Navigating the Employer Mandate

The Employer Mandate is the Health Care Reform provision that requires all employers with 50 or more full time equivalent employees to offer a certain level of health insurance coverage at an affordable rate to all full time employees or face a penalty. The Employer Mandate penalty is triggered if at least one full-time employee of a covered employer receives a premium tax credit for purchasing individual coverage on one of the new State Insurance Exchanges, also called the Health Insurance Marketplace.

The Employer Mandate is commonly referred to by other names, such as the "Shared Responsibility" provision or the "Play or Pay" provision of the Affordable Care Act. From a large employer's perspective, this is most likely the most feared aspect of Health Care Reform.

IN THIS GUIDE:

How Do I Know if the Employer Mandate Applies to Our Organization?

Whether the Employer Mandate applies to your organization depends on your number of **full-time equivalent** employees. The law defines a full time employee as one regularly working 30 or more hours per week. However, part-time employees are included in this calculation as fractions of full-time employees. The formula for counting your full-time equivalent employees is as follows:

____ # OF EMPLOYEES REGULARLY WORKING 30+ HOURS/WEEK

\+ ____ # OF PART TIME HOURS WORKED BY ALL PART-TIME EMPLOYEES ÷ 120

= ____ TOTAL # OF FULL TIME EQUIVALENT EMPLOYEES

Try this:

You must count your number of full-time equivalent employees each month. At the end of the year, you will have twelve counts.

Then average these 12 data points to determine the average number of full-time equivalent employees for the year. This average from the previous calendar year is used to determine coverage in the following calendar year.

For example, if an employer averaged 54 full-time equivalent employees in the 2016 calendar year, the employer would be subject to the Employer Mandate in the 2017 calendar year.

Hint: There is no need to perform this calculation if you know your organization will be over the threshold number of employees for this provision. So only organizations that are somewhat borderline (close to the 50 or 100 full time equivalent employee count) need to perform this calculation.

Transitional Relief for 2015: There is transitional relief in place for the 2015 tax year. This transitional relief allows the employer to use any consecutive six month period in 2014 for this calculation. For example, the employer could use January 2014 – June 2014 or April 2014 – September 2014 to calculate the number of full-time equivalent employees.

Most Owners may be excluded from the full-time equivalent calculation. Owners that may be excluded include:

- Sole proprietors
- Partners in a Partnership
- Members of LLCs Taxed as a Partnership,
- Shareholders who own two percent or more in an S Corporation

It is important to note that if an Owner is involved with more than one business, it is possible that the businesses must be considered a "controlled group" or "affiliated services group" under the IRS Code. If so, the multiple employers would be viewed in aggregate and the number of full time equivalent employees in all of the related organizations must be totaled when determining if the organization is a covered employer for the Employer Mandate.

When Does the Employer Mandate Begin?

There is a phased roll-out of the Employer Mandate which will begin on January 1, 2015.

Large employers (those with 100 or more full-time equivalent employees) who do not comply with the Employer Mandate will begin incurring Employer Mandate penalties in each month of the 2015 tax year. These penalties will be paid annually when the employer files its year-end taxes.

Midsized employers (those with 50-99 full time equivalent employees) enjoy an additional year of reprieve as long as the organization did not reduce its worker's hours/workforce to get below the 99 employee threshold without a bona fide reason or materially reduce its health care plan (the one that was in existence as of 2/9/14). For non-compliant midsized organizations, Employer Mandate penalties will begin being incurred each month of the 2016 tax year, and paid in early 2017 when the employer pays its year-end taxes.

Small employers (those with less than 50 full-time equivalent employees that are not in an IRS control group with any other employers) are not subject to the Employer Mandate, and will not be penalized for failing to offer health insurance.

AVERAGE NUMBER OF FULL TIME EQUIVALENT EMPLOYEES IN 2014	EMPLOYER MANDATE PENALTIES BEGIN
100+	1/1/15
50-99	1/1/16*
Less than 50	n/a

* Delay to 2016 applies only if:

1. The employer did not reduce its working hours or workforce to get below the 99 employee threshold without a bona fide reason.
2. The employer did not materially reduce its health care plan (the one that was in existence as of 2/9/14)

How Do I Immunize My Organization from Employer Mandate Penalties?

Below, we have detailed the three critical steps midsized and large employers must take to ensure they are completely immunized from Employer Mandate Penalties:

Step 1: Offer a Health Plan that Meets the "Minimum Value" Requirement

Only certain health insurance plans meet the Affordable Care Act's requirements. Generally, the organization is required to offer a plan that has an actuarial value of 60% or higher (commonly called a Bronze Level plan). This has nothing to do with how much the employer contributes to the plan. Rather, minimum value refers exclusively to the design of the plan. We do not recommend that employers attempt to determine whether their plan meets these requirements. Rather, we recommend asking your health plan broker or carrier to verify that your plan in fact meets the minimum value requirements.

Step 2: Ensure your Coverage is "Affordable"

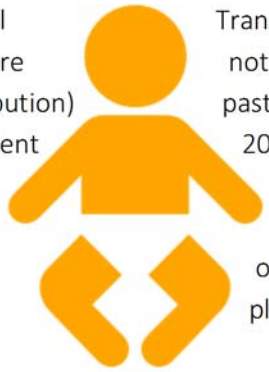
This is probably the most complex of the steps to immunize your organization from Employer Mandate penalties. Basically, the plan is "affordable" if the employee does not have to contribute more than 9.5% of their total household income to the employee-only portion of the premium. There are three safe harbors in place that the employer may use to determine affordability. We suspect most employers will use one of these three safe harbors, as an employee's total household income is generally unknown by the employer. The safe harbors are:

1. W-2 Safe Harbor – The organization will meet the affordability requirement if the employee is not required to contribute more than 9.5% of his W-2 wages on the premium for single health insurance coverage.
2. Rate of Pay Safe Harbor – The organization will meet the affordability requirement if the employee is not required to contribute more than 9.5% of his monthly wages on the premium for single health insurance coverage. For hourly employees, this is calculated by multiplying the employee's hourly rate by 130 hours. For salaried employees, the employer may simply use the employee's regular monthly salary.
3. Federal Poverty Level Safe Harbor – The organization will meet the affordability requirement if the employee is not required to contribute more than 9.5% of the federal poverty level for the year on the premium for single health insurance coverage. (The current federal poverty level is $11,670 for a single person, so 9.5% of that is approximately $1100. Therefore, to meet this safe harbor, the employer must ensure the employee is not required to contribute more than approximately $1100/year for the employee's premium for single health insurance coverage.)

Note: No employer contribution is required toward dependent health coverage. All of these affordability calculations should be performed using the employee-only cost of the health plan.

Step 3: Offer the Plan to all Full Time Employees and their Dependent Children

The health insurance plan must be offered to all full-time employees regularly working 30 or more hours per week. The health plan (but no contribution) must also be offered to the employee's dependent children. The organization is not required to extend coverage to spouses or domestic partners to avoid Employer Mandate penalties.



Transitional Relief for 2015: If your health plan has not offered coverage to dependent children in the past couple of years, and it takes steps during the 2015 plan year toward offering dependent coverage, the employer will not be subject to an Employer Mandate penalty solely on account of a failure to offer coverage to dependents for that plan year.

Do I Have to Offer Coverage to Part-time, Seasonal and Variable Hour Employees?

Part Time Employees

The Employer Mandate requires that companies with 50 or more full time equivalent employees offer affordable, minimum value health insurance coverage to all full time employees regularly working 30 or more hours per week. Part-time employees working less than 30 hours per week may be excluded from the health plan. Should a part-time employee regularly working less than 30 hours per week receive a federal premium subsidy through the state's Health Insurance Marketplace (or Exchange), the subsidy will not trigger an Employer Mandate penalty for the employer.

Variable Hour Employees

The IRS guidelines contain specific assistance for employees with fluctuating schedules, or as the IRS calls them, "variable hour employees." These are employees with work schedules that fluctuate so greatly that you have no way of knowing if they should be classified as full or part time employees. There are two different categories of variable hour employees: ongoing variable hour employees and new variable hour employees.

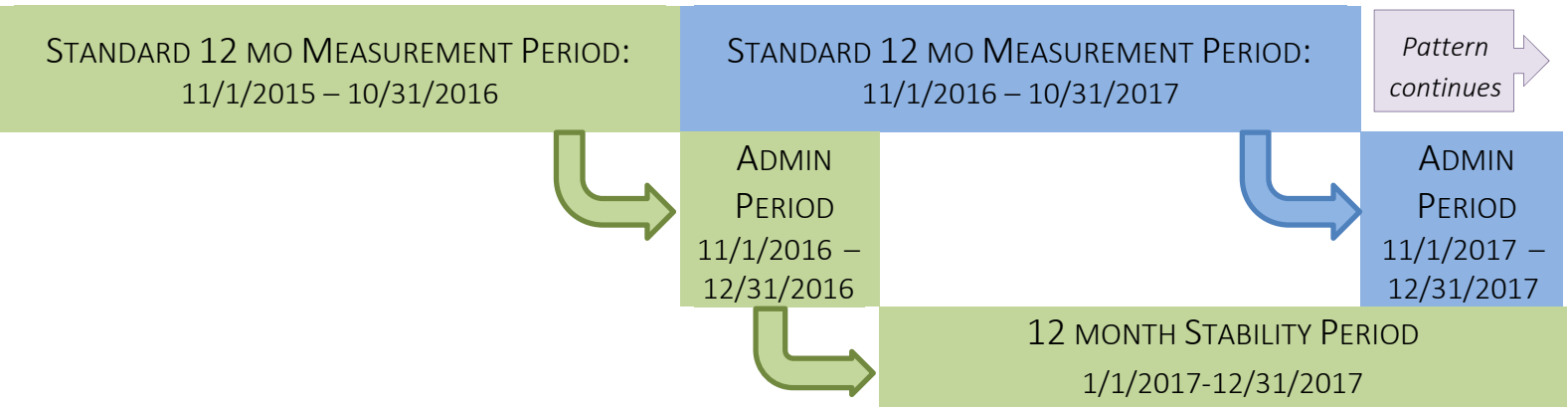
Ongoing Variable Hour Employees

An ongoing variable hour employee is one who has worked for the company for more than one complete standard measurement period (as described below).

The guidelines allow the employer to choose a look-back or "standard measurement period" that the company will use to determine if an ongoing variable hour employee should be classified as a full-time or part-time employee for Employer Mandate penalty determinations. The employer's standard measurement period must be a consecutive period between three and twelve months in duration. If the employee works for the organization for the entire standard measurement period and averages 30 hours or more per week during this standard measurement period, the employee is eligible for health insurance in the following "stability period." (The stability period must be at least as long as the standard measurement period, but may not be less than six months in duration.)

To avoid Employer Mandate penalties, following a standard measurement period in which the variable hour employee averaged 30 or more hours per week, he must be permitted to enroll in the health plan following an "administrative period" not to exceed 90 days. The employee remains eligible for health insurance for the entire stability period regardless of average hours worked during the stability period. On the other hand, if the company determined that a variable hour employee regularly worked less than 30 hours per week during the standard measurement period, the employee may be considered part-time and not eligible to be counted when penalties are assessed, even if the employee's hours increase past the 30-hour per week threshold during the subsequent stability period.

The measurement, administrative and stability period for ongoing employees are best demonstrated by example:

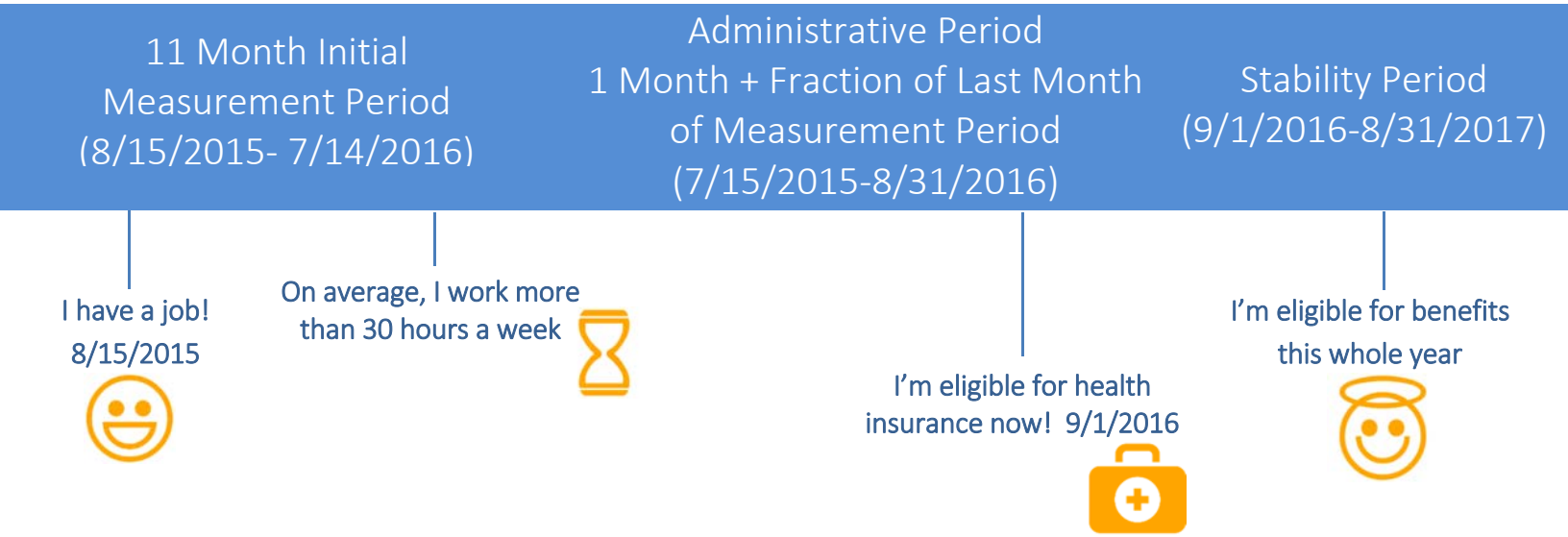


Company ABC uses a twelve-month standard measurement period and a two-month administrative period. If the employee averaged 30 or more hours per week during the standard measurement period (11/1/15 – 10/31/16), then the employee is eligible to enroll in the plan during the administrative period for a 1/1/17 effective date. Regardless of the employee's average hours during the stability period (1/1/17 – 12/31/17), the employee will be eligible for health insurance during this entire period. Then the system starts over and the standard measurement period moves to 11/1/16 – 10/31/17.

New Variable Hour Employees

The IRS guidelines state that a new employee may be considered a variable-hour employee if, based on the facts and circumstances on the hire date, the employer cannot reasonably determine whether the employee will average 30 hours per week during the "initial measurement period." Just as for ongoing employees, the employer may set an initial measurement period of between three and twelve months for new variable hour employees. The employer may also opt to use an administrative period. For new variable hour employees the stability period (1) must be the same length as the stability period for ongoing employees; and (2) may be up to one month longer than the initial measurement period. It is important to note that the company's initial measurement period and administrative period together may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date (totaling, at most, 13 months and a fraction of a month).

The measurement, administrative and stability period for new employees are best demonstrated by example:



Following this one-time initial measurement period, the company must transition the employee to the standard measurement period for ongoing employees.

Seasonal Employees

Seasonal employees who typically work six months or less are generally not considered full-time employees for Employer Mandate purposes. The organization may also opt to apply the initial measurement period (as described above) to seasonal employees. So using a longer initial measurement period will be more likely to exclude seasonal employees from the health plan. The IRS provides an example of a ski instructor hired to work from November 15 to March 15 and expected to work 50 hours per week during this time. The example points out that even though the worker would be expected to work in excess of full-time hours during his four-month period of employment, he would not be expected to average over 30 hours per week over a twelve-month initial measurement period, therefore the company is not required to offer him health insurance under the Employer Mandate provisions and should he apply for a premium subsidy, such subsidy would not trigger an Employer Mandate penalty for the company.

How Are Employer Mandate Penalties Calculated?

There are two separate penalties (an "A" penalty and a "B" penalty). An employer will never be required to pay both penalties in the same year.

"A" Penalty

The "A" penalty is assessed if the employer is subject to the Employer Mandate, but fails to offer health insurance to at least 95% (70% in 2015) of its full-time employees. The "A" penalty is $2,000 annually for each full-time employee, excluding the first 30 (80 in 2015) employees. It is calculated monthly, but paid annually.

"A" Penalty Examples:

Employer	Year	Health Plan	Trigger	Penalty
200 full time employees	2015	No plan offered	1 full time employee purchases coverage through the state exchange and receives a federal premium subsidy	$2000/full time employee, minus the first 80 full time employees. 200-80 = 120 120 x $2000 = **$240,000 penalty**
500 full time employees	2016	No plan offered	1 full time employee purchases coverage through the state exchange and receives a federal premium subsidy.	$2000/full time employee, minus the first 30 full time employees. 500-30 = 470 470 x $2000 = **$940,000 penalty**

"B" Penalty

The "B" penalty applies if the employer's health plan fails to meet the minimum value requirement or affordability requirement. This penalty is also triggered when one full-time employee receives a federal premium subsidy when shopping in the Marketplace. This penalty is the lesser of $3000/employee receiving a subsidy or the "A" Penalty Calculation above. This penalty is also calculated monthly and paid annually.

"B" Penalty Example:

Employer	Year	Health Plan	Trigger	Penalty
200 full time employees	2015	Offered, but the plan does not meet the "minimum value" requirement.	At least one full time employee purchases coverage through the state exchange and receives a federal premium subsidy (In this example, we will assume 3 employees purchased coverage on the exchange and received a federal premium subsidy.)	The lesser of: $3,000 per employee receiving a federal premium subsidy $3,000 x 3 = **$9,000 penalty** OR $2000/full time employee, minus the first 80 full time employees. 200-80 = 120 120 x $2000 = $240,000 penalty

What Employer Mandate Reporting is Required?

Employers subject to the Employer Mandate must begin Section 6056 (Employer Mandate) reporting for the 2015 tax year. There are no Employer Mandate reporting requirements for small employers not subject to the Employer Mandate.

Employers with 100+ full time equivalent employees in 2015 with a fully insured health plan

Employer Mandate penalties begin in 2015 for large employers with 100 or more full-time equivalent employees. Large employers are required, under Section 6056 of the tax code, to complete and submit one Transmittal Form (IRS Form 1094-C) and, for each employee, an Employee Statement (IRS Form 1095-C – top half only). It may help you to think of the 1094-C as similar to the W-3 (a transmittal form) and the 1095-C as similar to the W-2 (a separate return for each employee).

Employers with 50-99 full-time equivalent employees in 2015 with a fully insured health plan

Even though the regulations provide transitional relief from the Employer Mandate penalties in 2015 for most midsized employers, these employers still are required to perform certain reporting tasks under Section 6056. Midsized employers must file a Section 6056 Transmittal (IRS Form 1094-C) to prove that the employer in fact meets the requirements for the transitional relief. As long as the transitional relief requirements are met, Employer Mandate penalties will not begin for these midsized employers until 2016. Midsized employers will also be required to file an Employee Statement (the top half of IRS Form 1095-C) for each employee annually, although some transitional relief may be available in the 2015 tax year for certain mid-sized employers.

Employers with 50+ full time equivalent employees in 2015 with a self-insured health plan

Employers with self-insured health plans are required to perform both the employer reporting requirements (Section 6056) and the insurer reporting requirements (Section 6055). So employers with a self-insured plan are required to complete both the top and bottom half of the IRS Form 1095-C. (The top half of the form includes the Section 6056 reporting information and the bottom half of the form includes the Section 6055 reporting information.) These employers are also required to complete the transmittal form (IRS Form 1094-C). This information contained here is only intended to cover the Section 6056 (employer) reporting requirements, not the Section 6055 (insurer) reporting requirements.

There are 3 Methods of Reporting

General Method

The general method requires the greatest amount of information collection. All large employers with 50 or more full-time equivalent employees are required to use this method, unless they qualify for reporting relief provided by the two alternative methods that are described below.

When using the general method, the employer must file a 1094-C for the company and 1095-Cs for each employee. The employee must also receive a copy of the 1095-C.

Employers required to use this method must begin collecting the following data in 2015 for reporting purposes:

- Employer name, address, and Tax ID
- Name and phone number of employer's contact person responsible for health insurance (this may be either an employee or agent of the employer)
- Calendar year for which the information is reported
- Certification as to whether the employer provided a plan that meets the minimum value requirement to full-time employees and their dependents by calendar month
- Months a plan that meets the minimum value requirement was available to each full-time employee
- Each full-time employee's monthly cost for employee-only coverage under the employer's least expensive minimum value plan (bronze level or higher plan)
- Number of full-time employees employed each month in the calendar year
- Name, address, and tax ID of each full-time employee employed during the calendar year
- Months each employee was covered on the group health plan during the year

Qualifying Offer Method

In an attempt to ease the reporting burden for employers who offer a plan that meets the minimum value requirement at a very low rate, the government is offering such employers the option to report a bit less information. An employer may take advantage of this option if it provides a "qualifying offer" of insurance to any of its full time employees. A qualifying offer is an offer of a bronze level or higher plan where the cost to the employee of employee-only coverage is less than about $1,100 in 2015 (9.5 percent of the Federal Poverty Level). Also, the employer must offer the plan to all members of the employee's family to be eligible to use this reporting method.

So how is the reporting different when using this method?

For employees who receive qualifying offers for all 12 months of the year, employers will need to report only the names, addresses, and tax ID numbers of those employees and the fact that they received a full-year qualifying offer. So the employer is not required to report monthly, employee-specific information on these employees.

For employees who receive qualifying offers for fewer than 12 months of the year, the employer may use a code for each month a qualifying offer was made.

2015 Transitional Relief under the Qualifying Offer Method

For 2015 only, if the employer made a qualifying offer to at least 95% of all full-time employees and allowed family members to enroll in the plan (regardless of the cost to employees of family member coverage), the employer will be permitted to use this qualifying offer simple reporting method for all employees, including those who did not receiving a qualifying offer for the entire year.

98% Offer Method

To provide even greater reporting relief to reward employers offering to at least 98% of the company's full time employees a bronze level or higher plan at an "affordable" rate, the IRS is offering the 98% Offer Method.

So how is the reporting different when using this method?

The employer is not required to identify which employees regularly work full-time hours. Rather, the employer is simply required to include in the report those employees who may be full-time.

Wrap Up

Now that you are an Employer Mandate expert, it is time to make a strategic decision as to whether your organization will opt to "play" or "pay."

If you choose to "pay" rather than "play," remember there are both A and B penalties, so make sure to review them closely and pick your poison.

If you choose to "play" rather than "pay," you now know what is required and you are ready to comply. Make sure you follow all three steps to immunize your organization from Employer Mandate penalties.