

**American Benefits Council
P4P “Preparing for PPACA” Webinar**

**Final Regulations Implementing
Employer Shared Responsibility Rules:
Key Issues For Employers**

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- Brief refresher on the employer “pay or play” requirement
- What was actually delayed?
- Important transition rules
- Notable changes to the final rules

“Pay or Play”

- Two separate penalties:
 - **4980H(a) or “A-Penalty”**
 - 4980H(b) or “B-Penalty”

“Pay or Play”

- **A-Penalty**

- Sometimes referred to as the “offering requirement”
- General rule = An employer must offer “minimum essential coverage” (MEC) to 95% of its 4980H-defined full-time employees and their children up to age 26 or risk a penalty equal to (i) \$2,000, multiplied by (ii) the number of full-time employees minus 30
- Things to keep in mind:
 - The A-Penalty can only be triggered if a full-time employee goes to a public exchange, enrolls in individual coverage and receives a premium tax credit from the federal government (i.e., he or she generally must have MAGHI < 400% of the FPL)
 - There is no requirement that the coverage be affordable or provide “minimum value”
 - No requirement to offer spousal coverage
 - Certain transition relief for 2015 was provided

- **B-Penalty**

- Sometimes referred to as the “affordability requirement”
- **General rule = Even if an employer satisfies the offering requirement (i.e., avoids the A-Penalty), if the employer fails to offer affordable and minimum value coverage to a full-time employee, it can risk a B-Penalty equal to \$3,000 per year for that employee**
 - As with the A-Penalty, the B-Penalty can only be triggered if a full-time employee goes to a public exchange, enrolls in individual coverage and receives a premium tax credit from the federal government (i.e., he or she generally must have MAGHI < 400% of the FPL)
 - HOWEVER, if the employer offered the employee affordable, minimum value coverage (or the employee is otherwise enrolled in “minimum essential coverage”), then the employee is not eligible for a premium tax credit – and thus cannot trigger a “B Penalty” for the employer
 - Things to keep in mind:
 - Affordability is measured against the lowest-cost self-only coverage option that is minimum essential coverage and provides minimum value
 - Final regulations provide affordability safe harbors

What Was Delayed?

- For employers with 50-99 FTEs or equivalents, the entire mandate is delayed until:
 - For sponsors of calendar year plans: January 1, 2016
 - For sponsors of existing non-calendar year plans (and that meet certain criteria): First day of the sponsor's 2016 plan year
- Therefore, these employers are not subject to the A-Penalty or the B-Penalty
 - **BUT, numerous requirements apply in order to qualify for the delay, so be careful!!**



What Was Delayed?

- What else was delayed?
 - **Nothing...**
- But a host of additional transition rules were provided for 2015 (which is sort of like a delay...)



Transition Rules

- Most of the transition rules that were originally provided for 2014 remain for 2015
 - **But some do not**
 - **And some have been modified**

... **so be careful!**

- Certain additional transition rules were also provided

- **A-Penalty Transition Relief**

- **What does the relief provide?**

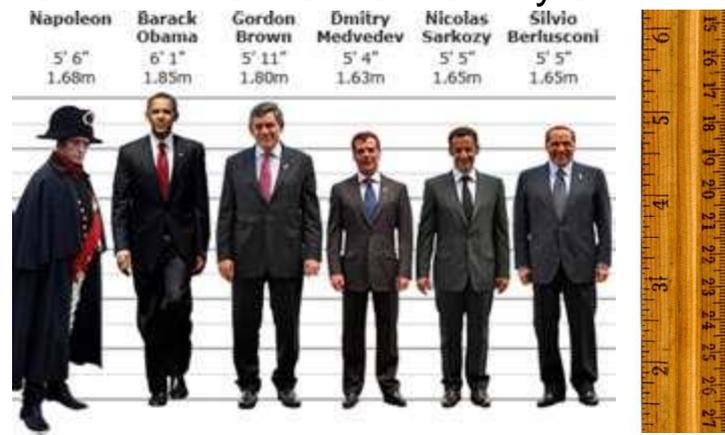
1. So long as the ALE member offers minimum essential coverage (MEC) to at least 70% of its full-time employees (and children, as required under the transition relief), then no “A Penalty” will apply –
 - Through 12/31/15 for calendar year plans
 - Through the close of the 2015 plan year for non-calendar year plans
2. ALSO, the “A Penalty” is reduced by the employer’s allocable share of 80 full-time employees rather than just 30

- **HOWEVER, It is important to note that there is no corresponding 4980H(b) relief!!!**

- Thus, the employer could be on the hook for penalties equal to \$3,000 per employee for any employee that goes to the exchange and gets subsidized individual coverage

Transition Rules

- **Shorter measurement period permitted in 2014 for stability period starting during 2015**
 - General rule is stability period cannot be longer than the measurement period (except if measurement period is 3 months, in which case the stability period must be six months)
 - For employers wanting to use a 12-month stability period, need transition relief given the late release of final regulations
 - **What does the relief provide?**
 - May use a transition measurement period that is as little as 6 months long and still use a longer stability period (up to 12 months), but the transition measurement period **MUST** begin by no later than 7/1/14 and end no early than 90 days before the start of the 2015 plan year
 - **ONLY** applies to employees hired on or before the first day of the transition measurement period



- **Shorter period for determining ALE status for 2015**
 - Generally, need to look over course of entire preceding calendar year to determine whether an employer is an applicable large employer (ALE)
 - With 2014 underway, some employers may not be tracking hours worked for this purpose

 - **What does the relief provide?**
 - An employer may determine whether it is an applicable large employer (ALE) by using a period of at least six consecutive months during the 2014 calendar year (rather than the entire 2014 calendar year)
 - Notes:
 - » The seasonal worker exception continues to apply on a calendar year basis
 - » This rule applies for employers trying to determine whether they fit in the delay provision for employers with 50-99 full-time employees or equivalents

- **Offer of coverage for January 2015**

- The final rules provide that if an ALE member fails to offer coverage to a full-time employee for any portion of a calendar month, the employee is treated as not offered coverage during that month
- Issue of the final 2014 payroll period that crosses into 2015
- **What does the relief provide?**
 - If an employer offers coverage to a full-time employee by no later than the first day of the first payroll period that begins in January 2015, the employee is treated as having been offered coverage for January 2015

Transition Rules

- **Offer of coverage for dependents**

- Generally, to avoid an A-Penalty, an employer must offer minimum essential coverage (MEC) to 95% of its full-time employees and their children up to age 26
 - Note: Special 70% rule for 2015
- Some employers may not yet be offering child coverage to all children up to age 26, or the coverage may not constitute MEC

- **What does the relief provide?**

- So long as the employer “takes steps” towards satisfying this requirement, then it is not liable for an “A Penalty” for the 2015 plan year based solely on its failure to offer the requisite child coverage
 - Relief doesn’t apply to employers that offered child coverage during the 2013 or 2014 plan years and drop it for 2015
 - Relief only applies to children not otherwise eligible for coverage during 2013 or 2014 plan years



- **Multiemployer plans**

- Employers may make contributions to multiemployer plans on behalf of certain collectively bargained employees in lieu of offering participation in the employers' plans
- Creates potential 4980H liability since there is no “offer” of coverage by the employer with respect to the employees covered by the collective bargaining agreement
- **What does the relief provide?**
 - Employers required by a collective bargaining agreement or participation agreement to make contributions to a multiemployer plan, will be considered to comply with 4980H, so long as the employee and children (subject to the multiemployer plan's eligibility rules) are offered affordable, minimum value coverage
 - Note: Not limited to just 2015

- Fiscal plan year transition relief
 - Three different rules
 - Pre-2015 eligibility transition relief
 - Significant percentage transition relief (all employees)
 - Significant percentage transition relief (full-time employees)

- Fiscal plan year transition relief
 - **Pre-2015 eligibility transition relief**
 - **Must-haves for relief to apply:**
 - Employer maintained a non-calendar year plan as of 12/27/12
 - The plan was not modified after 12/27/12 to begin at a later calendar date
 - Employer offers MEC to at least 70% of full-time employees as of the first day of the 2015 plan year
 - **What does the relief provide?**
 - For any employees (whenever hired) who are eligible for coverage on the first day of the 2015 plan year under the eligibility terms of the plan in effect on 2/9/14 (whether or not they take the coverage) **AND** who are offered affordable minimum essential coverage (MEC) that provides minimum value (MV) effective no later than the first day of the 2015 plan year, **the employer will not be subject to a 4980H penalty until the first day of the 2015 plan year with respect to these employees ONLY**
 - » NOTE: The relief **ONLY** applies to those full-time employees who are eligible for coverage on the first day of the 2015 plan year under the eligibility terms in effect on 2/9/14
 - » **THUS**, no 4980H relief for ineligible full-time employees

- Fiscal plan year transition relief
 - **Pre-2015 eligibility transition relief**
 - **Example:** Employer Z has 600 employees, all of whom are full-time employees within the meaning of 4980H and Employer Z maintained a 10/1 plan year (Plan P) as of 12/27/12. The plan year was not modified after 12/27/12 and all of Employer Z's employees are eligible for coverage under Plan P under the eligibility terms as in effect on 2/9/14. However, the coverage offered for the 2014 plan year was not affordable or did not provide MV. Employer Z modifies Plan P so that beginning for the 2015 plan year, it is affordable MEC that provides MV. In this case, no 4980H penalty could be due by Employer Z until 10/1/15

- Fiscal plan year transition relief
 - **Pre-2015 eligibility transition relief**
 - Practical steps/questions for determining whether the relief applies and/or would be helpful –
 1. Did the employer sponsor a non-calendar year plan on 12/27/12?
 - If no, then relief is not available
 2. After 12/27/12 did the employer modify the plan year to begin at a later date?
 - If yes, then the relief is not available
 3. Will the employer continue to sponsor the non-calendar year plan for 2015?
 - If no, then the relief is not available
 4. Will the plan use the same (or better) eligibility criteria as in effect on 2/9/14 for purposes of determining eligibility for the 2015 plan year?
 - If no, then the relief is not available
 5. For purposes of the 2015 plan year, will the employer offer affordable, minimum value coverage?
 1. If no, then the relief is unavailable
 6. Does the employer have “full-time” employees that were not eligible for coverage under the employer’s plan for the 2014 plan year?
 - If so, then the relief does NOT extend to these employees. Thus, the employer will need to provide 4980H-compliant coverage as of 1/1/14 for these full-time employees or risk penalties

- Fiscal plan year transition relief
 - **Significant percentage transition relief (all employees)**
 - **Must have for relief to apply:**
 - Employer maintained a non-calendar year plan as of 12/27/12
 - The plan was not modified after 12/27/12 to begin at a later calendar date
 - Employer offers MEC to at least 70% of full-time employees as of the first day of the 2015 plan year
 - **AND** either:
 - » As of any date in the 12 months preceding 2/9/14, at least 25% of its employees were covered under the plan(s), **OR**
 - » At least 33.33% of employees were offered coverage under the plan(s) during the most recent annual open enrollment prior to 2/9/14
 - **What does the relief provide?**
 - **The employer will not be subject to a 4980H penalty until the first day of the 2015 plan year** with respect to any employee who (i) is offered MEC that is affordable and provides MV by no later than the first day of the 2015 plan year, **AND** (2) would not have been eligible for a calendar year plan with employer as of 2/9/14
 - **NOTE: Relief here applies to ALL of the employer's full-time employees regardless of whether benefits eligible or enrolled**

- Fiscal plan year transition relief
 - **Significant percentage transition relief (all employees)**
 - **Example:** Employer Y has 1,100 employees. One thousand of the employees are full-time within the meaning of 4980H and 100 are not full-time. Employer Y maintained a plan with a 10/1 plan year (Plan M) as of 12/27/12. Plan M's plan year was not modified after 12/27/12 to begin at a later calendar date. Employer Y does not offer any other coverage. Employer Y chooses to measure the number of covered employees on 12/1/13 and determines that it covered only 23% of the 1,100 workers. During the most recent open enrollment period in September 2013, Employer Y offered coverage under Plan M to 45% of its employees. As of the first day of the 2015 plan year (10/1/15), Employer M offers affordable, MV coverage to all full-time employees. Employer Y does not offer coverage to other employees. In this case, no 4980H penalty could be due by Employer M for periods prior to 10/1/15.

- Fiscal plan year transition relief
 - **Significant percentage transition relief (all employees)**
 - Practical steps/questions for determining whether the relief applies and/or would be helpful –
 1. insert
 - If no, then relief is not available
 2. After 12/27/12 did the employer modify the plan year to begin at a later date?
 - If yes, then the relief is not available
 3. Were at least 33% of ALL employees eligible to participate in the fiscal year plan – OR – were at least 25% of ALL employees enrolled in the fiscal year plan?
 - If no, then relief is not available
 4. Will the employer continue to sponsor the non-calendar year plan for 2015?
 - If no, then the relief is not available
 5. For purposes of the 2015 plan year, will the employer offer affordable, minimum value coverage?
 - If no, then the relief is unavailable
 6. Does the employer have “full-time” employees that were not eligible for and/or enrolled in the plan for the 2014 plan year?
 - Doesn’t matter. If above steps are satisfied, relief applies to ALL full-time employees of the employer regardless of whether enrolled in, or eligible for, 2014 plan year coverage.

- Fiscal plan year transition relief
 - **Significant percentage transition relief (full-time employees only)**
 - **Must have for relief to apply:**
 - Employer maintained a non-calendar year plan as of 12/27/12
 - The plan was not modified after 12/27/12 to begin at a later calendar date
 - Employer offers MEC to at least 70% of full-time employees as of the first day of the 2015 plan year
 - **AND** either:
 - » As of any date in the 12 months preceding 2/9/14, at least 33.33% of its **full-time** employees were covered under the plan(s), **OR**
 - » At least 50% of its **full-time** employees were offered coverage under the plan(s) during the most recent annual open enrollment prior to 2/9/14
 - **What does the relief provide?**
 - **The employer will not be subject to a 4980H penalty until the first day of the 2015 plan year** with respect to any employee who (i) is offered affordable MEC that provides MV by no later than the first day of the 2015 plan year, **AND** (2) would not have been eligible for a calendar year plan with employer as of 2/9/14
 - **NOTE: Relief here applies to ALL of the employer's full-time employees regardless of whether benefits eligible or enrolled**

- Fiscal plan year transition relief
 - **Significant percentage transition relief (full-time employees only)**
 - **Example:** Employer W has 2,000 employees, of whom 500 are full-time and 1,500 are not full-time. Employer W maintained a plan (Plan N) with a 10/1 plan year as of 12/27/12 and the plan was not modified since then to begin at a later date. Employer W offers no other plans. Employer chooses 12/1/13 as the measurement date for determining the percentage of covered full-time employees. The results are that only 20% of full-time employees were covered, which is less than the required 33.33%. However, employer confirms that 60% of its full-time employees were offered coverage under Plan N during the last open enrollment period. In this instance, no 4980H penalty is payable for periods prior to 10/1/15

- Fiscal plan year transition relief
 - **Significant percentage transition relief (full-time employees) only**
 - Practical steps/questions for determining whether the relief applies and/or would be helpful –
 1. insert
 - If no, then relief is not available
 2. After 12/27/12 did the employer modify the plan year to begin at a later date?
 - If yes, then the relief is not available
 3. Was at least **50%** of “FULL-TIME” employees eligible to participate in the fiscal year plan – OR – Was at least **33%** of “FULL-TIME” employees enrolled in the fiscal year plan?
 - If no, then relief is not available
 4. Will the employer continue to sponsor the non-calendar year plan for 2015?
 - If no, then the relief is not available
 5. For purposes of the 2015 plan year, will the employer offer affordable, minimum value coverage?
 - If no, then the relief is unavailable
 6. Does the employer have “full-time” employees that were not eligible for and/or enrolled in the plan for the 2014 plan year?
 - Doesn’t matter. If above steps are satisfied, relief applies to ALL full-time employees of the employer regardless of whether enrolled in, or eligible for, 2014 plan year coverage.

- **NO transition rule for short-term hires**

- Under the proposed rules, an employer was permitted for 2014 to take into account an employee's expected term of employment (or the employer's aggregate turnover rate) in determining whether to treat a given employee as a variable hour employee.
- **No like transition rule was provided for 2015**
- Therefore, an employer will have to offer coverage to short-term hires reasonably expected to work a full-time schedule by the first day of the fourth full month after hire (or risk paying a penalty)

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