

2014 EMPLOYER PLAY OR PAY MANDATE

*****For Informational Purposes Only*****

What is the 2014 Employer Play or Pay Mandate?

The Affordable Care Act (ACA) amended the Internal Revenue Code to add provisions regarding the “shared responsibility for employers regarding health coverage.” These added provisions are sometimes called the “Employer Shared Responsibility” or the “Employer Play or Pay Mandate.”

Under the Employer Play or Pay Mandate, large employers will be subject to penalties if:

- a. The employer fails to offer minimum essential coverage for any month to its full-time employees and their dependents and, at least one full-time employee is certified (under the ACA) to receive a premium tax credit or cost-sharing reduction toward the purchase of a qualified health plan; or
- b. The employer offers minimum essential coverage to its full-time employees and their dependents but the coverage is not affordable or does not provide minimum value for any month.

What is minimum essential coverage?

Minimum essential coverage includes insurance coverage under an eligible employer-sponsored plan including coverage offered by an employer to an employee that is a governmental plan. The Kentucky Employees’ Health Plan (KEHP) will offer minimum essential coverage in 2014. **For groups participating in KEHP, no employer action is required related to minimum essential coverage.**

What is minimum essential coverage with minimum value?

Minimum essential coverage meets the minimum value test if the plan’s share of the total allowed costs of benefits provided under the plan is equal to or more than 60% of those costs. KEHP will provide minimum essential coverage with minimum value in 2014. **For groups participating in KEHP, no employer action is required related to minimum essential coverage.**

What is affordable minimum essential coverage?

Minimum essential coverage is affordable if the employee’s required contribution for self-only coverage does not exceed 9.5% of the employee’s household income for the taxable year. IRS Notice 2012-58 provides a safe harbor that allows employers to use an employee’s Form W-2 (Box 1) wages for affordability determinations. KEHP will provide affordable minimum essential coverage options in 2014. **For groups participating in KEHP, no employer action is required related to affordability of minimum essential coverage.**

What constitutes a large employer for the purposes of assessing penalties under the Play or Pay Mandate?

An employer is considered a large employer under the Play or Pay Mandate if the employer employed at least 50 full-time employees (or full-time equivalent employees) on business days during the prior calendar year.

What is a full-time employee or full-time equivalent (FTE) for the purposes of the Play or Pay Mandate?

A full-time employee is an employee who was employed on average at least 30 hours of service per week. Hours of service includes: (1) each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and (2) each hour for which an employee is paid, or entitled to payment by the employer on account of a period of time during which no duties are performed due to vacation, holiday, illness, incapacity, layoff, jury duty, military duty, or leave of absence.

A FTE includes all employees (including seasonal workers) who were not full-time employees for any month in the preceding calendar year. These employees are included in calculating the employer’s FTEs for that month by: (1) calculating the aggregate number of hours of service (not more than 120 hours for any employee) for all employees who were not employed on average at least 30 hours of service per week for that month; and (2) dividing the total hours of service in (1) by 120.

Additional provisions exist for non-traditional workers such as seasonal workers, teachers, and other employees of educational organizations. Educational organizations present a special situation compared to other workplaces because they

typically function on the basis of an academic year, which involves various extended periods in which the organization is not in session or is engaged in only limited classroom activities. Many of the employees in educational organizations, while typically employed for at least 30 hours of service per week during the active portions of the academic year, are precluded from working during periods when the organization is entirely or largely closed. The rules propose an averaging method for employment break periods that generally would result in an employee who works full-time during the active portions of the academic year being treated as a full-time employee for the purposes of the Play or Pay Mandate. See the measurement processes below.

How does the employer measure the number of full-time employees?

Since the Play or Pay penalties are determined on a monthly basis, employers would need to know which of its full-time employees and their dependents needed to be offered coverage for any given month. In recognition of the practical difficulties employers may have in predictably identifying which employees are full-time employees to whom coverage must be provided, an optional look-back measurement is permitted through at least the end of 2014.

Look-back measurement for Ongoing Employees: The optional look-back method to determine which ongoing employees are full-time employees in any calendar month is based on a "standard measurement period." The standard measurement period allows the employer to determine whether an employee is an ongoing employee and whether an ongoing employee is a full time employee. The standard measurement period is set by the employer and is at least 3 but not more than 12 consecutive calendar months. An "ongoing employee" is an employee who is employed on the first day of and for at least one complete standard measurement period.

If an employee works an average of thirty (30) hours of service per week during the standard measurement period, then the employer must treat the employee as a full time employee during a subsequent "stability period." The stability period is the period of time after the end of the standard measurement period during which the employee's status as a full-time employee (or not) remains unchanged, regardless of the number of hours the employee works during the stability period. The stability period must last at least 6 consecutive calendar months and cannot be shorter in duration than the standard measurement period.

The employer may also use an "administrative period" if an employer needs time between the standard measurement period and the associated stability period to determine which ongoing employees are eligible for coverage. The administrative period following the standard measurement period may last up to 90 days and will overlap any prior stability period.

E.g. Standard measurement period = 6 months; Administrative period = 2 months; Stability period = 12 months. To begin the stability period on January 1, the administrative period must begin on November 1 and end on December 31. The standard measurement period must end on October 31 before the administrative period and begin the preceding May 1. The stability period will last from January 1 through December 31.

Look-back measurement for New Employees reasonably expected to work full-time: If an employee is reasonably expected at his or her start date to work full-time, an employer that offers coverage to the employee at or before the conclusion of the employee's initial 3 calendar months of employment will not be subject to the Play or Pay penalties by reason of its failure to offer coverage to the employee for up to the initial 3 calendar months of employment.

Look-back measurement for Variable Hour and Seasonal Employees: The Play or Pay rules provide guidance with respect to variable hour and seasonal employees. The rules specifically provide that employers are permitted to use a reasonable, good faith interpretation of the term seasonal employee but, it is not a reasonable good faith interpretation to treat an employee of an educational organization, who works during the active portions of the academic year, as a seasonal employee.

Other Look-back measurements: The Play or Pay rules provide information with respect to the treatment of changes in employment status, new short-term employees, new employees hired into high-turnover positions, and other employee situations. For a better understanding of the rules, employers need to review IRS Notice 2011-36, IRS Notice 2011-73, IRS Notice 2012-17, IRS Notice 2012-58 and the proposed rule, "Shared Responsibility for Employers Regarding Health Coverage."

What should employers do now?

This advisory contains general information regarding the employer Play or Pay Mandate. Employers should not rely only on this advisory to comply with the employer Play or Pay Mandate. Rather, employers need to review and be familiar with the rules and guidance outlined in IRS Notice 2011-36, IRS Notice 2011-73, IRS Notice 2012-17, IRS Notice 2012-58 and the proposed rule, "Shared Responsibility for Employers Regarding Health Coverage." Employers need to identify and count full-

time employees and FTEs. In doing so, employers will need to establish a standard measurement period, an administrative period (if any), and a stability period.

Employers should consult their HR and Legal Departments on how to address the 2014 Employer Play or Pay Mandate.

Whistleblower Protections:

It is important to note that new regulations establish protections for employees who may have been subject to retaliation for reporting potential violations of the ACA's consumer protections or affordability assistance provisions (i.e. employees who receive premium tax credits or cost-sharing reductions). Employers need to review and be familiar with the whistleblower protections afforded to employees.

Important links to information regarding the Play or Pay Mandate:

IRS Notice 2011-36 - <http://www.irs.gov/pub/irs-drop/n-11-36.pdf>

IRS Notice 2011-73 - <http://www.irs.gov/pub/irs-drop/n-11-73.pdf>

IRS Notice 2012-17 - <http://www.irs.gov/pub/irs-drop/n-12-17.pdf>

IRS Notice 2012-58 - <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>

Shared Responsibility for Employers Regarding health Coverage –
<http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf>

Whistleblower Protections –
http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=23585