated on a commission basis, employees hired into high-turnover positions, and temporary staffing agencies. For the complete text of the proposed rules, go to <https://www.federalregister.gov/articles/2013/01/02/2012-31269/shared-responsibility-for-employers-regarding-health-coverage> .

This summary is provided for informational purposes only and is not intended to be either legal or tax advice. HNE strongly urges any employers who might be affected by these provisions of PPACA to consult with their own legal and tax advisors.