

Employee Benefits Series



Health Care Reform

CALCULATING "PAY OR PLAY" PENALTIES



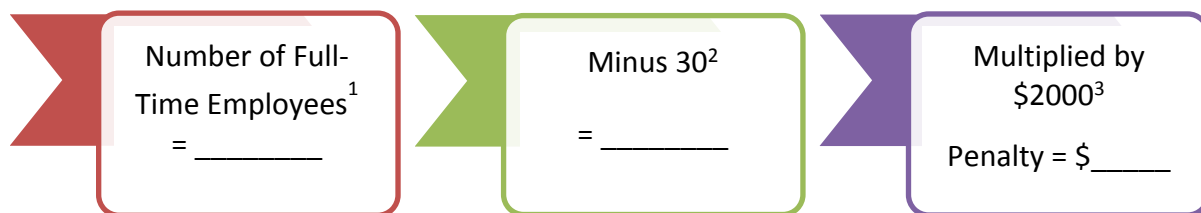
Calculating "Pay or Play" Penalties

Beginning in 2015, certain large employers will be subject to the [employer shared responsibility](#) ("pay or play") requirements under Health Care Reform. Employers with **100 or more full-time employees** (including full-time equivalents) are subject to the requirements starting in 2015, while those with **50 to 99 full-time employees** (including full-time equivalents) **do not need to comply until 2016** if they meet [certain criteria](#).

This worksheet provides step-by-step guidance on the two methods for calculating "pay or play" penalties, based on whether the employer offers health coverage to certain employees. The information and summaries provided in this worksheet are based on [final rules](#) issued by the IRS and are subject to change. General information regarding when a penalty may apply, including available transition relief, can be found beginning on [page 4](#) of this worksheet. **Employers are strongly advised to consult with employment law counsel or a professional tax advisor for individualized guidance regarding compliance.**

Employers Not Offering Coverage

The penalty for a large employer that does not offer coverage during the calendar year to at least 95% of its full-time employees (70% for the 2015 plan year) and their dependents (unless [transition relief](#) applies), where at least one full-time employee is certified to receive a premium tax credit, is calculated as follows:



¹ Do not count full-time equivalent employees (FTEs) or employees in a [limited non-penalty period](#).

² For the 2015 plan year, an employer with 100 or more full-time employees (including FTEs) on business days during 2014 may reduce the number of full-time employees by 80 rather than 30. Employers under common ownership or that are otherwise related and combined for determining large employer status are allowed only one reduction of 30 or 80 employees (allocated ratably among the related employers based on the number of full-time employees of each).

³ For an employer offering coverage for some months but not others during the year, the payment is computed separately for each month for which coverage was not offered. The penalty for the month equals the number of full-time employees for the month (minus the allowable reduction) multiplied by 1/12 of \$2,000.

Example

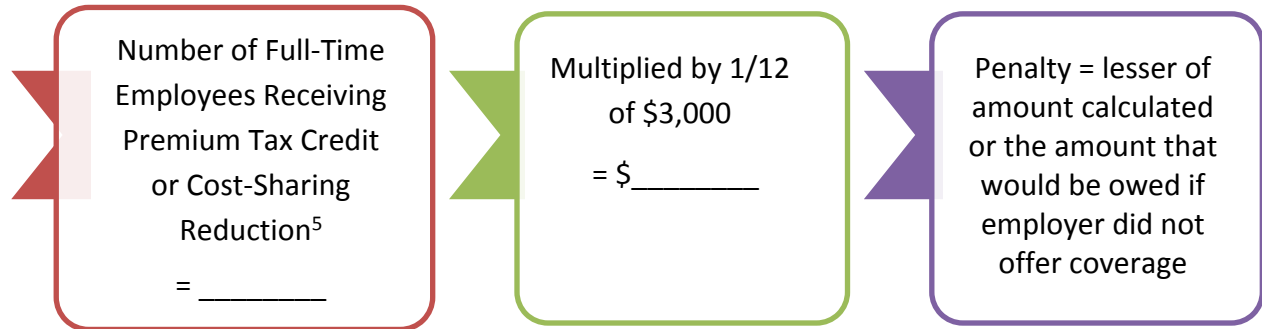
Large Employer employs 100 full-time employees in each calendar month of 2015 and does not provide an employer-sponsored health plan (no limited non-penalty periods apply). At least one of Large Employer's full-time employees is certified to receive a premium tax credit. Large Employer is subject to a penalty equal to **20 x \$2,000** (100 full-time employees minus 80, and then multiplied by \$2,000) = **\$40,000** for 2015.

Note: For calendar years after 2014, penalty amounts will be adjusted for inflation.

Calculating "Pay or Play" Penalties (cont'd)

Employers Offering Coverage That is Not Affordable or Does Not Provide Minimum Value⁴

For a large employer that offers coverage to at least 95% of its full-time employees (70% for the 2015 plan year) and their dependents (unless [transition relief](#) applies), but has one or more full-time employees who are certified to receive a premium tax credit, the penalty is computed separately for each month as follows:



⁴ An employer that offers affordable coverage that provides [minimum value](#) to less than 100% of full-time employees **may nevertheless owe a penalty** if an employee who is not offered coverage receives a premium tax credit or cost-sharing reduction.

⁵ Do not count full-time equivalent employees, employees in a [limited non-penalty period](#), or employees who were offered the opportunity to enroll in coverage under an eligible employer-sponsored plan that satisfied minimum value and met one or more of the [affordability safe harbors](#).

Example

Large Employer employs 100 full-time employees in each calendar month of 2015 and provides an employer-sponsored health plan to these employees (no limited non-penalty periods apply). Five full-time employees of Large Employer are certified to receive a premium tax credit during each month in 2015 because the coverage offered was unaffordable (the employer did not meet the requirements for any affordability safe harbor). Large Employer is subject to a penalty equal to **5 x 1/12 of \$3,000 = (\$1,250) x 12 months = \$15,000** (the lesser of \$15,000 and \$40,000) for 2015.

Note: For calendar years after 2014, penalty amounts will be adjusted for inflation.

General Rules and Transition Relief

An employer that is subject to the "pay or play" requirements may be liable for a penalty if:

The employer does not offer health coverage or offers coverage to fewer than 95% of its full-time employees (70% for the 2015 plan year) and their dependents (unless transition relief applies), and at least one full-time employee receives a premium tax credit to purchase coverage on an Exchange (Marketplace)

OR

The employer offers coverage to at least 95% of its full-time employees (70% for the 2015 plan year) and their dependents (unless transition relief applies), but at least one full-time employee receives a premium tax credit, because that employee was not offered coverage or because the coverage was unaffordable to the employee or did not provide minimum value

The [final rules](#) provide transition relief with respect to a number of requirements for 2015, including:

Large Employers With Fewer Than 100 Full-Time Employees

Employers with **50 to 99 full-time employees** (including full-time equivalents) who certify that they meet certain eligibility criteria related to maintenance of workforce, hours of service, and previously offered health coverage will **not be subject to a penalty for 2015** (and any months during the 2015 plan year that fall in 2016).

Percentage of Employees Offered Coverage

For the 2015 plan year, an employer that offers coverage to **at least 70% of full-time employees** (and their dependents, unless transition relief applies) may avoid a penalty for failing to offer coverage, rather than 95% which will begin in 2016. (The employer may still owe a penalty if a full-time employee receives a premium tax credit.)

Offers of Coverage for January 2015 Only

An employee who is offered coverage **no later than the first day of the first payroll period** that begins in January 2015 will be treated as having been offered coverage **for the entire month**. (Generally, an employee is treated as not offered coverage during an entire calendar month if he or she is not offered coverage for any day of the month.)

Non-Calendar Year Plans

Employers with plan years that do not start on January 1 may be able to begin compliance **at the start of their plan years in 2015**. Three pieces of transition relief are available for employers that maintained non-calendar year plans as of December 27, 2012, if the plan year was not modified thereafter to begin at a later calendar date.

Coverage for Dependents

An employer that takes steps during the 2014 or 2015 plan year (or both) to **extend coverage to dependents** who were not offered coverage during the 2013 or 2014 plan year (or both) generally **will not be liable** for a penalty solely based on the failure to offer coverage to those dependents for such plan year(s).

Limited Non-Penalty Periods for Certain Employees

The [final rules](#) also provide for limited periods during which an employer generally will **not** be subject to a penalty:

Beginning of Employer's First Year Subject to "Pay or Play"

For an employee who was not offered coverage by an employer during the prior calendar year, if the employer offers coverage to the employee **on or before April 1 of the first calendar year for which the employer is subject to "pay or play,"** the employer will not owe a penalty for not offering coverage to the employee for January through March of that year, provided that the coverage offered by April 1 provides minimum value.

First and Last Partial Months of Employment

An employer is not subject to a penalty with respect to an employee for the calendar month in which his or her start date occurs, **if the start date is a date other than the first day of the calendar month.** In a calendar month in which employment terminates, if the employee **would have been offered coverage** if he or she had been employed for the entire month, he or she is treated as having been offered coverage during that month.

Initial Three Calendar Months of Employment for New Full-Time Employees

Under the "look-back" measurement method, an employer offering coverage providing minimum value to a new employee reasonably expected at his or her start date to be full-time, **no later than the first day of the fourth full calendar month of employment,** will generally not be subject to a penalty for any calendar month of the three-month period beginning with the first day of the first full calendar month of employment.

Initial Measurement Period for New Variable, Seasonal & Part-Time Employees

For a new variable hour, seasonal, or part-time employee who has on average at least 30 hours of service per week during the initial measurement period, an employer will not owe a penalty for any calendar month during the initial measurement period (and any associated administrative period) if the employee is offered coverage providing minimum value by the employer **no later than the first day of the associated stability period.**

After Change in Employment Status

Under the "look-back" measurement method, an employer will generally not be subject to a penalty with respect to a new variable hour, seasonal, or part-time employee for a period of time after such employee **experiences a change to full-time employee status during the initial measurement period,** provided that certain conditions are satisfied.

Calculating "Pay or Play" Penalties

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