AFFORDABLE CARE ACT

EMPLOYER SHARED RESPONSIBILITY PROVISION

"PLAY OR PAY"

The Affordable Care Act's ***Employer Shared Responsibility (ESR)*** provision — often called "the Employer Mandate" or "Play or Pay" — requires large employers to offer health coverage to their full-time workers or face a potential penalty. Small employers with fewer than 50 full-time and full-time-equivalent employees are exempt.

Play or Pay took effect January 1, 2015, although special transition relief rules have allowed some employers to delay compliance for several months or into 2016.

The concept behind Play or Pay is simple: To ***play***, the employer must offer health coverage to full-time employees that work on average 30 or more hours per week. Employers that fail to offer coverage, or fail to offer adequate coverage, will ***pay*** penalties if any full-time employees receive government subsidies to buy individual insurance through an Exchange (Marketplace).

The concept may be simple but the details are complicated. Is the employer an Applicable Large Employer and subject to Play or Pay? How are full-time employees defined? What type of coverage is adequate? When must coverage be offered? How are penalties calculated?

This Guide offers step-by-step guidance about the basic Play or Pay rules for employers and brokers and advisors assisting employers:

- Starting with Basics and Definitions
- Determining Applicable Large Employer Status
- Defining Full-Time Employees for Coverage
- Using Measurement Methods
- Defining Minimum Essential, Minimum Value, and Affordable Coverage
- Estimating Penalties
- Qualifying for Transition Relief
- Reviewing Limited Non-Assessment Periods
- Checking Your Case

This Guide provides general information based on Internal Revenue Service (IRS) regulations (26 CFR Parts 1, 54, and 301, published in the Federal Register on February 12, 2014) and related federal guidance as of March 2016. The Play or Pay rules, similar to most federal tax laws, are extremely complex with many optional provisions. The Guide focuses on the most common provisions applicable to typical employer groups. Reporting requirements under Code §§ 6055 and 6056 are not discussed. All employers are advised to review their unique situation with experienced legal counsel.

Edition: March 2016

STARTING WITH BASICS

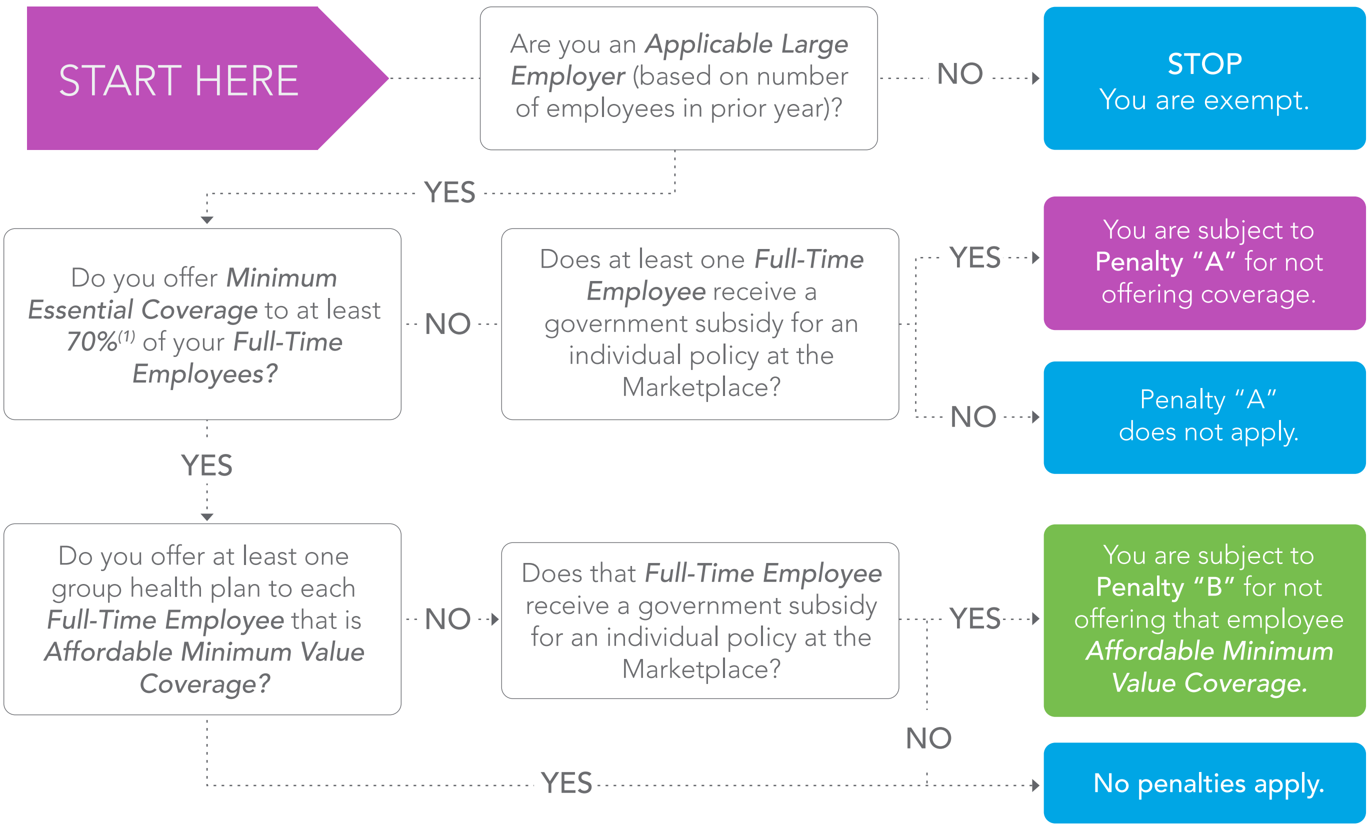
Play or Pay is a two-prong test that applies to Applicable Large Employers (ALEs) with 50 or more full-time employees (including full-time-equivalents):

A First, does the employer offer basic health coverage to most full-time employees and their children? If not, the employer is at risk for a large penalty.

B For employers that pass the first prong without a penalty, the second test is whether the employer offers all full-time employees and their children affordable coverage providing minimum value. If not, the employer is at risk for a different (smaller) penalty.

The two penalty types — called "A" and "B" for the sections in the law — are designed in tandem so that employers that decide not to offer comprehensive coverage to all their full-time workers are still incentivized to offer at least some coverage to most workers. Penalties are triggered when full-time employees receive government subsidies to buy individual insurance through a Marketplace (Exchange) based on their income and lack of access to employer-sponsored coverage.

"PLAY OR PAY"



[1] For 2015. For 2016 and later years, replace 70% with 95%.

Edition: March 2016

DEFINITIONS

Employee

Employee means a common-law employee.

"Employee" does not include persons defined as self-employed individuals under IRS rules, such as:

- Sole proprietors.
- Partners in partnerships (LLPs) or members of LLCs.
- 2%-or-more shareholders in Subchapter S corporations.
- Persons correctly classified as independent contractors.

Note regarding Professional Employer Organizations (PEOs):

The employer may have a co-employment arrangement with a PEO. In that case, the workers typically are common-law employees of the client-employer, not of the PEO, because the client-employer has authority over how work is performed. Although the PEO may be the group health plan sponsor, the client-employer generally is deemed the employer under Play or Pay.

Note regarding Staffing Agencies:

The employer may be leasing workers from a staffing agency. Typically the agency recruits and hires workers, assigns them to various clients, and assigns them to other clients when projects end. In that case, the workers generally are common-law employees of the agency and not of the client. Employers are advised to review their situation with legal counsel and to confirm their understanding in writing with the agency.

Full-Time Employee

Full-Time Employee generally means an Employee that averages 30 or more hours of service per week. One definition of "Full-Time Employee" applies for purposes of determining whether the employer is an Applicable Large Employer. Another definition of "Full-Time Employee" applies for purposes of the coverage offer requirement. For details, see the respective sections of this Guide.

Full-Time-Equivalent (FTE)

Full-Time-Equivalent (FTE) means an Employee other than a Full-Time Employee. FTEs are counted only for the purpose of determining whether the employer is an Applicable Large Employer subject to Play or Pay. There is no requirement to offer coverage to Employees that are not Full-Time Employees.

DEFINITIONS

Hour of Service

Hour of Service means each hour for which the Employee is paid or entitled to payment for:

- Performance of duties; and
- Vacation, holiday, illness, disability, layoff, jury duty, military leave, and leave of absence

For hourly employees, use records of actual work hours and other hours for which payment is made or due.

For salaried or other non-hourly employees:

- Use records of actual work hours and other hours for which payment is made or due;
- Assume eight hours of service for each day with an hour of service ("days-worked equivalency method"); or
- Assume 40 hours of service for each week with an hour of service ("weeks-worked equivalency method").

The employer may use different methods for different classes of salaried or non-hourly employees if the classifications are reasonable and consistent. Do not use an equivalency method if the result would understate the employee's hours. For instance, if a salaried employee normally works 10 hours per day three times a week, use either the records method or the weeks-worked equivalency method. Do not use the days-worked equivalency method in this case since it would understate the employee's hours of service (24 hours/week versus 30 hours/week).

Special Cases:

- **Work abroad:** Disregard hours worked outside the United States if paid with non-U.S. source income.
- **On-call hours:** In addition to paid hours, include unpaid hours if the employee must remain on the premises or cannot use the time for his or her own purposes without substantial restrictions.
- **Government programs:** Exclude hours performed by bona-fide volunteers (i.e., certain employees of governmental entities or tax-exempt organizations) or by participants in a Federal Work-Study Program or similar governmental program.

The IRS also provides guidance for colleges/universities employing adjunct faculty (to account for preparation time outside the classroom) and for airline/transit employers (to account for layovers).

Minimum Essential Coverage

Minimum Essential Coverage means any employer-sponsored group health plan, other than "excepted benefits" such as stand-alone dental or vision coverage.

See *"Defining Minimum Essential, Minimum Value, and Affordable Coverage"* for details.

DEFINITIONS

Affordable Minimum Value Coverage

Affordable Minimum Value Coverage means an employer-sponsored group health plan, other than "excepted benefits," that meets both of the following standards:

1. The employee's contribution (e.g. payroll deduction) to enroll for self-only coverage does not exceed 9.56% (if 2015, or 9.66% if 2016) of the employee's income from the employer; and

2. The plan's share of total allowed cost of benefits is at least 60% of such costs.

See *"Defining Minimum Essential, Minimum Value, and Affordable Coverage"* for details.

Penalty "A"

On a monthly basis, Penalty "A" is equal to 1/12th of $2,080 times the number of Full-Time Employees (minus the first 80 such employees) in 2015. (For 2016, replace $2,080 with $2,160 and replace 80 with 30.)

Penalty "B"

On a monthly basis, Penalty "B" is equal to 1/12th of $3,120 times the number of Full-Time Employees that receive subsidies due to employer's failure to offer Affordable Minimum Value Coverage in 2015 (for 2016, replace $3,120 with $3, 240). However, Penalty "B" is limited to the amount that would be calculated under Penalty "A" (if "A" had applied).

See *"Estimating Penalties"* for examples of calculating penalties.

Edition: March 2016

DETERMINING "APPLICABLE LARGE EMPLOYER" STATUS

Play or Pay applies only to Applicable Large Employers. An employer is an Applicable Large Employer if it employed an average of 50 or more full-time employees (including full-time-equivalents) in the prior calendar year.

Each employee with 120 or more hours of service in a month counts as one full-time employee. The number of full-time-equivalents is calculated by totaling the hours of service of all non-full-time employees in a month and dividing by 120.

Follow the steps below for each month of the prior calendar year (e.g., for 2015 status, use 2014 workforce data):

Step One: Identify All Employees

Identify all employees, including full-time, part-time, temporary and seasonal workers, based on the common-law employee standard. For details, refer to the definition of **Employee** on page 3 of this Guide.

RELATED EMPLOYERS

Related employers in a controlled group must be counted together to determine Applicable Large Employer status. Parent-subsidiary groups, brother-sister groups, non-profit organizations under common control, trades and businesses under common control, and affiliated service groups usually fall under this definition. The group's financial officer or general counsel can confirm whether the employer is part of a controlled group or affiliated service group as defined under § 414 of the Internal Revenue Code.

Note: Although related employers are combined to determine Applicable Large Employer status, each entity is separately responsible for the Play or Pay coverage requirements. Penalties assessed on one entity do not apply to other entities in the controlled group.

Step Two: Identify Seasonal Workers (if any)

Seasonal Worker means an employee hired to do work that is performed exclusively at certain seasons of the year, such as retail workers (employed only for holiday seasons) and agricultural workers.

Seasonal workers are included with all other employees (Step One). In some cases, seasonal workers can be subtracted from the final count in determining the average number of employees (Step Five).

Step Three: Total Each Employee's Hours of Service

Hour of service generally means each hour for which the employee was paid or entitled to payment (e.g., work, vacation, holidays, layoff, sick leave, leaves of absence).

For details about defining an **Hour of Service** for hourly workers, salaried employees, and non-standard work arrangements, see page 4 of this Guide.

Step Four: Calculate the Average Number of Employees

For each month of the prior calendar year:

1. Count the number of employees (including seasonal workers) whose hours of service were 120 or more that month. Each such employee counts as one "full-time employee."

2. Count the total number of hours of service for all non-full-time employees (including part-time seasonal workers). Do not count more than 120 hours/month for any one employee. Divide the sum by 120; round fractions to the nearest hundredth. The result is the number of "full-time-equivalents (FTEs)."

3. Add the numbers of full-time employees and full-time-equivalents for each month, then total for the year. Divide the sum by 12 (rounded down to a whole number) to determine the employer's average number of employees.

Note regarding veterans (optional): Employees can be omitted from counting for any months in which they received medical coverage through TriCare or the Veterans Administration.

TRANSITION RELIEF FOR MID-SIZE EMPLOYERS

Employers with 50-99 Full-Time Employees (including FTEs) may be exempt from Play or Pay penalties for 2015 if they meet certain criteria.

See "*Qualifying for Transition Relief*" for details.

Example

ABC Co. employed 80 workers in January: 10 full-time employees, and 70 non-full-time employees that accumulated a total of 4,600 hours of service (10 Full-Time and 4,600/120=38.33 FTEs). The data was similar for other months that year, except during the summer when ABC Co. also employed seasonal workers. At the end of the year, ABC Co. calculated its average number of employees as follows:

ABC CO.	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
FULL-TIME (INCL SEASONAL)	10.00	10.00	11.00	10.00	10.00	21.00	22.00	22.00	11.00	9.00	9.00	9.00	154.00
FULL-TIME-EQUIVALENT (INCL SEASONAL)	38.33	38.33	38.33	38.33	42.33	62.33	60.00	60.00	38.33	38.33	38.33	38.33	531.30
TOTAL	48.33	48.33	49.33	48.33	52.33	83.33	82.00	82.00	49.33	47.33	47.33	47.33	**685.30**

RESULT: 685.30/12 months = 57. ABC Co. is an Applicable Large Employer … but go on to Step 5

Edition: March 2016

Step Five: Adjust for Seasonal Workers (if any)

In the example, ABC Co. is defined as an Applicable Large Employer because its average number of employees the prior year was 57. A special provision regarding seasonal workers may help ABC Co. reduce its size. Specifically, if the average number of employees is 50 or more for not more than 120 days, or not more than four months (whether or not consecutive) due to seasonal workers, the employer may subtract the seasonal workers. ABC Co. re-calculates its average number of employees excluding seasonal workers:

ABC CO.	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
FULL-TIME (EXCL SEASONAL)	10.00	10.00	11.00	10.00	10.00	11.00	11.00	11.00	11.00	9.00	9.00	9.00	122.00
FULL-TIME-EQUIVALENT (EXCL SEASONAL)	38.33	38.33	38.33	38.33	42.33	42.33	40.00	40.00	38.33	38.33	38.33	38.33	471.30
TOTAL	48.33	48.33	49.33	48.33	52.33	53.33	51.00	51.00	49.33	47.33	47.33	47.33	**593.30**

RESULT: 593.30/12 months = 49.

By subtracting the seasonal workers, ABC Co.'s average number of employees for the prior year was 49. ABC Co. is not an "Applicable Large Employer" for the current calendar year.

Optional Rule to Determine Applicable Large Employer Status for 2015:

The standard rule for determining Applicable Large Employer status is based on calculating the average number of employees during all 12 months of the prior year. For 2015 only, however, employers have the option of counting employees during any period of at least six consecutive months in 2014.

This optional rule is not available if the employer uses the seasonal worker adjustment provision; in that case, the average number of employees must be based on all 12 months of the prior year.

Edition: March 2016

DETERMINING "APPLICABLE LARGE EMPLOYER" STATUS: **YOUR QUICK CHECK**

Use 2014 workforce data to determine your status for 2015:

☐ Count the number of Full-Time Employees and Full-Time-Equivalents for each month in 2014. Add all months and divide by 12. The result is your average number of employees:

- If the result is under 50, you are not an Applicable Large Employer for 2015.
- If the result is 50 or more, consider these options to reduce the result:
  - Seasonal worker adjustment (subtract seasonal workers from monthly counts)
  - Optional six-month rule (use any six-month consecutive period with the lowest counts)

Note: You may use either one but not both of the above options.

☐ Determine the final result:

- **Under 50:** You are not an Applicable Large Employer for 2015.
- **50 – 99:** You are an Applicable Large Employer for 2015, but you may be eligible for transition relief to avoid the risk of Play or Pay penalties until 2016. See "*Qualifying for Transition Relief*" for details.
- **100 or more:** You are an Applicable Large Employer for 2015. You may be eligible for short-term transition relief. See "*Qualifying for Transition Relief*" for details.

Use 2015 workforce data to determine your status for 2016:

☐ Count the number of Full-Time Employees and Full-Time-Equivalents for each month in 2015. Add all months and divide by 12. The result is your average number of employees:

- If the result is under 50, you are not an Applicable Large Employer for 2016.
- If the result is 50 or more, consider using the seasonal worker adjustment (if applicable) to reduce the result.

☐ Determine the final result:

- **Under 50:** You are not an Applicable Large Employer for 2016.
- **50 or more:** You are an Applicable Large Employer for 2016. You may be eligible for short-term transition relief. See "*Qualifying for Transition Relief*" for details.

Edition: March 2016

DEFINING FULL-TIME EMPLOYEES FOR COVERAGE

Play or Pay requires Applicable Large Employers to offer health coverage to Full-Time Employees or face a potential penalty. Therefore, to avoid the risk of penalties, the employer must determine whether each employee meets the definition of Full-Time Employee and, if so, ensure that coverage is offered to that employee by the date required under the Play or Pay rules.

For purposes of the coverage offer requirement, **Full-Time Employee** means an employee who averages at least 30 hours of service per week (or 130 hours per month) as measured under one of two specific measurement methods. ***Every employee must be measured.***

Hour of Service generally means each hour for which the employee is paid or entitled to payment (e.g., work, vacation, holidays). See page 4 for details. Hours of service are combined if the employee works for related employers that belong to the same controlled group or affiliated service group.

The two measurement methods are:

- **Monthly Measurement Method:** Hours of service are counted each month to determine whether the employee was a Full-Time Employee that month. If so, offer coverage to begin no later than the first day of the month following the initial three calendar months. For details, see page 11.
- **Look-Back Measurement Method:** Hours of service are tracked over a period of time from three to 12 months (called the Measurement Period) to determine whether the employee will be considered a Full-Time Employee for the subsequent period (called the Stability Period). If so, offer coverage to begin by the first day of the Stability Period. For details, see pages 11-15.

The Monthly Measurement Method may be used for all employees. Many employers consider it fairly easy to administer. In any case, this method ***must*** be used for all new non-seasonal employees in positions that are reasonably expected to average at least 30 hours/week (or 130 hours/month). For all other employees, the employer has the option of using either the Monthly Measurement Method or the Look-Back Measurement Method, but must apply the same method to all employees in the same "category."

For Applicable Large Employers that choose to use the Look-Back Measurement Method for one or more categories of employees (when permitted), the definitions shown below apply. These definitions are not relevant to employers that use only the Monthly Measurement Method for all employees.

- **Category:** Permissible categories are limited to (a) salaried or hourly, (b) bargained or non-bargained, (c) employees covered by separate bargaining agreements, and (d) employees working in different states.
- **New Employee:** An employee who has been employed for less than one Standard Measurement Period.
- **Ongoing Employee:** An employee who has been employed for one Standard Measurement Period or longer.
- **Seasonal Employee:** The customary annual employment for the employee's position is six months or less and generally begins the same time (season) each year, regardless of the expected number of hours per week. (Caution! This is not the same as the Seasonal Worker definition used in determining Applicable Large Employer status.)

Note that employers are not prevented from offering coverage to employees who are not Full-Time Employees as defined under Play or Pay. Many group health plans offer eligibility provisions that are broader than the provisions discussed here. The new Play or Pay rules merely set minimum requirements for offering coverage in order to avoid the risk of penalties.

Edition: March 2016

USING MEASUREMENT METHODS

The Play or Pay rules provide two methods to determine whether an employee is a Full-Time Employee for purposes of offering health coverage:

- Monthly Measurement Method
- Look-Back Measurement Method

The first method must be used for some employees. For others, the employer may use either method but must apply the chosen method to all employees in the same category. To review the guidelines, see "Defining Full-Time Employees for Coverage" on page 10.

Next, the section below explains each measurement method in further detail.

Monthly Measurement Method

The Monthly Measurement Method is a month-to-month method for determining Full-Time Employee status. It generally is easy to administer if the employer knows in advance that the employee will (or will not) average at least 30 hours of service per week (or 130 hours/month). On the other hand, administration may be challenging if employees have fluctuating work hours or unpredictable schedules (unless the employer wants to offer coverage to all employees, including employees that do not consistently maintain a full-time average).

- Determine the employee's hours of service at the end of each month.
- If at least 30 hours/week (or 130 hours/month), ensure that coverage was offered for the month.
- For new employees, Play or Pay penalties do not apply during first three full calendar months provided that the employee is offered minimum value coverage to start the first day of the immediately following month. (This three-month no-penalty gap is allowed only once during his or her employment.)

Look-Back Measurement Method

The Look-Back Measurement Method gives employers a useful way to avoid Play or Pay penalties while only having to offer health coverage to employees that have worked full time over a period of time. Once the employee meets the full-time average (30 hours/week or 130 hours/month) over the Measurement Period, however, he or she is eligible for coverage throughout the following Stability Period — even if the employee's hours reduce.

- Track the employee's hours of service over the employer-established Measurement Period.
- At the end of the Measurement Period, determine if the employee's hours of service averaged at least 30 hours/week (or 130 hours/month).
- If so, the employee is defined as a Full-Time Employee for a fixed period (called the Stability Period) following the Measurement Period.
- Play or Pay penalties do not apply provided that the Full-Time Employee is offered coverage to start no later than the first day of the Stability Period.

USING MEASUREMENT METHODS

Reminder: The Look-Back Measurement Method is optional. Employers may use this method for some, but not all, employees, as explained in "Defining Full-Time Employees for Coverage" on page 10.

Employers that adopt the Look-Back Measurement Method must follow a complicated set of rules, as summarized below.

Measurement Period

- Employer selects a period between three and 12 consecutive months. The same period must apply uniformly, except the employer may establish different periods for the following categories of employees:
  - Salaried versus Hourly
  - Bargained versus Non-Bargained
  - Employees under different Bargaining Agreements
  - Employees in Different States
- For **new employees,** the Initial Measurement Period begins on date of hire (or on a date between hire date and the first of the month immediately following the hire date). Thus, the Initial Measurement Period starts on individualized dates depending on each employee's hire date.
- For **ongoing** employees, the Standard Measurement Period begins on a fixed date each year.

Stability Period

- The period is between six and 12 consecutive months (and not shorter than the Measurement Period).
- For **new employees**, the Initial Stability Period begins after the Initial Measurement Period so coverage will start on different dates depending on each employee's hire date.
- For **ongoing** employees, the Standard Stability Period begins on a fixed date each year.

Administrative Period

- Brief period (up to 90 days) after the Measurement Period ends and before the corresponding Stability Period begins.
- This "gap" period gives the employer time to determine whether the employee's hours of service over the Measurement Period averaged at least 30 hours/week (or 130 hours/month) and, if so, offer the employee an opportunity to enroll for coverage.
- Administrative Period must overlap with the previous Stability Period so ongoing employees that earn full-time status repeatedly do not experience a gap in coverage offers.
- For **new employees** that become eligible for coverage, the Administrative Period cannot extend past the end of the 13th month following the hire date.

Examples

Most employers choosing to use the Look-Back Measurement Method, when permitted, want to use the longest durations possible. The intent of that strategy is to avoid having to offer coverage to employees that may terminate employment in the first year, or employees that usually work less than 30 hours/week.

The following examples illustrate Measurement Periods and Stability Periods using the maximum allowable duration of 12 months. (Employers may choose to establish periods using shorter durations.)

Example 1: ONGOING Employee (Hired on or before Dec. 1, 2013)

STANDARD MEASUREMENT PERIOD	ADMINISTRATIVE PERIOD	STANDARD STABILITY PERIOD
Dec. 1, 2013 – Nov. 30, 2014	Dec. 1, 2014 – Dec. 31, 2014	Jan. 1, 2015 – Dec. 31, 2015

Example 1 complies with the rules because:

- Standard Measurement Period is between three and 12 months.
- Standard Stability Period is at least six months and not shorter than Standard Measurement Period.
- Administrative Period (i.e., gap between Standard Measurement Period and Standard Stability Period) does not exceed 90 days.

Example 2: NEW Employee (Hired Sept. 15, 2014)

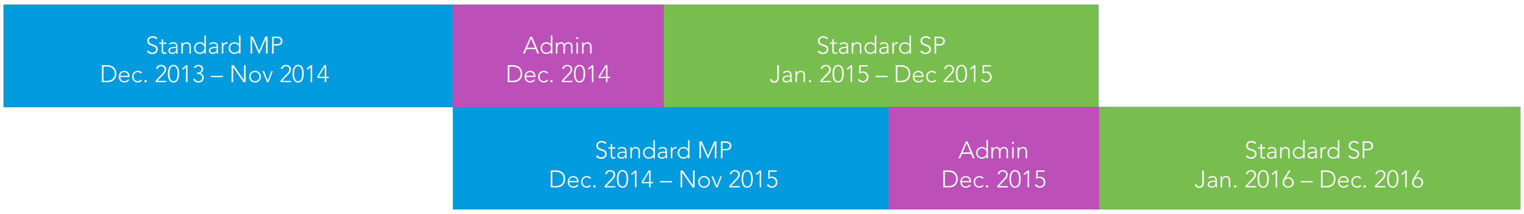
INITIAL MEASUREMENT PERIOD	ADMINISTRATIVE PERIOD	INITIAL STABILITY PERIOD
Oct. 1, 2014 – Sept. 30, 2015	Oct. 1, 2015 – Oct. 31, 2015	Nov. 1, 2015 – Oct. 31, 2016

Example 2 complies with the rules because:

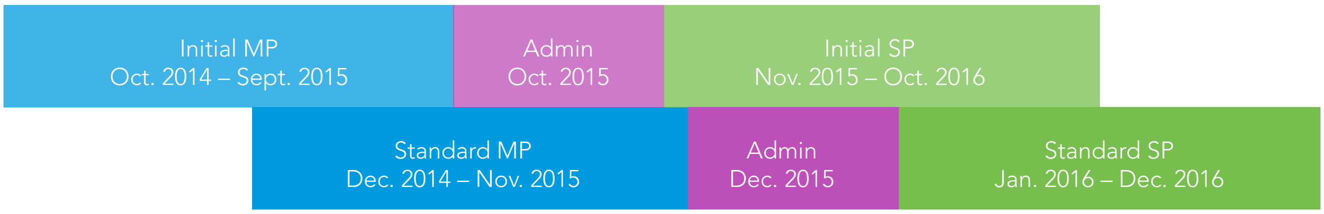
- Initial Measurement Period is between three and 12 months (and same duration as the Standard Measurement Period).
- Initial Stability Period is at least six months and not shorter than the Initial Measurement Period.
- Administrative Period (i.e., the gap between hire date and start of Initial Measurement Period plus the gap between the Initial Measurement Period and the Initial Stability Period) does not exceed 90 days.
- Employee's coverage (if eligible) will begin by no more than 13 months (and a fraction of a month) after the employee's hire date.

Edition: March 2016

Example 3: Illustration of How the Periods Continue for ONGOING Employee



Example 4: Illustration of How Initial and Standard Periods Overlap for NEW Employee



As shown in Example 4, the Standard Stability Period will begin during the Initial Stability Period. If the Standard Measurement Period results in the employee achieving full-time status, the Initial Stability Period will end early (January 1, 2016) because the Standard Stability Period will take over. If, on the other hand, the employee achieves full-time status as result of Initial Measurement Period but fails to maintain the status through the Standard Measurement Period, the Initial Stability Period will run through October 2016.

Optional Transition Rule for 2015 only

For purposes of a Stability Period beginning in 2015, the employer may choose to pair a "short" Transitional Measurement Period with a 12-month Stability Period if the following conditions are met:

- Transitional Measurement Period is at least six consecutive months;
- Transitional Measurement Period begins no later than July 1, 2014; and
- Administrative Period (the period between the Transitional Measurement Period and the corresponding Stability Period) does not exceed 90 days.

Breaks in Service

The employee's full-time status, if applicable, continues for the entire Stability Period unless the employee terminates employment. If the employee terminates and is rehired after a break in service that lasts at least 13 consecutive weeks*, the employer can treat him or her as a new employee. If the employee is rehired after a break of less than 13 consecutive weeks*, however, the employer must treat him or her as a continuing employee and resume the Stability Period.

For breaks in service that last between four and 13 consecutive weeks*, the employer may choose to apply the "rule of parity." That means the rehired employee can be treated as a new employee if the break in service lasted longer than the period of employment before the break.

*If the employer is an educational institution (e.g., public or private school or college), replace "13" with "26."

Special Unpaid Leaves

For purposes of the Look-Back Measurement Method, unpaid leaves under the Family and Medical Leave Act (FMLA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA) and jury duty must be disregarded in tracking hours of service during a Measurement Period. This provision prevents these special leaves from adversely affecting the employee's average hours of service.

A similar provision also applies to educational institutions so that an "employment break" of four weeks or more (e.g., summer break) does not affect the employee's average hours of service.

DEFINING MINIMUM ESSENTIAL, MINIMUM VALUE, AND AFFORDABLE COVERAGE

Play or Pay's two-prong test first looks to whether the employer offers **Minimum Essential Coverage** to most full-time employees (and their children). The second test is whether the employer offers full-time employees (and their children) coverage that provides **Minimum Value** and is **Affordable**.

Minimum Essential Coverage

Minimum Essential Coverage means an employer-sponsored group health plan other than "excepted benefits." Examples of "excepted benefits" that do not count as adequate coverage include:

- § 125 Health Flexible Spending Accounts if the maximum annual benefit does not exceed two times the employee's salary reduction amount (or, if greater, the salary reduction amount plus $500) and the participant also is eligible for non-excepted benefits coverage;
- Limited-scope stand-alone dental and vision plans (i.e., unbundled from medical plan or election); or
- Certain fixed-indemnity policies or specific-disease or illness policies.

Minimum Value Coverage

Minimum Value Coverage means the plan's share of total allowed costs is at least 60% of such costs. For insured plans, the carrier determines whether the plan provides minimum value coverage. For self-funded plans, use one of these methods:

- Minimum Value Calculator: Online calculator developed by federal regulators and available at www.cms.gov/cciio/resources/regulations-and-guidance/downloads/mv-calculator-final-4-11-2013.xlsm.
- Minimum Value Checklist: Checklists of sample plan designs. (At this time, the IRS has released three safe-harbor plan designs available at www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10463.pdf. Additional checklists are expected to be released by HHS but are not yet available.)

Plans that cannot use the calculator or checklists due to non-standard plan features may seek certification of minimum value by a member of the American Academy of Actuaries.

Caution: Plans that fail to provide substantial coverage of physician services and inpatient hospital services do not meet the standard for Minimum Value Coverage. Certain plans negotiated before November 4, 2014 may qualify for a short-term exception (45 CFR 156.145(a)).

Affordable Coverage

Affordable Coverage means that the employee's required contribution for self-only coverage, if elected, does not exceed 9.56% (if 2015; 9.66% if 2016) of the employee's income.

IRS regulations offer three optional safe harbor methods for employers to define "income" to determine affordability. Employers may use any of the safe harbor methods or use different methods for different classes (e.g., salaried, hourly) as long as the chosen safe harbor method is applied uniformly to the class.

Edition: March 2016

The three IRS safe harbor methods are:

- **W-2 Wages:** W-2 wages means the amount reported in Box 1 of the employee's Form W-2 for the current year. Note that § 125 contributions and § 401(k) or § 403(b) deferrals are not included in the Box 1 amount, so this method may understate the employee's actual income.

- Rate of Pay:

  - For salaried employees, "rate of pay" means the employee's monthly salary amount. (This method cannot be used if the monthly salary reduces, e.g., due to reduced work hours.)
  - For hourly employees, "rate of pay" means the employee's hourly rate times 130 hours per month. Many employers will find this method to be the most convenient way to determine "income" in order to calculate whether the coverage is affordable.

- **Federal Poverty Line (FPL):** Annual income is defined as the mainland FPL amount for a single-member household; i.e., $11,770 (2015; or $11,880 for plan year starting on or after January 25, 2016). This method is very simple, but it will generate the lowest "income" amount which may make the affordability test hard to pass.

Special Cases:

- Wellness Program Rewards that reduce the employee's contribution are disregarded in the affordability test, unless the wellness program is related to tobacco use. In that case, assume all employees qualify for the reward before determining affordability.
- Flex Credits or Cash-in-Lieu benefits may affect the determination of affordability. Employers whose cafeteria plans offer these types of options are advised to review the specific provisions with legal counsel.

DEFINING AFFORDABLE MINIMUM VALUE COVERAGE: YOUR QUICK CHECK

- [ ] Confirm that your group medical plan(s) meet the definition of Minimum Value Coverage:

  - If plans are insured, your carrier/HMO can provide confirmation
  - For self-funded plans, consult with plan actuary or advisor

  Note: The majority of group medical plans easily qualify as Minimum Value Coverage.

- [ ] Determine whether your Minimum Value plan meets the Affordability test:

  - If you offer multiple health plan options, you only need to test the lowest-cost option that is offered to the Full-Time Employee.
  - If the employee contribution is under $93.76/month (for self-only coverage), you automatically pass the affordability test under the simple FPL method (based on 2015 FPL chart).
  - If the employee contribution is over $93.76/month (for self-only coverage), consider using either the W-2 method or Rate of Pay method for each category of full-time employees (e.g., hourly, salaried).

  Note: The 2016 FPL chart can be used for plan year starting on or after January 25, 2016. For instance, 9.66% (2016 affordability threshold) of $11,880 (2016 FPL chart) will increase the affordable coverage amount to $95.63/month.

Edition: March 2016

ESTIMATING PENALTIES

The Play or Pay rules include two potential penalties:

A Applicable Large Employers that do not offer coverage, or do not offer Minimum Essential Coverage to at least 70%(1) of their Full-Time Employees (and children), may be assessed Penalty "A."

B Applicable Large Employers that do offer Minimum Essential Coverage to at least 70%(1) of their Full-Time Employees (and children) avoid Penalty A, but still may be assessed Penalty B (the smaller penalty) if they fail to offer Affordable Minimum Value Coverage to a Full-Time Employee.

Penalties are triggered when a Full-Time Employee receives a government subsidy to buy individual insurance through a Marketplace (Exchange) based on his or her income and the employer's failure to offer that employee Affordable Minimum Value Coverage.

If triggered, Penalty "A" is potentially very large since it is multiplied by the number of all Full-Time Employees (including those with coverage). On the other hand, Penalty "B" is designed to be much smaller since it is multiplied only by the number of Full-Time Employees that actually receive Marketplace subsidies due to the employer's failure to offer Affordable Minimum Value Coverage.

Note that persons **enrolled** in an employer's Minimum Essential Coverage plan (even if not Affordable Minimum Value) are not eligible for subsidies. Persons eligible for governmental programs (e.g., Medicare, Medicaid) also are ineligible for subsidies since they cannot use the Marketplace.

EXAMPLE

ABC Co. has 500 Full-Time Employees. The company offers health coverage to some but not all of its employees, and some employees go to the Marketplace to shop for individual policies. Twenty Full-time Employees receive Marketplace subsidies, which triggers Play or Pay penalties on the company.

The amount of the penalty assessed on ABC Co. will depend on three factors:

1. Did the employer offer coverage to most Full-time Employees (and children)?
2. Did the coverage offered meet the low standard of Minimum Essential Coverage?
3. Did the coverage offered meet the higher standard of Affordable Minimum Value Coverage?

EXAMPLE	SCENARIO	PENALTY (PER MONTH)
A	ABC Co. did not offer Minimum Essential Coverage to most Full-Time Employees. (Fewer than 70%(1) were offered coverage.)	Penalty "A" is equal to 1/12th of $2,080 times the number of Full-Time Employees (minus the first 80 such employees). ($2,080/12) X (500-80) = $72,800 monthly.(2)
B	ABC Co. did offer Minimum Essential Coverage to at least 70%(1) of its Full-Time Employees, but failed to offer Affordable Minimum Value Coverage to 100 Full-Time Employees and 20 of them received subsidies at the Marketplace.	Penalty "B" is equal to 1/12th of $3,120 times the number of Full-Time Employees that actually receive subsidies due to ABC Co.'s failure to offer Affordable Minimum Value Coverage. ($3,120/12) X 20 = $5,200 monthly.(3)(4)

(1) For 2015. For 2016 and later, replace 70% with 95%. (2) For 2015. For 2016, replace $2,080 with $2,160 and replace 80 with 30.
(3) For 2015. For 2016 replace $3,120 with $3,240. (4) Penalty "B" is limited to the amount that would be calculated under Penalty "A" (if "A" had applied).

Edition: March 2016

QUALIFYING FOR TRANSITION RELIEF

The Play or Pay rules took effect for all Applicable Large Employers on January 1, 2015. This date is fixed regardless of the employer's fiscal year or benefit plan year. However, some employers have been able to take advantage of one or more Transition Relief provisions to avoid potential penalties for part or all of 2015 (and part of 2016, in some cases).

The most common Transition Relief provisions are summarized here to help employers make an initial determination about possible qualification. In that case, the employer is advised to review the complete provision set forth in IRS regulations at http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf. The provisions offer significant relief, but only if several detailed conditions are met.

Coverage for Dependents

Transition relief is available for an Applicable Large Employer that currently does not offer dependent coverage (that is, coverage for children under age 26) but is taking steps toward offering dependent (child) coverage during its 2014 or 2015 plan year. (**Note:** This provision has little applicability since the majority of group health plans already provide child coverage.)

For complete details, refer to pages 8573-8574 of the IRS regulations.

Non-Calendar Year Plan Sponsors:

Transition relief is available for an Applicable Large Employer that had a non-calendar year group health plan as of December 27, 2012, and meets the following conditions:

- Does not change its plan year date to a later date;
- Does not offer a calendar-year health plan to participants eligible for the non-calendar year plan;
- Meets either one of the following conditions:
  - Covered at least one quarter of **all its employees** as of any date in the 12 months ending on February 9, 2014; OR offered coverage to at least one third of all its employees during the open enrollment period for the plan year that includes February 9, 2014; OR
  - Covered at least one third of **its Full-Time employees** as of any date in the 12 months ending on February 9, 2014; OR offered coverage to at least one half of its Full-Time employees during the open enrollment period for the plan year that includes February 9, 2014; AND
- Offers Affordable Minimum Value coverage to Full-Time Employees as of the first day of the non-calendar plan year beginning in 2015.

If all conditions are met, Play or Pay penalties will not apply for the months in 2015 that precede the start of the employer's 2015 plan year.

For complete details, refer to pages 8570-8572 of the IRS regulations.

Employers with 50-99 Employees:

For 2015, transition relief is available for an Applicable Large Employer that employed on average 50-99 full-time employees (including full-time-equivalents) in 2014, and meets the following conditions:

- Does not reduce its workforce size, or reduce hours of service of its workforce, through 2014 to get its average number of employees under 100, unless for bona fide business reasons;
- Does not eliminate or reduce level of coverage, or narrow eligibility, that was in effect as of February 9, 2014 through the end of the 2015 plan year*; AND
- Certifies that above conditions are met on IRS Form 1094-C (employer health coverage report form).

*The IRS provides the following example of an employer not eliminating or materially reducing its health plan's coverage:

- It continues to make an employer contribution toward the cost of employee-only coverage that is either (1) at least 95 percent of the dollar amount the employer was contributing on February 9, 2014; or (2) the same (or a higher) percentage of the total cost of coverage that the employer was contributing as of February 9, 2014;
- If the benefits provided under the employee-only coverage option are modified, the coverage provides "minimum value" after the change; and
- The plan is not amended to exclude or narrow any class of employees (or their dependents) to whom coverage was offered on February 9, 2014.

If all conditions are met, Play or Pay penalties will not apply for 2015. (If also eligible under the transition relief provision for Non-Calendar Year Plan Sponsors, the employer may avoid potential Play or Pay penalties both for 2015 and for months in 2016 that precede the plan year start date in 2016.)

For complete details, refer to pages 8574-8575 of the IRS regulations.

Multiemployer Plans (Union Plans)

Transition relief is available for an Applicable Large Employer, with respect to a Full-Time Employee, if the following conditions are met:

- The employer is required to contribute to a multiemployer plan (e.g., union trust) pursuant to a collective-bargaining agreement or similar participation agreement;
- The multiemployer plan coverage is offered to the employee (and dependents); and
- The multiemployer plan coverage is affordable minimum value coverage.

For complete details, refer to page 8576 of the IRS regulations.

REVIEWING LIMITED NON-ASSESSMENT PERIODS

The Transition Relief provisions explained on pages 20-21 allow certain employers to avoid potential Play or Pay penalties for part or all of 2015 (and part of 2016, in some cases). Employers who do not meet the conditions for Transition Relief may still be able to avoid Play or Pay penalties with respect to specific employees during short periods called Limited Non-Assessment Periods.

Limited Non-Assessment Period (LNP) generally means a period of one or more months during which an Applicable Large Employer may avoid the Play or Pay penalty that would otherwise apply with respect to a specific Full-Time Employee. The employer avoids the penalty, regardless of whether health coverage was offered to the employee during the LNP, provided that coverage is offered to start no later than the day immediately following the end of the LNP. The most common types of LNP are summarized below. For complete details, refer to the IRS regulations.

First Year as an Applicable Large Employer:

During its first year as an Applicable Large Employer, the employer may avoid potential Play or Pay penalties with respect to a Full-Time Employee for January through March if the following conditions are met:

- The employee was not offered coverage at any point during the prior calendar year, and
- The employer offers coverage to start by April 1 of the current calendar year.

This LNP is not available for 2015 if the employer would have been an Applicable Large Employer for 2014 due to its 2013 average employee count.

New Hires under the Monthly Measurement Method:

The employer may avoid potential Play or Pay penalties with respect to a Full-Time Employee under the Monthly Measurement Method who was not offered coverage for up to three full calendar months provided the employer offers minimum value coverage to start by the first of the following month (i.e., the fourth month). This LNP is available only once per period of employment.

Employees under the Look-Back Measurement Method:

The employer may avoid potential Play or Pay penalties with respect to a Full-Time Employee under the Look-Back Measurement Method who was not offered coverage during the employee's Initial Measurement Period or Administrative Period, provided the employer offers coverage to start by the first day of the Stability Period.

First Month of Employment:

Penalties do not apply with respect to a Full-Time Employee during the first calendar month of employment if the employee's first day of employment is other than the first day of the month. E.g., If the employee's date of hire is January 5, potential penalties are waived for the month of January.

YOUR QUICK CHECK

Consider the following items using information about you (the employer), your workforce and your group health plan. This gives you a starting point to evaluate the potential impact of the Play or Pay rules on your organization.

- ☐ **Average number of employees in the prior calendar year (full-time and full-time-equivalents):** ____________

  Did you consider using either the Seasonal Worker Adjustment or Optional Six-Month Rule, if eligible, to get the lowest possible result?
  If the result is 50 or fewer, stop here. You are not an Applicable Large Employer for the current calendar year.
  If the result is 50 or more, see "Qualifying for Transition Relief" for options that may allow you to avoid the risk of penalties for part or all of 2015 (and part of 2016, in some cases).

- ☐ **Measurement Methods used to define Full-Time Employees for coverage:**

  - ☐ **Monthly Measurement Method** (This method must be used for all non-seasonal new employees in positions reasonably expected to average at least 30 hours of service/week. Additionally, this method may be used either for all employees or for all employees in the same category.)

  - ☐ **Look-Back Measurement Method** (This method is not required but it may be used for various employee categories unless using the Monthly Measurement Method is required.)

  If you choose to subject any categories of employees to the Look-Back Measurement Method, establishing a long Look-Back Period (e.g., 12 months) may prevent some workers from averaging 30 hours/week and becoming eligible for coverage during the Stability Period.

- ☐ **Minimum Essential Coverage is offered to:**

  - ☐ **At least 70%[1] of all Full-Time Employees** (and children)
    You are not subject to Penalty "A." Go to the next item.

  - ☐ **Fewer than 70%[1] of all Full-Time Employees** (and children)
    You are at risk of Penalty "A" for each month that any Full-Time Employee receives a Marketplace subsidy.
    Review "Qualifying for Transition Relief" and "Limited Non-Assessment Penalties" for possible options to avoid penalties.

- ☐ **Affordable Minimum Value Coverage is offered to:**

  - ☐ **100% of all Full-Time Employees** (including those defined as Full-Time based on the Look-Back Measurement Method, if any)
    You are not subject to Penalty "B" if above statement remains true each month.

  - ☐ **Fewer than 100% of Full-Time Employees** (including those defined as Full-Time based on the Look-Back Measurement Method, if any)
    You are at risk of Penalty "B" (monthly) but only if a Full-Time Employee receives a Marketplace subsidy because you failed to offer Affordable Minimum Value Coverage to that employee.
    Review *"Qualifying for Transition Relief"* and *"Limited Non-Assessment Penalties"* for possible options to avoid penalties.

- ☐ **Estimated Penalty** (see "Estimating Penalties" for formulas)

  Compare estimated penalty, if any, with the estimated cost of improving your coverage offering to avoid risk of penalty.

[1] For 2015. For 2016 and later, the threshold increases from 70% to 95%.

Edition: March 2016

RESOURCES

The Play or Pay rules are complex as they are designed to protect an employee's eligibility for health coverage while also offering employers different methods for avoiding potential penalties. Employers are encouraged to review this brief Guide, and the official guidance provided by the IRS, with their legal and tax advisors.

For official guidance, see:

IRS Final Rule "Shared Responsibility for Employers Regarding Health Coverage" available at
https://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf

IRS Notice 2014-49 "Changes in Measurement Periods or Methods" available at
https://www.irs.gov/pub/irs-drop/n-14-49.pdf

IRS Notice 2015-87 "Further Guidance on … Affordable Care Provisions" available at
https://www.irs.gov/pub/irs-drop/n-15-87.pdf

IRS Questions and Answers available at
https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act

Edition: March 2016