General Board
Pension and Health Benefits

Caring For Those Who Serve

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Health Care Reform—Employer Shared Responsibility Rule
Part 3—Counting Employees

I. How Employees Are Counted to Determine if an Employer Is an ALE (i.e., subject to Employer Mandate penalties)

As discussed in ***Part 1 (Employer Shared Responsibility Rule—Overview)***, the Affordable Care Act (ACA) incentivizes large employers to consider offering coverage to full-time employees by creating penalties for large employers that do not offer coverage. This is informally called the Employer Mandate or "play or pay" rule.

The ACA defines a large employer ("applicable large employer" or ALE) as having 50 or more Full-Time Employees or Full-Time Equivalent Employees (collectively "FTEEs"). Full-time equivalents are calculated by dividing the total number of hours non-full-time employees work per month by 120.

All employees in a controlled group are counted when determining total number of employees, as discussed in ***Part 2A (Local Churches: Controlled Group Rules)*** and ***Part 2B (Annual Conferences: Controlled Group Rules)***.

For purposes of applying penalties for failing to "play" (i.e., failing to offer minimum essential coverage to full-time employees), the IRS has separated the ALE population into two groups: (1) ALEs with 100 or more FTEEs; and (2) ALEs with fewer than 100 FTEEs. ALEs with at least 100 FTEEs will be subject to penalties for each month in 2015 during which they failed to offer minimum essential coverage that provided minimum value and was affordable. ALEs with 50-99 FTEEs will not be subject to penalties until coverage months in 2016. (They must file a certification of eligibility for the relief[1], however.)

Both groups are required to file IRS reports: *Form 1094-C* and *Form 1095-C*, required by Code Section 6056. This Section 6056 reporting for employer-provided health insurance is discussed **here**.

Failing to file timely and accurate reports also triggers penalties, separate from the Employer Mandate penalties. (For those who file on time in 2016 and make a good faith effort to collect the required information, however, the IRS will waive penalties for incorrect or incomplete information on forms filed for 2015.)

Counting Employees—Exceptions
Not everyone who does work for an employer is counted for determining FTEEs and ALE status.

- Persons who are not common-law employees are not counted. This exclusion would cover independent contractors, partners, and others not considered to be "common law" employees.
- Employee hours worked outside the United States are disregarded if the compensation constitutes a foreign source of income.

[1] ALEs with 50-99 FTEEs in 2015 certify their eligibility by checking Box C ("Section 4980 Transition Relief") on page 1 of the IRS *Form 1094-C* and by using code "A" in column (e) on page 2 of the form.

- Seasonal workers are excluded under certain conditions. The definition of seasonal workers includes retail workers employed exclusively during holiday seasons, and generally includes workers defined as seasonal by the Department of Labor, citing the regulations on migrant and seasonal agricultural worker protection. Summer camp employees, for example, may qualify as seasonal workers. The definition also indicates that an employer may use a reasonable, good faith interpretation of this term. A special formula must be applied for seasonal workers to be eligible for this exception. (See *Special Seasonal Worker Rule* below.)

- Employees who have medical coverage provided by any of the uniformed services (e.g. TRICARE) or by certain Veterans' Affairs programs are excluded for any month in which they have such coverage.

The General Board has created a tool ***(Applicable Large Employer Worksheet)*** to assist employers with this determination.

Following is a method for determining ALE status.

Step 1—Counting Full-Time Employees
Step 1 is to calculate the number of full-time employees (including seasonal workers) for each month in the preceding calendar year. The ACA defines full-time employees as those who, with respect to any month, work at least 30 hours per week[2].

Step 2—Counting Full-Time Equivalent Employees
Step 2 is to calculate the number of full-time equivalent employees—including seasonal workers—for each month in the preceding calendar year. This is done by taking all non-full time employees, calculating their aggregate number of hours of service in each month (but not counting more than 120 hours for any one employee in a month), and dividing the aggregate number by 120.

Step 3—Adding Monthly Totals for Full-Time and Full-Time Equivalents Together
Step 3 is to add the number of full-time employees and full-time equivalents obtained in Steps 1 and 2 for each month of the preceding calendar year.

Step 4—Add The Monthly Numbers and Divide By 12
Step 4 is to add up the 12 monthly numbers from Step 3 and divide by 12[3]. This is considered the average number of FTEEs for the preceding calendar year.

Step 5—Compare the Number from Step 4 to the Number 50.

- If the number obtained in Step 4 is less than 50, then the employer is not an ALE for the current year. No further employee count calculation is needed for that calendar year.

- If the number obtained in Step 4 is 50 or more, then the employer is an ALE.

- However, if the number obtained in Step 4 is 50 or more *and the employer included seasonal workers in its calculations,* the employer may then apply a special rule for seasonal workers *(see below)*.

[2] For employers that prefer to use a monthly equivalent, the IRS indicated in its regulations and on its website that 130 hours per month may be used. (IRS details are **here**.)

[3] Twelve months is the period generally required; but for determining ALE status for 2015 only, an employer may use any period of at least six consecutive months in 2014. (For the seasonal worker exception, discussed below, however, the calendar year must be used.)

Special Seasonal Worker Rule
If the number obtained in Step 4 was 50 or more but included seasonal workers, the employer may be able to use the Seasonal Worker Rule to avoid ALE status. The Seasonal Worker Rule allows the employer to avoid ALE status if two requirements below are met.

The Seasonal Worker Rule requires:

1. Employer's FTEEs exceed 50 for 120 days or fewer, and

2. Employees in excess of 50 during such period were seasonal workers.

As noted above, the ***Applicable Large Employer Worksheet*** may be used to assist in performing these calculations.

II. How Employees Are Counted to Determine Who Must Be Offered Coverage (i.e., employer "plays"; avoids paying penalties)

The ACA states that an Applicable Large Employer must provide "full-time employees (and their dependents)" an "opportunity to enroll" in coverage that meets certain requirements, or it will face penalties. This is informally called the Employer Mandate or "play or pay" rule.

The following describes rules for identifying "full-time" employees who must be offered coverage, as these rules apply to employees in general, new hires, seasonal employees and other employee categories.

In General (Ongoing Employees)

The ACA defines "full-time employee" as: "with respect to any month, an employee who is employed on average at least 30 hours of service per week." (Note that the rules for determining who must be offered an opportunity to enroll measure actual hours worked by the employee in question to see if he or she is full-time; they do not involve calculation of full-time "equivalent" employees, which is part of the determination of who is an Applicable Large Employer, as explained in Part I above.)

Federal regulations governing this provision generally provide for the use of 130[4] hours per month as the standard for determining full-time status and, therefore, identifying which employees must be offered health coverage. There are two methods for performing the calculations required by these regulations: the monthly measurement method and the look-back method.

Monthly method: The monthly measurement method lets the employer determine each employee's status for a calendar month by counting his or her hours of service for the month. This monthly method can be effective for employees who generally work the same number of hours each week, but the IRS was concerned that this method could be problematic for employees whose work schedule varies from week to week—especially when this calculation is used to determine which employees should be offered coverage. In the case of variable-schedule employees, the employer might not know the status of the person until the end of the month; by that time, it would be too late to offer the employee coverage for the month in question. If the employer guessed incorrectly that the employee would work fewer than 130 hours (and thus did not offer coverage), the employer could be exposed to penalties if in fact that employee worked more than 130 hours that month. To address this, the IRS developed the "look-back method," described below.

Look-back method: The look-back method can be helpful for employers whose employees work variable-hour or seasonal schedules (including church organizations and retailers whose employee hours climb

[4] Note the inconsistency between 130 hours per month (the standard to determine which employees must be offered coverage) and 120 hours per month (the formula for converting part-time employees into full-time equivalent employees). This is one of a number of differences between the rules for determining if an employer is an ALE and the rules for determining to whom an ALE must offer coverage.

during holiday months and decline during other months, as well as educational institutions with summers off, etc.). This look-back method allows the employer to "look back" and count an employee's hours during one period (called the "measurement period") and then based on those hours, decide whether to offer coverage in a subsequent period (called the "stability period"). If this look-back method is used, the employer will be safe, even if, for example, the person works fewer than 130 hours per month during the measurement period and then turns out to actually work more than 130 hours per month during the stability period: in this scenario, the employer can avoid offering that employee coverage and still be considered in compliance with the Employer Shared Responsibility Rule ("Employer Mandate").

Look-back method—administrative period: The IRS also allows employers using the look-back method a period of time to perform the calculations, in between the measurement period and the stability period. The time for performing the calculations is called the administrative period.

Which time periods to use: The IRS allows flexibility to an employer in deciding the time periods to use for the calculations described above.

- The measurement period can be anywhere from three months to 12 months.
- The administrative period generally[5] can be any period up to 90 days.
- The stability period can be anywhere from 6 months to 12 months. (This correlation is the result of the fact that generally the stability period cannot be longer than the measurement period, except in the first year.)
- Many employers (those with plan years that are calendar years) will pick a 12-month standard measurement period (such as October 15 to October 14), so they can also have a 12-month stability period for the plan year/calendar year. (The stability period generally cannot be longer than the measurement period). These employers may designate October 15 to December 31 as the administrative period, even though it may only take a few days to calculate who will be considered a full-time employee. A three-month administrative period will also allow time for the employer to determine eligibility, distribute enrollment materials and conduct open enrollment, before the stability period (plan year) begins.

New Hires

While this standard measurement period will work well for ongoing employees, new hires will be treated somewhat differently. If as of his or her start date an employee is reasonably expected to be a full-time employee (i.e., work on average at least 30 hours per week) and is not a seasonal employee, the ALE should offer coverage to that employee to avoid penalties. If the employee's hours are more variable, his or her hours will need to be measured; however, the initial measurement period should start on or shortly after the employee's date of hire. (The regulations allow the initial measurement period to start on any date up to and including the first day of the month following the employee's start date or the first day of the first payroll period beginning after the start date.) If after 12 months of employment (assuming 12 months is the time length selected for the measurement and stability periods), it is determined that the employee worked on average at least 30 hours per week, then the employer should offer coverage by the last day of the month *after* the month of the one-year anniversary of the employee's start date, and the coverage should last for the rest of the calendar year. After that, the employee will be considered an ongoing employee and hours will be calculated the same way as all other ongoing employees (as described above).

Example of Transition from New Hire to Ongoing Employee

Amy is hired as a new variable-hour employee by an employer that has a standard measurement period of October 15 to October 14, an administrative period of October 15 to December 31, and a stability period of January 1 to December 31. Amy's initial measurement period will begin on or shortly after her start date

[5] For a new hire, as discussed below, the combination of the measurement period and the administrative period cannot extend beyond the end of the month *after* the month of the first anniversary of the employee's start date.

(i.e., the first day of the month following her start date or the first day of the first payroll period beginning after her start date.). For example, if Amy is hired on May 10, 2015, her initial measurement period will be May 10, 2015 to May 9, 2016. If the administrative period is May 10 to June 30, and if we assume Amy is determined to have worked an average of more than 30 hours per week, she will need to be offered coverage to begin July 1, 2016. The coverage will last one year, until June 30, 2017 (since generally the initial stability period for new hires must be the same as the standard stability period, which in this case is one year). In the meantime, of course, Amy will have worked an entire standard measurement period—from October 15, 2015 to October 1, 2016—and if we assume that she continues to average 30 hours per week during this standard measurement period, she will be entitled to a standard stability period of coverage (January 1, 2017 to December 31, 2017). At this point she will have transitioned to ongoing employee status.

Seasonal Employees and Educational Employees

A seasonal employee (not to be confused with a seasonal worker, discussed above in connection with the determination of ALE status) is defined as "an employee who is hired into a position for which the customary annual employment is six months or less." Such employees may be treated the same as a new variable-hour employee. Thus, an initial measurement period may be applied to them. An example might be a choir director hired to cover the Lenten season. The employer can apply a 12-month measurement period, and thus even if the person works more than 30 hours per week, the average over a year will not be enough to require the offer of health coverage to that seasonal employee.

An educational institution (including UMC-affiliated preschools, schools and colleges) is required to treat its employees differently to avoid artificial reductions in their average hours during a measurement period. An educational institution is defined as an entity whose primary function is the presentation of formal instruction and that normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. Two special rules apply to such employers.

1. The educational employer may not use the same definition of break in service as other employers. (Many employers may define a break as a 13-week period during which the employee did not have even one hour of service; after such a break, the employer may treat the person as a new employee for purposes of offering health coverage.) Educational institutions must use a period of 26 weeks to be considered a break.
2. The employer must neutralize the impact of the typical extended break periods when no classes are being held, either by excluding the break period from its calculation of the average, or by imputing hours for the break period equal to the rate of actual service during non-break periods.

Flexibility

The IRS provides for flexibility in setting the measurement periods, administrative period and stability period (e.g., different periods are permitted for hourly vs. salary employees, or if primary places of employment are in different states); therefore, not all employers need to follow the examples given above. If different periods are established for different classes of employees, there are rules to determine which periods apply when an employee changes to a position under a different classification. In addition, the IRS has identified certain periods for transition relief. (For example, for a stability period beginning in 2015, employers can adopt a measurement period that is shorter than 12 months, so long as it is at least six months.)

Questions and Information

The General Board has created a template ***Applicable Large Employer Worksheet*** to help Church employers with their employee calculations.

If you have questions or would like additional information, please send your inquiries to **healthcarereform@gbophb.org**. General information about health care reform is available from the federal government at **www.healthcare.gov**.

Further detail is available in the regulations themselves, available **here**.

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