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## Health Care Reform Alert **Determining Large Employer Status for 2015**

### What Employers Need to Know

#### **Determining large employer status**

Do you know for sure whether your company is considered an “applicable large employer” (large employer) according to the Affordable Care Act (that is, a company employing 50 or more full-time or full-time equivalent employees)?

Some companies clearly are large employers; however, for companies that are on the cusp of employing 50 employees, it may not be so evident. ***Those companies must determine during 2014 whether they will be considered a large employer in 2015.***

#### **Why it's important**

Beginning in 2015, large employers may be liable for ***significant penalties*** for failure to offer their full-time employees (and their dependents) health coverage that is affordable and provides minimum value.

- A large employer that fails to offer substantially all of its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage will be assessed, ***in general, a penalty of \$2,000 per year (\$167 per month) for every full-time employee (minus 30) if even just one full-time employee receives financial aid through an Exchange.***
- A large employer that does offer health coverage to substantially all its full-time employees (and their dependents) but such coverage is “unaffordable” and/or does not provide “minimum value” will be assessed, ***in general, a penalty of \$3,000 per year (\$250 per month) for every full-time employee that receives financial aid through an Exchange.***

#### **Which employers will be considered large employers in 2015?**

Generally, an employer that employs an average of at least 50 full-time and full-time equivalent (FTE) employees on business days during 2014 will be considered a large employer in 2015.

#### **Which employees will be considered full-time?**

A full-time employee is employed an average of at least 30 hours of service per week, or 130 hours of service in a calendar month.

**Hours of service** means each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

## Full-time equivalent employees explained

“Variable hour” and “seasonal” employees who average less than 30 hours of service per week must be counted when determining large employer status. However, each of these employees is not counted individually. Instead, a calculation is performed to come up with the number of FTEs, and then each FTE is counted as one full-time employee. The calculation is performed as follows:

- Add the total number of hours of service for all variable hour and seasonal employees in a calendar month
  - Don't use more than 120 hours of service for any employee
- Divide the total by 120 to get the number of FTEs for that month

For example, if for a calendar month all variable hour and seasonal employees' hours of service totaled 1,260, there would be 10.5 FTEs for that month

$$1,260 \div 120 = 10.5$$

## Calculating large employer status for 2015

Most employers' status as a large employer will be evident without the need for an actual employee calculation. However, for employers not sure whether they will be considered a large employer in 2015 according to the Affordable Care Act, the following calculation can be performed:

### 12-month calculation example for 2014

- **Step 1:** Find the total number of full-time employees in each calendar month
- **Step 2:** Determine the number of FTEs for each calendar month
- **Step 3:** Add together the full-time employees and the FTEs for each month (fractions are counted)
- **Step 4:** Add the totals for each month together to get a grand total
- **Step 5:** Divide the grand total by 12 (drop any fraction)

Calendar Month	Full-time Employee Count	FTE Count	Total
January	36	11	47
February	36	11	47
March	36	11	47
April	37	9.5	46.5
May	37	9.5	46.5
June	37	13	50
July	38	14	52
August	38	14	52
September	38	14	52
October	38	14.5	52.5
November	38	14.5	52.5
December	38	16	54
Add all calendar month totals together for a grand total			599
Divide the grand total by 12			49.9
Drop any fractions			49

The above employer calculates 49 full-time employees for 2014; thus, the employer is not considered a large employer in 2015.

### Seasonal worker exception

Seasonal workers must be calculated when determining large employer status. However, in the final analysis, they may be disregarded if

- the sum of an employer's full-time employees and FTEs exceeds 50 for 120 days or less during the preceding calendar year,
- and the employees in excess of 50 who were employed during that period of no more than 120 days are seasonal workers.

In this case, the employer is not considered to employ more than 50 full-time employees (including FTEs) and so the employer is not determined to be a large employer.

For this purpose only, four calendar months may be treated as the equivalent of 120 days. The four calendar months and the 120 days are not required to be consecutive.

The following example illustrates application of the seasonal worker exception.

**Example of seasonal worker exception calculation**

Calendar Month	Full-time Employee Count	FTE Count	Seasonal	Total
January	40	0	0	40
February	40	0	0	40
March	40	0	0	40
April	40	0	0	40
May	40	0	0	40
June	40	0	0	40
July	40	0	0	40
August	40	0	0	40
September	40	0	80	120
October	40	0	80	120
November	40	0	80	120
December	40	0	80	120
Add all calendar month totals together for a grand total				800
Divide the grand total by 12				66.66
Drop any fractions				66

Before applying the seasonal worker exception, the above employer has 40 full-time employees during each of eight calendar months of 2014, and 120 full-time employees during each of four calendar months of 2014, resulting in an average of 66 full-time employees.

However, the workforce equaled or exceeded 50 full-time employees (counting seasonal workers) for no more than four calendar months (treated as the equivalent of 120 days), and the number of full-time employees would be less than 50 during those months if seasonal workers were disregarded.

Accordingly, after application of the seasonal worker exception, this employer is not considered to employ more than 50 full-time employees and is not considered a large employer.

**How are employees of a controlled group calculated?**

If two or more companies have a common owner or are otherwise related, they are combined for purposes of determining whether they employ enough employees (50 or more full-time and FTE employees) to be considered a large employer.

For example, in the case of a parent corporation and 10 wholly owned subsidiary corporations (11 corporations) that have a total of 50 or more full-time employees and FTEs, each is considered an “applicable large employer member” regardless of the number of employees at each subsidiary corporation.

For instance,

- assume that for 2015 and 2016, corporation P owns 100 percent of all classes of stock of corporation S and corporation T;
- P has no employees at any time in 2015;
- for every calendar month in 2015, S has 40 full-time employees and T has 60 full-time employees;

- P, S, and T are a controlled group of corporations;
- because P, S and T have a combined total of 100 full-time employees for every calendar month of 2015, P, S, and T is an “applicable large employer” for 2016;
- each of P, S and T is an “applicable large employer member” for 2016.

“There is no better guide to shared ownership issues than Derrin Watson’s publication “Who’s the Employer” (6th Edition, 2012). However, employers likely will need a seasoned ERISA attorney or other tax practitioner to carry out the analysis. Keep in mind, also, that certain types of “affiliated service groups” can lead to a combined group of businesses for these purposes, even without any shared ownership between the entities.”

~ E is for Erisa, January 2013