

Employee Benefits Series

Health Care Reform

"PAY OR PLAY" TOOLKIT FOR EMPLOYERS



Introduction

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](#).

Employers subject to "pay or play" that do not offer affordable health insurance providing a minimum level of coverage to full-time employees (and their dependents, unless transition relief applies) may be liable for a penalty if at least one full-time employee receives a premium tax credit for purchasing coverage on the Health Insurance Exchange (Marketplace).

This toolkit provides step-by-step guidance on the key areas of "pay or play" for employers, including:

- How to determine if a company is subject to the penalty;
- How to determine large employer status (calculating the number of full-time employees);
- How to determine the full-time status of employees;
- How to determine if a "pay or play" penalty applies; and
- How to calculate the amount of a penalty.

Timeline for Compliance

The "pay or play" requirements generally go into effect on January 1, 2015. Employers will use information about the employees they employ during 2014 to determine whether they employ enough employees to be subject to the requirements in 2015. Thereafter, an employer will determine whether it will be considered a large employer for each year based on the number of employees it employed during the prior year.

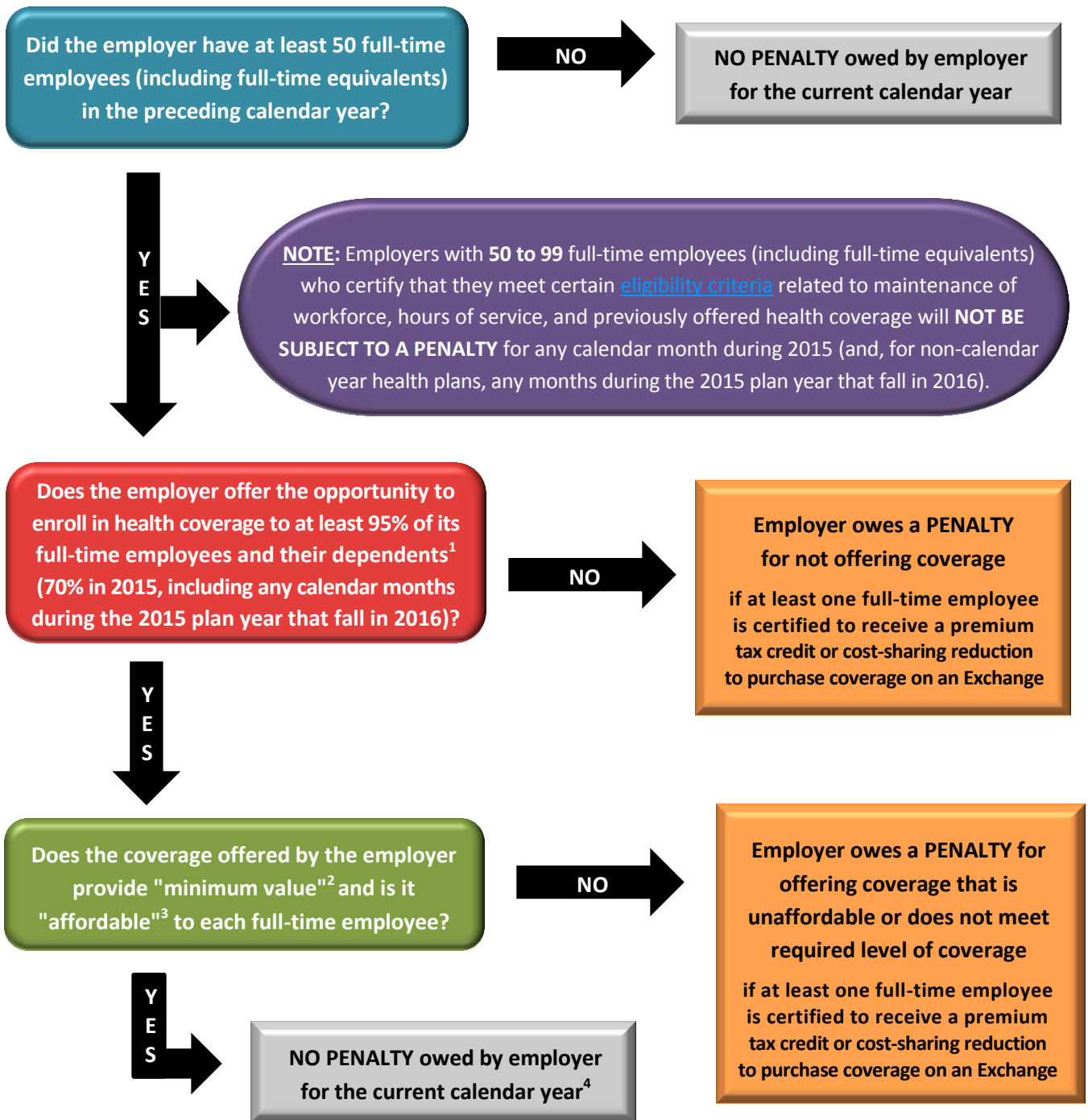
A number of pieces of transition relief are available for 2015, including for certain employers sponsoring non-calendar year plans, as well as for employers who are expanding their health plans to add dependent coverage.

Where to Go for Additional Information and Help

The information and summaries provided in this toolkit are based on [final rules](#) issued by the Internal Revenue Service (IRS) and are subject to change. **Compliance with the "pay or play" rules is very complex.** This toolkit provides a general overview of key steps and does not address every potential factor that may be relevant for a particular employer. Nor is the information intended to constitute legal or tax advice or opinions.

More detailed information about the "pay or play" requirements is available in the [final rules](#) and related [Q&As](#) from the IRS. **Employers are strongly advised to consult with employment law counsel, a professional tax advisor, and the IRS (1-800-829-4933) for individualized guidance regarding compliance.**

Is Your Company Subject to a "Pay or Play" Penalty?



¹ An employer that takes steps during the 2014 or 2015 plan year (or both) to extend coverage under the plan 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).

² An employer-sponsored group health plan generally provides [minimum value](#) if the plan pays for at least 60% of covered health care expenses. (Safe harbors will be available for employers to determine minimum value without performing any calculations.)

³ Coverage is [unaffordable](#) if the employee's required contribution for self-only coverage exceeds 9.5% of his or her household income for the taxable year. (Employers may use a number of [safe harbors](#) to determine affordability, including reliance on Form W-2 wages.)

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.

How to Determine Large Employer Status⁵

1. Calculate the number of full-time employees (including seasonal workers⁶) for each calendar month in the preceding calendar year.

- A full-time employee for any month is an employee who is employed, on average, at least **30 hours of service per week** (or 130 hours per month).
- Hours of service include **hours for which an employee is paid or entitled to payment** even when no work is performed (e.g., vacation or sick leave).⁷

Month 1: ____ Month 2: ____ Month 3: ____ Month 4: ____ Month 5: ____ Month 6: ____
Month 7: ____ Month 8: ____ Month 9: ____ Month 10: ____ Month 11: ____ Month 12: ____

2. Calculate the number of full-time equivalents (FTEs), including seasonal workers,⁶ for each calendar month in the preceding calendar year.

To determine the number of FTEs for a calendar month:

- Calculate the **total hours of service** (but not more than 120 hours of service for any employee) for all employees who were not full-time for that month.
- **Divide the total hours of service by 120** and record this number, including fractions (which may be rounded to the nearest hundredth), as the number of FTEs for the calendar month.

Month 1: ____ Month 2: ____ Month 3: ____ Month 4: ____ Month 5: ____ Month 6: ____
Month 7: ____ Month 8: ____ Month 9: ____ Month 10: ____ Month 11: ____ Month 12: ____

3. Add the number of full-time employees and FTEs from (1) and (2) for each of the 12 months in the preceding calendar year and record the total.

For the 2015 calendar year, an employer may use **any consecutive 6-month period in 2014** to determine the number of full-time employees and FTEs. Whether an employer meets the requirements of the seasonal worker exception (see below) is based on the calendar year, rather than the months chosen by the employer for purposes of this transition relief.

4. Divide the total sum from step (3) by 12 and record the result, disregarding fractions.

5. If the number in step (4) is less than 50, the employer is not subject to the "pay or play" rules for the current calendar year.

6. If the number is 50 or more, the employer is subject to "pay or play" unless the seasonal worker exception* applies (or the employer has fewer than 100 full-time employees, including FTEs, and qualifies for transition relief for the 2015 plan year).

*An employer that exceeds 50 full-time employees (or 99 under the 2015 transition relief), including FTEs, for **120 days or less** (or 4 calendar months) during the preceding calendar year is not subject to the requirements for the current year if the employees in excess of 50 (or 99) during that period were **seasonal workers**.⁶

⁵ Companies that have a common owner or are otherwise related generally are combined to count employees. If the combined total meets the threshold, each company is subject to "pay or play," even those that individually do not employ enough employees to meet the threshold. (Whether a penalty is owed and the amount of any penalty is determined separately for each related company.)

⁶ A seasonal worker performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by [29 C.F.R. § 500.20\(s\)\(1\)](#) and retail workers employed exclusively during holiday seasons. Employers may apply a reasonable, good faith interpretation of the term "seasonal worker" and the regulation, including as applied by analogy to positions not otherwise covered.

⁷ Employers of employees whose hours of service are particularly challenging to identify or track, or for whom the general rules for determining hours of service may present special difficulties (e.g., adjunct faculty and commissioned salespeople), must use a reasonable method of crediting hours of service that is consistent with the [law's requirements](#). In addition, hours of service performed in certain capacities (e.g., "bona fide volunteers") are not counted.

How to Determine Full-Time Employees: Ongoing Employees

To calculate potential liability for a penalty, large employers must determine each employee's full-time status. An employee is considered full-time if he or she averages at least 30 hours of service per week (or 130 hours per month). As an alternative to a month-by-month calculation, employers may use a look-back method (outlined below) for determining in advance if an **ongoing employee**⁸ is to be treated as full-time, based on the employee's hours of service during a previous period.

1. Choose the period of time that will be used to look back and measure an employee's hours of service—this is the STANDARD MEASUREMENT PERIOD.

- The standard measurement period is a defined period of **between 3 and 12 consecutive months** selected by the employer. An employer is permitted to base this period on one week, two week, or semi-monthly payroll periods that include the beginning and end dates of the measurement period.
- An employer may apply different measurement periods for the following categories of employees:
 - Salaried vs. hourly employees
 - Collectively bargained vs. non-collectively bargained employees
 - Employees in different states
 - Collectively bargained employees covered by separate contracts

2. Determine whether the employee averaged at least 30 hours of service per week (130 hours per month) during the standard measurement period.

- Hours of service include **hours for which an employee is paid or entitled to payment** even when no work is performed (e.g., vacation or sick leave). Hours must be combined for employees performing services for two or more employers that are under common ownership or are otherwise related.⁹
- For non-hourly employees, employers may generally use a days- or weeks-worked equivalency, whereby an employee is credited with 8 hours of service per day (or 40 hours per week) for each day (or week) the employee is credited with at least one hour of service. An employer may use different methods for different categories of non-hourly employees, if the categories are reasonable and consistently applied.
- Special rules apply for teachers and other employees of educational institutions, as well as employees who are rehired or resume services after special periods of unpaid leave (e.g., [FMLA](#)).

Optional: Utilize additional time (up to 90 days), between the measurement period and the stability period (explained below), to determine which employees are eligible for coverage and to notify and enroll employees—this is the ADMINISTRATIVE PERIOD.

The administrative period **must overlap with the prior stability period** so ongoing employees enrolled in coverage (determined to be full-time based on a prior period) continue to be covered.

3. Treat the employee as full-time (or not) for a certain amount of time after the standard measurement period and any administrative period, based on the hours of service during the measurement period—this is the STABILITY PERIOD.

- Employees determined to be full-time based on the measurement period are treated as full-time during a stability period of **at least 6 consecutive calendar months, no shorter than the standard measurement period**, regardless of the number of hours of service during the stability period (a limited exception may apply in the event of a change in employment status, if certain conditions are met).
- Employees who did not work full-time during the measurement period may be treated as not full-time for a stability period that is no longer than the associated standard measurement period.¹⁰

⁸ An **ongoing employee** is an employee who has been employed for at least one complete standard measurement period.

⁹ In such case, the employer for whom the employee has the greatest number of hours for that calendar month treats the employee as a full-time employee for purposes of penalty determinations.

¹⁰ A "transition" measurement period shorter than 12 consecutive months (but no less than 6 consecutive months) may be adopted for 12-month stability periods beginning in 2015, provided it begins no later than July 1, 2014 and ends no earlier than 90 days before the first day of the plan year starting on or after Jan. 1, 2015. An employer may apply similar transition relief to a stability period that begins in 2014 and ends in 2015. For employees hired during or after the transition measurement period, the [general rules](#) for new employees under the look-back method apply.

How to Determine Full-Time Employees: New Employees

In general, before becoming an ongoing employee, full-time employee status for a new employee who is reasonably expected at his or her start date to be a **full-time employee**¹¹ is based on that employee's hours of service each calendar month. Employers that use the look-back method for ongoing employees may also use a look-back method (outlined below) to determine the full-time status of new **variable hour employees**,¹² **seasonal employees**,¹³ and **part-time employees**.¹⁴

1. Choose an INITIAL MEASUREMENT PERIOD to measure the new employee's hours and determine if the employee averaged at least 30 hours of service per week.

- The initial measurement period, **between 3 and 12 consecutive months**, may begin on any date up to and including the first day of the first calendar month following the employee's start date (or, if later, on the first day of the first payroll period starting on or after the employee's start date, if the employer is using a one week, two week, or semi-monthly payroll period for purposes of determining the initial measurement period).
- Calculate a new employee's hours of service using the same [general rules](#) that apply for ongoing employees.

Optional: Utilize ADMINISTRATIVE PERIOD before start of the STABILITY PERIOD.

- The administrative period may not exceed **90 days total**, including all time between the employee's start date and the date coverage is first offered (other than the initial measurement period).
- The initial measurement and administrative periods combined cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date.

2. Depending on the employee's hours of service during the initial measurement period, treat the employee as full-time (or not) during the STABILITY PERIOD that follows.

- Treat employees determined to be employed on average **at least 30 hours of service per week as full-time** during a stability period **equal in length** to the stability period established for ongoing employees.
- Employees that do not average at least 30 hours per week may be treated as **not full-time for a stability period not more than one month longer than the initial measurement period**. The stability period may not exceed the remainder of the first entire standard measurement period (plus any associated administrative period) for which a variable hour, seasonal, or part-time employee has been employed.*

3. Once a new variable hour, seasonal, or part-time employee has been employed for an entire standard measurement period, test the employee again for full-time status.

- Test the employee for full-time status beginning with the employer's standard measurement period, at the same time and under the same conditions as apply to other ongoing employees.
 - * An employee determined not to be full-time during the initial measurement period, but full-time during the overlapping or immediately following standard measurement period, must be treated as full-time for the entire stability period corresponding to that standard measurement period (**even if** that stability period begins before the end of the stability period associated with the initial measurement period).
- If there is a period between the end of the stability period associated with the initial measurement period and the beginning of the stability period associated with the first full standard measurement period during which a new employee is employed, the treatment as a full-time employee (or not) continues to apply during such period.

¹¹ Factors to consider include, but are not limited to, whether the employee is replacing a full-time employee, the extent to which employees in the same or comparable positions are (or are not) full-time, and whether the job was communicated to the new hire or otherwise documented as requiring an average of 30 or more hours of service per week.

¹² A new employee is a **variable hour employee** if, based on the facts and circumstances at the employee's start date, it cannot be determined whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period because the employee's hours are variable or otherwise uncertain.

¹³ A new **seasonal employee** is an employee hired into a position for which the customary annual employment is 6 months or less.

¹⁴ A new **part-time employee** is one who is reasonably expected to be employed on average less than 30 hours of service per week during the initial measurement period, based on the facts and circumstances at the employee's start date. ©2013–2014 HR 360, Inc. | 6

How to Determine if a "Pay or Play" Penalty Applies

General Rules

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

Transition Relief

The "pay or play" [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).

How to Determine if a "Pay or Play" Penalty Applies (cont'd)

Limited Non-Penalty Periods for Certain Employees

The [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 method, an employer that offers 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.**

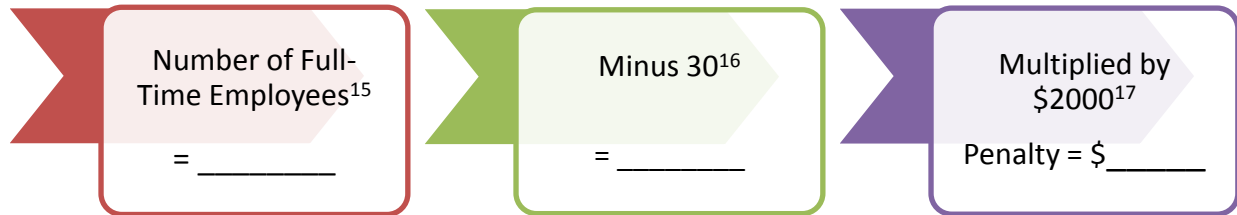
After Change in Employment Status

Under the look-back 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.

How to Calculate the "Pay or Play" Penalty

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:



¹⁵ Do not count full-time equivalent employees or employees in a [limited non-penalty period](#).

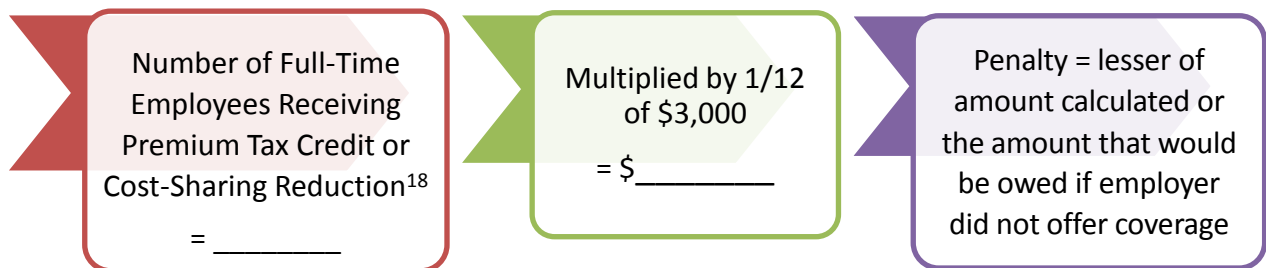
¹⁶ For the 2015 plan year, an employer with 100 or more full-time employees (including FTEs) on business days during 2014 may reduce the number of full-time employees by 80 rather than 30. Employers under common ownership or that are otherwise related and combined for determining large employer status 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).

¹⁷ For an employer that offers 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.

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:



¹⁸ 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.

Pay or Play: Toolkit for Employers

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