



Employer Penalty

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What is your Effective Date?

The first step to determining employer penalty exposure is identifying the effective date. The effective date for large employers (50 or more FTEs in preceding calendar year) is January 1, 2015. There are two important exceptions to this effective date: transition relief for non-calendar year plans, and transition relief for employers with 50-99 FTEs for 2015.

■ Transition Relief of Effective Date for Non-Calendar Year Plans

The following transition relief is available for a non-calendar year plan to the first day of the 2015 plan year only if the plan year was not modified after December 27, 2012 to begin at a later calendar date:

1. For any employees who are eligible for coverage under the terms of an employer's plan as of February 9, 2014 (regardless of whether they take the coverage).
2. For any other employees:
 - a. if at least 25% of its employees (or 33% of its FTEs) are covered under any non-calendar year plans as of any date from February 10, 2013 to February 9, 2014; or

- b. at least 33% of its employees (or 50% of its FTEs) were offered coverage during the open enrollment period that ended most recently before February 9, 2014.

In both cases above, the FTE must be offered affordable coverage that provides a minimum value no later than the first day of the 2015 plan year in order for the employer to avoid a penalty.

■ 2015 Transition Relief for Employers with 50-99 Full-time Employees

The final rules provide relief for mid-sized employers to delay the employer penalty until 2016. An employer is eligible for this transition relief if it satisfies the following conditions:

1. **Limited Workforce Size.** The employer employs on average at least 50 FTEs (including full-time equivalent employees) but fewer than 100 FTEs (including full-time equivalent employees) on business days during 2014.
2. **Maintenance of Workforce and Aggregate Hours of Service.** During the period beginning on February 9, 2014 and ending on December 31, 2014, the employer does not reduce the size of its workforce or the overall

hours of service of its employees in order to satisfy the workforce size condition described in (1) above. Bona fide business reasons for a reduction in workforce size or overall hours of service will not be considered to violate this provision. For example, reductions of workforce size or overall hours of service because of business activity such as the sale of a division, changes in the economic marketplace in which the employer operates, terminations of employment for poor performance, or other similar changes unrelated to eligibility for this transition relief are for bona fide business reasons and will not affect eligibility for the transition relief.

3. Maintenance of Previously Offered Health Coverage.

During the coverage maintenance period, the employer does not eliminate or materially reduce the health coverage (if any) it offered as of February 9, 2014. "Coverage maintenance period" means (i) for an employer with a calendar year plan, the period beginning on February 9, 2014 and ending on December 31, 2015; and (ii) for an employer with a non-calendar year plan, the period beginning on February 9, 2014 and ending on the last day of the plan year that begins in 2015. An employer is not treated as eliminating or materially reducing health coverage if:

- a. it continues to offer each employee who is eligible for coverage during the coverage maintenance period an employer contribution toward the cost of employee-only coverage that either:
 - is at least 95% of the dollar amount of the contribution toward such coverage that the employer was offering on February 9, 2014, or
 - is the same (or a higher) percentage of the cost of coverage that the employer was offering to contribute toward coverage on February 9, 2014;
- b. when there is a change in benefits under the employee-only coverage offered, that coverage provides minimum value after the change; and
- c. it does not alter the terms of its group health plans to narrow or reduce the class or classes of employees (or the employees' dependents) to whom coverage under those plans was offered on February 9, 2014.

4. Certification of Eligibility for Transition Relief. The large employer certifies on Form 1094-C that it meets 1-3 above.

■ Application of Transition Relief to Non-Calendar Year Plans

The transition relief applies to all calendar months of 2015 plus any calendar months of 2016 that fall within the employer's 2015 plan year. It will cover non-calendar year plans but only if the employer did not modify the plan year after February 9, 2014 to begin on a later calendar date (for example, changing the start date of the plan year from January 1 to December 1).