

We the People

insure domestic Tranquility, provide for the common defence, promote the general Welfare, and our Posterity, We do hereby ordain and establish this Constitution for the United States of America.



MEDICAL MUTUAL®

CAROLINA CARE PLAN | CONSUMERS LIFE

Article I  
Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

# Healthcare Re-FORUM

Healthcare Re-Forum : 2013 Issue No. 1

## Proposed Rules on Shared Responsibility for Employers Regarding Health Coverage

The Internal Revenue Service (IRS) recently published a Proposed Rule and questions and answers about the employer shared responsibility (previously “employer responsibility”) provisions contained in the Affordable Care Act (ACA). These provisions are also known as the pay or play mandate.

For plan years beginning on or after January 1, 2014, the shared responsibility provisions will apply to all employers with at least 50 full-time or full-time equivalent employees. At that time, employers must offer coverage that is affordable and meets the minimum value requirements to 95 percent of their full-time employees and those employees’ eligible dependents. If any of their full-time employees receives premium assistance (a tax credit or cost sharing reduction) through an exchange, the employer must pay a penalty. Employers with 50 full-time or equivalent employees are generally not subject to the shared responsibility provisions.

### What is affordability and minimum value?

To avoid a tax penalty, an employer’s coverage must meet the ACA’s standards for being both affordable and providing minimum value. Coverage will be considered affordable if the employee’s share for the cost of coverage does not exceed 9.5 percent of household income. There are three safe harbors (Rate of Pay, Poverty Line, Form W-2) that employers can use to determine affordability if household income cannot be determined by the employer. If multiple healthcare coverage options are offered, the affordability test is applied to the lowest-cost option (among qualified options). Dependents’ coverage cost does not factor into the affordability determination. Note: Employers are not required to cover spouses.

Minimum value means a healthcare plan covers at least 60 percent of the total allowed cost of benefits expected to be incurred under the plan.

### What are the employer penalties?

There are two potential penalties for non-compliance of shared responsibility requirements.

- **Penalty #1:**  
An applicable large employer who does not offer affordable, minimum value coverage to 95 percent of its employees may be penalized \$2,000 annually for every full-time employee, minus the first 30, if any employee receives premium assistance through the public exchange.
- **Penalty #2:**  
An applicable large employer who offers a plan that is either not affordable or does not meet the minimum value will be subject to a penalty if any employee receives premium assistance through the public exchange. The penalty is equal to \$3,000 for each employee who receives premium assistance. Employers will not be liable for penalties until the first plan year on or after January 1, 2014 (called “transitional relief”). To be eligible, an employer must have used the non-calendar fiscal year plan on or before December 27, 2012.

Transitional relief is also granted to an employer who has not offered dependent child coverage, as long as the employer takes steps to add this coverage during the plan year beginning in 2014.

## What are full-time and seasonal employees?

A full-time employee is one that works an average of 30 hours or more per week. For employees paid on a monthly rather than an hourly basis, the average for qualifying as full-time is 130 hours per month.

Full-time employees are determined on a month-to-month basis unless the employer uses the look-back measurement period method with stability periods as a safe harbor. The “look-back stability” safe harbor allows an employer to review the previous three to 12 months to determine which employees must be offered coverage to avoid a shared responsibility penalty.

The seasonal workers designation is not limited to agricultural or retail employees: “employers may apply a reasonable, good faith interpretation of the statutory definition of seasonal worker.”

The rules apply to employers that, in the previous calendar year (2013 when evaluating for 2014), employed on average at least 50 full-time and/or full-time equivalent employees. For new employers without a preceding calendar year, the test is whether or not the employer is reasonably expected to meet the threshold of 50 full-time employees for the current calendar year. The Internal Revenue Code (IRC) §414 is applied to determine whether an organization is to be categorized as a single employer. A number of smaller organizations could be subject to the penalty if they are considered under common control of a parent company according to IRC §414.

An employer is not subject to the shared responsibility provisions, if the employer had 50 or more full-time employees for no more than 120 days during a calendar year and seasonal employees were the reason the employer exceeded 50 employees during that 120 day period.

## How are full-time and full-time equivalent employees calculated?

All employees who were not full-time for any month in the preceding calendar year are included when calculating an employer’s full-time equivalents for that month. The calculations for determining whether part-time or seasonal employees qualify as full-time equivalent employees include:

1. Total the number of service hours for all employees who were not employed on average at least 30 hours per week for that month. (That total should not include more than 120 hours of service for any employee included in the total.)
2. Divide the total hours of service for the month by 120
3. Add the 12 monthly full-time equivalent totals and divide by 12. Disregard all fractions.

To determine monthly totals of hours worked per employee, you must include hours for which employees are entitled to be compensated even if no work was performed (e.g., paid vacation, sick days, maternity leave, disability).

Employers must count all employees within a control group to determine whether an organization constitutes an applicable large employer. However, the new rules make it clear that penalties would be applied separately to each member of a control group. This flexibility allows businesses to make pay or play decisions on a per-member basis. However, such employers should keep in mind the 30 employee reduction when calculating the penalty for failing to offer any coverage and pro-rating the penalty among members of the control group.