June 2013

Health Care Reform: Employer Shared Responsibility Rule

Part 1—Overview

Beginning January 1, 2014, the Patient Protection and Affordable Care Act (ACA) requires certain employers to offer affordable health coverage under the Employer Shared Responsibility Rule [hyperlink to http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf] (also called the employer mandate or the “pay or play” rule). This coverage must provide at least “minimum value” to full-time employees.

The General Board of Pension and Health Benefits (General Board) has published this guide to the Employer Shared Responsibility Rule to help employers in The United Methodist Church (UMC) understand:

- Whether the Employer Shared Responsibility Rule applies to them,
- What to do if the Rule does apply to them, and
- What penalties might apply as a result of not complying with the Rule (i.e., the “pay” part of “pay or play” rule)?

Information on the Employer Shared Responsibility Rule is divided into separate documents. 

Choose only the documents that relate to your situation as an employer:

- **Part 1** explains the Employer Shared Responsibility Rule in general.
- **Part 2** helps local churches, annual conferences and other UMC employers understand whether or not they are part of a “controlled group,” (i.e., whether they must be treated as one employer under the Rule with other affiliated employers including schools, day-care centers, summer camps, etc.)

Choose the appropriate Part 2 version:

  - **Part 2A** for local churches
  - **Part 2B** for annual conferences

- **Part 3** helps local churches and other UMC employers understand how to count employees under the Rule and which employees must be offered health coverage.

- **Part 4** explains the penalties associated with the Employer Responsibility Rule.

- **Part 5** explores the question of the employment status of clergy appointed to local churches in the UMC for purposes of the Rule.
I. The Basics—“Pay or Play”

The Employer Shared Responsibility Rule is complex and has several key concepts to understand. Basically, the Rule requires any **Applicable Large Employer** (i.e., any employer with 50 or more full-time equivalent employees) to offer health insurance coverage to full-time employees (those working 30 or more hours per week) or else pay a **No Coverage Penalty**. The Rule also imposes an **Inadequate Coverage Penalty** if the Applicable Large Employer offers health insurance coverage but any of its Full-Time Employees qualifies for a premium tax credit (PTC). A PTC is a federal subsidy based on low to moderate income, to be used toward the purchase of health insurance through an ACA-established Health Insurance Marketplace. (Health Insurance Marketplaces were previously called “Exchanges”.)

An Applicable Large Employer will be assessed a penalty under §4980H of the Internal Revenue Code if, for any month, any Full-Time Employee is certified as eligible to receive a PTC toward the purchase of health insurance through the Marketplace. The Rule also applies a penalty to Applicable Large Employers that do not offer coverage to the dependent children (up to age 26) of Full-Time Employees, (however, no penalty applies if an Applicable Large Employer does not offer coverage to an employee’s spouse.

For the purposes of the Employer Share Responsibility Rule:

- An **Applicable Large Employer** is an employer that employed an average of 50 or more Full-Time Equivalent Employees (meaning Full-Time Employees and full-time “equivalent” part-time employees) during the preceding year.
- A **Full-Time Employee** is an individual who is employed an average of at least 30 hours per week or 130 hours per month.
- When counting part-time employees toward total full-time equivalent employees, the number of **Full-Time Equivalent Employees** (FTEEs) is calculated by taking the aggregate number of service hours of non-full-time employees (i.e., part-time employees, seasonal employees and variable-hour employees) during the month and dividing that sum by 120. This number is then added to the count of Full-Time Employees.
- The number of Full-Time Equivalent Employees and Full-Time Employees is determined on a **Controlled Group** basis, so all individuals employed by the organizations that are members of the Controlled Group (for example, a local church and its day-care center) are treated as being employed by a single employer. The Controlled Group concept is explained further in **Part 2A for local churches** or **2B for annual conferences** [hyperlinks to 4566/4567].

The Employer Shared Responsibility Rule applies only to Applicable Large Employers, (i.e., those with at least 50 Full-Time Equivalent Employees.) Under the Rule, an Applicable Large Employer must offer health insurance coverage to its Full-Time Employees (those working at least 30 hours per week) and their dependent children, and that coverage must provide at least **Minimum Value** and be **Affordable** to the employees. The concepts of Minimum Value and Affordable coverage are described in **Part 4** [hyperlink to 4569].

*If an employer is an Applicable Large Employer and does not offer coverage to any employees, or if the employer offers coverage that does not meet Minimum Value or Affordability standards for certain employees, then the employer may be subject to a penalty, as described in **Part 4** [hyperlink to 4569].*

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1 Part-time employees are counted in the calculation of FTEE’s but Applicable Large Employers are not subject to the employer penalty for part-time employees qualifying for a PTC toward the purchase of health insurance through a Marketplace.
II. Employers Subject to the Employer Shared Responsibility Rule

Only Applicable Large Employers (at least 50 FTEEs) are subject to the Employer Shared Responsibility Rule. The Rule applies to all types of common-law employers with at least 50 FTEEs, including tax-exempt employers such as churches. The Rule first becomes effective on January 1, 2014, but is based on an employer’s count of Full-Time Equivalent Employees in 2013.

An employer is an Applicable Large Employer for a calendar year if it employed an average of at least 50 Full-Time Equivalent Employees on the employer’s business days during the preceding calendar year. Solely for purposes of determining Applicable Large Employer status (but not for coverage or penalty purposes), part-time, seasonal and variable-hour employees are included in the FTEE calculation.

Example: During each month of 2013, a local church has 20 Full-Time Employees, each of whom averages 35 hours of service per week. The local church also employs 40 part-time employees, each of whom averages 90 hours of service per month (roughly 22 hours per week).

Calculating Full-Time Equivalent Employees:

\[
40 \text{ part-time employees} \times 90 \text{ hours} \div 120 = 30 \text{ FTEEs}
\]

The church has 30 full-time equivalent part-time employees who are counted toward the church’s Full-Time Equivalent Employees total. This is then added to the number of FTEs working 35 hours per week:

\[
20 \text{ FTEs} + 30 \text{ (Part-Time) FTEEs} = 50 \text{ FTEEs}
\]

In this scenario, the local church has 50 Full-Time Equivalent Employees each month by combining full-time and full-time equivalent employment. This local church is considered an Applicable Large Employer and is subject to the Employer Shared Responsibility Rule.

Calculating FTEEs—Exceptions for Select Types of Employees

The Rule allows for certain employee exceptions when calculating total FTEEs to determine an employer’s Applicable Large Employer Status (i.e., whether the employer has at least 50 FTEEs).

- Employee hours worked outside of the United States are disregarded if the compensation constitutes a foreign source of income.
- Partners in a partnership, independent contractors and those individuals who are not considered “common-law employees” can be excluded.
- Seasonal employees may be excluded in a complicated manner. An employer that exceeds 50 Full-Time Equivalent Employees for fewer than 120 days per year only because of seasonal employees (for example, individuals employed for only the summer or the Christmas season) will not be considered an Applicable Large Employer. Part 3 [hyperlink to 4568] of this summary explains the rules for counting employees.
- An employee must be credited for hours of service for each hour in which he or she is paid or entitled to be paid, including periods where no duties are performed, such as vacation time, holidays, jury duty, paid sabbatical, sick time and disability leave.
- Employers may choose to credit salaried employees with eight hours per day or 40 hours per week, unless such method would significantly understate the employee’s actual hours.

If an employer is uncertain at the time of hire whether an employee will be a Full-Time Employee, or if the employee is a variable-hour or seasonal employee, the Rule provides guidance regarding Measurement Periods and Stability Periods, which are explained in detail in Part 3 [hyperlink to 4568].
III. Determining If Your Organization Is an Applicable Large Employer

United Methodist Clergy

It appears to be a reasonable good faith interpretation to treat the local church as the employer of appointed clergy at local churches and charges for the purpose of the Employer Shared Responsibility Rule. However, the regulations are not clear regarding who is the employer of UMC appointed clergy for purposes of the Rule. This question is discussed further in Part 5 [hyperlink to 4570].

Five Steps for Employers

1. **Determine whether your organization and another employer have a common owner.** Under the Rule, “churches and conventions or associations of churches” can apply a reasonable, good faith interpretation to determine if two or more employers have a common owner (also called a “Controlled Group”). If your organization is part of a Controlled Group, all employees in the Controlled Group must be counted. Part 2 [hyperlink] of this summary explains the rules for Controlled Groups as pertains to churches in detail. For example, a local church and a day care center might be considered a Controlled Group.

2. **Determine your organization’s Full-Time Equivalent Employee count.** A calculation period is set to allow employers at least six months to count employees to determine their Applicable Large Employer status. At any point during this period, employers should use payroll records to input employees and hours into the worksheet [hyperlink to new worksheet]. The worksheet will help you determine whether your organization is an Applicable Large Employer. **Please note:** Use the worksheet only in 2013 for 2014 Applicable Large Employer determinations. You won’t use this worksheet for 2015 calculations.

3. **Determine whether or not your organization is subject to the Employer Shared Responsibility Rule, based on the Part 3 Worksheet.**

   **If No**—
   
   If the worksheet shows that your organization is not an Applicable Large Employer, the Employer Shared Responsibility Rule does not apply to your organization. That means:
   
   - Your organization would not be required to offer coverage to Full-Time Employees, and
   - You would not need to read further.

   **Please note:** Your organization can offer coverage to its employees if it so chooses. Small employers that choose to offer coverage have more flexibility in the design of the coverage and to whom the coverage is offered.

   **If Yes**—
   
   If the worksheet shows that your organization is an Applicable Large Employer, the Employer Shared Responsibility Rule will apply to your organization. That means:
   
   - You should review Part 3 [hyperlink to 4568] and Part 4 [hyperlink to 4569] to learn more about complying with this Rule.
   - You must offer health insurance coverage to all Full-Time Employees and their dependents up to age 26—or pay a penalty (“pay or play”).
   - You are not required to offer coverage to the spouse of a Full-Time Employee.
4. If your organization is an Applicable Large Employer, determine which employees to cover and enroll them.

The Internal Revenue Service (IRS) has developed three time periods—Measurement, Administrative and Stability—to help employers determine which employees should be offered coverage and to allow sufficient time to enroll employees in coverage. You can read more about these time periods and who should be offered coverage in Part 3 [hyperlink to 4568].

5. If your organization is an Applicable Large Employer, estimate potential penalties for not offering health coverage:

- **No Coverage Penalty**—for Applicable Large Employers that do not offer health coverage to any Full-Time Employees, this is a monthly penalty related to all of its Full-Time Employees.

- **Inadequate Coverage Penalty**—for Applicable Large Employers that offer coverage to full-time employees but have at least one Full-Time Employee who qualifies for a PTC because the coverage is not Affordable, this is a monthly penalty related only to Full-Time Employees whose health coverage is “unaffordable” under ACA rules.

You can read more about these penalties in Part 4 [hyperlink to 4569].

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**Employer Considerations—Plan Ahead**

The Employer Shared Responsibility Rule is effective for coverage periods beginning on or after January 1, 2014, but employers may want to begin preparing for this Rule now. These steps can help:

1. Determine whether the organization is an Applicable Large Employer.

2. Track the number of Full-Time Employees and part-time employees and their service hours to determine total Full-Time Equivalent Employees.

3. If the calculation in Step 2 is at least 50: Determine whether all Full-Time Employees and their children to age 26 have been offered coverage under the organization’s group health plan.

4. If the group health plan does not offer coverage to children, consider establishing the offer of such coverage for upcoming plan years.

5. Determine whether the organization’s existing health plan provides minimum essential coverage (described here) and Minimum Value (described here);

6. Determine whether the cost of participant-only (employee-only) health plan coverage (not coverage for spouse or children) is Affordable (described here) for Full-Time Employees.

7. Pay or play: Consider whether it is preferable and more cost-effective to offer health plan coverage to all Full-Time Employees or to pay a penalty.

8. Consider whether it is preferable to make self-only health plan coverage Affordable or pay a penalty for any Full-Time Employees who qualify for a PTC based on Affordability.

The IRS has published a set of Frequently Asked Questions (FAQs) for more information about the Employer Shared Responsibility Rule here.
More Information
More about health care reform is available on the General Board’s health care reform webpage. Please send your questions to healthcarereform@gbophb.org. General information about health care reform is available from the federal government at www.healthcare.gov.

This update is provided by the General Board of Pension and Health Benefits as a general informational and educational service to its plan sponsors, the annual conferences, plan participants and friends across The United Methodist Church. It should not be construed as, and does not constitute, legal advice nor accounting, tax, or other professional advice or services on any specific matter, nor does this message create an attorney-client relationship. Readers should consult with their counsel or other professional advisor before acting on any information contained in this publication.

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Appendix A

Key Terms Related to Employer Shared Responsibility Rule

ACA—Affordable Care Act (Patient Protection and Affordable Care Act of 2010, i.e., federal healthcare reform legislation).

Affordability/Affordable Coverage—Employee’s share of premium for self-only coverage is less than 9.5% of his or her household income (defined as modified adjusted gross income [MAGI]) (note: clergy housing is excluded from MAGI).

Applicable Large Employer—Employs at least 50 Full-Time Equivalent Employees; is subject to the Employer Shared Responsibility Rule (“pay or play”).

Controlled Group—Related employers that are considered “a single employer” under the Employer Shared Responsibility Rule. For example: a local church and its on-site day-care center could be considered a Controlled Group. If so, their employees would be added together to determine whether the Controlled Group is an Applicable Large Employer.

Exchange—See Health Insurance Marketplace

Full-Time Equivalent Employee (FTEE)—Under ACA, this calculation includes average hours per month of the employer’s part-time employees plus a count of employer’s Full-Time Employees.

Full-Time Employee—Works at least 30 hours per week, on average.

Health Insurance Marketplace—Regulated “Marketplaces” where individuals and small employers can choose from many insurance carriers to purchase health insurance. Starting January 1, 2014, health insurance marketplaces will be offered through the federal government and many states. Previously called health insurance “Exchanges.”

Inadequate Coverage Penalty—Penalty applies only to Applicable Large Employers; imposed if any full-time employee qualifies for a premium tax credit because his or her share of premium for health insurance coverage offered is not “affordable.”

Minimum Coverage/Minimum Value—Health insurance must cover at least 60% of costs, on an actuarial basis.

No Coverage Penalty—Penalty applies only to Applicable Large Employers who do not offer health insurance coverage.

Pay or Play—Describes the employer mandate to “play” (offer affordable, minimum value health insurance) or else “pay” (inadequate coverage penalty or no coverage penalty). Applies only to Applicable Large Employers.