



# Employer Shared Responsibility Requirements

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## IRC 4980- Employer Shared Responsibility Rules (Eff 1/1/14)

- 🏛️ Commonly referred to as “Pay or Play” but IRS calls it the “Shared Responsibility” requirement
- 🏛️ Large employers must offer a plan that
  1. Is “affordable”;
  2. Provides “minimum essential coverage” (Sec. 5000A); and
  3. Provides “minimum value” (Sec. 1302(d)(2)(C))

***NEW! Non-calendar year plans are provided transition relief; will not be subject to “pay or play” rules until the first day of the plan year beginning in 2014***





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## Large Employer Definition / Test

- Employers with 50 or more Full-Time employees (or the equivalent)

## Full Time Equivalent Calculation

- Part-Time employee's hours are counted to determine whether an employer has at least 50 full-time employee equivalents
  - Total number of monthly hours work by Part-Time employees, divide by 120 = Full-Time Equivalent Employees.
  - Seasonal employee hours counted unless the "seasonal employee exception" applies (work less than 120 hours or 4 months during a calendar year)
  - Add this number to total number of existing Full-Time Employees





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- For employers close to the 50 full-time employee threshold, is there transition relief to aid them in determining their options for 2014?
- Employer can use any consecutive six-month period in 2013 to measure employee count (or an equivalent number of part-time or seasonal employee)
- By example, an employer could use a January 1 through June 30 period, analyse the results, determine whether it needs to offer a plan, and if so, choose and establish a plan



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## Seasonal Employees

-  The Notice permits employers to use a “reasonable good faith” interpretation of the term seasonal employee.  
***IRS Rule issued 12/28/12 suggests using the statutory definition of seasonal worker set forth under DOL regulations at 29 CFR 500.20(s)(1)***
-  120 day rule, seasonal employee exception- if an employer’s workforce exceeds 50 for no more than 120 days or four calendar months during a calendar year by virtue of it’s seasonal employees it employs, that employer is not deemed to be large under the statute
-  An employer must use the “measurement and stability period” rules to properly classify even seasonal employees to avoid possible employer mandate penalties



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*\$2,000 per year per FTE (Less 30)*

***This Section 4980(H)(a) penalty may occur because:***

The employer:

1. DOES NOT offer health coverage;
2. Offers health insurance plan(s) that DO NOT meet the minimum essential coverage (MEC) requirement
3. Is deemed to offer qualifying coverage to less than 95% of it's full-time employees (as now defined under PPACA) and *at least one full-time employee receives a premium tax credit on an Exchange*, which occurs because:
  - a) An employer did not offer qualifying coverage to a specific employee, or
  - b) An employer did not offer qualifying coverage to a class of employees such as permanent PT or seasonal employees who work on average more than 30 hrs/week, 130 hrs/mo. Or 1560 hrs a year; or



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***\$3,000 per year; or \$250 per month Penalty***

***This 4980(H)(b) penalty may occur because:***

- (1) the coverage under the plan is unaffordable
- (2) The coverage under the plan does not provide minimum value, or
- (3) the employer offers coverage to at least 95 percent (or, if greater, five) but less than 100 percent of its full-time employees (and to those employees' dependents) and one or more of those employees who are not offered coverage receive a premium tax credit

***In any given month, an employer can never be liable for a penalty under both Sec 4980(H)(a) and (b)***

***NEW! The proposed regulations confirms that the offer be made to the employee and their dependents, not spouses. Dependents are defined as children under age 26.***





**Employee's Income/Premium Cost Sharing-When Does An Employer Become Subject To Potential Penalty:**

<b>Federal Poverty Level (FPL)</b>	<b>2011 FPL One person</b>	<b>Household EE Contribution Percentage</b>	<b>Monthly Premiums at 9.5% (self only)</b>
100%	\$10,890	<b>N/A – credits and penalties do not apply to individuals in employer coverage if &lt; 133% FPL</b>	
133%	\$14,484		
150%	\$16,335	9.5%	\$130/month
200%	\$21,780	9.5%	\$172/month
250%	\$27,225	9.5%	\$216/month
300%	\$32,670	9.5%	\$259/month
350%	\$38,115	9.5%	\$302/month
400%	\$43,560	9.5%	\$345/month
400% family of 4	\$89,400	9.5%	\$849/month
Over 400%	<b>N/A – credits and penalties do not apply to individuals in employer coverage if &gt; 400% FPL</b>		

Source: Georgetown University Health Policy Institute



# Shared Responsibility Definitions

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- ***“Affordable”*** means that an employee contribution for ***employee only*** coverage of no more than 9.5% of the employee’s household income
- How can employers be expected to know their employee’s household income?
  - IRS Safe Harbor permits an employer to make a determination using the federal taxable wages in Box 1 of the W-2
  - ***NEW W-2 Safe Harbor choices (IRS Notice issued 12/28/12)***
    - *Rate of pay calculation using a 130 hours per month*
    - *FPL for single person*