

## **THE FINAL “PLAY OR PAY” REGULATIONS HAVE ARRIVED!**

Feb 18, 2014

The long awaited final regulations regarding the employer shared responsibility provisions of the Affordable Care Act were released on February 10, 2014. They offer new transition relief and provide much needed guidance in several areas including how to determine which employees are “full-time” for purposes of the mandate. Although the 59 pages of regulations will surely provide ample fodder for numerous future posts, we’ll start with a rundown of some of the most notable provisions:

### **NEW TRANSITION RELIEF**

#### **EMPLOYERS WITH 50-99 FULL TIME EMPLOYEES HAVE AN ADDITIONAL YEAR TO COMPLY**

The new compliance date for these employers is January 1, 2016 (or the first day of new plan year beginning in 2016 for non-calendar year plans). In order to avail themselves of the transition relief, these employers must certify that they satisfy the following eligibility conditions:

- The employer must employ on average at least 50 full-time employees but fewer than 100 full-time employees on business days during 2014.
- The employer must not reduce the size of its workforce or the overall hours of service of its employees in order to satisfy the workforce size condition. A reduction for a bona fide business reason such as a sale of a division, a change in the economic marketplace in which the employer operates or a termination of employment for poor performance will not affect eligibility for the transition relief.
- The employer must not eliminate or materially reduce the health coverage it offered to employees as of February 9, 2014. This requirement is satisfied if (1) the employer continues to provide a contribution toward the cost of employee-only coverage that either: (a) is at least 95 percent of the dollar amount of the contribution that it offered on February 9, 2014, or (b) is the same or higher percentage of the cost of coverage that it offered on February 9, 2014; (2) any change in benefits under the employee-only coverage must continue to provide “minimum

value”; and (3) the employer must not narrow or reduce the class or classes of employees and dependents to whom coverage is offered.

## EMPLOYERS WITH 100 OR MORE EMPLOYEES MUST STILL COMPLY IN 2015 BUT THE COVERAGE REQUIREMENT IS TEMPORARILY EASED

The employer mandate will still apply to these employers beginning January 1, 2015 (or the first day of the new plan year beginning in 2015 for non-calendar year plans); however, the following transition relief applies:

- For the 2015 plan year only, these employers will be treated as satisfying the mandate if they offer coverage to at least 70 percent (rather than 95 percent) of full-time employees.
- Beginning January 1, 2016 (or the first day of the new plan year beginning in 2016 for non-calendar year plans) these employers will need to offer coverage to at least 95 percent of full-time employees in order to avoid the “play or pay” penalty.
- This transition relief is available only if the plan year is not modified after February 9, 2014 to begin on a later calendar date.

## “FULL TIME” EMPLOYEE GUIDANCE

Employers have struggled to determine which of their employees are “full time” for purposes of the employer mandate. It has proven difficult to apply the rules to certain types of employees. The final regulations provide the following clarifications:

### VOLUNTEERS

- Volunteer hours performed for government or tax-exempt entities by “bona fide volunteers” such as volunteer firefighters and emergency responders will not be counted.
- Generally, compensation provided to a “bona fide volunteer” must be limited to reimbursement for reasonable expenses incurred in the performance of services and reasonable benefits including length of service awards and customary nominal fees.

### STUDENTS

- Work-study hours performed by students participating in federal or state-sponsored work-study programs will not be counted.
- All other types of student employment performed for an educational organization or other employer must be counted.
- No special rule was adopted for interns and externs; general rules apply.

## EDUCATIONAL EMPLOYEES

- Educational employees such as teachers will not be considered to be part-time just because their school is closed or it operates on a limited schedule during the summer.

## ADJUNCT FACULTY

- Until further guidance is issued, employers may use any reasonable method for crediting hours of service that is consistent with the employer mandate rules.
- One reasonable method expressly recognized in the final regulations is to credit adjunct faculty members with 2 ¼ hours of service per week for each hour of teaching or classroom time in order to account for additional activities such as class preparation, grading, office hours and faculty meetings.
- To the extent that any future guidance modifies this “bright line” rule, employers will be permitted to rely on this rule for at least six months after issuance of the guidance and at least through the end of 2015.

Stay tuned for future ruminations regarding these and other provisions in the regulations!

## MEET THE TEAM



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