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FAQs on the Employer Shared Responsibility Rules

The Affordable Care Act (ACA) imposes a penalty on applicable large employers (ALEs) that do not offer health insurance coverage to substantially all full-time employees and dependents. Penalties may also be imposed if coverage is offered, but is unaffordable or does not provide minimum value. The ACA's employer penalty rules are often referred to as "employer shared responsibility" or "pay or play" rules.

> The employer penalty provisions were set to take effect on Jan. 1, 2014. However, in July 2013, the Treasury **delayed the employer penalties and related reporting requirements for one year, until 2015.** Therefore, no penalties will apply for 2014. Smaller ALEs may also be eligible for an additional one-year delay.

On Feb. 12, 2014, the Internal Revenue Service (IRS) published final rules on the employer shared responsibility rules, which finalize provisions in proposed rules released on Jan. 2, 2013. Under the final rules, **ALEs that have fewer than 100 full-time employees (including full-time equivalents) generally will have an additional year, until 2016, to comply with the pay or play rules**. ALEs with 100 or more full-time employees (including FTEs) must comply starting in 2015.

On Dec. 28, 2012, the IRS issued the following **Questions & Answers** on the employer shared responsibility rules to help employers comply with the requirements. The IRS revised these FAQs on Feb. 10, 2014, to include information on the final rules, and again on May 13, 2014, to provide further clarification for employers.

BASICS OF THE EMPLOYER SHARED RESPONSIBILITY PROVISIONS

1. What are the employer shared responsibility provisions?

For 2015 and after, employers employing at least a certain number of employees (generally 50 full-time employees or a combination of full-time and part-time employees that is equivalent to 50 full-time employees) will be subject to the employer shared responsibility provisions under section 4980H of the Internal Revenue Code (added by the ACA). As defined by the statute, a full-time employee is an individual employed on average at least **30 hours of service per week**. An employer that meets the 50 full-time employee threshold is referred to as an ALE.

Under the employer shared responsibility provisions, if ALEs do not offer affordable health coverage that provides a minimum level of coverage to their full-time employees (and their dependents), the ALE may be subject to an employer shared responsibility penalty if at least one of its full-time employees receives a premium tax credit for purchasing individual coverage on one of the new Affordable Insurance Exchanges (Exchanges), also called a Health Insurance Marketplace (Marketplace).

2. When do the employer shared responsibility provisions go into effect?

The employer shared responsibility provisions generally are not effective until Jan. 1, 2015, meaning that no employer shared responsibility penalties will be assessed for 2014. See Notice 2013-45. Employers will use information about the number of employees they employ and their hours of service during 2014 to determine whether they employ enough employees to be an ALE for 2015. See Q&A 4 for more information on determining whether an employer is an ALE and Q&As 29 through 39 for more information about transition relief for 2015.

3. Is more detailed information available about the employer shared responsibility provisions?

Yes. The IRS has issued final regulations on the employer shared responsibility provisions. The IRS also has issued final regulations on the related information reporting by ALEs on health insurance coverage offered under employer-sponsored plans.

WHICH EMPLOYERS ARE SUBJECT TO THE EMPLOYER SHARED RESPONSIBILITY PROVISIONS?

4. I understand that the employer shared responsibility provisions apply only to employers employing at least a certain number of employees. How many employees must an employer have to be subject to the employer shared responsibility provisions?

To be subject to the employer shared responsibility provisions for a calendar year, an employer must have employed, during the previous calendar year, at least 50 full-time employees or a combination of full-time and part-time employees that equals at least 50. For example, an employer that employs 40 full-time employees (that is, employees employed 30 or more hours per week on average) and 20 employees employed 15 hours per week on average has the equivalent of 50 full-time employees and would be an ALE.

Seasonal workers are taken into account in determining the number of full-time employees. However, if an employer's workforce exceeds 50 full-time employees (including full-time equivalents) for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, the employer is not considered an ALE. Seasonal workers are workers who perform labor or services on a seasonal basis (as defined by the DOL) and retail workers employed exclusively during holiday seasons. For this purpose, employers may apply a reasonable, good faith interpretation of the term "seasonal worker."

Employers will determine each year, based on their current number of employees, whether they will be considered an ALE for the next year. For example, if an employer has at least 50 full-time employees (including full-time equivalents) for 2014, it will be considered an ALE for 2015. Note that because employers will be performing this calculation for the first time to determine their status for 2015, there is a transition rule intended to make this first calculation easier. See Q&A 31 for a discussion of this transition rule for 2015 determination of ALE status.

Employers average their number of employees across the months in the year to see whether they will be an ALE for the next year. This averaging can take account of fluctuations that many employers may experience in their work force across the year. The final regulations provide additional information about how to determine the average number of employees for a year, including information about how to take account of salaried employees who may not clock their hours.

5. How does an employer that was not in existence throughout the preceding calendar year determine if it employs enough employees to be subject to the employer shared responsibility provisions?

An employer that was not in existence on any business day in the prior calendar year is considered an ALE in the current year if the employer:

- Is reasonably expected to employ an average of at least 50 full-time employees (including full-time equivalents) on business days during the current calendar year; and
- Actually employs an average of at least 50 full-time employees (including full-time equivalents) on business days during the calendar year.

In contrast, for the next year (the year after the first year the employer was in existence), the employer will determine its status as an ALE using the rules that generally apply (that is, based on the number of full-time employees and full-time equivalents that the employer employed in the preceding year).

6. If two or more companies have a common owner or are otherwise related, are they combined for purposes of determining whether they employ enough employees to be subject to the employer shared responsibility provisions?

Yes, section 4980H includes a longstanding provision that also applies for other tax and employee benefit purposes, under which companies that have a common owner or are otherwise related generally are combined and treated as a single employer, and so would be combined for purposes of determining whether or not they collectively employ at least 50 full-time employees (including full-time equivalents). If the combined total meets the threshold, then each separate company is subject to the employer shared responsibility provisions—even those companies that individually do not employ enough employees to meet the threshold.

Note that these rules for combining related employers do not apply for purposes of determining whether a particular company owes an employer shared responsibility penalty or the amount of any penalty. That is determined separately for each related company.

7. Do the employer shared responsibility provisions apply only to large employers that are for-profit businesses or to other large employers as well?

All employers that are ALEs are subject to the employer shared responsibility provisions, including for-profit, non-profit and government entity employers.

8. Do the employer shared responsibility provisions apply to government entities?

Yes. There is no exclusion from the employer shared responsibility provisions for government entities. All employers that are ALEs are subject to the employer shared responsibility provisions, including federal, state, local and Indian tribal government employers.

9. Do the employer shared responsibility provisions apply to employers in states where a Federally-facilitated Exchange (Marketplace) has been established on behalf of the state?

Yes. An ALE is subject to an employer shared responsibility penalty if at least one of its full-time employees receives a premium tax credit. A premium tax credit is only available to eligible individuals who obtain coverage through an Exchange, which includes a state-based Exchange, regional Exchange, subsidiary Exchange or the Federally-facilitated Exchange (FFE) established on behalf of a state.

10. Do the employer shared responsibility provisions apply to employers with full-time employees who are eligible for health coverage through another source, such as Medicare, Medicaid or a spouse's employer?

Yes. For purposes of determining whether an employer is an ALE, all employees are counted (subject to a limited exception for certain seasonal workers), regardless of whether the employees are eligible for health coverage from another source, such as Medicare, Medicaid or a spouse's employer. Thus, an ALE with full-time employees who are eligible for health coverage through another source (such as Medicare, Medicaid or a spouse's employer) will be subject to the employer shared responsibility provisions regardless of whether those employees are eligible for coverage from another source. But, employees who are eligible for Medicare or Medicaid are not eligible for a premium tax credit. If no full-time employee receives a premium tax credit (for example, because all of an employer's full-time employees are eligible for Medicare or Medicaid), the ALE will not be subject to an employer shared responsibility penalty.

However, as described in Q&A 18 below, if an ALE does not offer coverage to its full-time employees (and their dependents) or offers coverage to fewer than 95 percent of its full-time employees (and their dependents) and a full-time employee receives a premium tax credit, the ALE will be liable for an employer shared responsibility penalty, which will be calculated based on the ALE's number of full-time employees. For this purpose, the number of full-time employees includes full-time employees who are eligible for coverage from another source. See Q&As 33 through 37 for transition relief for 2015.

11. Do the employer shared responsibility provisions apply to employers with full-time employees who are exempt from the individual shared responsibility provision (that is, the individual mandate), such as members of a health care sharing ministry or members of a federally-recognized Indian tribe?

Yes. For purposes of determining whether an employer is an ALE, all employees are counted (subject to a limited exception for certain seasonal workers), regardless of whether they are exempt from the individual mandate. Thus, an ALE with full-time employees who are exempt from the individual mandate will be subject to the employer shared responsibility provision. Employees who are exempt from the individual mandate may be eligible for a premium tax credit. If no full-time employee receives a premium tax credit, the ALE will not be subject to an employer shared responsibility penalty.

However, if an ALE does not offer coverage to its full-time employees (and their dependents) and a full-time employee receives a premium tax credit, the ALE will be liable for an employer shared responsibility penalty, which will be calculated based on the ALE's number of full-time employees. See Q&As 10 and 18.

12. Which employers are not subject to the employer shared responsibility provisions?

For a calendar year, employers who employ fewer than 50 full-time employees (including full-time equivalents) in the prior calendar year are not subject to the employer shared responsibility provisions. See Q&A 4 for a limited exception for employers with certain seasonal workers, and Q&As 34 through 36 for 2015 transition relief for employers with fewer than 100 full-time employees (including full-time equivalents).

13. Are companies with employees working outside the United States subject to the employer shared responsibility provisions?

For purposes of determining whether an employer is an ALE, an employer generally takes into account only work performed in the United States. For example, if a foreign employer has a large workforce worldwide, but fewer than 50 full-time employees (including full-time equivalents) in the United States, the foreign employer generally would not be subject to the employer shared responsibility provisions.

14. Are companies that employ U.S. citizens working abroad subject to the employer shared responsibility provisions?

A company that employs U.S. citizens working abroad generally would be subject to the employer shared responsibility provisions only if the company had at least 50 full-time employees (including full-time equivalents), determined by taking into account work performed in the United States. Thus, employees working only abroad, whether or not U.S. citizens, generally will not be taken into account for purposes of determining whether an employer is ALE or for purposes of determining whether the employer owes an employer shared responsibility penalty (or the amount of any penalty).

IDENTIFICATION OF FULL-TIME EMPLOYEES

15. How does an employer identify its full-time employees for purposes of the employer shared responsibility provisions?

An employer's number of full-time employees matters both for purposes of:

- Whether the employer shared responsibility provisions apply to an employer; and
- Whether an employer shared responsibility penalty is owed by an employer (and the amount of that penalty).

An employer identifies its full-time employees based on each employee's hours of service. For purposes of the employer shared responsibility provisions, an employee is a full-time employee for a calendar month if he or she averages at least 30 hours of service per week. Under the final regulations, for purposes of determining full-time employee status, 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week.

The final regulations provide two measurement methods for determining whether an employee has sufficient hours of service to be a full-time employee.

(1) One method is the **monthly measurement method**, under which an employer determines each employee's status as a full-time employee by counting the employee's hours of service for each month.

(2) The other method is the **look-back measurement method**, under which an employer may determine the status of an employee as a full-time employee during a future period (referred to as the stability period), based upon the hours of service of the employee in a prior period (referred to as the measurement period). The look-back measurement method for identifying full-time employees is available only for purposes of determining and computing liability for an employer shared responsibility penalty, and not for purposes of determining if the employer is an ALE. The final regulations describe approaches that can be used for various circumstances, such as for employees who work variable hour schedules, seasonal employees and employees of educational organizations.

These methods prescribe minimum standards for the identification of full-time employee status. Employers always may make additional employees eligible for coverage, or otherwise offer coverage more expansively than required.

16. For purposes of the employer shared responsibility provisions, what is an hour of service?

Generally, an hour of service means:

- Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and
- Each hour for which an employee is paid, or entitled to payment, for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

Under the final regulations, an hour of service does not include any hour of service performed as a bona fide volunteer, as part of a federal work-study program (or a substantially similar program of a state or political subdivision thereof) or to the extent the compensation for services performed constitutes income from sources without the United States.

In addition, until further guidance is issued, a religious order is permitted, for purposes of determining if an employee is a full-time employee for the employer shared responsibility provisions, to not count as an hour of service any work performed by an individual who is subject to a vow of poverty as a member of that order when the work is in the performance of tasks usually required (and to the extent usually required) of an active member of the order.

17. Are there special rules for hours of service that are particularly challenging to identify or track or for whom the final regulations' general rules for determining hours of service may present special difficulties?

The IRS continues to consider additional rules for the determination of hours of service for certain categories 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 (including adjunct faculty, commissioned salespeople and airline employees) and certain categories of work hours associated with some positions of employment, including layover hours (for example for airline employees) and on-call hours.

For this purpose, until further guidance is issued, employers are required to use a **reasonable method of crediting hours of service that is consistent with the employer shared responsibility rules**. The preamble to the final regulations includes examples of methods of crediting these hours that are reasonable and that are not reasonable, including a method that is considered reasonable for crediting hours of service for adjunct faculty members.

LIABILITY FOR THE EMPLOYER SHARED RESPONSIBILITY PENALTY

18. Under what circumstances will an employer owe an employer shared responsibility penalty?

For 2015 and after, an ALE will be liable for an employer shared responsibility penalty only if:

(a) The employer does not offer health coverage or offers coverage to fewer than 95 percent of its full-time employees and the dependents of those employees, and at least one of the full-time employees receives a premium tax credit to help pay for coverage on an Exchange; OR

(b) The employer offers health coverage to all or at least 95 percent of its full-time employees, but at least one full-time employee receives a premium tax credit to help pay for coverage on an Exchange, which may occur because the employer did not offer coverage to that employee or because the coverage the employer offered that employee was either unaffordable to the employee (see Q&A 19, below) or did not provide minimum value (see Q&A 20, below).

But see Q&A 33 for transition relief with respect to offers of coverage to dependents for 2015, Q&As 34 through 36 for 2015 transition relief for certain employers with fewer than 100 full-time employees (including full-time equivalents), and Q&A 37 for 2015 transition relief for all other employers with respect to the percentage of full-time employees to whom coverage must be offered to avoid the penalty described in paragraph (a) above.

19. How does an employer know whether the coverage it offers is affordable?

If an employee's share of the premium for employer-provided coverage would cost the employee more than 9.5 percent of that employee's annual household income, the coverage is not considered affordable for that employee. IRS Revenue Procedure 2014-37 (Rev. Proc. 2014-37) indexed the ACA's affordability contribution percentage for 2015. For plan years beginning in 2015, employer-sponsored coverage will generally be considered affordable under the pay or play rules if the employee's required contribution for self-only coverage does not exceed **9.56 percent** of the employee's household income for the year.

Because employers generally will not know their employees' household incomes, employers can take advantage of one or more of the three affordability safe harbors set forth in the final regulations that are based on information the employer will have available, such as the employee's Form W-2 wages or the employee's rate of pay. If an employer meets the requirements of any of these safe harbors, the offer of coverage will be deemed affordable for purposes of the employer shared responsibility provisions, regardless of whether it was affordable to the employee for purposes of the premium tax credit. The three affordability safe harbors are:

(1) **The Form W-2 wages safe harbor**. The Form W-2 wages safe harbor generally is based on the amount of wages paid to the employee that are reported in Box 1 of that employee's Form W-2;

(2) **The rate of pay safe harbor**. The rate of pay safe harbor generally is based on the employee's rate of pay at the beginning of the coverage period, with adjustments permitted, for an hourly employee, if the rate of pay is decreased (but not if the rate of pay is increased); and

(3) **The federal poverty line safe harbor**. The federal poverty line safe harbor generally treats coverage as affordable if the employee contribution for the year does not exceed 9.5 percent of the federal poverty line for a single individual for the applicable calendar year.

The general employer mandate affordability rules determine affordability by reference to the rules for determining premium tax credit eligibility. However, the affordability safe harbors do not reference the premium tax credit eligibility rules. Instead**, the safe harbor rules specifically use 9.5 percent** as the required contribution.

Thus, based on a literal reading of the affordability safe harbor rules, ALEs using any of the affordability safe harbors in 2015 will measure their plan's affordability using a required contribution of 9.5 percent (instead of the adjusted 9.56 percent). ALEs who are not using any of the affordability safe harbors in 2015 will apply the required contribution

percentage under the premium tax credit eligibility rules. As a result, these employers can measure their health plan's affordability using a required contribution of 9.56 percent.

The IRS may issue guidance in the future to address this disconnect.

The final regulations provide additional information on these affordability safe harbors. These safe harbors are all optional. An employer may use one or more of the safe harbors only if the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that provides minimum value for the self-only coverage offered to the employee. An employer may choose to use one or more of the safe harbors for all of its employees or for any reasonable category of employees, provided it does so on a uniform and consistent basis for all employees in a category. If an employer offers multiple healthcare coverage options, the affordability test applies to the lowest-cost self-only option available to the employee that also meets the minimum value requirement (see Q&A 20, below).

20. How does an employer know whether the coverage it offers provides minimum value?

A plan provides minimum value if it covers at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan. The Department of Health and Human Services (HHS) and the IRS have produced a minimum value calculator. By entering certain information about the plan (such as deductibles and co-pays) into the calculator, employers can get a determination as to whether the plan provides minimum value. Additionally, on May 3, 2013, the IRS issued proposed regulations regarding the other methods available to determine minimum value.

21. If an employer offers health coverage that is affordable and that provides minimum value to its full-time employees and offers health coverage to the dependents of those employees, will it be subject to an employer shared responsibility penalty if some of its employees purchase health insurance through an Exchange or if some of its employees enroll in Medicare or Medicaid?

No. An ALE will not be subject to an employer shared responsibility penalty solely because one, some or all of its employees purchase health insurance coverage through an Exchange or enroll in Medicare or Medicaid. An employer will not be liable for an employer shared responsibility penalty unless at least one full-time employee receives a premium tax credit. In general, an employee will not be eligible for a premium tax credit if the employer has offered that employee health coverage that is affordable (see Q&A 19) and that provides minimum value (see Q&A 20), even if that employee rejects the offer of coverage and instead enrolls in coverage through an Exchange or enrolls in Medicare or Medicaid. If no full-time employee receives a premium tax credit, the employer will not be subject to an employer shared responsibility penalty.

22. If an employer offers health coverage that is affordable and that provides minimum value to its full-time employees and offers health coverage to the dependents of those employees, will it be subject to an employer shared responsibility penalty if an employee's spouse purchases health insurance through an Exchange, or if a spouse enrolls in Medicare or Medicaid?

No. To avoid a potential employer shared responsibility penalty, an ALE must offer health coverage that is affordable and provides minimum value to its full-time employees and must offer health coverage to the dependents of those employees (see Q&As 18, 19 and 20). For this purpose, **a spouse is not a dependent**. An ALE will not be subject to an employer shared responsibility penalty solely because it does not offer health coverage to an employee's spouse or if the spouse purchases health insurance coverage through an Exchange or enrolls in Medicare or Medicaid. An ALE will not be liable for an employer shared responsibility penalty unless a full-time employee receives a premium tax credit. If no full-time employee receives a premium tax credit, the ALE will not be subject to an employer shared responsibility penalty. Thus, even if an employee's spouse receives a premium tax credit, the ALE will not be subject to an employer shared responsibility penalty.

If an ALE offers health coverage that is affordable and that provides minimum value to a full-time employee's spouse, the spouse will not be eligible for the premium tax credit. For more information about eligibility for the premium tax credit, see the premium tax credit final regulations and the IRS' questions and answers.

23. If an employer offers health coverage that is affordable and that provides minimum value to its full-time employees and offers health coverage to the dependents of those employees, will it be subject to an employer shared responsibility penalty if some of its employees purchase health insurance coverage for their dependents through an Exchange or if some of its employees enroll their dependents in Medicare or Medicaid?

No. An ALE will not be subject to an employer shared responsibility penalty solely because one, some or all of its employees purchase health insurance coverage for their dependents through an Exchange or enroll their dependents in Medicare or Medicaid. An employer will not be liable for an employer shared responsibility penalty unless a full-time employee receives a premium tax credit. If no full-time employee receives a premium tax credit, the employer will not be subject to an employer shared responsibility penalty.

If an employer offers health coverage that is affordable (see Q&A 19) and that provides minimum value (see Q&A 20) to the dependents of its full-time employees, those dependents will not be eligible for a premium tax credit. For more information about eligibility for the premium tax credit, see the premium tax credit final rules and the IRS' Q&As.

CALCULATION OF THE EMPLOYER SHARED RESPONSIBILITY PENALTY

24. If an employer that does not offer coverage or that offers coverage to fewer than 95 percent of its full-time employees (and their dependents) owes an employer shared responsibility penalty, how is the amount of the penalty calculated?

If an ALE does not offer coverage or offers coverage to fewer than 95 percent of its full-time employees (and their dependents), it owes an employer shared responsibility penalty equal to the number of full-time employees the employer employed for the year (minus up to 30) multiplied by $2,000, as long as at least one full-time employee receives a premium tax credit. (Note: for purposes of this calculation, a full-time employee does not include a full-time equivalent). Also, see Q&A 33 for transition relief for offers of dependent coverage for 2015.

For an employer that offers coverage for some months but not others during the calendar year, the penalty is computed separately for each month for which coverage was not offered. The amount of the penalty for the month equals the number of full-time employees the employer employed for the month (minus up to 30) multiplied by 1/12 of $2,000. If the employer is related to other employers (see Q&A 6 above), then the 30-employee exclusion is allocated among all the related employers in proportion to each employer's number of full-time employees. See Q&As 38 and 39 for information about 2015 transition relief for calculating the penalty.

25. If an employer offers coverage to at least 95 percent of its full-time employees (and their dependents) but, nevertheless, owes the employer shared responsibility penalty, how is the amount of the penalty calculated?

For an employer that offers coverage to at least 95 percent of its full-time employees (and their dependents), but has one or more full-time employees who receive a premium tax credit, the penalty is computed separately for each month. See Q&A 33 for transition relief with respect to offers of dependent coverage for 2015.

The amount of the penalty for the month equals the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of $3,000. The amount of the penalty for any calendar month is capped at the number of the employer's full-time employees for the month (minus up to 30) multiplied by 1/12 of $2,000. (The cap ensures that the penalty for an employer that offers coverage can never exceed the penalty that employer would owe if it did not offer coverage (see Q&A 24)). See Q&As 38 and 39 for 2015 transition relief for calculating the penalty.

26. Will the amount of the employer shared responsibility penalty be increased over time?

Yes. The employer shared responsibility provisions provide an inflation adjustment mechanism beginning in years after 2014. The transition relief announced in Notice 2013-45 that the employer shared responsibility provisions will not be applied for 2014 does not affect the statutory inflation adjustment mechanism beginning in years after 2014.

PAYING AN EMPLOYER SHARED RESPONSIBILITY PENALTY

27. How will an employer know that it owes an employer shared responsibility penalty?

The IRS will adopt procedures that ensure employers receive certification that one or more employees have received a premium tax credit. The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made. The contact for a given calendar year will not occur until after:

- The due date for employees to file individual tax returns for that year claiming premium tax credits; and
- The due date for ALEs to file the information returns identifying their full-time employees and describing the coverage that was offered (if any).

28. How will an employer pay an employer shared responsibility penalty?

If it is determined that an employer is liable for an employer shared responsibility penalty after the employer has responded to the initial IRS contact, the IRS will send a notice and demand for payment. That notice will instruct the employer on how to make the payment. **Employers will not be required to include the employer shared responsibility penalty on any tax return that they file.** As explained in Q&A 2, no employer shared responsibility penalties will be assessed for 2014.

TRANSITION RELIEF

29. Is there transition relief from the employer shared responsibility provisions for 2014?

Yes. Notice 2013-45, issued on July 9, 2013, provides as transition relief that no employer shared responsibility penalty applies for 2014. The employer shared responsibility provisions are effective for 2015 (see Q&A 2). See Q&As 30 through 39 for additional information about 2015 transition relief.

30. I understand that the employer shared responsibility provisions do not go into effect until 2015. However, the health plan that I offer to my employees runs on a non-calendar year plan year that starts in 2014 and will run into 2015. Do I need to make sure my plan complies with the employer shared responsibility provisions in 2014 when the next non-calendar year plan year starts?

The preamble to the final regulations provides three pieces of transition relief addressing non-calendar year plans:

(1) Pre-2015 eligibility transition relief;

(2) Significant percentage transition relief (all employees); and

(3) Significant percentage transition relief (full-time employees).

The first piece of relief generally addresses employees that are already eligible to participate in the non-calendar year plan. Specifically the pre-2015 eligibility transition relief provides that 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 as of Feb. 9, 2014, (whether or not they take the coverage) and who are offered affordable coverage that provides minimum value effective no later than the first day of the 2015 plan year, the employer will not be subject to a potential employer shared responsibility penalty until the first day of the 2015 plan year. The remaining two pieces of relief generally address employees that have not been eligible to participate in the non-calendar year plan. They provide that if the employer meets certain requirements generally related to the portion of the employer's employees already eligible for or participating in the non-calendar year plan, the relief may be extended to those employees that have not been eligible to participate.

The preamble to the final regulations provides additional information on the rules for determining whether an employer is eligible for this relief. All of this transition relief applies for the period before the first day of the first non-

calendar year plan year beginning in 2015 (the 2015 plan year) but only for employers that maintained non-calendar year plans as of Dec. 27, 2012, and only if the plan year was not modified after Dec. 27, 2012, to begin at a later calendar date. See Q&A 36 on 2015 transition relief.

31. Is transition relief available to assist employers that are close to the 50 full-time employee threshold in determining if they are an ALE for 2015?

Yes. Rather than being required to use the full twelve months of 2014 to measure whether it has 50 full-time employees (or equivalents), an employer may measure during any consecutive six-month period (as chosen by the employer) during 2014. For example, an employer could use a period of at least six months through August 2014 to determine its ALE status and, if it is an ALE, the period from September through December 2014 to make any needed adjustments to its plan (or to establish a plan). See Q&A 36 on 2015 transition relief.

32. For 2015, will employees who receive offers of coverage effective as of the first day of the first pay period beginning on or after the first day of the year be treated as having been offered coverage for January 2015?

Yes. Generally, if an employer fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not offered coverage during the entire month. Solely for purposes of January 2015, if an employer offers coverage to a full-time employee no later than the first day of the first payroll period that begins in January 2015, the employee will be treated as having been offered coverage for January 2015.

33. 33. Do employers have additional time to expand their 2015 health plans to add dependent coverage?

The transition relief in the preamble to the final regulation generally extends the transition relief that had been provided for plan years that begin in 2014 (2014 plan years) to plan years that begin in 2015 (2015 plan years). Under this transition relief, an ALE that takes steps during its 2014 plan year toward offering dependent coverage will not be subject to an employer shared responsibility penalty solely because of a failure to offer coverage to dependents for that plan year. This extended transition relief applies to ALEs for the 2015 plan year for plans under which:

(1) Dependent coverage is not offered;

(2) Dependent coverage that does not constitute minimum essential coverage is offered; or

(3) Dependent coverage is offered for some, but not all, dependents.

The transition relief is not available to the extent the ALE had offered dependent coverage during either the 2013 or 2014 plan year and subsequently dropped that offer of coverage. The transition relief, as extended, applies only for dependents who were without an offer of coverage from the ALE in both the 2013 and 2014 plan years, and only if the ALE takes steps during the 2014 or 2015 plan year (or both) to extend coverage under the plan to dependents not offered coverage during the 2013 or 2014 plan year (or both). See Q&A 36 on 2015 transition relief.

34. Is additional transition relief available for employers with at least 50, but fewer than 100, full-time employees (including full-time equivalents)?

Yes. For employers with fewer than 100 full-time employees (including full-time equivalents) in 2014, that meet the conditions described below, **no employer shared responsibility penalty will apply for any calendar month during 2015**. For employers with non-calendar-year health plans, this applies to any calendar month during the 2015 plan year, including months during the 2015 plan year that fall in 2016.

In order to be eligible for the relief, an employer must certify that it meets the following conditions:

(1) **Limited Workforce Size**. The employer must employ, on average, at least 50 full-time employees (including full-time equivalents), but fewer than 100 full-time employees (including full-time equivalents), on business days during 2014. (Employers with fewer than 50 full-time employees (including full-time equivalents) on business days during the previous year are not subject to the employer shared responsibility provisions.) The

number of full-time employees (including full-time equivalents) is determined in accordance with the otherwise applicable rules in the final regulations for determining status as an ALE.

(2) **Maintenance of Workforce and Aggregate Hours of Service**. During the period beginning on Feb. 9, 2014, and ending on Dec. 31, 2014, the employer may not reduce the size of its workforce or the overall hours of service of its employees in order to qualify for the transition relief. However, an employer that reduces workforce size or overall hours of service for bona fide business reasons is still eligible for the relief.

(3) **Maintenance of Previously Offered Health Coverage**. During the period beginning on Feb. 9, 2014, and ending on Dec. 31, 2015 (or, for employers with non-calendar-year plans, ending on the last day of the 2015 plan year), the employer does not eliminate or materially reduce the health coverage, if any, it offered as of Feb. 9, 2014. An employer will not be treated as eliminating or materially reducing health coverage if:

(i) It continues to offer each employee who is eligible for coverage an employer contribution toward the cost of employee-only coverage that either:

(A) Is at least 95 percent of the dollar amount of the contribution toward such coverage that the employer was offering on Feb. 9, 2014; or

(B) Is at least the same percentage of the cost of coverage that the employer was offering to contribute toward coverage on Feb. 9, 2014;

(ii) In the event of a change in benefits under the employee-only coverage offered, that coverage provides minimum value after the change; and

(iii) It does not alter the terms of its group health plan(s) to narrow or reduce the class(es) of employees (or the employees' dependents) to whom coverage under those plans was offered on Feb. 9, 2014.

35. Is the transition relief for employers with at least 50 but fewer than 100 full-time employees (including full-time equivalents) available to newly formed employers? If so, how does a new employer know whether it qualifies for the relief?

Yes, the relief is available to new employers (that is, employers that are not in existence on any business day in 2014). For new employers that would be ALEs under the general rules in the final regulations, the special transition relief applies if the employer certifies that it:

- Reasonably expects to employ, and actually employs, fewer than 100 full-time employees (including full-time equivalents) on business days during 2015; and
- Reasonably expects to meet, and actually meets, the standards relating to maintenance of workforce and aggregate hours of service and maintenance of previously offered health coverage, as measured from the date the employer is first in existence.

36. How does the transition relief for employers with fewer than 100 full-time employees coordinate with other transition relief available under the final regulations?

For periods on or after Jan. 1, 2016 (or, if applicable, for any period after the last day of the 2015 plan year), the transition relief for 2015 generally is not available. An employer may, however, use the shorter period in 2014 permitted for determining ALE status for 2015 in determining ALE status and full-time employee count for 2015 (but not for any subsequent year). See Q&As 30 through 33.

37. Under what circumstances will an employer that is not eligible for the relief described in Q&A 34 owe an employer shared responsibility penalty for 2015?

For 2015 (and for ALEs with non-calendar-year plans, any calendar months during the 2015 plan year that fall in 2016), an ALE that (a) had at least 100 full-time employees (including full-time equivalents) in 2014, or (b) had at

least 50 but fewer than 100 full-time employees (including full-time equivalents), but does not qualify for the relief described in Q&A 34, will be liable for an employer shared responsibility penalty only if:

- The ALE does not offer health coverage or offers coverage to fewer than 70 percent of its full-time employees and (unless the ALE qualifies for the 2015 dependent coverage transition relief described in Q&A 33) the dependents of those employees, and at least one of the full-time employees receives a premium tax credit to help pay for coverage on an Exchange; or
- The ALE offers health coverage to at least 70 percent of its full-time employees and (unless the ALE qualifies for the 2015 dependent coverage transition relief described in Q&A 33) the dependents of those employees, but at least one full-time employee receives a premium tax credit to help pay for coverage on an Exchange, which may occur because the ALE did not offer coverage to that employee or because the coverage the ALE offered that employee was either unaffordable (see Q&A 19) to the employee or did not provide minimum value (see Q&A 20).

After 2015, 95 percent should be substituted for 70 percent in the bullets above (see Q&A 18).

38. For 2015, if an employer with at least 100 full-time employees (including full-time equivalents) that does not offer coverage, or that offers coverage to fewer than 70 percent of its full-time employees (and their dependents), owes an employer shared responsibility penalty, how is the amount of the penalty calculated?

For any calendar month in 2015 or any calendar month in 2016 that falls within an employer's non-calendar 2015 plan year, if an ALE with at least 100 full-time employees (including full-time equivalents) does not offer coverage to at least 70 percent of its full-time employees (and their dependents), it owes an employer shared responsibility penalty equal to the number of full-time employees the ALE employed for the month (minus 80) multiplied by 1/12 of $2,000, provided that at least one full-time employee receives a premium tax credit for that month. See Q&As 24 and 25.

39. For 2015, if an employer with at least 100 full-time employees (including full-time equivalents) offers coverage to at least 70 percent of its full-time employees and, nevertheless, owes an employer shared responsibility penalty, how is the amount of the penalty calculated?

For an employer with at least 100 full-time employees (including full-time equivalents) that offers coverage to at least 70 percent of its full-time employees in 2015, but has one or more full-time employees who receive a premium tax credit, the penalty is computed separately for each month. The amount of the penalty for the month equals the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of $3,000. The amount of the penalty for any calendar month is capped at the number of the employer's full-time employees for the month (minus up to 80) multiplied by 1/12 of $2,000. See Q&As 24 and 25.

BASICS FOR SMALL EMPLOYERS

40. I am a small employer with 30 employees. How do the employer shared responsibility provisions (Code section 4980H) affect me?

They don't. Employers that employ fewer than 50 full-time employees (including full-time equivalents) in their businesses are not subject to the employer shared responsibility provisions. According to the IRS, the vast majority of businesses fall below this threshold.

In addition, the preamble to the final regulations for the employer shared responsibility provisions provides transition relief for 2015. Employers with at least 50, but fewer than 100, full-time employees (including full-time equivalents) in 2014 that meet conditions described in the preamble to the final regulations will not be subject to any employer shared responsibility penalties for 2015 (or for the 2015 plan year in the case of an employer with a non-calendar-year health plan).

41. If I hire additional employees, including some part-time employees, how do I determine if I have become large enough to be subject to the employer shared responsibility provisions?

An employer determines if it is subject to these provisions for a current year by counting how many full-time employees and full-time equivalents it employed during the prior calendar year. First, for each month of the prior year, the employer counts its employees working an average of 30 or more hours per week as full-time employees and, if it has employees working less than that, adds the number of full-time equivalents (determined by simply adding up the hours that are worked by these less-than-full-time employees for the month, but no more than 120 hours per employee, and then dividing by 120).

Second, the resulting totals for each month in the prior year are added together and then divided by 12 to get an average for the prior year. If the result is less than 50, the employer is not subject to these rules for the current year and need not take any other action. (If the result is 50 or more but some of the employees are seasonal workers, certain adjustments may still bring the average down to less than 50.)

Two transition rules apply in 2015 that are particularly relevant for small employers close to the 50 full-time employee (including full-time equivalents) threshold. First, employers with at least 50, but fewer than 100, full-time employees (including full-time equivalents) in 2014 that meet conditions described in the preamble to the final regulations will not be subject to any employer shared responsibility penalties for 2015 (or for the 2015 plan year in the case of an employer with a non-calendar-year health plan). These employers determine if they have 100 or more employees in the same manner as described above.

Second, rather than being required to use the full twelve months of 2014 to measure if it has 100 full-time employees (including full-time equivalents), an employer may measure during any consecutive six-month period (as chosen by the employer) during 2014. For example, an employer could use a period of at least six months through August 2014 to determine its ALE status and, if it is an ALE, the period from September through December 2014 to make any needed adjustments to its plan (or to establish a plan). See Q&A 36 on 2015 transition relief.

42. What if I buy or start another business that has another group of employees, but my new business is in an entity that is separate from my existing business?

In that case, the employer shared responsibility rules (section 4980H) provides for common ownership and control "aggregation" rules that may apply. These are similar to rules that have applied to 401(k) and other retirement plans for years. Under these rules, the employees of businesses that are under common control are added together to determine if an employer employs the equivalent of at least 50 (or 100 under the 2015 transition rule noted above) full-time employees (including full-time equivalents). For example, if an individual owns 80 percent or more of two businesses that are separate legal entities, the total number of full-time employees of that employer is based on the full-time employees (including full-time equivalents) in both businesses combined together. If the employees in the combined businesses add up to fewer than 50 full-time employees (including full-time equivalents) in a year, the employer shared responsibility provisions will not apply to those businesses for the following year.

RELATED PROVISIONS

43. When can an employee receive a premium tax credit?

The premium tax credit generally is available to help pay for coverage for employees who:

- Have household income between 100 percent and 400 percent of the federal poverty line and enroll in coverage through an Exchange;
- Are not eligible for coverage through a government-sponsored program like Medicaid or CHIP; and
- Are not eligible for coverage offered by an employer or are eligible only for employer coverage that is unaffordable or that does not provide minimum value.

44. If an employer does not employ enough employees to be subject to the employer shared responsibility provisions, does that affect the employees' eligibility for a premium tax credit?

No. The rules for how eligibility for employer-sponsored insurance affects eligibility for the premium tax credit are the same, regardless of whether the employer is subject to the employer shared responsibility provisions.

45. Where can employers get more information about the information reporting requirements on health coverage for employers and for insurers?

The IRS has issued final regulations on information reporting on health coverage for employers and information reporting on health coverage for providers of minimum essential coverage.

46. Where can employees get more information about the Exchange?

HHS administers the requirements for the Exchange and the health plans offered in the Exchange. For more information about your coverage options, financial assistance and the Exchange, visit HealthCare.gov.

47. My spouse and I own a small business and are the only employees. Previously, I bought coverage in the small group market in my state to cover me, my spouse and our dependents and received the Self-Employment Health Insurance Tax Deduction. For 2014, I purchased coverage in the individual market in my state to cover me, my spouse and our dependents. How does that affect my eligibility for the Self-Employment Health Insurance Tax Deduction?

If you are self-employed and purchase health insurance coverage for yourself and your family, you will still be eligible for the self-employment health insurance tax deduction. You may claim the deduction regardless of whether you purchase coverage in the individual market or the small group market. However, if you purchase coverage in the individual Exchange and claim the premium tax credit on your tax return, the amount of the premium reimbursed by the credit may not also be deductible. Specific rules on how the premium tax credit is coordinated with the self-employment health insurance deduction will be issued in the near future.

ADDITIONAL INFORMATION

48. What are the consequences for an employer covered by the employer shared responsibility provisions if the employer offers health insurance coverage to all full-time employees, but does not offer dependent coverage? Would a penalty be owed by the employer? If so, beginning in what year? Does the answer depend on whether a dependent gets health insurance coverage in the Exchange?

Under the employer shared responsibility provisions, an ALE may have to pay an employer shared responsibility penalty if: (1) the employer does not offer health coverage to the dependents of its full-time employees (as well as to those employees themselves); and (2) At least one full-time employee receives a premium tax credit for purchasing coverage on the Exchange.

However, under transition relief provided in the preamble to the final regulations under the employer shared responsibility provisions, an employer that takes steps during its 2014 and 2015 plan years toward offering dependent coverage will not be subject to an employer shared responsibility penalty solely on account of a failure to offer coverage to dependents for that plan year. This transition relief applies to employers for plans under which:

(1) Dependent coverage is not offered;

(2) Dependent coverage that does not constitute minimum essential coverage is offered; or

(3) Dependent coverage is offered for some, but not all, dependents.

The transition relief is not available to the extent the employer had offered dependent coverage during either the 2013 or 2014 plan year and subsequently dropped that offer of coverage. The transition relief applies for the 2015 plan year only for dependents who were without an offer of coverage from the employer in both the 2013 and 2014

plan years, and only if the employer takes steps during the 2014 or 2015 plan year (or both) to extend coverage under the plan to dependents not offered coverage during the 2013 or 2014 plan year (or both).

For 2015 and in later years, an employer may be liable for an employer shared responsibility penalty only if one or more of its full-time employees enrolls in coverage through an Exchange and receives a premium tax credit. Whether or not one or more of its full-time employees' dependents enrolls in an Exchange and receives a premium tax credit does not affect an employer's liability.

49. Although my company offers all its full-time employees and dependents health insurance coverage, one of my employees' dependents enrolled for coverage in the Exchange and received a premium tax credit—does my company have to pay an employer shared responsibility penalty?

An ALE will not be subject to an employer shared responsibility penalty solely because one, some or all of the dependents of its full-time employees receive health insurance coverage through an Exchange and receive a premium tax credit. An ALE will potentially be liable for an employer shared responsibility penalty only if **a full-time employee** enrolls in coverage through an Exchange and receives a premium tax credit. If no full-time employee receives a premium tax credit, the ALE will not be subject to an employer shared responsibility penalty. If an ALE offers health coverage to its full-time employees and their dependents, and that coverage is affordable and provides minimum value with respect to the full-time employees, those dependents will not be eligible for a premium tax credit.

50. I own a business with fewer than 50 full-time (including full-time equivalent) employees. I offer insurance that is generally affordable and provides minimum value. However, for one employee, it's unaffordable. If that employee goes to the Exchange for insurance and gets advance penalties of the premium tax credit, do I owe an employer shared responsibility penalty?

No. Employers that employ fewer than 50 full-time employees (including full-time equivalents) in their businesses for the prior year are not subject to the employer shared responsibility provisions. According to the IRS, the vast majority of businesses fall below this threshold.

In addition, for employers with fewer than 100 full-time employees, the preamble to the final regulations for the employer shared responsibility provisions provides transition relief for 2015. Employers with at least 50, but fewer than 100, full-time employees (including full-time equivalents) in 2014 that meet conditions described in the preamble to the final regulations will not be subject to any employer shared responsibility penalties for 2015 (or for the 2015 plan year in the case of an employer with a non-calendar-year health plan).

51. I own a business that is subject to the employer shared responsibility rules. Who certifies that my employer plan meets the minimum value requirements?

Beginning in 2016 (for calendar year 2015), all ALEs must report to the IRS and provide statements to all full-time employees certain information regarding coverage offered to full-time employees, including whether the coverage offered met the minimum value requirements. A plan provides minimum value if it covers at least 60 percent of the total allowed cost of benefits that are expected to be incurred under the plan. On May 3, 2013, the IRS issued proposed regulations regarding the methods available to determine minimum value. One such method is a minimum value calculator produced by HHS in coordination with the IRS. By entering certain information about the plan (such as deductibles and co-pays) into the calculator, an employer (or an insurance company, third-party administrator or other entity) can get a determination as to whether the plan provides minimum value.

52. I own a business that is subject to the employer shared responsibility provisions. However, all of my employees obtain other health insurance coverage. Do I still need to offer insurance to them to avoid an employer shared responsibility penalty?

Yes. An ALE must generally offer coverage to its full-time employees (and their dependents), even if the employee is eligible for coverage from another source, to avoid a potential employer shared responsibility penalty. An ALE may be subject to an employer shared responsibility penalty if the employer does not offer health coverage to its full-time employees (and their dependents), and at least one full-time employee receives a premium tax credit for purchasing

coverage on the Exchange. If an ALE does not offer coverage to its full-time employees (and their dependents), or offers coverage to fewer than 95 percent of its full-time employees (70 percent in 2015 as a transition) (and their dependents), and at least one full-time employee receives a premium tax credit, the employer will be liable for an employer shared responsibility penalty, which will be calculated based on the employer's number of full-time employees. For this purpose, all full-time employees are counted, including those who are eligible for coverage from another source. (See Q&A 48 above for a 2015 transition rule under which an employer that takes steps during its 2014 and 2015 plan years toward offering dependent coverage may not be subject to an employer shared responsibility penalty solely on account of a failure to offer coverage to dependents.)

An employer may owe an employer shared responsibility penalty only if one or more full-time employees receive a premium tax credit. Individuals (including employees) who are eligible for Medicare or Medicaid are generally not eligible for a premium tax credit. Thus, if all of an employer's full-time employees are eligible for Medicare or Medicaid, the employer will not be subject to an employer shared responsibility penalty. However, if even one full-time employee receives a premium tax credit, the employer may be subject to an employer shared responsibility penalty.

53. How do I determine if my business is part of a controlled group under the employer shared responsibility rules? Are there any resources or tools to help me make this determination?

The employer shared responsibility rules (Section 4980H) include a provision that has long applied for other tax and employee benefit purposes, under which companies that have a common owner or are otherwise related generally are combined and treated as a single employer, and so would be combined for purposes of determining whether or not they collectively employ at least 50 full-time employees (including full-time equivalents). If the combined total meets the threshold, then each separate company is subject to the employer shared responsibility provisions—even those companies that individually do not employ enough employees to meet the threshold. (Note that these rules for combining related employers do not apply for purposes of determining whether a particular company owes an employer shared responsibility penalty or the amount of any penalty. That is determined separately for each related company. For example, if a particular company does not have a full-time employee who receives a premium tax credit, then that particular company will not owe an employer shared responsibility penalty, even if a full-time employee of a related company receives a premium tax credit.)

54. What is the impact under the employer shared responsibility provisions if some of my employees are seasonal "employees" and some are seasonal "workers"? Is a seasonal employee the same as a seasonal worker under these rules?

The terms "seasonal worker" and "seasonal employee" are both used in the employer shared responsibility provisions, but in two different contexts.

- The term "**seasonal worker**" is relevant for determining whether an employer is an ALE subject to the employer shared responsibility provisions. To be an ALE, an employer must have employed, during the previous calendar year, at least 50 full-time employees (including full-time equivalent employees). However, if an employer's workforce exceeds 50 full-time employees (including full-time equivalent employees) for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, the employer is not considered an ALE. **Seasonal workers** are workers who perform labor or services on a seasonal basis (as defined by the DOL), and include retail workers employed exclusively during holiday seasons. For this purpose, employers may apply a reasonable, good faith interpretation of the term "seasonal worker."
- The term "**seasonal employee**" is relevant for determining an employee's status as a full-time employee under the look-back measurement method. For purposes of the employer shared responsibility provisions, an employee is a full-time employee for a calendar month if he or she averages at least 30 hours of service per week (or 130 hours of service per month). The final regulations under the employer shared responsibility provisions provide two methods for determining full-time employee status, one of which is the look-back measurement method. Under the look-back measurement method an employer may determine an employee's

status as a full-time employee during a period (referred to as the stability period), based upon the hours of service of the employee in a prior period (referred to as the measurement period). The look-back measurement method includes special rules that apply to new employees who are seasonal employees. For this purpose, a **seasonal employee** means an employee who is hired into a position for which the customary annual employment is six months or less and for which the period of employment begins each calendar year in approximately the same part of the year, such as summer or winter. Note that the look-back measurement method is not available for purposes of determining whether the employer is an ALE.

55. I own a small business. How do I count the hours of my interns (both paid and unpaid) to determine whether or not my business is an ALE subject to the employer shared responsibility provisions?

To be subject to the employer shared responsibility provisions for a calendar year, an employer must be an ALE. To be an ALE, an employer must have employed, during the previous calendar year, at least 50 full-time employees or a combination of full-time employees and part-time employees (referred to as full-time equivalent employees) that equals at least 50. Both to determine its number of full-time employees and to determine its number of full-time equivalent employees, an employer must determine the hours of service of each of its employees.

Under the final regulations for the employer shared responsibility provisions, generally, an hour of service means:

- Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and
- Each hour for which an employee is paid, or entitled to payment, for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. For purposes of determining hours of service, interns are treated like all other employees.

Therefore, under the general rule, an employee (including an intern) who receives no payment from an employer (for example, an unpaid intern) will not have any hours of service.

An employee (including an intern) who is paid, or entitled to payment, for the performance of duties (or for a period of time during which no duties are performed) will have hours of service. However, under the final regulations, an hour of service does not include any hour of service performed:

- As a bona fide volunteer (as defined in the regulations) for a government entity or tax-exempt entity;
- As part of a federal work-study program (or similar program of a state or political subdivision); or
- To the extent the compensation for services performed constitutes income from sources without the U.S.

56. I own a business that is subject to the employer shared responsibility provisions. How do I measure a particular employee's average hours worked if that employee works both for my company and another unrelated company? What if the employee works for two different subsidiaries under a parent corporation that forms a controlled group of companies?

Under the employer shared responsibility provisions, common ownership and control "aggregation" rules apply for purposes of identifying the employer in computing an employee's hours of service. These are similar to rules that have applied to retirement plans for years. Under these rules, employers under common control are treated as a single employer so that an employee's hours of service for all the different employers are added together. In other words, an employee's hours of service for one member of a controlled group is treated as an hour of service for another member of the controlled group, for whom the individual is also an employee.

However, if an employee is employed by two employers that are not under common control and therefore are not treated as a single employer for purposes of the employer shared responsibility provisions, an employee's hours of service for one of the employers are not treated as hours of service for the other employer.

Source: Internal Revenue Service