

August 28, 2015

Health Care Reform: Employer Shared Responsibility Rule

Part 1—Overview

Beginning January 1, 2015¹, the Patient Protection and Affordable Care Act (ACA) requires certain employers to offer affordable health coverage under the **Employer Shared Responsibility Rule** (also called the employer mandate or the “pay or play” rule). This coverage must provide at least “minimum value” to Full-Time Employees and be “affordable” for them.

Wespath has published this guide to the Employer Shared Responsibility Rule to help employers in The United Methodist Church (UMC) understand:

- Whether the Employer Shared Responsibility Rule applies to them,
- What to do if the Rule does apply to them, and
- What penalties might apply as a result of not complying with the Rule (i.e., the “pay” part of the “pay or play” rule).

Information on the Employer Shared Responsibility Rule is divided into separate documents. *Choose only the documents that relate to your situation as an employer:*

- **Part 1** explains the Employer Shared Responsibility Rule in general.
- **Part 2** helps local churches, annual conferences and other UMC employers understand whether or not they are part of a “controlled group,” i.e., whether they must be treated under the Rule as *one employer* with other affiliated employers including schools, day-care centers, summer camps, etc.

Choose the appropriate Part 2 version:

- **Part 2A** for local churches
- **Part 2B** for annual conferences

- **Part 3** helps local churches and other UMC employers understand how to count employees under the Rule and which employees must be offered health coverage.
- **Part 4** explains the penalties associated with the Employer Responsibility Rule.
- **Part 5** explores the question of the employment status of clergy appointed to local churches in the UMC for purposes of the Rule.
- **Part 6** is a calculator to help UMC employers assess whether the Rule may apply to them.

¹ Originally scheduled to be effective on January 1, 2014, the Employer Shared Responsibility Rule was delayed by the Obama Administration in **July 2013**.

I. The Basics—“Pay or Play”

The Employer Shared Responsibility Rule is complex and has several key concepts to understand. Basically, the Rule requires any **Applicable Large Employer** (i.e., any employer with 50 or more *Full-Time* and *Full-Time Equivalent Employees—collectively “FTEEs”*) to offer health insurance coverage to Full-Time Employees (those working 30 or more hours per week) or else pay a **No Coverage Penalty**. The Rule also imposes an **Inadequate Coverage Penalty** if the Applicable Large Employer offers health insurance coverage but any of its Full-Time Employees qualifies for a Premium Tax Credit (PTC), for example, if the employer coverage offered is not “affordable.” A PTC is a federal subsidy based on low to moderate income, to be used toward the purchase of health insurance through an ACA-established Health Insurance Marketplace. (Health Insurance Marketplaces are also called “Exchanges.” You can read more about the Health Insurance Marketplace [here](#).)

Important Delay Until 2016 for Some Employers: On February 12, 2014, as explained [here](#), the Internal Revenue Service (IRS) published **final regulations** concerning the Employer Shared Responsibility Rule. The final regulations give “mid-sized” Applicable Large Employers with **50-99** FTEEs an additional year to comply with the Rule as long as they follow the reporting and certification requirements detailed below. Mid-sized employers that are in compliance with the requirements below are not subject to the Employer Mandate until **January 2016**. However, large Applicable Large Employers with **100 or more** FTEEs must comply fully with the Employer Shared Responsibility Rule by **January 2015**.

- Under the text of the ACA (enacted March 2010), the Rule was meant to take effect **January 1, 2014** for all Applicable Large Employers with at least 50 FTEEs.
- In July 2013, the IRS postponed enforcement of the Rule (Employer Mandate) as relates to *any* Applicable Large employer until **January 2015**.
- The final regulations (February 2014) added a new category of *mid-sized employers* (50-99 FTEEs) and postponed enforcement of the Employer Mandate until **January 2016** for mid-sized employers. The **January 2015** enforcement deadline for *large employers* (100+ FTEEs) was maintained.
- Most small employers with fewer than 50 FTEEs remain exempt from the Employer Mandate.

Further relaxations to the Rule’s penalties are described in the sections below.

Reporting and Certification for Mid-Sized Employers: Very importantly, mid-sized Applicable Large Employers with 50-99 FTEEs must certify to the IRS that they qualify (i.e., by not cutting their workforces and not cutting back offered benefits) for the extra year’s delay. These mid-sized Applicable Large Employers also are subject to information reporting requirements related to 2015 coverage, as explained [here](#).

An Applicable Large Employer will be assessed a penalty under §4980H of the Internal Revenue Code if, for any month, any Full-Time Employee is certified as eligible to receive a PTC toward the purchase of health insurance through the Marketplace. The Rule also applies a penalty to Applicable Large Employers that do not offer coverage to the dependent children (up to age 26) of Full-Time Employees. However, no penalty applies if an Applicable Large Employer does not offer coverage to an employee’s spouse. Penalties are discussed in **Part 4**.

For the purposes of the Employer Shared Responsibility Rule:

- An **Applicable Large Employer** is an employer that employed an average of 50 or more FTEEs (meaning Full-Time Employees and Full-Time “equivalent” employees) *during the preceding year*. (Keep in mind that Applicable Large Employers with 50 to 99 FTEEs in 2014 may qualify for the one-year delay in applicability of the Rule.)

- A **Full-Time Employee** is an individual who is employed an average of at least 30 hours per week or 130 hours per month.
- When counting part-time employees toward total FTEEs, the number of **Full-Time Equivalent Employees** (FTEEs) is calculated by taking the aggregate number of service hours of non-full-time employees² (i.e., part-time employees, seasonal employees and variable-hour employees) during the month—not to exceed 120 for any part-time employee—and *dividing that sum by 120*. This number is then added to the count of Full-Time Employees.
- The number of FTEEs is determined on a **Controlled Group** basis, so all individuals employed by the organizations that are members of the Controlled Group (for example, a local church and its day-care center) are treated as being employed by a single employer. The Controlled Group concept is explained further in **Part 2A for local churches** or **Part 2B for annual conferences**.

Under the Employer Shared Responsibility Rule, an Applicable Large Employer must offer health insurance coverage to its Full-Time Employees (those working at least 30 hours per week) and their dependent children (up to age 26), and that coverage must provide at least **Minimum Value** and be **Affordable** to the employees. The concepts of Minimum Value and Affordable coverage are described in **Part 4**.

*If an employer is an Applicable Large Employer and does not offer coverage to any employees, or if the employer offers coverage that does not meet Minimum Value or Affordability standards for certain employees, then the employer may be subject to a penalty, as described in **Part 4**.*

II. Employers Subject to the Employer Shared Responsibility Rule

Only Applicable Large Employers (at least 50 FTEEs) are subject to the Employer Shared Responsibility Rule. The Rule applies to all types of common-law employers that employ at least 50 FTEEs, including tax-exempt employers such as churches. The Rule first becomes effective on **January 1, 2015** (for Applicable Large Employers that have 100 or more FTEEs), but is based on an employer's count of FTEEs during **2014**.

An employer is an Applicable Large Employer for a calendar year if it employed on average at least 50 Full-Time Equivalent Employees on the employer's business days during the preceding calendar year. Solely for purposes of determining Applicable Large Employer status (but not for coverage or penalty purposes), part-time, seasonal and variable-hour employees are included in the FTEE calculation.

Example: During each month of 2014, a local church has 20 Full-Time Employees, each of whom averages 35 hours of service per week. The local church also employs 40 part-time employees, each of whom averages 90 hours of service per month (roughly 22 hours per week).

Calculating Full-Time Equivalent Employees:

$$40 \text{ Part-Time Employees} \times 90 \text{ hours} \div 120 = 30 \text{ FTEs}$$

The church has 30 Full-Time equivalent part-time employees who are counted toward the church's FTEE total. This is then added to the number of Full-Time Employees working 35 hours per week:

$$20 \text{ Full-Time Employees} + 30 \text{ (Part-Time) FTEs} = 50 \text{ FTEEs}$$

² Part-time employees are counted in the calculation of FTEE's but Applicable Large Employers are not required to offer coverage to part-time employees and are not subject to the employer penalty for part-time employees who qualify for a PTC toward the purchase of health insurance through a Marketplace.

In this scenario, the local church has 50 FTEs each month by combining full-time and full-time equivalent employment. This local church is considered an Applicable Large Employer and therefore would be subject to the Employer Shared Responsibility Rule in 2015. (However, if the local church meets the reporting and certification requirements for the transition relief for medium-sized Applicable Large Employers, then the local church may not have to comply with the Rule in 2015.)

Calculating FTEs—Exceptions for Select Types of Employees

The Rule allows for certain employee exceptions when calculating total FTEs to determine an employer's Applicable Large Employer Status (i.e., whether the employer has at least 50 FTEs).

- Employee hours worked outside of the United States are disregarded if the compensation constitutes a foreign source of income.
- Partners in a partnership, independent contractors³ and those individuals who are not considered "common-law employees" can be excluded.
- Employees who have medical coverage provided by any of the uniformed services (for example, TRICARE) or by certain Veterans' Affairs programs are excluded for any month in which they have such coverage.
- Seasonal employees may be excluded in a complicated manner. An employer that exceeds 50 FTEs for fewer than 120 days per year only because of seasonal employees (for example, individuals employed for only the summer or the Christmas season) will not be considered an Applicable Large Employer. **Part 3** of this summary explains the rules for counting employees.
- An employee must be credited for hours of service for each hour in which he or she is paid or entitled to be paid, including periods where no duties are performed, such as vacation time, holidays, jury duty, paid sabbatical, sick time and disability leave.
- Employers may choose to credit salaried employees with eight hours per day or 40 hours per week, unless such method would significantly understate the employee's actual hours.

III. Determining If Your Organization Is an Applicable Large Employer

United Methodist Clergy

The question of who is the "employer" of UMC-appointed clergy for purposes of the Rule is discussed further in **Part 5**. It may be a reasonable good faith interpretation to treat the local church as the employer of appointed clergy at local churches and charges for the purpose of the Employer Shared Responsibility Rule at this time. Despite being classified as "self-employed" by statute for employment tax (SECA versus FICA) purposes, UMC clergy are considered "employees" of "the Church" for income tax and employee benefits purposes, as determined by several federal courts.

³ Employer should use caution when classifying any worker as an independent contractor; misclassification can lead to significant legal and financial consequences.

Five Steps for Employers

- 1. Determine whether your organization and another employer have a common owner.** Under the Rule, “churches and conventions or associations of churches” can apply a *reasonable, good faith interpretation* to determine if two or more employers have a common owner (also called a “Controlled Group”). If your organization is part of a Controlled Group, all employees in the Controlled Group must be counted. **Part 2A** of this summary explains the rules for Controlled Groups as pertains to churches in detail. For example, a local church and a day-care center might be considered a Controlled Group. **Part 2B** explains the rule for Controlled Groups as it pertains to annual conferences.
- 2. Determine your organization’s Full-Time Equivalent Employee count.** A calculation period is set to allow employers at least six months to count employees to determine their Applicable Large Employer status. At any point during this period, employers should use payroll records to input employees and hours into the **calculator**. The calculator will help you determine whether your organization is an Applicable Large Employer. **Please note:** Use the calculator only in 2015 for Applicable Large Employer determinations based on 2014 data. *You won’t use this worksheet for 2016 calculations.*
- 3. Determine whether or not your organization is subject to the Employer Shared Responsibility Rule, based on the Calculator and Part 3.**

No—Not Applicable Large Employer

If, using the calculator, you determine that your organization is not an Applicable Large Employer, the Employer Shared Responsibility Rule should not apply to your organization. That means:

- *Your organization would not be required to offer coverage to Full-Time Employees, and*
- *You would not need to read further at this time.*

Please note: Your organization can offer coverage to its employees if it so chooses. Small employers that choose to offer coverage have more flexibility in the design of the coverage and to whom the coverage is offered. Your organization also may be able to access the SHOP Marketplaces, explained in greater detail **here**.

2015 Only: Keep in mind that if you determine you are an Applicable Large Employer for 2015 based on your 2014 FTEE count but you have *50 to 99 FTEEs*, you may not be subject to the Rule (again, for 2015 only) if you satisfy certain conditions—but you will be required to certify and report certain information about your employees and health plan, if any, to the IRS in early 2016.

Yes—Applicable Large Employer

If, using the calculator, you determine that your organization is an Applicable Large Employer, the Employer Shared Responsibility Rule applies to your organization. That means:

- You should review **Part 3** and **Part 4** to learn more about complying with this Rule.
- You must offer health insurance coverage to all Full-Time Employees and their dependent children up to age 26—or pay a penalty (“pay or play”).
- You are *not* required to offer coverage to the spouse of a Full-Time Employee.

4. If your organization is an Applicable Large Employer, determine which employees to cover and enroll them.

The Internal Revenue Service (IRS) has developed three time periods—Measurement, Administrative and Stability—to help employers determine which employees should be offered coverage and to allow sufficient time to enroll employees in coverage. You can read more about these time periods and who should be offered coverage in **Part 3**. Generally, though, an Applicable Large Employer should offer coverage to all Full-Time Employees during the annual open enrollment period that precedes the year in which the Rule will apply.

5. If your organization is an Applicable Large Employer, estimate potential penalties for *not* offering health coverage:

- **No Coverage Penalty**—for Applicable Large Employers that do not offer health coverage to any Full-Time Employees, this is a monthly penalty related to all its Full-Time Employees, if at least one Full-Time Employee qualifies for a PTC.
- **Inadequate Coverage Penalty**—for Applicable Large Employers that offer coverage to Full-Time Employees but have at least one Full-Time Employee who qualifies for a PTC because the coverage is not Affordable, this is a monthly penalty related only to Full-Time Employees whose health coverage is not “Affordable” under ACA rules.

You can read more about these penalties in **Part 4**.

Employer Considerations—Plan Ahead

The Employer Shared Responsibility Rule is effective for coverage periods beginning on or after **January 1, 2015** (and may not apply until 2016 for many mid-sized employer with 50-99 FTEs), but employers may want to begin preparing for this Rule now. These steps can help:

1. Determine whether the organization is an Applicable Large Employer.
2. Track the number of Full-Time Employees and non-Full-Time Employees and their service hours to determine total FTEs.
3. If the calculation in Step 2 is at least 50: Determine whether all Full-Time Employees and their children up to age 26 have been offered coverage under the organization's group health plan.
4. If the group health plan does not offer coverage to children, consider establishing the offer of such coverage for upcoming plan years.
5. Determine whether the organization's existing health plan provides Minimum Essential coverage (described [here](#)) and Minimum Value (described [here](#));
6. Determine whether the cost of individual (participant-only/employee-only/self-only) health plan coverage (not coverage for spouse or children) is Affordable (described [here](#)) for Full-Time Employees.
7. Pay or play: Consider whether it is preferable and more cost-effective to offer health plan coverage to all Full-Time Employees or to pay a penalty.
8. Consider whether it is preferable to make self-only health plan coverage Affordable or pay a penalty for any Full-Time Employees who qualify for a PTC based on Affordability.

The IRS has published a set of **Frequently Asked Questions (FAQs)** for more information about the Employer Shared Responsibility Rule.

More Information

More about health care reform is available on Wespath's **health care reform webpage**, including a summary brochure for individuals entitled ***Affordable Care Act and You***.

Please send your questions to **healthcarereform@gbophb.org**. General information about health care reform is available from the federal government at **www.healthcare.gov**.

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Appendix A

Key Terms Related to the Employer Shared Responsibility Rule

ACA—Affordable Care Act [Patient Protection and Affordable Care Act of 2010, (i.e., federal health care reform legislation)].

Affordability/Affordable Coverage—Employee’s share of premium for individual (self-only) coverage is less than 9.5% of his or her household income [defined as modified adjusted gross income (MAGI).]

Note: Clergy housing is excluded from MAGI.

Applicable Large Employer—Employs at least 50 Full-Time and Full-Time Equivalent Employees; is subject to the Employer Shared Responsibility Rule (“pay or play”).

Controlled Group—Related employers that are considered “a single employer” under the Employer Shared Responsibility Rule. For example: a local church and its on-site day-care center could be considered a Controlled Group. If so, their employees would be added together to determine whether the Controlled Group is an Applicable Large Employer.

Exchange—See Health Insurance Marketplace

Full-Time Equivalent Employee (FTE)—Under ACA, this calculation includes average hours per month of the employer’s non-Full-Time Employees.

Full-Time Employee—Works at least 30 hours per week, on average.

Health Insurance Marketplace—Regulated “Marketplaces” where individuals and small employers can choose from many insurance carriers to purchase health insurance. Health insurance marketplaces are offered through the federal government and many states. Sometimes also called health insurance “exchanges.”

Inadequate Coverage Penalty—Penalty applies only to Applicable Large Employers; imposed if any Full-Time Employee qualifies for a Premium Tax Credit because his or her share of premium for health insurance coverage offered is not “Affordable.”

Minimum Coverage/Minimum Value—Health insurance must cover at least 60% of costs, on an actuarial basis.

No Coverage Penalty—Penalty applies only to Applicable Large Employers who do not offer health insurance coverage.

Pay or Play—Describes the Employer Mandate to “play” (offer affordable, minimum value health insurance) or else “pay” (inadequate coverage penalty or no coverage penalty). Applies only to Applicable Large Employers.

Premium Tax Credit (PTC)—Federal subsidy based on low income, to be used toward the purchase of health insurance through an ACA-established Health Insurance Marketplace.