The ACA's Employer Mandate

In February 2014, the Treasury Department and IRS published final regulations on the Affordable Care Act's employer mandate, or "shared responsibility," provisions. These rules go into effect on January 1, 2015, except as noted below in Section V, "Transition Rules for 2015.

I. Overview of Employer Penalty Provisions
Under the ACA, employers with more than 50 full-time equivalent employees must provide a health care plan to their full-time workforce. The coverage offered by the plan must be both affordable and of minimum value. The penalty provisions are as follows:

A. Penalty for Not Offering Coverage:

- Employers with more than 50 full-time equivalent employees must provide a health care plan at least 95% of their full-time workforce, or they are assessed a penalty.
- If the employer does not offer a health care plan, and at least one full-time employee purchases coverage through an ACA exchange and receives the Federal Subsidy, the employer is assessed the penalty.
- Penalty is $2,000 per full-time employee, minus first 30 employees.

B. Penalty for Inadequate Coverage:

- The employer plan must be both "affordable" and provide "minimum value."
  - **"Affordable:"** Employee premium for individual coverage can be no more than 9.5% of total household income.
  - **"Minimum Value:"** The plan must bear at least 60% of total health care costs. (In other words, employee out of pocket costs—deductibles, copays, coinsurance—can be no more than 40% of incurred costs, on average.)
- If the plan is either unaffordable or does not provide minimum value, and at least one employee purchases coverage through the ACA exchange and receives the Federal Subsidy, the employer is assessed the penalty.
- The penalty is $3,000 per full-time employee receiving a subsidy, up to maximum of $2,000 per employee minus the first 30 employees.

II. Defining a Full-Time Employee
Under the ACA, employers must provide coverage to their full-time workforce only; part-time workers are excluded from the mandate. The law defines full-time workers as those who work an average of 30 hours per week, or 130 hours per month. This includes hours worked as well as any other paid hours, including vacation, holiday, disability, illness, etc.

A. Calculating Full-Time Status
Employers can use one of two methods to determine full-time status:

- **Monthly Measurement Method.** Under this method, the employer can continually track each employee's hours of service and report the status to the IRS each month.

- **Lookback Measurement Method.** Under this method, the employer designates:
  1. A "Measurement Period" of 3-12 months that will be used to determine the full-time/part-time status of employees.
  2. The "Stability Period" is the amount of time after the Measurement Period in which the employee remains in the status determined by the Measurement Period. The Stability Period can be 6-12 months, but cannot be shorter than the measurement period.
  3. Between these two periods, employers may also have a 90-day "Administrative Period" to determine status, sign employees up for coverage, and perform other administrative functions.

Generally, an employer must use the same measurement method for all employees, except that it may apply different methods to the following categories:

- Each group of collectively bargained employees covered by different collective bargaining agreements
- Collectively bargained and non-collectively bargained employees
- Salaried and hourly employees
- Employees who primarily work in different states

B. Employees Who May Have More Variable Hours

- **Variable hour employees.** If it cannot be determined at the start date whether an employee will reasonably be expected to work 30 hours or more (a "variable hour" employee), the employers have up to one year to determine whether the employee is full-time, using the lookback measurement method described above.
- **Layover Hours.** For employees such as pilots, flight attendants, or others who have to remain overnight at locations other than their homes, employers are required to use a "reasonable method" to determine service for those layover hours.
  - It would not be reasonable for an employer to count layover hours for compensation purposes or as required hours of service, but not count them as hours of service for ACA purposes.
  - For layover hours for which an employee does not receive compensation and that are not counted as required hours of service, it would be reasonable for an employer to credit an employee with 8 hours of service for each they are required to stay overnight for business purposes (that is, 8 hours each day, or 16 hours total, for the two days encompassing the overnight stay). The employee must be credited with the employee's actual hours of service for a day if crediting 8 hours of service substantially understates the employee's actual hours of service for the day.
  - Other methods of counting hours of service may also be reasonable.

- **Seasonal employees.** A seasonal employee is one who is expected to work at least 30 hours/week but for which "customary" employment is less than 6 months. Customary employment is defined as occurring generally at the same time every year.
- **Breaks in Service.** Employees with breaks in service longer than 13 weeks (or 26 weeks for educational employees) may be treated as new hires. The break-in-service period applies to both measurement methods.
- **Educational employees.** Adjunct faculty can use a safe harbor of 2.25 hours worked for every 1 hour of class time, plus 1 hour worked for each hour of mandatory office/meeting time, to determine full-time status. Student interns are not exempted from the mandate, except if part of a governmental work study program.

III. Affordability Safe Harbors:

The affordability standard is determined on an employee-by-employee basis. Employers have three safe harbors to determine whether the 9.5% affordability standard is met:

1. **W-2 wages.** Coverage is affordable if it does not exceed 9.5% of wages paid by the employer, as reported in Box 1 of Form W-2.
2. **Rate of pay.** Coverage is affordable if it does not exceed 9.5% of 130 hours times an hourly employee's rate of pay.
3. **Federal poverty line.** Coverage is affordable if employee's contribution for self-only coverage does not exceed 9.5% of the FPL for a family of 1.

IV. Other Items of Note:

1. **Dependent coverage.** The health plan must cover the employee's dependent children, but not spouses. Dependents include biological and adopted children only (stepchildren, foster children, etc., may be excluded), until the end of the month that they reach age 26.
2. **90-day waiting period.** For newly hired full-time employees, an offer of coverage must be made within 90 days. All calendar days, not just business days, apply. However, the 90 day waiting period can begin after an additional "reasonable and bona fide" orientation period. Proposed rules limit the orientation period to a maximum of one calendar month.
3. **Penalty can be assessed for entire length of employment after the 90 day waiting period.** This includes the administrative period (up to 90 days) and the entire measurement period (3-12 months).

V. Transitional Rules for 2015:

1. **Employers with 50-99 employees.** These employers will not be assessed the employer penalties until 2016. Employers may not reduce the size of their workforce, or reduce

hours for employees, arbitrarily in order to avoid the mandate; any reductions in this regard must be done “for bona fide business reasons.” Employers also may not materially eliminate or reduce health benefits in 2015.

2. **Employers with 100 or more employees.** These employers must only provide coverage to 70% of their full-time workforce in 2015. Beginning in 2016, 95% of full-time workers must be covered.
3. **Penalty for not providing coverage reduced slightly.** For 2015 only, penalty for not offering coverage changed to $2,000 x all full-time employees minus the first 80. In 2016 onward, the penalty is $2,000 x all full-time employees minus the first 30.
4. **Dependent coverage.** Plans that did not offer coverage to dependent children until now are not subject to the penalty until 2016. All other employers must comply in 2015.
5. **Noncalendar year plans.** If a 2014 non-calendar-year plan spills over into calendar 2015, the transition relief applies for those months. The mandate begins on their plan start date, not Jan. 1, 2015.
6. **Measurement period.** For 2015 only, employers can use a 6-month measurement period coupled with a 12-month stability period.