



Health Care Reform

LEGISLATIVE BRIEF

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Pay or Play Penalty—Transition Relief Provisions

Effective Jan. 1, 2015, the Affordable Care Act (ACA) imposes a penalty on applicable large employers (ALEs) that do not offer affordable, minimum value coverage to full-time employees (and their dependents). These penalties are often referred to as the “employer shared responsibility” or “pay or play” rules.

On Feb. 10, 2014, the Treasury released [final regulations](#) implementing the ACA’s employer shared responsibility rules. The final regulations include a number of transition relief provisions for 2015 that apply to certain ALEs.

This Legislative Brief provides a high-level overview of the transition relief available to certain ALEs in 2015.

AVAILABLE TRANSITION RELIEF

DELAY FOR MID-SIZED EMPLOYERS:

Mid-sized ALEs generally have an additional year (until 2016) to comply with the pay or play rules

ELIGIBLE EMPLOYERS	TYPE OF RELIEF	EXPIRATION
<p>To be eligible for this transition relief, an ALE must satisfy the following:</p> <ul style="list-style-type: none"> • Limited Workforce—the ALE employed, on average, 50 to 99 full-time and full-time equivalent (FTE) employees during the 2014 calendar year; • Maintenance of Workforce—during the period of Feb. 9, 2014, to Dec. 31, 2014, the ALE did not reduce its workforce size or overall hours of service of its employees to satisfy the limited workforce condition (unless there is a bona fide business reason for the reduction); • Maintenance of Coverage—the ALE did not eliminate or materially reduce the health coverage, if any, it offered as of Feb. 9, 2014; and • Certification of Eligibility—the ALE certifies that it is eligible for the delay as part of the Section 6056 reporting requirements. <p>In addition, to be eligible for this delay, an ALE may not change its plan year after Feb. 9, 2014, to begin on a later calendar date.</p>	<p>An ALE that qualifies for this delay will not be subject to any pay or play penalties for 2015.</p> <p>NOTE: An ALE that qualifies for this delay must still satisfy the Section 6056 reporting requirements.</p>	<p>This delay applies for all calendar months in 2015, plus any calendar months in 2016 that fall within the ALE’s 2015 plan year.</p>

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NON-CALENDAR YEAR PLANS:
Certain ALEs that maintain non-calendar year plans can delay their compliance with the pay or play rules until the beginning of their 2015 plan year

ELIGIBLE EMPLOYERS	TYPE OF RELIEF	EXPIRATION
<p>ALEs that maintained a non-calendar year plan as of Dec. 27, 2012, if the plan year was not modified after Dec. 27, 2012, to begin at a later calendar date</p>	<p>Pre-2015 Eligibility. Relief is provided for employees who would be eligible for coverage as of the first day of the 2015 plan year under the plan’s eligibility terms in effect on Feb. 9, 2014, if:</p> <ul style="list-style-type: none"> • The ALE maintained a non-calendar year plan as of Dec. 27, 2012, and the plan year was not modified after Dec. 27, 2012, to begin at a later calendar date; and • Employees are offered coverage that meets the ACA’s affordability and minimum value requirements no later than the first day of the 2015 plan year. <p>Significant Percentage (All Employees). Relief is provided for ALEs that have a significant percentage of their employees eligible for or covered under one or more non-calendar year plans that have the same plan year as of Dec. 27, 2012, if the ALE either:</p> <ul style="list-style-type: none"> • Had at least one-quarter of its employees covered under those non-calendar year plans as of any date in the 12 months ending on Feb. 9, 2014; or • Offered coverage under those plans to one-third or more of its employees during the open enrollment period that ended most recently before Feb. 9, 2014. <p>Significant Percentage (Full-time Employees). Relief is provided for ALEs that have a significant percentage of their full-time employees eligible for or covered under one or more non-calendar year plans that have the same plan year as of Dec. 27, 2012, if the ALE either:</p> <ul style="list-style-type: none"> • Had at least one-third of its full-time employees covered under those non-calendar year plans as of any date in the 12 months ending on Feb. 9, 2014; or • Offered coverage under those plans to one-half or more of its full-time employees during the open enrollment period that ended most recently before Feb. 9, 2014. <p>If any of the relief listed above applies, the ALE will not be liable for a pay or play penalty for any period prior to the 2015 plan year with respect to employees who are offered affordable, minimum value coverage no later than the first day of the 2015 plan year and who would not have been eligible for coverage under any calendar year group health plan maintained by the ALE as of Feb. 9, 2014.</p>	<p>This relief applies until the first day of the ALE’s 2015 plan year.</p>

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OFFERS OF COVERAGE UNDER MULTIEMPLOYER PLANS:

Eligible ALEs generally will not be penalized for failing to offer coverage to employees who are eligible to enroll under a multiemployer plan

ELIGIBLE EMPLOYERS	TYPE OF RELIEF	EXPIRATION
<p>An ALE that is required by a collective bargaining agreement to make contributions to a multiemployer plan that:</p> <ul style="list-style-type: none"> • Offers coverage that is affordable and provides minimum value to eligible individuals; and • Offers coverage to those individuals' dependents. 	<p>The ALE will not be subject to a pay or play penalty for failing to offer coverage to full-time employees (and dependents) for whom the ALE is required to make contributions to the multiemployer plan.</p>	<p>This relief applies until future guidance is issued modifying the transition relief.</p>

SECTION 4980H(A) PENALTY CALCULATION:

ALEs with 100 or more full-time and FTE employees may reduce their full-time employee count by 80, rather than by 30, when calculating any applicable Section 4980H(a) penalty

ELIGIBLE EMPLOYERS	TYPE OF RELIEF	EXPIRATION
<p>ALEs with 100 or more full-time and FTE employees</p>	<p>The monthly penalty assessed on ALEs that do not offer coverage to substantially all full-time employees (and their dependents) will generally be equal to the ALE's number of full-time employees (minus 30) X 1/12 of \$2,000, for any applicable month. However, ALEs with 100 or more full-time and FTE employees may reduce their full-time employee count by 80, rather than by 30, when calculating this penalty amount.</p>	<p>This relief applies for 2015, plus for any calendar months in 2016 that fall within the ALE's 2015 plan year.</p>

"SUBSTANTIALLY ALL" REQUIREMENT PERCENTAGE:

In 2015, ALEs must offer coverage to a lower percentage of their full-time employees (and dependents) to meet the "substantially all" requirement

ELIGIBLE EMPLOYERS	TYPE OF RELIEF	EXPIRATION
<p>All ALEs</p>	<p>The Section 4980H(a) penalty will not apply to an ALE that intends to offer coverage to all of its full-time employees, but that fails to offer coverage to a few (regardless of whether the failure to offer coverage was inadvertent). This requires ALEs to offer coverage to "substantially all," which generally means at least 95 percent of its full-time employees (and dependents). However, an ALE will satisfy the "substantially all" requirement in 2015 if it offers coverage to at least 70 percent of its full-time employees (and dependents).</p> <p>NOTE: ALEs that qualify for this transition relief may still be subject to a Section 4980H(b) penalty for that time period (for example, if coverage is unaffordable or does not provide minimum value).</p>	<p>This relief applies for 2015, plus for any calendar months in 2016 that fall within the ALE's 2015 plan year.</p>

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DEPENDENT COVERAGE:

ALEs that did not previously offer dependent coverage have additional time to provide this coverage

ELIGIBLE EMPLOYERS	TYPE OF RELIEF	EXPIRATION
<p>ALEs that offered plans during the 2015 plan year under which:</p> <ul style="list-style-type: none"> • Dependent coverage is not offered; • Dependent coverage is offered, but the coverage does not constitute minimum essential coverage; or • Dependent coverage is offered for some, but not all, dependents. <p>The relief is not available to the extent that the ALE offered dependent coverage during either the 2013 or 2014 plan year, and later dropped that offer of coverage.</p>	<p>An ALE that takes steps toward satisfying the dependent coverage requirement during its 2014 or 2015 plan year will not be liable for any pay or play penalty solely on account of a failure to offer coverage to the dependents for that plan year.</p>	<p>The relief is available only if the ALE takes steps during the 2014 or 2015 plan year (or both) to extend coverage to dependents that were not offered coverage during the 2013 or 2014 plan year (or both).</p> <p>All ALEs must provide dependent coverage in 2016 in order to avoid a penalty.</p>

NEW ALES:

New ALEs have additional time to offer coverage to employees, for the first year that they become an ALE

ELIGIBLE EMPLOYERS	TYPE OF RELIEF	EXPIRATION
<p>Any employer, for the first year that it is considered an ALE</p>	<p>A new ALE will not be subject to any pay or play penalties for January through March of the first year that it is considered an ALE, as long as it offers employee coverage providing minimum value on or before April 1.</p>	<p>This relief applies until April 1 of the first calendar year that the employer is considered an ALE. It does not apply if, for example, the employer falls below the ALE threshold for a subsequent calendar year and then increases employment and becomes an ALE again.</p>

OTHER TRANSITION RELIEF

In addition to the transition relief outlined above, there is relief that pertains to certain offers of coverage, special rules for determining ALE status in 2015 and special transitional rules for measurement and stability periods.

Offers of Coverage for January 2015

The final regulations provide, in general, that if an ALE fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not having been offered coverage during that entire month. However, the IRS understands that many employers offer coverage for a new year effective as of the first day of the first pay period beginning on or after the first day of the year. Therefore, **solely for January 2015**, if an ALE offers coverage to a full-time employee no later than the first day of the first payroll period that begins in January 2015, the employee will be treated as having been offered coverage for January 2015.

Determining Employer Size for 2015

ALE status is determined for each calendar year using employee information from the prior calendar year. Specifically, an employer that employed an average of at least 50 full-time employees (including FTEs) on business days during the preceding calendar year will be considered an ALE.

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The final regulations provide transition relief that allows an employer to determine its ALE status by reference to a period of at least six consecutive calendar months, as chosen by the employer, during the 2014 calendar year (rather than the entire 2014 calendar year). In addition, employers can determine whether they had at least 100 full-time and FTE employees in 2014 by reference to a period of at least six consecutive months, instead of the full year, to determine whether it may qualify for the mid-sized employer delay (described above).

Measurement and Stability Periods

Under the ACA, the term “full-time employee” means, with respect to any month, an employee who is employed an average at least 30 hours of service per week with an employer. The final regulations included transition relief for purposes of determining full-time employee status that applies, on a one-time basis in 2014 preparing for 2015, for ALEs using the look-back measurement method to determine full-time status. Thus, for purposes of stability periods beginning in 2015, ALEs may adopt a transition measurement period that:

- Is shorter than 12 consecutive months, but not less than six consecutive months; and
- Begins no later than July 1, 2014, and ends no earlier than 90 days before the first day of the plan year beginning on or after Jan 1, 2015 (90 days being the maximum permissible administrative period).

This transition guidance applies to a stability period beginning in 2015 through the end of that stability period (including any portion of the stability period falling in 2016), and applies to individuals who are employees as of the first day of the transition measurement period. **It does not apply for stability periods beginning after 2015.** For employees hired during or after the transition measurement period, the general rules for new employees under the look-back measurement method apply.

MORE INFORMATION

Contact Brown & Brown Benefit Advisors for more information on any of the transition relief described above.

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