



IRS ISSUES FINAL “PLAY OR PAY” REGULATIONS UNDER HEALTHCARE REFORM

On February 12, 2014, the IRS issued final regulations for the Employer Shared Responsibility Assessable Payments, otherwise known as the play or pay penalties. These regulations contain:

- The rules used to determine when an Applicable Large Employer (ALE) owes a play or pay penalty
- The look-back measurement rules used to determine who qualifies as a full-time (FT) employee

The final regulations retain the basic structure of the proposed regulations issued in January 2013, but many important details were added or changed. Additional explanations and guidance also were included that may be helpful when applying the regulations to specific situations.

On March 10, the IRS also issued final regulations on the “play or pay” reporting requirements which will apply to all ALEs starting in 2015, with first reports due in 2016. We will address these regulations in more detail in a future Healthcare Reform eLine.

The final regulations didn’t answer all of the questions raised by the proposed regulations. Therefore, it seems highly likely the IRS will continue issuing guidance, making compliance a moving target.

A complete list of all of the changes, clarifications and details of the final regulations are beyond the scope of this article. What follows is a summary of some of the most important provisions.

Glossary of terms

“Play or pay” penalty = Employer Shared Responsibility Assessable Payments under §4980H

“No coverage” penalty = §4980H(a) assessable payment

“Affordability” penalty = §4980H(b) assessable payment

ALE = Applicable Large Employer

FT = Full-time employee

FTE = Full-time equivalent guarding

Play or pay penalties

- **Determining ALE status.** Normally, ALE status is determined based on the employer’s average full-time (FT) and full-time equivalent (FTE) count during the preceding calendar year. For 2015 only, employers can use any six consecutive calendar months in 2014 to calculate their average FT and FTE count.
- **Play or pay delayed for medium employers.** ALEs whose average FT plus FTE count is between 50-99 in 2014 will generally not be subject to play or pay penalties until 2016, provided certain conditions are met.
- **“No coverage” penalty for 2015.** For 2015, ALEs will not be subject to the “no coverage” penalty as long as they offer coverage to at least 70% of their FTs. This percentage returns to 95% in 2016. Also for 2015, an ALE reduces its FT count by 80 when calculating the amount of any no coverage penalty. This number returns to 30 in 2016.



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- **Non-calendar year plans.** The play or pay penalties are generally effective January 1, 2015 or 2016. However, for ALEs with non-calendar year plans, the final regulations contain several different rules which may delay the effective date of one or both play or pay penalties for some or all employees until the plan renewal date in 2015/2016.
- **Coverage offered by a third-party.** New rules were added as to when an ALE can treat coverage offered to its employees by someone else (e.g., a union or staffing firm) as an offer of coverage by the ALE itself.
- **Staffing firm and Professional Employer Organization (PEO) employees.** The final regulations continue to take the position that either the staffing firm/PEO or its client (the employer) could be responsible for offering coverage or paying the play or pay penalty for staffing firm/PEO workers. The regulations indicate this is determined on a case-by-case basis using the common-law employer test. So in some cases it will be the staffing firm/PEO who must offer coverage or the pay the penalty for such employees and in other cases it will be the client-employer who will be responsible.
- **Other special situations.** The final regulations provide guidance on certain unique classes of employees, such as volunteer firefighters and EMTs, student employees and interns, home care workers, employees who are Medicaid/Medicare eligible and employees of educational organizations.

Determining full-time status/look-back measurement

- **Monthly measurement method.** An ALE can use either the monthly measurement method or the look-back measurement method to determine an employee's FT status for play or pay purposes. The final regulations provide a lot more details on how the monthly measurement method works. But they

don't change the fundamental problem that you won't know whether an employee is FT or not until the end of the calendar month, at which point it's too late to offer that employee coverage to avoid a penalty. We presume most ALEs will continue to use the look-back measurement method to determine FT status.

- **New part-time employees.** A new category of "part-time employees" is added to the look-back measurement rules — that is, new hires who at the date of hire are reasonably expected to average less than 30 hours of service. These new hires are analyzed the same way as new variable and seasonal employees.
- **New seasonal employees.** New seasonal employees for look-back measurement purposes are defined as employees hired for a position that typically occurs at the same time every year and lasts six months or less.
- **New full-time employees.** The final regulations clarify how to determine the FT status of new full-time employee between the time they are hired and the end of the first full standard measurement period.
- **Factors to determine full-time, part-time or seasonal status.** A list of non-exclusive factors that are used to determine whether a new hire is full-time, part-time or variable was added to the final regulations.
- **Length of standard administrative period.** The standard administrative period under look-back measurement can be no more than 90 calendar days. While not new, the IRS specifically rejected a request to allow a standard administrative period of three calendar months. That means, for example, an employer cannot choose October, November and December as its standard administrative period because that period is 92 days.
- **Break in service.** An employee with a break in service as short as 13 weeks may now be treated as a new hire under look-back measurement. However, employees



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of educational organizations are still subject to the original 26 week break in service rule.

- **Transitional measurement period.** Normally an ALE who chooses a 12 month stability period must also use a 12 month measurement period. However, for 2015 only, ALEs can choose a measurement period as short as six months and still have a 12 month stability period. The transitional measurement period is subject to specific rules as to when such period must start and stop, which may limit its usefulness for non-calendar year plans.

Associated Financial Group has numerous tools and services to assist employers implement and adjust their strategic planning in light of the final play or pay regulations, including:

- Our [Strategic Planning for Large Employers](#) webinar series. (Recordings of previous sessions of these seminars are available to clients in the [Client Access](#) section of our website. Additional live sessions will be scheduled in the future.)

- Calculators to determine whether you qualify as an Applicable Large Employer or medium employer.
- Tools to determine the effective date of the play or pay penalties for non-calendar year plans.
- Healthcare Reform Audit Decision Tool to compare the financial impact of maintaining your current health coverage to dropping your coverage.
- Look-back measurement services to assist you evaluate potential measurement periods and track hours of service to determine full-time status under the look-back measurement method.

We encourage you to contact your consultant and service team for more information on these products and services. For more information contact us at 800-258-3190 or info@AssociatedFinancialGroup.com.



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