HCR FAQ: Play or Pay

THE DOCTORS INSURANCE BROKER™

Q: **What is Play or Pay?**

A: Per IRS regulations, effective for calendar year 2015, employers with 100 or more full-time equivalent employees (FTEs) must offer adequate, affordable health coverage to at least 70% of their full-time employees (and their dependent children up to age 26), or potentially pay a penalty if at least one of those employees goes into the Exchange and qualifies for a premium tax credit.

Effective calendar year 2016, these employers must offer coverage to at least 95% of their full-time employees (and their dependent children up to age 26).

Employers with less than 100 but more than 50 FTEs have until January 1, 2016 to comply with the employer requirements. To be eligible, an employer will have to go through a certification process to demonstrate that during a period beginning on February 9, 2014, and ending on December 31, 2014, the employer did not reduce the size of its workforce or the overall hours of service of its employees in order to satisfy the workforce size conditions.

All eligible employers will have to offer coverage to at least 95% of their full-time employees and their dependent children up to age 26 in 2016 to avoid potential tax penalties.

Employers with less than 50 FTEs do not have to comply with this mandate.

This provision in the Affordable Care Act is known as Employer Shared Responsibility or the Employer Mandate. It should be noted that employers are not mandated to offer coverage to their part-time employees.

Q: **How does the Mandate apply to employers who offer non-calendar year plans?**

A: Employers who offer non-calendar year plans are not required to comply with the mandate until the start of their plan year in 2015, rather than on January 1, 2015, provided that the plan meets the following criteria:

A. The employer maintained a non-calendar year plan before December 27, 2012

B. The plan year was not modified after December 27, 2012

C. Eligibility rules were not changed after February 9, 2014.

Also, the group must meet one of two coverage tests:

A. Since December 27, 2012, the plan needs to have been either offering coverage to at least 33% of all employees or covering at least 25% of its entire workforce, including part-time workers.

B. The group would have to demonstrate that since December 27, 2012, it has been offering coverage to at least 50% of all full-time employees or covering at least 33% of all full-time employees.

For salaried employees, monthly salary is used instead of 130 multiplied by the hourly rate of pay. To rely on this safe harbor, an employer cannot decrease the employee's rate of pay during the year.

In order to meet "Minimum Value" (MV) requirements, the employer-sponsored plan must offer health coverage that pays at least 60% of the cost of the covered services provided under the plan. For fully-insured group plans, it is up to the plan carrier to determine if a plan meets minimum value and provide that information to the employer.

There are three ways to determine whether a plan meets minimum value.

1. The IRS and HHS have created a "Minimum Value calculator" to determine whether a plan satisfies this 60% threshold. This calculator is located on the CMS.gov website: http://www.cms.gov/site-search/search-results.html?q=minimum%20value%20calculator.

2. The IRS provided three design-based safe harbor plans listing acceptable levels of benefits. If the employer-sponsored plan provides coverage that is at least as generous as any of the safe-harbor plans, the plan satisfies the MV provision. (See chart below)

	Design-based safe harbor plans that satisfy minimum value					
	Individual Deductible		Coinsurance	Individual Out-of-Pocket Maximum	Prescription Drug Copayments	Employer Individual Annual HSA Contribution
	Medical	Prescription Drug				
1	$3,500 integrated medical and drug		80% all services	$6,000	N/A	N/A
2	$4,500 integrated medical and drug		70% all services	$6,400	N/A	$500
3	$3,500	$0	60% medical 75% prescription drug	$6,400	$10/$20/$50 Specialty drugs at 75%	N/A

3. Where the Minimum Value calculator or checklist safe-harbors are not appropriate, for example, if the plan contains nonstandard features (such as limitations on the number of doctor visits or on the amount of covered visits in the hospital), then a member of the American Academy of Actuaries must provide certification that the plan satisfies the MV requirement.

preceding calendar year, and the employees causing the employer to exceed the 50 full-time employee threshold are seasonal employees employed no more than 120 days during the preceding calendar year. So, if an employer has less than 50 full-time equivalent employees for most of the year and then employs seasonal employees for no more than 120 days during the year, they do not have to count the seasonal employees in their FTE calculation.

However, once an employer is an "applicable large employer," that is, they employ 50 or more full-time employees without counting the seasonal employees, the seasonal employees' hours are measured along with the hours of other employees, and such seasonal employees may be considered "full-time" if they work, on average, at least 30 hours per week during a measurement period.

Q: How does an employer identify a full-time employee?

A: A full-time employee is an employee who works an average of at least 30 hours of service per week or 130 hours of service per month. Hours of service include paid time off due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. Hours of service also includes certain unpaid time if the employee is absent due to USERRA, FMLA, or jury duty.

Under the ACA, "employee" is defined by the common law standard and, as such, non-employee directors, sole proprietors, partners, 2-percent or more shareholders in an S corporation, and "leased employees" (as defined in Code Section 414(n)(2)) are not treated as employees. However, an employee who provides services as both an employee and non-employee (such as an individual serving as both an employee and a director) is an employee with respect to his or her hours of service as an employee.

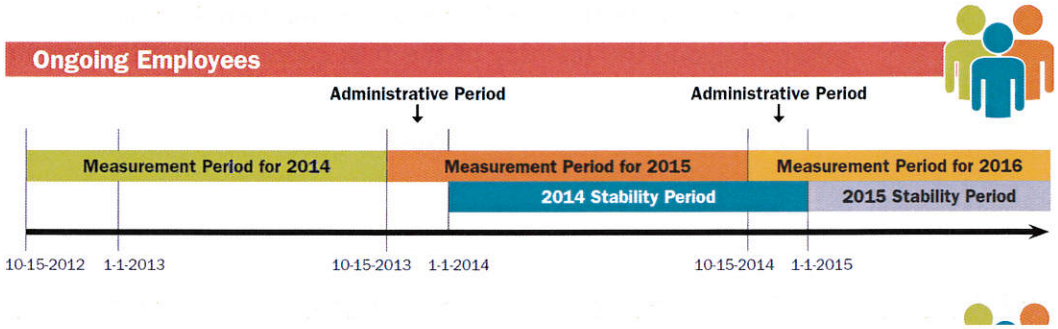
Q: What if the employer can't reasonably determine if an employee will be full-time?

A: If, based on the facts and circumstances available at time of hire, an employer cannot reasonably determine whether a new employee will work an average of at least 30 hours per week, then the employee is considered a "variable hour" employee. In that case, the employer may use a safe harbor method for determining the status of its variable hour employees.

The final regulations provide two measurement methods for an employer to determine whether an employee is a full-time employee: the monthly measurement method and the look-back measurement method.

Under the monthly measurement method, an employer determines whether each employee is a full-time employee by counting the employee's hours of service for each month. An employer will not be subject to a Play or Pay penalty with respect to an employee as long as the employee is offered affordable, minimum value coverage no later than the day after the end of the three-month period that begins with the first full

worked. In general, the standard stability period must be at least six consecutive months, but no shorter than the standard measurement period, taking into account any applicable "administrative period."



Here you can see, this employer has chosen a Standard Measurement period of 12 months, beginning October 15, 2012, through October 15, 2013. Then they have added an Administrative Period to allow them time to determine who qualifies as a full-time employee. All full-time employees will now enter a Stability Period, where they will need to be offered coverage for a period of time that equals the 12-month Standard Measurement Period, so, from January 1, 2014 to January 1, 2015.

Going forward, to prevent an administrative period from creating a potential gap in coverage, it must overlap with the prior stability period, so that ongoing full-time employees will continue to be offered coverage during the administrative period. As you can see on this graph, an employee entitled to coverage for a stability period that is calendar year 2015 will be covered during any administrative period in 2015.

Q: **How do the "look-back" and measurement periods work for new variable hour and seasonal employees?**

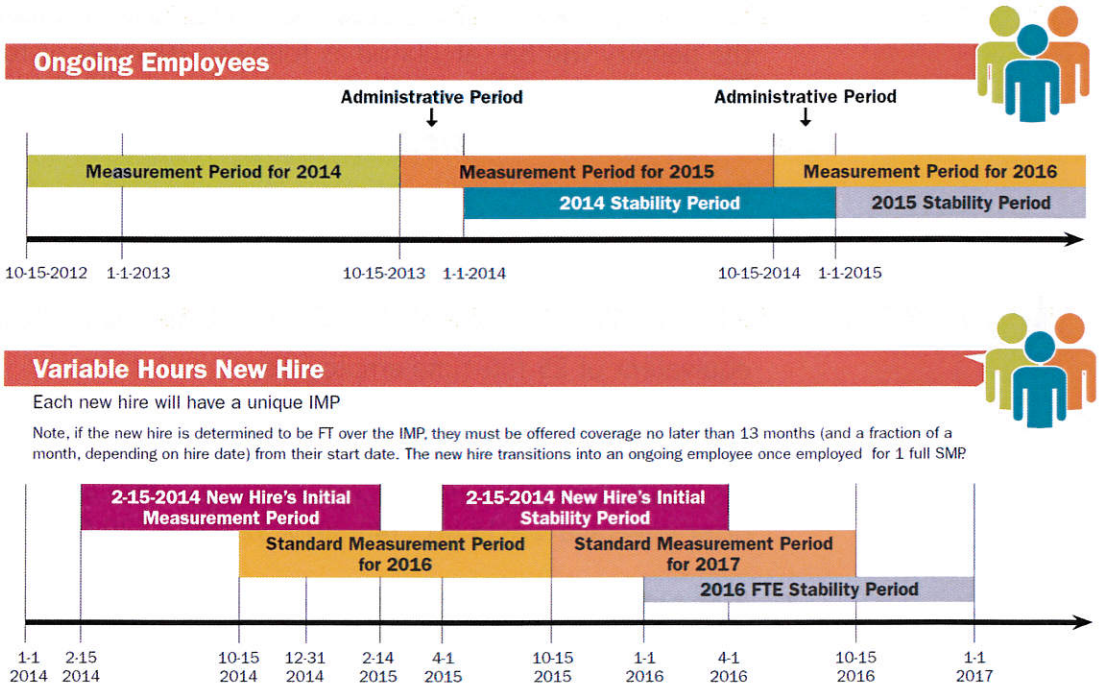
A: "New" variable hour and seasonal employees have not yet worked for their employer for one full standard measurement period. An employer may determine whether a new employee worked an average of at least 30 hours of service per week or 130 hours of service per month by looking back at period of 6 to 12 consecutive calendar months, as chosen by the employer. This is the "initial measurement period".

As is permitted for ongoing employees, an employer may use an administrative period before the start of the initial stability period following an employee's initial measurement period. The administrative period must not exceed 90 days in total, and includes all periods between the new employee's date of hire and the employee's eligibility date, other than the initial measurement period.

So this is a little different. For example, if the employer begins the initial measurement period on the first day of the month following a new variable hour or seasonal employee's date of hire, the period between the employee's start date and the first day of the next

becomes an "ongoing" employee once they have been employed for 1 full Standard Measurement Period.

In general, a 12-month measurement period (and a 12-month stability period that corresponds to the plan year) may be easiest administratively for the employer. The chart below shows how the measurement periods would work for an employer with both ongoing and new and/or seasonal employees.



Q: **What relief is there for employers that want to use a 12-month stability period for new employees but are unable to use an administrative period shorter than 2 months?**

A: An employer may use an initial stability period that is one month longer than the initial measurement period, as long as it does not exceed the remainder of the standard measurement period (plus any associated administrative period) in which the initial measurement period ends. This is intended to give additional flexibility to employers that wish to use a 12-month stability period for new variable hour and seasonal employees and an administrative period that exceeds one month. To that end, such an employer could use an 11-month initial measurement period (in lieu of the 12-month initial measurement period that would otherwise be required) and still comply with the general rule that the initial measurement period and administrative period combined may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the employee's start date.

Q: **How does this affect employers with multiple businesses (Controlled Groups)?**

A: Under IRS regulations, all members of a tax controlled group are treated as a single employer. However, each member of a controlled group is treated as a separate entity for purposes of determining the liability for, or amount of, the Employer Shared Responsibility penalty. See example on next page.

One owner has three businesses in which:

A: has 20 full-time employees,

B: has 40 full-time employees, and

C: has 5 full-time employees.

When combined, this equals 65 full-time employees, which designates them as a large employer under the law.

If the employer is subject to a penalty, they are allowed to subtract 30 **total** employees from that number. However, the 30 employees will be split up among the three businesses based on the number of employees in each business. The calculation would be as follows:

A:	20 employees = 31% of 65.	31% of 30 = 9	A can subtract 9 employees from its total.
B:	40 employees = 61% of 65.	61% of 30 = 18	B can subtract 18 employees from its total.
C:	5 employees = 8% of 65.	8% of 30 = 2	C can subtract 2 employees from its total.

Under the rules of the ACA governing controlled groups, the employer does not need to offer identical coverage to each entity, or in fact, any coverage at all. For example:

The employer may decide to not offer coverage to business A and C, but will offer minimum value, affordable coverage to B.

In that case, the penalties would only apply to A and C, and not B.

The penalty reductions for each business would be:

A: (20 - 9) x $2,000 = $22,000 and

C: (5 - 2) x $2,000 = $6,000

NOTE: For calendar year 2015 ONLY, employers may subtract the first **80** employees.

Q: **How is the Employer Shared Responsibility tracked and penalties applied?**

A: The IRS has added thousands of agents just to monitor this provision of the new law. After the end of each calendar year, the IRS will contact employers to inform them of their potential liability and provide an opportunity for a response.