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 takes effect January 1, 2015, although special transition relief rules will allow 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 a 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 Large Employer Status
- Defining Full-Time Employees for Coverage
- Using Measurement Periods and Stability Periods
- Defining Minimum Essential, Minimum Value, and Affordable Coverage
- Estimating Penalties
- Qualifying for Transition Relief
- 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 federal guidance as of July 2014. 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. All employers are advised to review their unique situation with experienced legal counsel.

Edition: August 2014

STARTING WITH BASICS

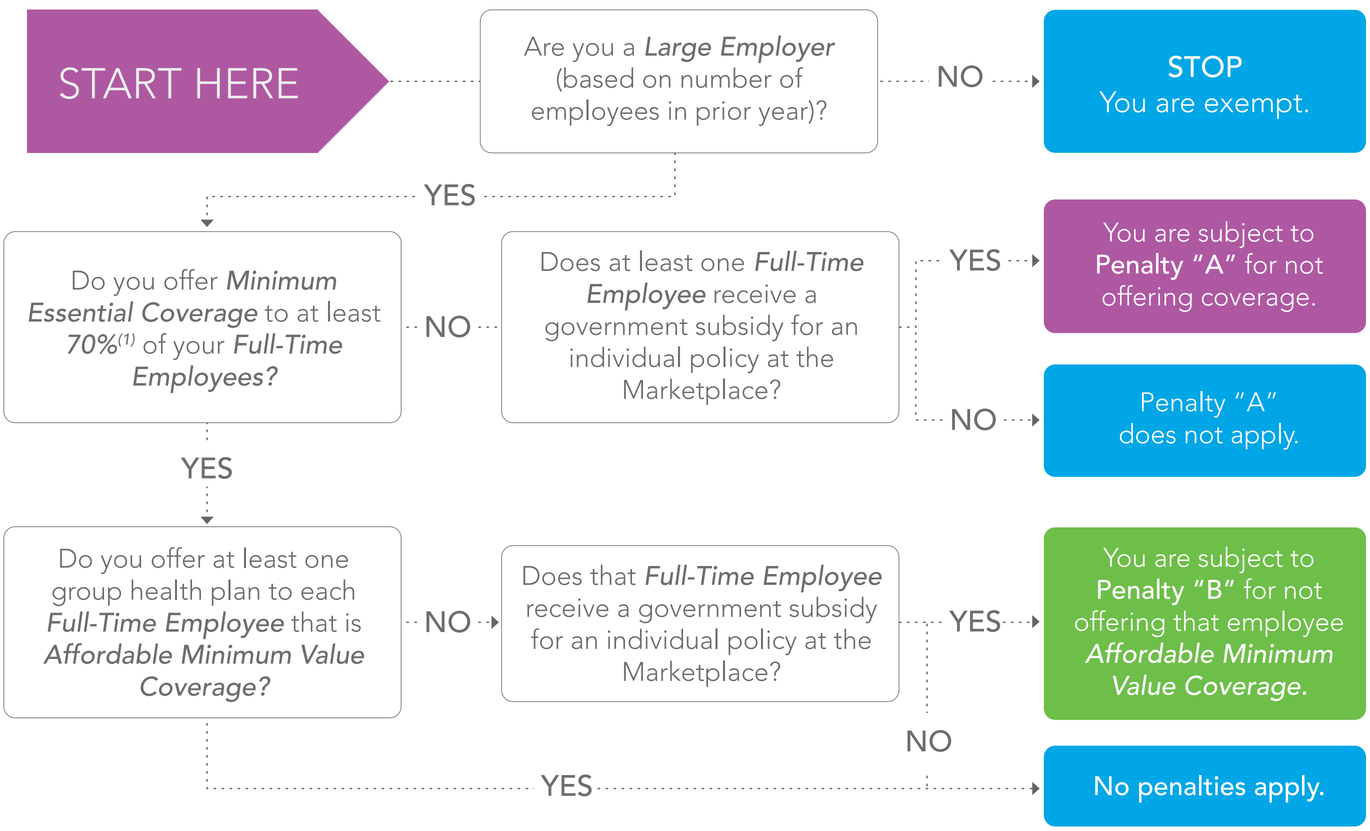
Play or Pay is a two-prong test that applies to Large Employers with 50 or more full-time employees (including full-time-equivalents):

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: August 2014

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 a 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 a 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 9.5% 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 $2,000[2] times the number of Full-Time Employees (minus the first 80[3] such employees).

Penalty "B"

On a monthly basis, Penalty "B" is equal to 1/12th of $3,000[2] times the number of Full-Time Employees that receive subsidies due to employer's failure to offer Affordable Minimum Value Coverage. 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.

(2) Estimated; penalty amount will be indexed for inflation.
(3) For 2015. For 2016 and later, replace 80 with 30.

DETERMINING "LARGE EMPLOYER" STATUS

Play or Pay applies only to Large Employers. An employer is a 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 Large Employer status. Parent-subsidiary groups, brother-sister groups, nonprofit 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 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.

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 a Large Employer … but go on to Step 5

Edition: August 2014

DETERMINING "LARGE EMPLOYER" STATUS

Step Five: Adjust for Seasonal Workers (if any)

In the example, ABC Co. is defined as a 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 a "Large Employer" for the current calendar year.

Optional Rule to Determine Large Employer Status for 2015:

The standard rule for determining 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.

DETERMINING "LARGE EMPLOYER" STATUS: YOUR QUICK CHECK

- [ ] Include all entities belonging to the same controlled group.

- [ ] Include all common-law employees, but exclude self-employed individuals (e.g., 2% shareholders)

- [ ] 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 a 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 a Large Employer for 2015.
  - **50 – 99:** You are a 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 a Large Employer for 2015. You may be eligible for short-term transition relief. See "*Qualifying for Transition Relief*" for details.

Edition: August 2014

DEFINING FULL-TIME EMPLOYEES FOR COVERAGE

Play or Pay requires Large Employers to offer health coverage to Full-Time Employees or face a potential penalty. There is no requirement to offer coverage to part-time employees.

To avoid the risk of a potential penalty, 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.

Full-Time Employee means an employee who averages at least 30 hours of service per week (or 130 hours per month). Depending on the employment category, the employee may meet the definition upon hire or upon completing a Measurement Period during which the worker's hours of service are tracked.

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.

There are three categories of employment for new hires:

<table>
<tr><th>EMPLOYMENT CATEGORY</th><th>JOB POSITION</th><th>COVERAGE OFFER REQUIREMENT</th></tr>
<tr><td>Full-Time Employee</td><td>Based on facts and circumstances at hire, the position is expected to average 30 hours/week or more.

E.g., position has been considered full-time in the past; position is advertised or communicated as full-time; similar positions are full-time.</td><td>To avoid risk of Play or Pay penalty, offer coverage to begin by the first day of the month following initial three calendar months.</td></tr>
<tr><td>Variable-Hours Employee</td><td>Based on facts and circumstances at hire, the employer cannot determine whether position is expected to average 30 hours/week or more because the hours are variable or unpredictable.</td><td rowspan="2">Under the Play or Pay rules, the employer may delay offering coverage for a period of time (Measurement Period) to determine whether the employee averages at least 30 hours/week:

› If employee meets the 30 hour/week average over the Measurement Period, he or she is a Full-Time Employee for the subsequent Stability Period. Offer coverage to begin the first day of the Stability Period.

› If employee does not achieve the 30 hour/week average over the Measurement Period, he or she is not eligible for the subsequent Stability Period and there is no Play or Pay requirement to offer coverage.</td></tr>
<tr><td>Seasonal Employee

(This is not the same as the Seasonal Worker definition used in determining Large Employer status.)</td><td>Customary annual employment for the position is six months or less and generally begins same time (season) each year.

(This may include positions that are expected to average 30 hours/week.)</td></tr>
</table>

Methods

The Play or Pay rules allow two methods for defining Full-Time Employee status:

- **Monthly Measurement Method:** This is a month-to-month method that assumes the employer knows in advance that the employee will (or will not) average at least 30 hours of service per week. This method is not suitable for employer groups with fluctuating work hours or unpredictable schedules (unless the employer wants to offer coverage to all including employees that do not consistently maintain a full-time average).
  - Determine 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 hires, 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:** This method can be used with respect to Variable-Hours Employees (or Seasonal Employees):
  - 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.

RELATED EMPLOYERS

Hours of service must be combined for employees that work for related employers that are members of the same controlled group or affiliated service group.

Using the 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 on average. 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.

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

USING MEASUREMENT PERIODS AND STABILITY PERIODS

Measurement Period

- Employer selects a period between three and 12 consecutive months. The same period must apply uniformly to all Variable-Hours Employees (including Seasonal Employees, if any), except the employer may establish different periods for the following categories of employees:
  - Salaried versus Hourly
  - Bargained versus Non-Bargained
  - Different Bargaining Units
  - Employees in Different States
- For **new hires,** 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. "Ongoing" employee means a Variable-Hours Employee (or Seasonal Employee) who has completed his or her Initial Measurement Period as a new hire.

Stability Period

- The period is between six and 12 consecutive months (and not shorter than the Measurement Period).
- For new hires, 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 hires that become eligible for coverage, the Administrative Period cannot extend past the end of the 13th month following the hire date.

USING MEASUREMENT PERIODS AND STABILITY PERIODS

Examples

Most employers choosing to use the Look-Back Measurement Method for Variable-Hours Employees (and Seasonal Employees, if any) 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 Variable-Hours 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.

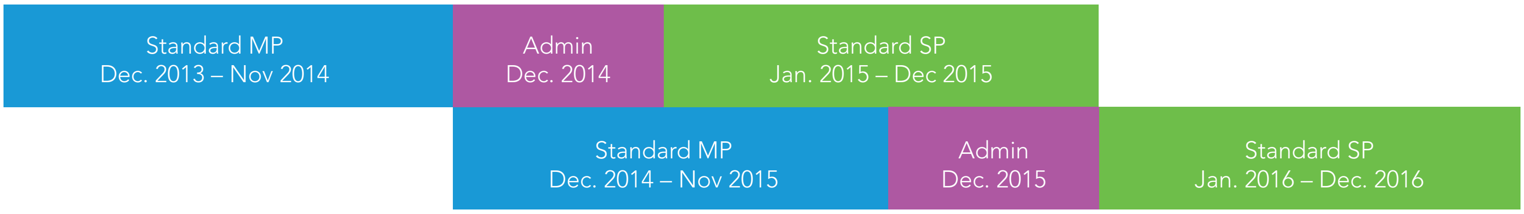
Example 2: NEW HIRE Variable-Hours Employee (Hired Sept. 15, 2014)

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

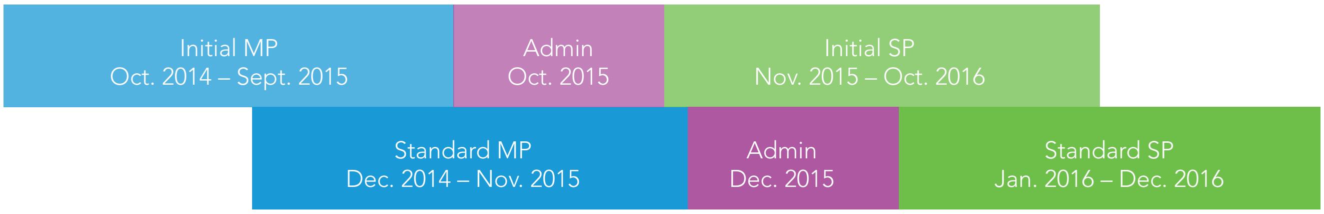
Example 2 complies with the rules because:

- 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.

Example 3: Illustration of How the Periods Continue for Ongoing



Example 4: Illustration of How Initial and Standard Periods Overlap for New Hire



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

For purposes of 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.

Additional Provisions

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 hire. 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 weeks, the employer may choose to apply the "rule of parity." That means the rehired employee can be treated as a new hire if the break in service lasted longer than the period of employment before the break.

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.

Other

Additional provisions apply to educational organizations (e.g., schools) regarding breaks in service of up to 26 consecutive weeks or for seasonal breaks (e.g., summer closures).

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.

Affordable Coverage

Affordable Coverage means that the employee's required contribution for self-only coverage, if elected, does not exceed 9.5% of the employee's income.

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

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. 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 Level (FPL):** Income is defined as the FPL for a single-member household. This method is very simple, but it will generate the lowest "income" amount which may make the affordability test hard to pass.

WELLNESS PROGRAM REWARDS

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.

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 Full-Time Employees.
- If the employee contribution is under $92/month (for self-only coverage), you automatically pass the affordability test under the simple FPL method (based on 2014 FPL chart).
- If the employee contribution is over $92/month (estimated), consider using either the W-2 method or Rate of Pay method for each category of full-time employees (e.g., hourly, salaried).

ESTIMATING PENALTIES

The Play or Pay rules include two potential penalties:

A 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 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 $2,000[2] times the number of Full-Time Employees (minus the first 80[3] such employees). ($2,000[2]/12) X (500-80[3])= $70,000 monthly.
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 $3,000[2] times the number of Full-Time Employees that actually receive subsidies due to ABC Co.'s failure to offer Affordable Minimum Value Coverage.[4] ($3,000[2]/12) X 20 = $5,000 monthly.

(1) For 2015. For 2016 and later, replace 70% with 95%. (2) Estimated; penalty amount will be indexed for inflation.
(3) For 2015. For 2016 and later, replace 80 with 30. (4) Penalty "B" is limited to the amount that would be calculated under Penalty "A" (if "A" had applied).

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QUALIFYING FOR TRANSITION RELIEF

The Play or Pay rules take effect for all Large Employers on **January 1, 2015**. This date is fixed regardless of the employer's fiscal year or benefit plan year. However, some employers will be 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.

Non-Calendar Year Plan Sponsors:

Transition relief is available for a 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 a 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 1095-C (employer health coverage report form).

For complete details, refer to page 8574 of the IRS regulations.

Note Regarding Employers with 50-99 Employers:

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.)

Limited Non-Penalty Period with respect to Certain Employees

During its first year as a Large Employer, the employer may avoid potential Play or Pay penalties with respect to a Full-Time Employee who was not offered coverage during the prior year provided that the employer does offer Affordable Minimum Value Coverage to take effect no later than April 1. In this case, the employer will not be subject to Play or Pay penalties for failure to offer coverage for January through March.

For complete details, refer to pages 8548 of the IRS regulations.

Coverage for Dependents

Transition relief is available for a Large Employer that currently does not offer dependent (that is, child under age 26) coverage 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 of the IRS regulations.

CHECKING YOUR CASE

Consider the following items using information about you (the employer), your workforce and your group health plan as of **January 1, 2015**. 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 prior year (full-time and full-time-equivalents): ____________________

  Did you consider using either the Seasonal Worker Adjustment or Optional Six-Month Rule to get the lowest possible result?
  If the result is 50 or fewer, stop here. You are not a Large Employer for 2015.
  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 some or all of 2015.

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

  - ☐ Full-Time Employee definition automatically applies at hire
  - ☐ Variable-Hour (and/or Seasonal) Employees are subject to a Look-Back Measurement Period

  If you choose to subject Variable-Hour Employees (and Seasonal Employees, if any) to a Look-Back Measurement Period, establishing a long period (e.g., 12 months) may prevent some workers from averaging 30 hours/week and becoming eligible for coverage during Stability Period.

- ☐ Minimum Essential Coverage is offered to:

  - ☐ At least 70% of all Full-Time Employees (and children)
    You are not subject to Penalty "A." Go to the next item.
  - ☐ Fewer than 70% 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" 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 Look-Back Measurement Period)
    You are not subject to Penalty "B" if above statement remains true each month.
  - ☐ Less than 100% of Full-Time Employees (including those defined as Full-Time based on Look-Back Measurement Period)
    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" 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% with 95%.

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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
http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf

IRS Questions and Answers available at
http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-under-the-Affordable-Care-Act