



February 11, 2014

Employer Mandate Rules Begin 2015

The Treasury and the IRS have issued [final regulations](#) implementing the employer shared responsibility (mandate) provisions under the Affordable Care Act (ACA) that take effect in 2015. The rules make a number of changes and improvements in response to input on the proposed regulations issued in December 2012. In addition, final regulations will be issued shortly that aim to substantially streamline the employer reporting requirements for employers that offer coverage. For more information, see the Treasury [fact sheet](#) and the newly released [FAQs](#).

Background. The ACA employer mandate provisions require employers to offer “affordable,” minimum-value health coverage to at least 95% of their “full-time employees” (FTE is defined as on average at least 30 hours/week) or pay a penalty, triggered when at least one FTE receives a premium tax credit to purchase coverage through a health insurance exchange. These rules apply to employers that employed on average at least 50 FTEs or equivalents on business days during the preceding calendar year. These employer mandate provisions were originally intended to be effective beginning in 2014, but were delayed last year until 2015. The ACA also requires that large employers fill out reporting forms on their workers and coverage for 2015 and subsequent years.

The New Rules. Under the new rules, larger employers—those with at least 100 FTEs—will not be liable for certain of the law's employer mandate penalties in 2015 so long as they extend coverage to at least 70% of their FTEs. The 95% coverage requirement is now delayed until 2016. In addition, employers with 50-99 FTEs will be exempt until 2016 from the requirement to either offer coverage or be liable for the penalty. The rules apply to companies as follows:

- **Employers with fewer than 50 FTEs** are not required to provide coverage or fill out any reporting forms in 2015, or in any year, under the ACA.
- **Employers with 50 to 99 FTEs** are required to fill out reporting forms on their workers and coverage in 2015, but have until 2016 before any employer responsibility payments could apply. However, such employers will have to certify that they are not reducing the size of their workforces to fall under the 99-FTE threshold and are subject to certain maintenance of coverage requirements.
- **Larger employers with 100 or more FTEs** are required to fill out reporting forms on their workers and coverage in 2015, and are also required to offer coverage or pay a penalty beginning in 2015. Employers in this category can now phase in the percentage of FTEs that need to be offered coverage from 70% in 2015, to 95% in 2016 and beyond. Note that an employer could still be subject to penalties in 2015 if it offers coverage that is

unaffordable or does not provide minimum value, and one or more of its employees receives a premium tax credit or cost-sharing reduction through an exchange.

The new rules generally preserve the optional look-back measurement/stability period method for purposes of determining FTE status for employees with varying hours and seasonal employees. Also many transition rules are available, including:

- For employers with non-calendar year plans, the mandate will generally apply beginning with the first day of the 2015 plan year (January 1, 2015 for calendar year sponsors).
- The requirement to cover dependents will not apply to an employer who does not currently offer dependent coverage in 2015 so long as the employer is taking steps to arrange for such coverage to begin in 2016.
- On a one-time basis, in 2014 preparing for 2015, plans may use a measurement period of six months and a stability period (for the offer of coverage) of up to 12 months.
- In 2015, for purposes of determining whether an employer is subject to the mandate, employers can determine whether they had at least 100 FT or FT equivalent employees by reference to a period of at least six consecutive months.

Various Employee Categories. The rules provide clarification regarding whether employees of certain types or in certain occupations are considered FT, including:

- **Volunteers:** Hours contributed by bona fide volunteers for a government or tax-exempt entity, such as volunteer firefighters and emergency responders, will not cause them to be considered FTEs.
- **Educational employees:** Teachers and other educational employees will not be treated as part-time for the year simply because their school is closed or operating on a limited schedule during the summer.
- **Seasonal employees:** Those in positions for which the customary annual employment is six months or less generally will not be considered FTEs.
- **Student work-study programs:** Service performed by students under federal or state-sponsored work-study programs will not be counted in determining whether they are FTEs.
- **Adjunct faculty:** The rules provide as a general rule (until further guidance is issued), that employers of adjunct faculty are to use a method of crediting hours of service for those employees that is reasonable in the circumstances and consistent with the employer responsibility provisions. However, to accommodate the need for predictability and ease of administration and consistent with the request for a "bright line" approach, the final rules expressly allow crediting an adjunct faculty member with 2 ¼ hours of service/week for each hour of teaching or classroom time as a reasonable method for this purpose.

As the new limited transition rules take effect, the agencies will consider whether it is necessary to further extend any of them beyond 2015.

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