Oregon Educators Benefit Board
ACA Bulletin #2 (revised April 2014)

Spotlight on Health Care Reform
Prepared for Educational Entities Participating in the OEBB Benefits Program

In this second ACA Bulletin for OEBB-participating entities, we will discuss ACA's Employer Shared Responsibility Provisions, including when and how they may apply to the entities. Future ACA Bulletins will focus on additional updates and guidance on the other provisions of the ACA. This bulletin has been revised/updated from the original version to reflect changes and/or clarifications resulting from the final regulations that were published by the IRS on February 10, 2014. Changes from the original OEBB Bulletin are noted in red text.

Employers Subject to the Employer Shared Responsibility Provisions

Employers subject to employer shared responsibility provisions for 2015 are those who employed at least 100 full-time equivalent employees (FTEEs) during the prior year. Beginning in 2016, employers will be subject to the provisions if they employ at least 50 FTEEs during the prior year.

The FTEE count for the prior year is based on the number of FTEEs for each month in the prior year divided by 12. FTEEs can be made up of any combination of full-time and/or part-time employees. Part-time employees will count toward the FTEE total based on a formula. For example: If an entity has 40 employees working 30 or more hours per week, plus 20 part-time employees employed 15 hours or more per week throughout the year, the entity will have an FTEE count of at least 50. The process for applying this formula along with sample calculations is provided below.

Step by Step: How to Calculate Full-Time Employee Equivalents

Step 1: Determine the number of actual full-time employees (employees working 30 or more hours per week) for each calendar month in the prior year (e.g., January, February, March, etc.).

Step 2: Determine the impact of part-time employees on the FTEE count for each calendar month in the prior year (e.g., January, February, March, etc.).

a. Calculate the total hours of service for each month by part-time employees. *(Do not include more than 120 hours of service for any employee.)*

b. Divide the total hours of service from (a) by 120 rounding up or down using normal fraction rules.

Step 3: Add the numbers from Steps 1 and 2(b) for each calendar month in the prior year.

Step 4: Add up the 12 monthly totals from Step 3 and divide the sum by 12. This is the FTEE average for the prior year.

Step 5: If the FTEE average from Step 4 is 100 or greater in 2015 (50 or greater in 2016), the employer is a large employer for the current calendar year.

Example: How to Calculate Full-Time Employee Equivalents in 2015

	District A	District B
1. Known full-time employees for month.	30	75
2. Hours of service by part-time employees for month (do not count more than 120 hours of service for any single employee).	2,000	12,000
3. Divide #2 by 120.	17	100
4. Total FTEEs for month (add #1 and #3).	47	175

5. Perform #1 – #4 for each month of the prior year and add the totals together.	(e.g.,) 555	(e.g.,) 2,100
6. Divide #5 by 12.	46	175
7. If #6 is 100 or greater, the district is a large employer during the current year.	Small employer	Large employer

Note: An employer existing for only part of a prior year is subject to large employer determination based on its partial prior year. A new employer will not be exempt from large employer status within the current year if the employer can reasonably determine it will have 100 or more FTEEs during 2015 (50 or more beginning in 2016).

Play or Pay Penalties

For 2015, if an employer has at least 100 FTEEs, as explained above, the employer must determine if it wants to "pay" or "play." In order to "play," the employer must offer medical coverage to at least 70% of its full-time employees (those employees working 30 or more hours per week). Alternatively, an employer can decide to "pay" a penalty to the government based on its total number of full-time employees. An employer who chooses to "play," could possibly still owe a penalty on certain employees who choose to obtain coverage through the public insurance marketplace **and** who meet certain criteria. Beginning in 2016, these numbers are adjusted. If an employer has at least 50 FTEES, the employee must determine if it wants to "pay" or "play." To "play," the employer must offer medical coverage to at least 95% of its full-time employees.

ACA initially required employers to decide whether to "pay" or "play" for plan years beginning in 2014. Employers with non-calendar year plans were generally granted compliance relief until the start of their 2014 plan year (i.e., entities participating in OEBB would have had until October 1, 2014 to comply). However, on July 2, 2013, the Obama Administration unexpectedly announced that employers would not be assessed under this mandate until 2015. The final regulations issued on February 10, 2014, clarified that non-calendar year compliance relief will be granted for 2015, so OEBB participating entities have until October 1, 2015 before they are subject to the "pay" or "play" mandates.

An employee is a **full-time employee** for the purposes of the "pay" or "play" penalties if he or she works at least 30 hours per week or 130 hours per month during the course of the employer's look-back measurement period (measurement is discussed in ACA Bulletin #3). An employer is generally free to select a measurement period from 3 – 12 months in duration. If an employer uses a 12-month measurement period, an employee will be considered a full-time employee if he or she has at least 1,560 (52 x 30 or 12 x 130) total hours of service during the measurement period. "Hours of service" includes hours worked, most forms of paid leave and certain forms of unpaid leave (including FMLA). Educational organizations have an important choice about how to address lengthy break periods (e.g., summer and winter breaks):

(1) Ignore the break period and calculate full-time employee status on a reduced pro-rata basis — Let's say an entity selects a 12-month measurement period for its employee measurement and the cumulative summer and winter break periods equal 3 months. The entity can modify the required hours threshold (1,560) by discounting the 3-month break period and recalculating on a 9-month basis, which would equal 1,170 hours.

(2) Count the break period by calculating an average hours of service — Let's say an entity selects a 12-month measurement period for its employee measurement and the cumulative summer and winter break periods equal 3 months. The entity can use the 12-month threshold (1,560) if it calculates an average hours of service for employees during the other 9 months and uses that average during the 3-month break period. For example, if the average hours of service during the other 9 months are 141, the entity will measure assuming the employee also worked 141 hours per month during the 3-month break period. An entity does not have to account for more than 501 total break period hours of service.

What is the "pay" penalty? In 2015, an employer will be subject to the "pay" penalty if the employer fails to offer health coverage that is minimum essential coverage (MEC) to at least 70% of its full-time employees and at least one full-time employee receives a federal premium tax credit to help pay for coverage through the public insurance marketplace. In 2016, the 70% increases to 95%, so employers must offer MEC to at least 95% of full-time employees to avoid the "pay"

penalty. The "pay" penalty results in a $2,000 penalty for each full-time employee (minus the first 30 full-time employees). The "pay" penalty is paid monthly and is non-deductible.

What is the "play" penalty? If the employer opts to "play," the employer may face a penalty if at least one full-time employee receives a federal premium tax credit to help pay for coverage through the public insurance marketplace. The "play" penalty results in a $3,000 penalty for each affected full-time employee. The "play" penalty is also paid monthly and is non-deductible. This penalty can be triggered based on answers to the following questions:

1. Is the employee a full-time employee (i.e., working 30 hours or more per week)? If no, the $3,000 "play" penalty cannot be triggered. If yes, proceed to #2 below.
2. Is the full-time employee's household income between 100% – 400% of the federal poverty level? If no, the $3,000 "play" penalty cannot be triggered. If yes, proceed to #3 below. If unknown, proceed to #3 below.
3. Was the full-time employee offered health coverage by the employer that qualifies as minimum essential coverage requirements (MEC)? If no, the $3,000 "play" penalty is triggered for this individual. If yes, proceed to #4 below. Note: OEBB has determined that all OEBB medical plan offerings meet the minimum essential coverage (MEC) requirements.
4. Does the medical plan coverage offered to the full-time employee meet the minimum value requirements? If no, the $3,000 "play" penalty is triggered for this individual. If yes, proceed to #5 below. Note: OEBB has determined that all of the medical plan options offered meet the minimum value requirement.
5. Is the cost of the medical plan coverage equal to or less than 9.5% of the employee's household income (an employer may use the employee's W-2 income as a safety net)? If no, the $3,000 "play" penalty is triggered for this individual. If yes, no "play" penalty applies to this individual. Note: If the "play" penalty is triggered using the employee's W-2 income, there is still the possibility that the employee may not trigger a "play" penalty if he or she goes to the Marketplace (Cover Oregon in Oregon). The Marketplace will use household income to make this determination.

Please note: OEBB has determined that all OEBB medical plan offerings qualify as MEC and provide minimum value for ACA purposes. OEBB has also determined that the lowest cost OEBB medical plan offerings available will qualify as affordable coverage for most participating entity employees who are eligible for an employer benefit contribution.