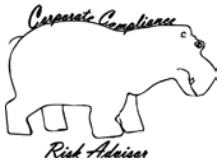


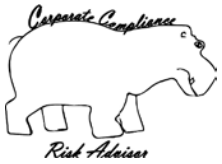
Employer Penalty and 2015 Transition Relief

79 FR 8544 (February 12, 2014)

NOTE: This is the final regulation on the Employer Penalty and it modifies the proposed regulation published at 78 FR 218 (January 2, 2013).

Summary of the Regulation

1. Determination of Status as an Applicable Large Employer
    A. In General
        i. **Applicable Large Employer** means an employer with at least 50 full-time employees (including full-time equivalents) in the preceding calendar year. See §4980H(c)(2)(A) & §4980H(c)(2)(E).
        ii. **Applicable Large Employer Member** means an applicable large employer that is part of a group of related entities aggregated due to common ownership.
    B. Employers Not in Existence in the Preceding Year
        i. An employer was not in existence in the preceding year if it was not in existence for any business day of the prior year.
        ii. If the employer started mid-year, look at the number of employees during that partial year. If 50 or more, then the employer is a large employer.
    C. Seasonal Employees
        i. A seasonal worker is one who performs labor or services on a seasonal basis as defined by the Dept. of Labor at 29 CFR §500.20(s)(1) and includes retail workers hired for the holiday season.
        ii. An employer is not a large employer if the employer (i) exceeds 50 employees for less than 120 days during the calendar year and (ii) the excess of 50 employees is due to seasonal workers.
        iii. A new employer (not in existence in the prior calendar year) may use the seasonal employee exception if the employer reasonably believes that (i) its workforce will exceed 50 employees for less than 120 days and (ii) the excess over 50 employees will be due to seasonal workers.
    D. Aggregation Rules for Applicable Large Employers
        i. All entities treated as a single employer under 26 USC §414(b), (c), (m), or (o) are treated as one employer. (This is the “common control” rule.)
        ii. If an employer penalty is assessed, each Applicable Large Employer Member is assessed their portion of the penalty.
        iii. Government entities, churches, conventions or associations of churches: IRS reserves its decision on whether these entities will be subject to the aggregation rule. Until further guidance, these entities must use a reasonable, good faith interpretation of §414 to decide their status.
    E. Predecessor Employers
        i. When deciding if it is an Applicable Large Employer, the employer must look at any predecessor employer(s).
        ii. Until further guidance is issued by IRS, an employer should use employment tax rules to decide when wages paid by a predecessor employer may be considered



as having been paid by the successor employer. (See 26 USC §31.3121(a)(1)–1(b) for wage rules.)

F. Administrative Period
   i. Special rule for employers in their first year as an Applicable Large Employer: No penalty in the first quarter (January – March) if the employer offers coverage by April 1st to any employees who were not offered coverage at any point in the prior calendar year.

G. Full-time Equivalent Employees (FTE's)
   i. When determining the number of FTE's for each calendar month, an employer may round the monthly calculation to the nearest one hundredth. (Example: The employer's calculation for the month is 30.544 FTE's. The employer may round that number to 30.54 FTE's.)

H. Break Period and Unpaid Leave Rules When Determining Employer Size
   i. If an employer uses the Look Back Measurement Method (for determining which employees are full-time), the employer must credit an employee for any special unpaid leave or employment breaks rather than showing this time as zero hours of service.

2. Hours of Service
   A. General Definition of Hours of Service
      i. Final regulation adopts the definition in the proposed regulation with a few modifications.
      ii. **Hour of Service** means each hour for which the employee: (a) is paid or is entitled to payment for performance of duties for the employer or (b) is paid or entitled to payment during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. (See 29 CFR §2530.200b-2(a) for more details on this definition.)
      iii. Hourly employees: count the actual hours of service.
      iv. Salaried employees: calculate the actual hours of service by one of the following methods:
         1. Actual hours of service (just like hourly employees);
         2. Days-worked equivalency: credit an employee for 8 hours of service for each day in which employee must be credited with at least one hour of service; or
         3. Weeks-worked equivalency: credit an employee for 40 hours of service for each week in which employee must be credited with at least one hour of service.
      v. Equivalency methods count paid leave. These methods are adopted from DOL rules for pension benefits. (See 29 CFR §2530.200b-3(e) for more details.)
      vi. Employer may use different methods for different categories of salaried employees and may change the method used each calendar year.
      vii. Employer is prohibited from using the equivalency methods if the result would understate the hours of service for a substantial number of employees; even if no specific employee's hours of service is substantially understated.
   B. Exclusions from Definition of Hours of Service
      i. Volunteer Employees: hours of service are not counted for volunteers at a government entity or a 501(c) tax-exempt organization because they aren't entitled to payment. Bona fide volunteer are exception to this general rule:

1. **Bona fide volunteers** are compensated by (a) reimbursement of reasonable expenses incurred in performance of volunteer services, or (b) reasonable benefits, such as length of service awards, and nominal fees.
2. Bona fide volunteers include volunteer firefighters or emergency medical providers (e.g., EMT's).

ii. Student Employees
1. Federal work study program or a substantially similar state program: student's hours of service not counted.
2. Internship or externship: the outside employer must count student's hours of service using either the monthly measurement method or the look back measurement method.

C. Application to Adjunct Faculty, Commissioned Salespeople, & Airline Employees
i. Until further guidance from IRS, employer must use a reasonable method for crediting hours of service. It is not reasonable to take into account only a portion of an employee's hours in a position that traditionally involves at least 30 hours a week of service
ii. Adjunct faculty: a reasonable method is to credit the faculty member at a college/university with (a) 2¼ hours of service per week for each hour of teaching or classroom time (to credit time spent preparing & grading exams) and (b) one hour of service per week for each additional hour outside the classroom spent on duties such as required office hours or required attendance at faculty meetings. Employers may rely on this method through at least the end of 2015.
iii. Airline employees: count layover hour if employee is (a) compensated or (b) if the layover hour is counted as part of the required hours of service for which employees receives regular compensation. For layover hours that are not compensated, credit the employee with 8 hours of service for each day on which the employee is required to stay away from home overnight (8 hours per day, 16 hours total).
iv. On-call hours: count each hour that an employee is (a) paid or is due payment and required to remain on employer's premises, or (b) substantially restricted from using the time for employee's own purposes due to being on-call.

3. Identification of Full-Time Employees
A. In General
i. Two methods for determining full-time employee status: monthly measurement method or the look back measurement method.
ii. Employers may treat employees who are not full-time employees as eligible for health coverage so long as the employer complies with any non-discrimination requirements. But the penalty only applies to full-time employees.
iii. 30 hours per week can't be adjusted or changed for any particular industry or employment position.
iv. 130 hours per calendar month is the standard for determining full-time status under both the monthly measurement method and the look back measurement method.

B. Monthly Measurement Method
i. No penalty during the first three full calendar months of employment if (a) the employee is offered coverage no later than the day after the 3-month period ends

and (b) the employee is meets all conditions to be offered coverage other than completing the waiting period.

ii. Rehired employees are treated as continuing employees rather than new hires if the break in employment is less than 13 weeks (or 26 weeks for an employee of an educational organization).

iii. The special unpaid leave and employment break rules don't apply to the monthly measurement method. (See section H, top of page 3 of this paper)

iv. The measurement period must include either the week with the first day of the month or the week with the last day of the month, but not both. For this purpose, a week means any period with 7 consecutive calendar days.

v. For calendar months calculated with 4 weeks, 120 hours of service is a full-time.

vi. For calendar months calculated with 5 weeks, 150 hours of service is full-time.

vii. For purposes of coordinating with the rules on the premium tax credit (36B rules) and the individual penalty (5000A rules), an employer must offer coverage for an entire calendar month to a full-time employee to avoid the employer penalty.

C. Look Back Measurement Method

i. In General

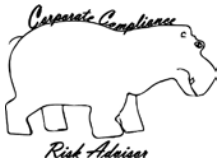
1. An employee with an average of 30 hours of service per week during the standard measurement period is a full-time employee and keeps that status during the subsequent stability period.
2. Look back measurement method is intended to credit employees with hours of service they earn while also providing employers with predictability in being able to identify full-time employees before the beginning of a potential coverage period (during the stability period).
3. The initial measurement period does not have to be based on calendar months. (Example: A month can be March 15 to April 14.) But a stability period must be based on a calendar month.

ii. Reasonable Expectations with New Employees

1. If a new hire is reasonably expected to be a full-time employee at her/his hire date, there is no employer penalty if (a) coverage is offered on the first day of the month after the employee completes her/his initial three full calendar months of employment and (b) the coverage provides minimum value (60%).
2. **Factors to consider when deciding if a new hire is full-time: (a) whether the new hire is replacing a full-time employee, (b) whether employees in the same or comparable positions are full-time employees, (c) whether the job was advertised as full-time or documented as full-time in a job description.**
3. Educational organization employers can't take into account the potential for or likelihood of an employment break period when deciding if a new hire will be full-time.

iii. Administrative Period

1. This period can't be longer than 90 days.
2. For variable hour and seasonal employees there may be a period of time between their employment start date and the beginning of the initial measurement period. The administrative period must include the days between the start date and the beginning of the initial measurement period.



iv. Rules when Stability Periods are Longer than the Associated Measurement Periods
    1. General rule: a standard measurement period can be 3 months to 12 months and the stability period is the greater of (a) 6 months or (b) the length of the standard measurement period.
    2. If the measurement period is short, such as 3 months, then there will be no period of time between stability periods, which are 6 months minimum.

v. Employee Categories to which Different Measurement and Stability Periods May be Applied
    1. Employer can use measurement and stability periods that differ in length and in their starting and ending dates for different **categories of employees: (a) salaried employees vs. hourly employees, (b) employees whose primary place of employment are in different states, (c) union employees vs. non-union employees, or (d) each union group covered by a separate collectively bargained agreement**.
    2. Applicable Large Employer Members (part of a control group) may use different starting and ending dates and lengths of measurement and stability periods.

vi. Variable Hour Employees
    1. In some industries, such as hospitality or retail, an employer may not be able to determine at the start date if an employee will be full-time because the working hours vary significantly.
        a. Employer can use an initial measurement period, including any administrative period that does not extend beyond the last day of the calendar month beginning on or after the first anniversary of the employee's start date. (Example: Employee begins work on February 1, 2014. The measurement period ends on March 31, 2015, or the end of the first month after the one year anniversary.)
        b. The employer may not take into account the likelihood that the employee may terminate employment before the end of the initial measurement period.
    2. The employer must also consider the new hire factors outlined above to determine at an employee's start date whether the new hire will be a full-time employee.

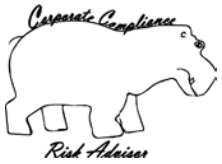
vii. Temporary Staffing Firms
    1. To decide if a new employee of a temp firm is a variable hour employee, consider factors, such as whether other employees in the same position with the temp firm: (a) may reject a temporary job assignment; (b) typically have periods when no temporary job assignment is offered; (c) are offered temporary placements for differing time periods; and (d) typically are offered assignments that don't extend beyond 13 weeks.
    2. Until further guidance, deciding when an employee terminates her/his employment should be based on all available facts and circumstances and by using a reasonable method that is consistent with the employer's general practices for other purposes, such as COBRA or applicable state law.

viii. Seasonal Employees
    1. Employers using the look back measurement method may apply the same rules as they would with variable hour employees.
    2. **Seasonal employee** means an employee in a position for which the customary annual employment is 6 months or less. The 6 months should begin in approximately the same part of the year, such as summer or winter.
    3. If a seasonal employee changes employment status before the end of the initial measurement period to a 30 hours/week position, the employer must treat the employee as a full-time employee by either (a) the first day of the 4th month after the change in employment status, or (b) if earlier, the first day of the first month following the end of the initial measurement period.

ix. Modifications of the Measurement or Stability Periods to Consolidate Coverage Entry Dates
    1. The initial measurement period for new variable hour or seasonal employees may begin on the (a) employee's start date, or (b) any date after that up to and including the first day of the first calendar month following the employee's start date. Effectively, this allows employers to group new hires into 12 groups during the year for purposes of determining the initial measurement period.

x. Change in Employment Status
    1. Variable hour and seasonal employees who have a change in employment status during the initial measurement period (that makes them full-time employees) must be offered coverage with minimum value by (a) the first day of the 4th full calendar month following the change in employment status or (b) if earlier, and the employee is full-time based on the initial measurement period, the first day of the first month following the end of the initial measurement period. Employer not subject to a penalty on this employee for the first 3 months of employment.
    2. The above rule also applies to an employee who changes status from a part-time to a full-time employee during the initial measurement period.
    3. Employee moves from full-time to part-time status:
        a. Monthly measurement method: employer can use this method within 3 months of the change (a) if the employee actually averages less than 30 hours a week for the 3 months following the change to part-time and (b) if the employer offer continuous coverage with minimum value from at least the 4th month of the employee's employment.
        b. Look back measurement method: since employee's status is set during the measurement period and maintained in the stability period, the employee's reduced hours would be counted in a subsequent standard measurement period and the part-time status would then continue in the next stability period.

xi. New Employees that Are Not Variable Hour or Seasonal
    1. Employers will not be assessed a penalty during the initial three months of employment for new full-time employees if (a) the employee is otherwise eligible for coverage, (b) coverage is offered on the first day following the 3 months, and (c) the coverage has minimum value.

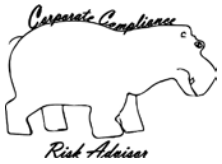


xii. Periods of Time Between Stability Periods
    1. Occasionally a situation may arise when an employer uses a lengthy measurement period, such as 12 months, and an employee is hired soon after a standard measurement period begins. The different starting dates for the standard measurement period (applicable to on-going employees) and the initial measurement period (applicable to the new hire) will eventually create a gap in time between the stability periods.
    2. To sync up the stability periods, the new hire will retain the same on-going status (full-time or part-time) established in the initial measurement period and associated stability period until the beginning of the stability period associated with the first full standard measurement period.
    3. For variable hour or seasonal employees who don't average 30 hours a week during the initial measurement period, the associated stability period must end at the same time as the first full standard measurement period.

D. Periods During Which 4980H Liability Does Not Apply
    i. Limited Non-Assessment Period for Certain Employees: new term that describes periods when an employer is not subject to a penalty.
    ii. Employer is not subject to a penalty for (a) an employee who changes to full-time status during the initial measurement period or associated administrative period or (b) a new hire who is reasonably expected to be full-time (c) if the employee is offered coverage on the first day of the month following the employee's initial 3 full calendar months of employment and (d) the coverage has minimum value.
    iii. Monthly measurement method: no penalty for the first full calendar month in which an employee is otherwise eligible for an offer of coverage and the next two months.
    iv. Employers who are new applicable large employers: there is no penalty for January to March if coverage is offered by April 1 to the employees not offered coverage at any time during the prior calendar year.
    v. Employer is not subject to a penalty in the first month of an employee's employment if the employee's first day of employment is a day other than the first day of the month.

E. Rehire Rules and Break-in-Service Rules for Continuing Employees
    i. Rehire rules: If an employee is rehired in less than 13 consecutive weeks, then treat as a continuing employee. If there is more than 13 consecutive weeks, then treat as a new hire. (Note: Educational organizations must count 26 consecutive weeks.)
    ii. Break-in-Service rules: These rules apply only when using the look back measurement method. There are several alternative methods for averaging the employee's hours over the measurement period that includes the break in service period.
        1. Special unpaid leave includes FMLA, USERRA, or jury duty.
        2. Employment break rule: applies only to educational organizations and is a period of at least 4 consecutive weeks (disregarding special unpaid leave).

F. Short-Term and High-Turnover Employees
    i. Short term employees



1. Employees who average 30 hours a week in a position expected to continue for less than 12 months.
2. If the employment is for less than 3 months, the employee doesn't affect the penalty.
3. The final regulations don't explain how short-term employees of more than 3 months but less than 12 months affect the employer penalty.

ii. High turnover positions

1. Full-time employees who quit within 3 months of hire date don't affect the penalty.
2. Variable hour employees who are counted under the look back measurement method and are not offered coverage during their first year of employment don't affect the penalty.
3. The final regulations do not contain rules for counting these employees because IRS is concerned that any rules will be manipulated.

G. Employers Using Different Methods for Different Categories of Employees

i. Employers are prohibited from using the look back measurement method for variable hour or seasonal employees while using the monthly measurement method for employees with more predictable hours of service.

ii. Employees can be split into categories. See the categories above.

iii. If an employee changes employment status from a position that is counted with the look back measurement period to a position counted with the monthly measurement period and date of transfer is during a stability period, then the employee keeps the same status (full-time/part-time) for the remainder of the stability period. After the stability period ends, the employer can determine the employee's status solely through the monthly measurement method.

iv. If an employee changes employment status from a position counted with the monthly measurement method to a position counted with the look back measurement method, the employer must recreate the stability period that would apply based on the employee's hours of service before the transfer.

4. Affordability and Affordability Safe Harbors

A. Affordability Safe Harbors

i. Liability under 4980H only arises if at least one full-time employee receives a premium tax credit.

ii. If the employer meets the affordability safe harbors, the coverage is deemed affordable under 4980H (employer penalty) regardless of whether it is affordable to the employee under §36B.

iii. An employer may use different safe harbors for different categories of employees. Employees can be categorized by: specific job categories; salaried vs. hourly; geographic location; and similar bona fide business criteria.

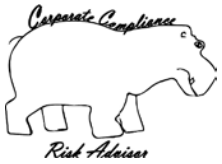
B. W-2 Safe Harbor

i. Affordable if the amount does not exceed 9.5% of the wages in Box 1 of W-2.

ii. Ignore salary reduction elections for 401(k) plans or §125 cafeteria plans. (This means these amounts are not added back into the 9.5% calculation.)

C. Rate of Pay Safe Harbor

i. Hourly employees: amount does not exceed 9.5% of an amount equal to 130 hours multiplied by the lower of (a) the employee's hourly rate on the first day of the



coverage period or (b) the employee's lowest hourly rate during the calendar month.

1. Use this formula even if the employee doesn't actually work 130 hours during a calendar month. This formula is not affected by leave of absence or a reduction in hours worked.
2. Employer can use this calculation even if an hourly employee's hourly rate of pay is reduced during the year.

ii. Salaried employees: amount doesn't exceed 9.5% of the employee's monthly salary, as of the first day of coverage.

iii. This safe harbor method can't be used with tipped or commission-only employees.

D. Federal Poverty Line Safe Harbor

i. Affordable if the amount doesn't exceed 9.5% of the monthly poverty level amount for a single individual for the applicable calendar year.

ii. Employers may use the poverty guidelines in effect 6 months prior to the beginning of the plan year.

5. Offers of Coverage

A. In General

i. Coverage is deemed offered to all full-time employees if it is offered to 95% of full-time employees, or if greater, 5 of its full-time employees. (But see 2015 transition rules below.)

ii. The offer must allow an employee an "effective opportunity" to accept or decline coverage. If the employer offers minimum value at no cost to the employee for employee-only coverage, ignore the effective opportunity requirement.

iii. Employees who work for more than one Applicable Large Employer Member (in the same control group): if one of these employers offers coverage it is treated as an offer by all employers in the group.

iv. Employer may be subject to the penalty if it fails to offer coverage to employees who are eligible for other coverage, such as Medicare, Medicaid or a spouse's employer's plan.

v. An employee's election of coverage from a prior year that continues for every succeeding plan year constitutes an offer of coverage for purposes of §4980H.

B. MEWA's and Single Employer Taft-Hartley Plans

i. An offer of coverage includes an offer made on behalf of an employer.

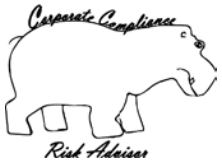
ii. An offer of coverage made by a professional employment organization or other staffing firm is treated as an offer of coverage on behalf of the client-employer for purposes of 4980H; but only if the client-employer's fee includes an amount attributable to the health coverage in which the employee enrolled.

6. Assessment and Payment of Section 4980H Liability

A. An Applicable Large Employer Member (part of a control group) is not liable for an assessable penalty of any other entity in the controlled group.

B. IRS will contact employers about their potential liability and allow an opportunity to respond before any liability is assessed or a notice & demand for payment is made.

C. If an employee worked for two or more employers in a control group in the same month, the employer with the greatest number of hours that month is treated as the employer for purposes of 4980H(a) & (b). This member employer would also be responsible for §6056 report on the employee.

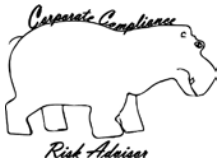


D. The 4980H penalty is not tax deductible.

7. Definition of Dependent
   A. **Dependent** means biological and adopted children, but not foster children or stepchildren. (Foster children receive health coverage via government programs such as Medicaid or CHIP. Stepchildren have a biological parent who can provide coverage.)
   B. Dependent excludes a child who is not a US citizen or national, unless the child is a resident of a country contiguous with the US (i.e., Mexico or Canada).
   C. A dependent must be covered for the entire calendar month in which she/he becomes 26 years old.
8. Worker Classification
   A. **Employee** does not include a leased employee (as defined in 26 US §414(n)(2)), a sole proprietor, a partner in a partnership, a 2% S-corp shareholder, or a §3508 worker (i.e., real estate agent or direct sellers). The hours of service of §3508 workers are not counted when determining the number of full-time and full-time equivalent employees.
   B. **Home Care Workers**: Determine who controls and directs the work done by the home care worker using the IRS common law employer criteria. The "employer" could be the home health company or the service recipient (e.g., the family needing the services).
9. International Issues
   A. H-2A and H-2B Visa holders: these workers included in the definition of "employee". But H-2A workers (agricultural workers) may fit I the "seasonal employee" rules.
   B. Cruise Ship Employees: "Hours of service" does not include hours for which the employee receives payment that is taxed by sources outside the US. This general rule applies to cruise ship employees.
   C. Hours of service definition does not include hours that are compensated with income from sources outside the US.
   D. Employees transferring to or from Foreign Employer: The rule below applies to both the monthly measurement method and the look back measurement method.
      i. An employee who transfers from a domestic (i.e., US) applicable large employer to a foreign applicable large employer (e.g., 50 or more employees) is treated as a terminated employee (of the US employer), but only (a) if the overseas job is expected to continue indefinitely or for at least 12 months and (b) substantially all the compensation after the transfer is treated as foreign-source income.
      ii. An employee who transfers to a domestic applicable large employer from a foreign employer is treated as a new hire, but only if the employee has no prior hours of service with the US employer. If the employee has prior hours with the US employer, then apply the rehire rules.

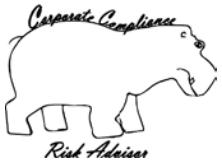
Transition Rules for 2015

1. Non-calendar Year Plans
   A. This transition relief applies to: (a) the period before the first day of the first non-calendar year plan beginning in 2015, (b) for an employer that maintained a non-calendar year plan as of December 27, 2012, and (c) has not modified the plan year after December 27, 2012 to begin on a later calendar date.
      i. Essentially, it's transition relief for the period before the 2015 plan year begins for employees who (a) based on the eligibility rules in effect on February 9, 2014, (b) are eligible for coverage as of the first day of the 2015 plan year and (c) are offered



coverage no later than the first day of the 2015 plan year that is (d) affordable and (e) has minimum value.

B. Pre- 2015 Eligibility Transition Guidance
    i. No penalty for the months in 2015 before the beginning of the 2015 plan year if:
        1. Employer maintained a non-calendar year plan as of December 27, 2012, and
        2. Has not modified the plan year since December 27, 2012 to begin at a later calendar date, and
        3. Employee was eligible for coverage under the eligibility rules in effect as of February 9, 2014, and
        4. The same eligibility rules make the employee eligible for coverage on the first day of the 2015 plan year, and
        5. Employee is offered coverage no later than the first day of the 2015 plan year that is affordable and has minimum value.
    ii. The above relief also applies to calendar year plans if: (i) an employee was not eligible for coverage under the eligibility rules in effect as of February 9, 2014.
    iii. An employer may still be subject to a penalty if it does not offer coverage to 95% of its full-time employees as of the first day of the 2015 plan year. In this case, the penalty would apply to all 2015 calendar months without regard to the above transition relief.
C. Significant Percentage Transition Guidance (All Employees)
    i. Employers that maintained a non-calendar year plan as of December 27, 2012 and the plan was not modified after December 27, 2012 to start at a later date (i.e., the plan year start and end dates weren't changed) and that either
        1. Had at least one quarter of its employees covered in the non-calendar year plan during the 12-month period ending on February 9, 2014 or
        2. Offered coverage to at least one third of employees during the most recent open enrollment period before February 9, 2014.
    ii. Employers in the above scenario would not be assessed a penalty for the months before the start of the 2015 plan year with respect to employees who (1) are offered affordable coverage with minimum value by the first day of the 2015 plan year and (2) would not have been eligible for coverage as of February 9, 2014 in the employer's calendar year plan year.
    iii. An employer may still be subject to a penalty if it does not offer coverage to 95% of its full-time employees as of the first day of the 2015 plan year.
D. Significant Percentage Transition Guidance (Full-time Employees)
    i. Employers with large numbers of seasonal or part-time employees may need to use this transition guidance.
    ii. Employers that maintained a non-calendar year plan as of December 27, 2012 and the plan was not modified after December 27, 2012 to start at a later date and that either:
        1. Had at least one third of its full-time employees covered in the non-calendar year plan during the 12-month period ending on February 9, 2014 or
        2. Offered coverage to at least one half of its full-time employees during the most recent open enrollment period before February 9, 2014.



iii. Employers in the above scenario would not be assessed a penalty for the months before the start of the 2015 plan year with respect to full-time employees who (1) are offered affordable coverage with minimum value by the first day of the 2015 plan year and (2) would not have been eligible for coverage as of February 9, 2014 in an employer's calendar year plan year.

iv. An employer may still be subject to a penalty if it does not offer coverage to at least 95% of full-time employees as of the first day of the 2015 plan year.

E. Section 6056 Reporting for 2015 Transition Period for Non-Calendar Year Plans

i. Section 6056 applies to all calendar months during 2015.

ii. Employers with non-calendar year plans may use actual service dates or the look back measurement method to determine the full-time employees (that must be included in this reporting) during the months in 2015 that precede the start of the 2015 plan year.

2. Shorter Measurement Periods Permitted for Stability Periods Starting During 2015

A. **Full-time employee**, for purposes of §4980H, means an employee who works on average at least 30 hours a week.

B. Shorter Measurement Periods Permitted in 2015

i. Employers using the look back measurement method who want the stability period to start in 2015 may (a) use a measurement period at least 6 consecutive months but less than 12 consecutive months that (b) begins no later than July 1 and (c) ends no earlier than 90 days before the first day of the plan year beginning on or after January 1, 2015. (Note: So if the employer includes an administrative period, the stability period would begin on the first day of the 2015 plan year. If no administrative period is included, the stability period would begin 90 days before the first day of the 2015 plan year.)

ii. An employer with a plan year beginning on July 1, 2014 must use a measurement period longer than 6 consecutive months in order to comply with the requirement that the measurement period begin by July 1 and end no earlier than 90 days before the stability period.

iii. The above transition relief applies to employees who are employed as of the first day of the transition's measurement period. For new hires after that date, the employer would use the general rules of look back measurement method.

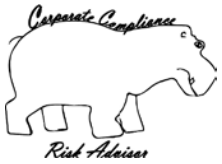
C. Shorter Period Permitted in 2015 to Determine Employer Size

i. An employer may chose 6 consecutive months during the 2014 calendar year to determine if it is an applicable large employer (e.g., having at least 50 full-time or full-time equivalent employees on business days during the preceding calendar year).

ii. Example: An employer could use 6 consecutive months from February to August 2014 to determine size; then use September to December 2014 to establish a group health plan or make adjustments to an existing plan (presumably to change eligibility rules).

D. Offer of Coverage

i. An employer that is a first-time applicable large employer will not be penalized in January – March 2015 if it offers coverage with minimum value by April 1, 2015 to full-time employees who were not offered coverage at any time during the 2014 calendar year.



ii. Special rule for January 2015 only: If employer offers coverage to a full-time employee no later than the first day of the first pay period that begins in January 2015, the employee will be treated as having been offered coverage for January 2015.

iii. An employer will not be liable for a penalty related solely to coverage of dependents if the employer takes steps during the 2015 plan year to ensure that coverage is offered to the dependents. This applies to plans in which (1) dependent coverage is not offered, (2) dependent coverage does not have minimum essential coverage, or (3) dependent coverage is offered to some but not all dependents. This transition relief applies only to dependents that were not offered coverage in both the 2013 or 2014 plan years.

3. Transition Relief for Employers with less than 100 Full-time Employees

A. No penalty assessed in 2015 for applicable large employers who meet the following criteria:

i. Employer has 50 – 99 full-time and full-time equivalent employees on business days during 2014.

ii. Beginning on February 9, 2014 through December 31, 2014, employer doesn't reduce the size of its workforce or the overall hours of service of its workforce (in order to lower the number of full-time & FTE's eligible for coverage), except for bona fide business reasons. Bona fide business reasons include: sale of a division, changes in the economic marketplace, terminations for performance, or similar reasons.

iii. During the **Coverage Maintenance Period** (which means for an employer (a) with a calendar year plan, the period beginning on February 9, 2014 and ending on December 31, 2015, or (b) with a non-calendar year plan, the period beginning on February 9, 2014 and ending on the last day of the plan year that begins in 2015), the employer does not eliminate or materially reduce the health coverage, if any, in effect on February 9, 2014. The following actions are acceptable:

1. Employer continues to contribute to employee-only cost that is (a) 95% of the dollar amount of the contribution that employer was offering on February 9, 2014 or (b) is the same or higher percentage of cost of coverage the employer was contributing on February 9, 2014,
2. If there is a change in benefits, the coverage still provides minimum value, and
3. Employer doesn't narrow or reduce the classes of employees or their dependents to whom coverage was offered on February 9, 2014.

iv. Employer certifies it's eligibility for the transition relief when it files the §6056 report.

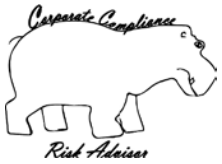
4. Application of the Transition Relief to Non-Calendar Year Plans

A. The above transition relief applies to all calendar months in 2015 & 2016 that are part of the non-calendar 2015 plan year.

B. An employer with 50 – 99 employees can't use the above transition relief if the employer modifies the plan date after February 9, 2014 to begin on a later calendar date.

5. Application of the Transition Relief to New Employers

A. An employer first coming into existence in 2015, may be able to use the transition relief if the employer: (1) reasonably believes it will have fewer than 100 full-time & full-time



equivalent employees in 2015, (2) reasonably expects to maintain coverage, and (3) certifies that it meets the criteria for the transition relief.

6. Coordination with Other Transition Relief
    A. The transition relief is available only for the 2015 calendar year or for the 2015 non-calendar plan year.

7. Limited 2015 Transition Relief

    A. Applicable large employers will not be subject to the penalty in 2015 (or for non-calendar year plans, during the 2015 plan year) if coverage is **offered to 70%** full-time employees and their dependents. For non-calendar year plans, this relief is only available if the plan year is not modified after February 9, 2014 to begin on a later calendar date.
    B. For applicable large employers with more than 100 full-time & full-time equivalent employees, the §4980H(a) penalty will be calculated by **subtracting 80 employees** (rather than 30 employees). This transition rule means that the §4980H(b) penalty will also be reduced because it can't exceed what would be owed under 4980H(a).

8. Interim Guidance for Multi-employer Arrangements
    A. This interim guidance doesn't apply to single-employer plans; only to MEWA's.
    B. This applies to an applicable large employer member that is required by a collective bargaining agreement to make contributions to a multi-employer plan for some of its employees that has affordable coverage and minimum value. With regard to the employees (and their dependents) covered by the collective bargaining agreement, the employer:
        i. Won't be subject to a 4980H(a) penalty for failing to offer minimum essential coverage to full-time employees and their dependents; and
        ii. Won't be subject to a 4980H(b) penalty (because the coverage is affordable & has minimum value).
    C. Coverage under a multi-employer plan will be deemed affordable if the employee's required contribution for self-only coverage doesn't exceed 9.5% of the wages reported to the qualified multi-employer plan. The wages may be determined based on actual wages or an hourly wage rate.
    D. If a penalty is assessed the employer would be responsible for identifying its employees in the multi-employer plan that are included in the penalty.
    E. For a definition of a multi-employer plan see 26 USC §414(f).
    F. Note that multi-employer plans that are not subject to DOL jurisdiction (i.e., public sector unions) may use this interim guidance if they meet the requirements of 26 USC §414(f)(1)(A) and (B).