


Affordable Care Act: Understanding the Employer Responsibility Rules



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Health Care Reform

- ▶ Employer Responsibility
 - Who is subject to requirements
 - Who must be offered coverage
 - Choosing counting methods
 - Reporting and disclosure requirements

Who Is Subject to Employer Mandate?

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Applies to “Large” Employers

▶ Who is a “large” employer

An employer that employed an average of at least 50 FTEs on business days during the preceding year*

Includes all “common law” employees

*2015 transition rule for employers with 50–99 FTEs

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Who Does Not Have to be Counted?

◦ Not considered employees:

- Sole proprietors
- Partners in a partnership
- More than 2% S corporation shareholders

◦ Do not count hours of service for which an employee receives compensation from a foreign source.

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Aggregation Rules Apply

▶ Take into account:

- Controlled groups of corporations (parent–subsidiaries, brother–sister corporations)
- Partnerships and proprietorships under common control
- Affiliated service groups
- Any other group identified in regs (which to date have not been issued)

▶ Note: only applies for purposes of determining whether the employer is subject to Employer Responsibility requirement

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Who is the Common Law Employer?

- ▶ Workers from Staffing Agencies
 - Right to control how the employee performs day-to-day activities.
 - *IRS working on anti-abuse rules for staffing arrangements designed to evade 4980H requirements*
- ▶ Independent Contractors
 - True independent contractor, or an employee?
 - Behavioral control
 - Financial control
 - Type of relationship

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Counting Employees

- ▶ Full-time employees
 - Anyone with at least 120 hours of service during the month
- ▶ Full-time equivalents (all other employees)
 - Aggregate number of hours (up to 120)
 - Divide by 120 hours
- ▶ Count all hours of service

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Are You a Small Employer?

- ▶ How many FTE's do you average each month throughout the year?*

Total number of full-time employees

+

Total Number of FTEs

- ▶ Calculate for each month and average

*During 2014, were able to use any six consecutive calendar month period

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Seasonal Workers

- ▶ Potential adjustment
 - If total exceeds 50 for four months or less
 - and the employees in excess of 50 are seasonal workers,
 - Then not considered to employ more than 50 employees

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Consequences

- ▶ If average 50 or more FTEs:
 - Subject to employer responsibility in the following year.
 - Offer coverage by April 1 or pay penalty
- ▶ If average less than 50 FTEs:
 - Not subject to mandate in following year
 - No penalty for failure to offer coverage
- ▶ Transitional rule for 2015:
 - If averaged 50-99 FTEs during 2014, no penalty for 2015.
 - Offer coverage by first day of plan year starting in 2016 or pay penalty.

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Example 1

- ▶ ABC Company with 30 full-time workers.
- ▶ Part-time workers log the following aggregate hours per month:

January:	1500	July:	3000
February:	1500	August:	2900
March:	1750	September:	2000
April:	1800	October:	1700
May:	1950	November:	1700
June:	2200	December:	1650

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Example 1

- ▶ Number of workers per month:

January:	30+12.5	July:	30+25.0
February:	30+12.5	August:	30+24.2
March:	30+14.6	September:	30+16.7
April:	30+15.0	October:	30+14.2
May:	30+16.3	November:	30+14.2
June:	30+18.3	December:	30+13.8
- ▶ Average for year: 46.4 FTEs

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Example 2

- ▶ X Corporation and Y corporation owned by same individual
 - X corporation averages 35 FTEs
 - Y corporation averages 20 FTEs
- ▶ Because X and Y are part of a controlled group, both are subject to employer responsibility requirement.
 - not required to comply in 2015
 - must offer coverage in 2016

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Who Must Be Offered Coverage?



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Penalties for failure to offer coverage

- ▶ The "A" Penalty--Failure to offer coverage to at least 95%[†] of full-time workforce:
 - \$2,000 x number of full-time employees - 30*
- ▶ The "B" Penalty--Offer coverage, but some employees qualify for subsidized coverage through exchange
 - \$3,000 x number of full-time employees who qualify for subsidized coverage

[†]2015 transitional rule: 70%
^{*}2015 transitional rule: subtract 80

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Who must be offered coverage?

- ▶ To avoid penalties, must offer coverage to full-time employees and their dependents:
 - Dependents mean the children of the employee
 - NOT required to offer coverage to spouse
- ▶ Can miss a small percentage/number of full-time employees.
 - Greater of 5% or 5 full-time employees*

*2015 transitional rule: can miss up to 30% during 2015

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Definition

- ▶ Employee = common law employee
 - Workers from staffing agencies?
 - Independent contractors?

Issue: who has the right to control how the worker performs his or her services

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Definition

- ▶ “Full-time”
 - at least 30 hours of service per week; or
 - at least 130 hours of service per month
- ▶ Includes:
 - Hours while working
 - Other hours for which the employee is paid or entitled to pay

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Determining Full-Time Status

- ▶ can determine in one of two ways:
 - Monthly (after the fact)
 - Look-back measurement periods
 - Use historical data
 - Characterize employees for coming plan year

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Determining Full-Time Status

- ▶ Can use different methods for following classifications:
 - Salaried employees/hourly employees
 - Employees working in different states
 - Collectively bargained/non-collectively bargained
 - Different collectively bargained groups

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Monthly Measurement Method

- ▶ Monthly equivalency: 130 hours of service during month
- ▶ Alternative week to week method:
 - Months with four weeks: 120 hours of service
 - Months with five weeks: 150 hours of service

Look Back Measurement Periods

- ▶ Establish measurement periods of between 3 months and 12 months
- ▶ Use to determine full-time status to:
 - identify employees who should be offered coverage for following "stability" period
 - calculate penalties
 - Example: measure 10/15/13-10/14/14 to identify who must be offered coverage for 2015 plan year

Key Concepts

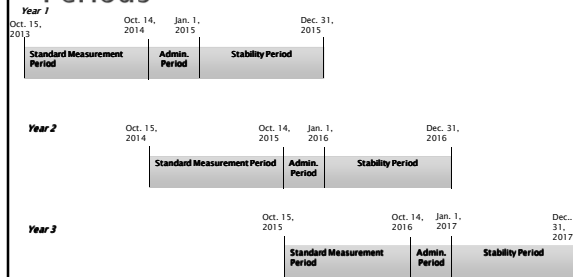
- ▶ Measurement period—time period used to evaluate full-time status of employees:
 - "Standard Measurement Period" for use with on-going employees
 - "Initial Measurement Period" for use with new employees
- ▶ Administrative period
 - time following measurement period to calculate status, notify individuals of status, offer coverage and enroll in plan
 - Time before initial measurement period between date new employee starts and measurement period begins
 - cannot exceed 90 days in aggregate

Key Concepts

“Stability Period”

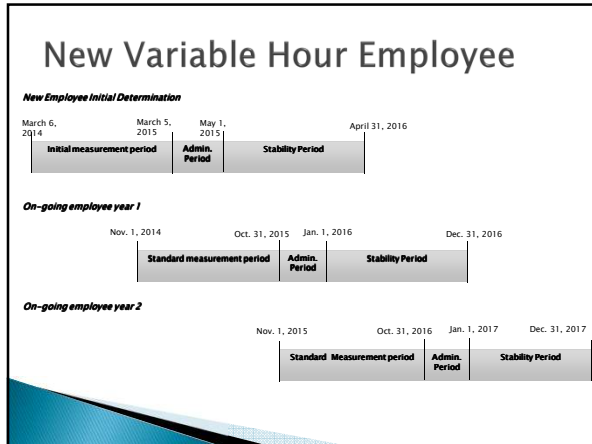
- Time following measurement period and administrative period during which individual has been offered coverage (regardless of actual hours worked during the stability period)
- Must be the longer of 6 months or the length of the standard measurement period
 - Example: 12-month standard measurement period requires a 12-month stability period
 - Example: 3-month standard measurement period requires a 6-month stability period.

Ongoing Employee Measurement Periods



New Employees

- ▶ **Expected to be full-time?**
 - Must be eligible for coverage after 3 full months
- ▶ **Variable, seasonal or part-time?**
 - Use an initial measurement period
 - Initial measurement period + administrative period cannot run longer than to the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (13 months and a fraction).
 - Then transition to standard measurement periods.



Rehired Variable Hour Employees

- ▶ Two alternative tests to determine if new employee:
 - 13 week rule: no hours of service are credited for at least 13 consecutive weeks.
 - 26 weeks for Educational Institutions
 - Rule of Parity (for periods shorter than 13 consecutive weeks or 26 weeks for Educational Institutes): Period with no credited hours is at least 4 weeks and is longer than employee's period of employment immediately preceding period with no credited hours.
- ▶ For "continuing" employees
 - Resume measurement and stability periods that would have applied without a break in service.
 - Measurement periods calculated ignoring break in service

Other Special Circumstances

- ▶ Special unpaid leave:
 - FMLA, USERRA, jury duty
- ▶ Employees of educational organizations:
 - Employment breaks of at least four consecutive weeks
- ▶ Measurement periods are calculated ignoring breaks in service.

Which Counting Method Should A Large Employer Use?

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Scenario 1 – Month-to-Month

- ▶ Widget Company
 - 200 workers classified as full-time – eligible for plan
 - 50 part-time/variable hour/seasonal workers – not eligible
- ▶ Should it use month-to-month method?

Month-to-Month 2015

	# ≥ 130	70%	"A" Penalty		# ≥ 130	70%	"A" Penalty
Jan	203	142	-	July	230	161	-
Feb	206	144	-	Aug	225	157	-
Mar	205	143	-	Sept	220	154	-
April	211	147	-	Oct	206	144	-
May	209	146	-	Nov	208	145	-
June	215	150	-	Dec	204	142	-

Month-to-Month 2016

	# ≥ 130	95%	"A" Penalty		# ≥ 130	95%	"A" Penalty
Jan	203	192	-	July	230	218	\$38,333
Feb	206	195	-	Aug	225	213	\$37,500
Mar	205	194	-	Sept	220	209	\$36,667
April	211	200	-	Oct	206	195	-
May	209	198	-	Nov	208	197	-
June	215	204	\$35,833	Dec	204	193	-

Scenario 1 – Look-Back Method

- ▶ Widget Company
 - 200 workers classified as full-time – eligible
 - 50 part-time/variable hour/seasonal – not eligible
- ▶ Look-back measurement period results:
 - 205 FT workers → 95% target is 194
 - 45 non-FT

Look-Back Method 2016

	# ≥ 130	95%	"A" Penalty		# ≥ 130	95%	"A" Penalty
Jan	203	194	-	July	230	194	-
Feb	206	194	-	Aug	225	194	-
Mar	205	194	-	Sept	220	194	-
April	211	194	-	Oct	206	194	-
May	209	194	-	Nov	208	194	-
June	215	194	-	Dec	204	194	-

Scenario 2 – Broader Eligibility Rules

- ▶ Widget Company
 - 200 workers classified as full-time – eligible for plan
 - 50 part-time/variable hour/seasonal workers – eligible for plan (pay higher contribution rate)

Month-to-Month 2016

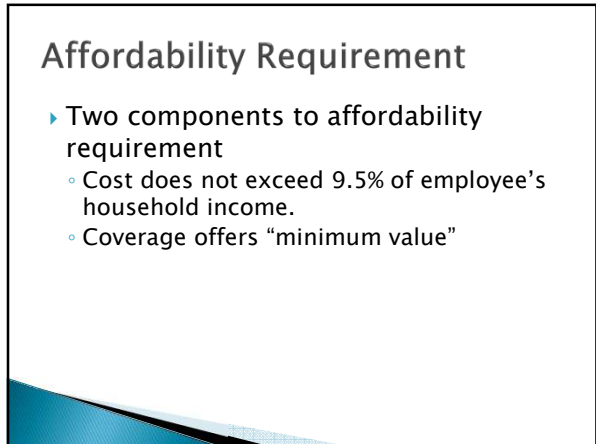
	# ≥ 130	95%	"A" Penalty		# ≥ 130	95%	"A" Penalty
Jan	203	192	-	July	230	218	-
Feb	206	195	-	Aug	225	213	-
Mar	205	194	-	Sept	220	209	-
April	211	200	-	Oct	206	195	-
May	209	198	-	Nov	208	197	-
June	215	204	-	Dec	204	193	-

Which Method to Choose?

- ▶ Look-back measurement method will generally be better if have a lot of variable hour or seasonal workers
- ▶ Month-to-month method will work if:
 - Almost all employees work predictable schedules, or
 - Eligibility rules more generous than required







9.5% of Income Test

- ▶ Employee's required contribution for self-only coverage does not exceed 9.5% of the employee's household income.
 - Typically do not know employee's household income.
- ▶ Good news: three safe harbors for determining affordability
 - Employer not subject to penalty if comply with a safe harbor—even if employee qualifies for subsidy because cost of coverage exceeds 9.5% of household income.

W-2 Safe Harbor

Cost does not exceed 9.5% of W-2 Box 1 income.

- ▶ For individuals employed part of the year, can pro-rate income for months coverage was offered.
- ▶ Box 1 excludes tax-free contributions to 401(k)/403(b) plans and cafeteria plans

New Guidance:

- ▶ Required Employee contribution for coverage must be consistent
 - Amount or Percentage
 - No discretionary employer contributions
- ▶ New special adjustments for partial-year offers of coverage

Drawbacks:

- ▶ After the fact verification that coverage was affordable.

Rate of Pay Safe Harbor

Based on rate of pay:

- ▶ For hourly employees: compare required contribution each month to 9.5% of 130 hours x lower of (a) hourly rate of pay as of first day of coverage period or (b) lowest hourly rate of pay during calendar month
- ▶ For non-hourly employees, compare required contribution each month to 9.5% of salary as of first day of coverage period.
- ▶ Do not need to reduce income for tax-free contributions to employee benefit plans.

Restriction on use:

- ▶ May not use this method if employer has reduced employee's salary (for example, by transfer of employee to another employer in controlled group).

Federal Poverty Line Safe Harbor

Cost of self-only coverage does not exceed 9.5% of Federal poverty line for a single individual

- ▶ Employers can use most recently published poverty guidelines in effect within six months of the first day of the plan year.
- ▶ Note: anyone with household income below 100% of FPL cannot receive subsidy and therefore cannot trigger a penalty.

What is Minimum Value?

- ▶ To be affordable, plan must also cover no less than 60% of the total allowed costs.
- ▶ Three proposed ways to meet this standard:
 - Minimum value calculator
 - Design-based safe harbor checklists
 - Actuarial certification

Reporting and Disclosure Requirements



ACA's New Reporting Requirements

- ▶ Code 6055 - Reporting on who is covered under health plan
- ▶ Code 6056 - Reporting on full-time employees

- ▶ Information used to calculate penalties
 - Individual responsibility penalties
 - Employer responsibility penalties

Reporting on Health Plan Coverage

- ▶ Health Insurer reports for insured plans.
 - New form 1095-B to report to employees
 - New form 1094-B to report to IRS
- ▶ Employer reports for self-funded plans
 - If have fewer than 50 FTES:
 - New form 1095-B to report to employees
 - New form 1094-B to report to IRS
 - If have 50 or more FTES:
 - New form 1095-C to employees
 - New form 1094-C to IRS

Form 1095-B

1095-B Health Coverage (OMB No. 1545-0047) **2014**

Part I Individual Reporting (Begin at the top and follow through to the end)

Part II Employer-Sponsored Coverage (If the employer is not a self-insured employer, skip to Part III)

Part III Insurer or Other Coverage Provider

Part IV Coverage Information (Enter the appropriate box for each month of coverage)

2013	2014											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Form 1094-B

OMB No. 1545-0047
1115
2014

Department of the Treasury
Internal Revenue Service

Form 1094-B Transmittal of Health Coverage Information Returns

1. Filer's name
2. Employer identification number (EIN)

3. Name of person to contact
4. Contact telephone number

5. Street address (including town or suburbs)
6. City or town

7. State or province
8. County and ZIP or foreign postal code

9. Total number of Forms 1095-B submitted with this transmittal

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct and complete.

Signature _____ Title _____ Date _____

For Paperwork Reduction Act Notice, see separate instructions. Cal. No. 1094-B Form 1094-B (2014)

Reporting on Full-Time Employees

- ▶ Employer with 50 or more FTEs must report
 - Use 1095-C to report to employees
 - Use 1094-C to submit reports to IRS
- ▶ Report key information about full-time employees.
 - Data reported on monthly basis
 - Was employee eligible, was coverage affordable, months covered, etc.
 - Determine full-time status same as for employer responsibility rules
 - Month-to-month method
 - Look-back measurement method

Form 1095-C

OMB No. 1545-0047
1095-C
2014

Department of the Treasury
Internal Revenue Service

Form 1095-C Employee Provided Health Insurance Offer and Coverage

1. Filer's name
2. Employer identification number (EIN)

3. Name of person to contact
4. Contact telephone number

5. Street address (including town or suburbs)
6. City or town

7. State or province
8. County and ZIP or foreign postal code

9. Total number of Forms 1095-C submitted with this transmittal

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct and complete.

Signature _____ Title _____ Date _____

For Paperwork Reduction Act Notice, see separate instructions. Cal. No. 1095-C Form 1095-C (2014)

When To Report—2015 Calendar Year

- ▶ Time to Collect Data: All of 2015
 - Even if eligible for non-calendar year transition relief under Employer Responsibility Requirements
- ▶ Reports Due:
 - Individual reports must be sent January 2016
 - Reports must be filed with IRS:
 - Paper filings: February 2016
 - Electronic filings : March 2016
 - Mandatory if file 250 or more reports

Alternate Reporting Methods

- ▶ Simplified reporting options available if:
 - Use poverty level affordability safe harbor
 - Offer coverage to individuals who average less than 30 hours per week.

Penalties for Noncompliance

- ▶ \$100 for each statement, capped at \$1,500,000
 - Failure to file an information return with IRS; and
 - Failure to furnish statements to individuals
 - Relief for failure due to reasonable cause
- ▶ Transition Relief – 2016
 - Must file at least incorrect or incomplete information
 - No relief if no good faith effort or failure to timely file

Questions?

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