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Health Care Reform—Employer Shared Responsibility Rule
Part 5—Clergy in The United Methodist Church: Who Is the Employer?

Within the context of employee health benefits, the question often arises about *who* is the "employer" of clergy in The United Methodist Church (UMC) appointed by an annual conference to serve at a local church. Under the Employer Shared Responsibility Rule (Rule) of the Patient Protection and Affordable Care Act (ACA), as explained in **Part 1**, determination of "employer" is very important because it has implications for the clergyperson's health insurance coverage and for the local church's financial responsibility for providing health coverage.

In its **final regulations**, the Internal Revenue Service (IRS) has given churches and conventions and associations of churches permission to use a "reasonable good faith interpretation standard" for determining who is an Applicable Large Employer under the Rule. As a result, *treating appointed UMC clergy as employees of the local church under the Rule may be a reasonable good faith interpretation of applicable IRS guidance*, including the rules for aggregating related employers under Section 414(c) of the Internal Revenue Code of 1986 (Code) and rules for determining common law employees and employers.

Under the Rule, Applicable Large Employers (i.e., employers with at least 50 Full-Time and Full-Time Equivalent Employees—collectively "FTEEs") are required to provide adequate health coverage to their Full-Time Employees (and their dependent children up to age 26) or else pay a penalty. So, it is important under the ACA to understand who is considered an employer's common-law employee for the Rule. For clergy in many religious denominations, defining the employer is not as simple as in the secular employment world. This is especially true in the UMC.

Defining Clergy's Employer—for ACA Purposes Only

This document analyzes only who is the employer of UMC clergy *for purposes of the ACA and its Employer Shared Responsibility Rule*; this analysis does not apply for all purposes. In fact, the ACA determination of employer conflicts with *The Book of Discipline* (¶143), which maintains that UMC clergy are *not* employees of a local church, an annual conference or the denomination itself.

Identifying UMC clergy as "employees" of a local church in this circumstance relates specifically and exclusively to a particular secular law, namely the ACA's Employer Shared Responsibility Rule. This determination for ACA purposes in no way interferes directly with the relationships among clergy, local churches, charges and conferences, or with Episcopal appointive powers.

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Federal law treats UMC clergy as self-employed for employment tax purposes (SECA taxes) by statute. A few courts [e.g., *Weber v. Commissioner*, 104 T.C. 378 at 387 (1994), affirmed 60 F.3d 1104 (4th Cir. 1995)] have held, however, that UMC clergy are considered "employees" (common-law employees) for income tax and employee benefits purposes, but these courts have not determined which organization is the "employer".[1]

The IRS applies a "common-law test of employment" to determine the applicability of the Employer Shared Responsibility Rule. For example, the Rule does not apply to non-employee partners in a partnership. The common-law test considers numerous factors, such as providing a place of work, paying salary, providing benefits, paying for work supplies, and the ability to terminate employment; however, the common-law test also focuses on *control* over the worker. Although most of these factors point to the local church or the charge conference being the employer for this purpose, the appointment and removal powers of the annual conference leave some ambiguity for elders and local pastors (i.e., the local church is arguably more clearly the employer of deacons under the common-law employment test).

For purposes of the Employer Shared Responsibility Rule and determining Applicable Large Employers, the information provided in this toolkit of documents assumes that the local church is considered the "employer" for most clergy.

Note: In March 2013, Wespath together with the benefit boards of other denominations submitted a **comment letter** to the IRS urging the IRS to apply the Employer Shared Responsibility Rule at the local church level in all denominations. The IRS has reserved the right to issue further future guidance about Applicable Large Employer determinations for churches and conventions and associations of churches.

Questions and Information

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**.

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[1] In *Weber v. Commissioner*, the court did not reach the determination of whether the local church or conference was the "employer"; and in *Radde v. Commissioner* [T.C. Memo 1997-490 (1997)], the court held in a similar case that a clergyperson was "an employee of The United Methodist Church."