



**ACA SHARED RESPONSIBILITY OBLIGATIONS FOR EMPLOYERS:
DO YOU HAVE AT LEAST 50 EMPLOYEES?
NUMBERS CAN BE DECEIVING**
February 7, 2013


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Shared Responsibility Obligations

- ❖ Individual Minimum Coverage vs. Pay Tax
- ❖ Employer 50+ FTEEs: Minimum Coverage at Affordable Rate vs. Excise Tax



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ACA: The Individual Mandate

Beginning 1/1/14, all individuals residing in US required to maintain minimum essential health coverage for themselves and their dependents.

➤ Options for coverage depends on household income as % of FPL.

<i>Federal Poverty Level</i>	<i>Option</i>
Under 133%	Minimum essential coverage through Medicaid, if a state so elects
Between 134%-400%	Premium assistance or cost sharing possibilities via Exchange



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ACA: The Individual Mandate

IRS Proposed Regulations – MEC


(Issued 1/30/13)

Nine categories of individuals exempt from MEC requirement:

1. Religious conscience
2. Health care sharing ministry
3. Indian tribes
4. No tax filing requirement
5. Short coverage gap
6. Hardship
7. Incarceration
8. Unaffordable coverage options
9. Not lawfully present



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ACA: The Individual Mandate

What is MEC?

- **Employer-sponsored Group Health Plans**
 - Insured and self-funded
 - Grandfathered plans
 - COBRA coverage (if actually elected)
 - Retiree coverage
 - GHP sponsored by non-profit and for-profit entities and government entities

HIPAA-excepted coverage does not qualify as MEC
Examples: Limited-scope dental or vision, LTC, Limited benefit plans, Non-coordinated benefits, Supplemental benefits



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ACA: The Individual Mandate

What is MEC?

- **Government-sponsored plans:** Medicare, Medicaid, CHIP, TRICARE, Veterans health programs
- **Individual health policies** including QHP via Exchange
- **Other similar types of comprehensive health coverage** deemed MEC by HHS




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ACA: The Individual Mandate

Potential Penalties for Failure to Maintain MEC

Year	Penalty
2014	Greater of: \$95 per adult and \$47.50 per child (up to \$285 for a family); or 1.0% of family income
2015	Greater of: \$325 per adult and \$162.50 per child (up to \$975 for a family); or 2.0% of family income
2016 and Beyond	Greater of: \$695 per adult and \$347.50 per child (up to \$2,085 for a family); or 2.5% of family income



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ACA: Shared Responsibility for Employers

Beginning January 1, 2014, a tax penalty could be imposed against employers who:

- Fail to offer health coverage to full-time employees; or
- Offer health coverage to employees qualified for premium tax credits or cost-sharing reductions.


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ACA: Shared Responsibility for Employers


IRS issued Proposed Reliance Regulations & FAQs
(1/2/13)

Two separate potential excise taxes assessed:

1. 'No Coverage' Penalty
2. 'Inadequate or Unaffordable' Penalty




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Employers Subject to Shared Responsibility Requirement

Applies to All Public and Private ERs who employ 50 FT (plus FTE) EEs on business days during preceding calendar year.

- Number of FT EEs (plus seasonal EEs) in each calendar month in preceding calendar year + Number of FTEEs (plus seasonal EEs) and divide by 12.



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Employers Subject to Shared Responsibility Requirement

- ***First year transition relief:*** Number of EE workforce determined in any consecutive 6-month period in 2013 to determine applicability in 2014
- ***Seasonal worker exception:*** When ER's workforce >50 FTEs for 120 days or less during calendar year and EEs in excess of 50 are seasonal EEs
- ***Control Group Rules Apply:*** For counting purposes, IRC group rules apply (IRC Section 414 (b), (c), (m), (n)). *[Penalties assessed separately to individual entity]*



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Shared Responsibility Requirement


Type of Health Coverage Employers Must Offer:

Minimum essential coverage ("MEC")

- Includes typical coverage available under ER-sponsored group plans (without regard to funding method or GF status)



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Shared Responsibility Requirement

What is Affordable Coverage?


Coverage under ER-sponsored plan (based on self-only coverage cost) deemed affordable if EE's required contribution < 9.5% of EE's household income (modified AGI) for taxable year

Three safe harbors ERs can use to determine affordability (based on self-only coverage cost):

1. **Form W-2 wages** (Box 1)
2. **Rate of pay method:**
 - *Hourly EEs*: Minimum value can't > 9.5% of amount equal to 130 hours, multiplied by EE's hourly rate of pay on 1st day of the coverage period
 - *Salaried EEs*: Monthly salary used instead of the 130 hour standard
3. **Federal poverty line (FPL) standard**: Minimum value can't > 9.5% of FPL rate for applicable calendar year, divided by 12.



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Shared Responsibility Requirement

What is the Minimum Value Standard?

Coverage meets minimum value standard if it covers minimum 60% of total allowed cost of benefits expected to be incurred under the plan.

Three options ERs could use to determine Minimum Value:

1. Minimum Value Calculator developed by IRS/HHS
2. Designed-based Safe Harbor Checklists
3. Actuarial Certification



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Shared Responsibility Requirement

Who Must Be Offered Coverage?
 ER required to offer MEC to minimum 95% of its FTEs (FTEs + dependents* beginning 2015) or risk 'No Coverage' penalty.

**Dependents* include EE's son, daughter, stepchild or foster child up to 26th birthday; does not include spouse.




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Shared Responsibility Requirement

Who are Full-time Employees?

- *Employee* means common-law EE
 - Does not include independent contractors, leased EEs, sole proprietors, partners, 2% S-corp shareholders, or EEs working outside US
- *Full-time employee* (FTE) means one who works avg 30 hrs/week (130 hrs/calendar month = 30 hrs/week)



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Shared Responsibility Requirement

Calculating Hours of Service


For purposes of determining the number of hours of service an EE works, count **actual** paid working hours

plus

paid hours not worked (vacation, holiday, sick leave, disability leave, layoff, jury duty, military duty or other PTO)



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Shared Responsibility Requirement


Calculating Hours of Service

Special Rules for Unpaid Leave of Absence (FMLA, USERRA, other unpaid LOA): Credit must be given

- Break in service of more than 26 weeks: Individual considered new EE
- Break in service of at least 4 weeks that exceeds initial employment can be considered (on uniform and consistent basis), a break in employment; Individual considered new EE upon return




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Shared Responsibility Requirement

Calculating Hours of Service – Determining whether EE regularly scheduled to work 30 hrs/week:

- *For Hourly EEs:* Calculate record of hours worked and hours paid
- *For non-hourly EEs:*
 - **Actual hours of service** – Based on record of hours worked and paid
 - **Days-worked equivalency** – Based on 8 hrs/service each day EE required to be credited with minimum 1 hr/service
 - **Weeks-worked equivalency** – Based on 40 hrs/service for each week EE required to be credited with minimum 1 hr/service




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Shared Responsibility Requirement

Calculating Hours of Service – Determining whether EE regularly scheduled to work 30 hrs/week, cont.:

- ERs not required to use same counting method for all non-hourly EEs, i.e., ERs can apply different methods for different classifications
- Days-worked equivalency or Weeks-worked equivalency can't be used in a way to cause loss of FT status.



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Shared Responsibility Requirement

Calculating Hours of Service, *cont.*


Special Rules for School and Colleges

Calculating periods of employment breaks during academic terms:

- EE working 30+ hrs/week during regular school year deemed to work 30+ hrs/week during school breaks (summer break)




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Shared Responsibility Requirement

When Must Coverage be Offered?

- Coverage must be offered to FTEs within 90 days of employment
- Effective for plan years beginning on or after 1/1/14, maximum waiting period that can be imposed is 90 days (applies to all sized plans)
- For shared responsibility purposes, FT employees offered adequate coverage at affordable rate within 3 months, no penalty risk
- EEs must be given opportunity to enroll in ER's plans at least annually



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Shared Responsibility Requirement

FT Status Unknown at Date of Hire

- Permissible to use Look-back period (3-12 months)
- If EE works 30+ hrs/week, deemed to be FTE during stability period (minimum 6 months - can't be < measurement period)

New Hires: Can use initial measurement period vs. standard measurement period:

- *Initial measurement period* - measured from DOH or shortly thereafter.
- *Standard measurement period* - defined by ER; can be calendar year or other period of time defined by the employer.



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Shared Responsibility Requirement

FT Status Unknown at Date of Hire, con't.

Variable or Seasonal EEs: ER can use a measurement period (as defined by ER)



- A *variable hour EE* is one working variable or uncertain hours; unable to be determine if EE will be working min 30 hrs/week during initial measurement period.
- A *seasonal worker* is one working on a seasonal basis (as defined under the federal wage and hour law) and retail workers employed exclusively during holiday seasons.


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Shared Responsibility Requirement


- Measurement Period and Stability Period must be same for all individuals in a particular classification of EEs.
- Four types of allowed classifications of EEs:
 - Collectively bargained EEs and non-collectively bargained EEs;
 - Each group of collectively bargained EEs covered by a separate collective bargaining agreement;
 - Salaried employees and hourly employees; and
 - EEs whose primary places of employment are in different States.
- Permissible imposition of optional administrative period (90 days max) between end of measurement and start of stability period



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Shared Responsibility Requirement

Employment Status Changes

- EEs remain in same employment status for duration of the measurement period
- *Variable or Seasonal EEs*: If employment status change occurs within initial measurement period must be re-classified within 4 months of status change
- *Re-hired employees*: Deemed FT status if period between termination and re-hire at least 26 consecutive weeks


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Shared Responsibility Requirement

Calculation of Penalties


No Coverage Excise Tax Penalty

If ER fails to offer MEC to minimum 95% of its FTEs (EEs + dependents beginning 2015) for any calendar month and employs at least one credit EE*, excise tax penalty is calculated monthly as $(\text{Number of FTEs} - 30) \times \166.67 (~\$2,000/yr).

** A credit employee is one who works minimum 30 hours/week and eligible for premium tax credit or cost sharing assistance for buying insurance via exchange.*



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Shared Responsibility Requirement


Calculation of Penalties, con't

Inadequate or Unaffordable Excise Tax Penalty


If ER offers health coverage to minimum 95% of its FTEs and employs at least one credit EE*, and coverage fails to meet minimum value standard or is unaffordable, then the monthly excise tax penalty is the lesser of:

- Number of credit employees* multiplied by \$250 (~\$3,000/yr), or
- $(\text{Number of FTEs} - 30) \times \166.67 (~\$2,000/yr)

** A credit employee is one who works minimum 30 hours/week and eligible for premium tax credit or cost sharing assistance for buying insurance via exchange.*




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Shared Responsibility Requirement

Summary of Penalties

- MEC not offered and at least one EE goes to Exchange and receives premium tax credit:
 - \$2,000 per year per FTE (less first 30)
- Minimal Coverage or Unaffordable (i.e., EE's premium >9.5% of household income) and at least one employee goes to Exchange and receives premium tax credit, then penalty lesser of:
 - \$3,000 per year for each FTE using Exchange and qualifying for premium credit, or
 - \$2,000 per year per FTE (less first 30)




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Shared Responsibility Requirement

Effective Date: January 1, 2014 without regard to plan year

- *Transition Relief for 'Non-Calendar Plan Year' Plans (in effect on 12/27/12):* Penalty applies on 1st day of plan year beginning in 2014 as long as:
 - Coverage offered to minimum one-third EE population (including FT and PT EEs) during most recent open enrollment period, or plan covered minimum 25% of EE population; and
 - Plan offers adequate coverage at an affordable rate at plan anniversary in 2014




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Shared Responsibility Requirement

Penalty Procedure

- Regulations provide methodology for penalty process
- IRS notifies ER of any penalties – payment due upon notice and demand by the Secretary of the Treasury
- Payment assessed and collected in same manner as other IRS assessable penalties



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Shared Responsibility Requirement


Indexing the Penalty Payment

- Beginning 2015 and beyond, the \$2,000/\$3,000 amounts used in determining assessable payment amount will be indexed for inflation.
- Increase will equal the \$2,000/\$3,000 amount multiplied by the “*premium adjustment*” amount* for the calendar year.

* *Premium Adjustment Amount: HHS Secretary determines by Oct. 1 the percentage (if any) by which the average U.S. per capita premium for health insurance coverage for the preceding calendar year exceeds average per capita premium for 2013.*



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Shared Responsibility Requirement


Indexing the Penalty Payment, *con't.*

➤ Assuming 9% inflation in cost of premiums, by 2019:

- The \$2,000 per year/per EE penalty increases > \$3,000
- The \$3,000 per qualifying EE penalty increases > \$4,600 per year




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Shared Responsibility Requirement

What Should An Employer Do?

1. Determine ER size.
2. Determine which EEs are full-time (30+ hours per week or 130 hours per month).
3. Determine which EEs are part-time (<30 hours per week or 130 per month).
4. Determine which EEs are variable or seasonal.




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Shared Responsibility Requirement

What Should An Employer Do?

5. Decide whether to take advantage of a look-back (measurement) and stability period.
 - If using a measurement/stability period:
 - Define it for new EEs (initial) and define it for on-going EEs (standard).
 - Add to new hire practice, a determination of whether the individual is full-time, part-time, variable or seasonal. If variable or seasonal, track hours worked during measurement period.
 - If you're not using a measurement/stability period, analyze status each month.




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Shared Responsibility Requirement

What Should An Employer Do?

6. Define methodology for determining affordability: Form W-2 method, the rate of pay method or the Federal poverty line (FPL) standard.
7. Make certain EEs are given an effective opportunity to enroll in the plan (at least once per plan year).
8. Know your risk. How many full-time EEs are offered MEC? Is it affordable? To avoid a penalty risk, offer adequate coverage at an affordable rate. It is the offer, not the take-up rate, that matters.



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Questions?

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