

On February 12, 2014, the Treasury Department issued final regulations and certain transitional rules related to the employer mandate tax under the Patient Protection and Affordable Care Act (PPACA). A copy of the final regulations can be found [online](#). This update contains highlights of the final regulations and transitional rules.

Background

The employer mandate tax is located in Section 4980H of the Internal Revenue Code (IRC). The mandate tax operates on a calendar year basis. Proposed Regulations were issued on December 28, 2012. IRS Notice 2013-45 delayed the effective date until the 2015 calendar year.

The employer mandate tax applies to employers with 50 or more full-time employee equivalents (FTEs) in the prior calendar year.

Tier 1 of the mandate tax will apply if an employer does not offer a medical plan with minimum essential coverage to 95% or more of its full-time employees and their dependents. If so, the Tier 1 tax is \$166.67 per month for each full-time employee (\$2,000 per year), in excess of 30 full-time employees.

Tier 2 of the mandate tax can apply with respect to an individual full-time employee who is not offered "affordable coverage" under an employer medical plan. That tax applies if the employee elects to buy coverage through an Exchange. If applicable, the Tier 2 tax is \$250 per month (\$3,000 annually).

Transition Relief

Small Employer Delayed Effective Date. Employers with less than 100 FTEs in 2014 can delay the effective date of the mandate tax until the first day of the first plan year beginning in 2016. To do so, the employer must satisfy certain requirements regarding the maintenance of the employer's workforce and any existing medical plan.

Tier 1 Tax Transitional Relief. In 2015, the Tier 1 tax will not apply if the plan coverage is offered to 70% (instead of 95%) of the employer's full-time employees and their dependents. In addition, in 2015, the exemption from the Tier 1 tax is raised to 80 (instead of 30) full-time employees.

The Final Regulations

Dependents. For the Tier 1 tax, the term "dependent" will only include biological and adopted children. It will not include spouses, step-children and foster children. Special rules are provided for children who are not US citizens.

Determining Full-Time Employees. An optional "Monthly Measurement Period" may be used to determine full-time employees. This method will simply count an employee's hours of service in each month the mandate tax can apply to the employer. This method would be used instead of using a "Look-Back Measurement Method". Differing methods may be used for certain categories of employees (e.g., salaried and hourly).

Counting Hours. Special rules are provided to address hours counting in a variety of circumstances, including volunteers, students, members of religious orders, adjunct faculty, airline employees, and other jobs and professions.

Staffing Firm Workers. Guidance is provided to staffing firms and their clients. In certain situations, the client will be able to count coverage offered by a staffing firm as being coverage offered by the client.

The Look-Back Measurement Method. For employers choosing to use this method of determining full-time employees, there are clarifications regarding seasonal employees, employment break periods, international employment transfers and more.

For more information, please consult one of the Squire Sanders professionals listed in this publication.

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