

Employer Shared Responsibility Provisions:

Key Definitions

- **Employer:** Includes for-profit, non-profit and government entity employers
- **Common law definition of “employee” and “employer” applies**
- **Full-Time Employee:** an employee who is employed on average at least 30 hours per week
- **Full-Time-Equivalent (FTE) Employee:** a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least 30 hours per week, but who, in combination, are counted as the equivalent of a full-time employee
 - *For example, two employees, each of whom works 15 hours per week, are the equivalent of one full-time employee*

Note: Transition relief means that employer responsibility payments will not be collected for 2014. Transition relief also means that employers with 50 – 99 Full-time/Full-time Equivalent employees are not subject to these rules in 2015 provided they meet certain certification requirements.

How does an employer count its full-time and FTE employees to know whether it has 50 or more?

- An employer is subject to Employer Shared Responsibility if it averaged a combination of full-time employees (including seasonal employees) and full-time equivalents that equals at least 50.

Example: Company X has 40 full-time employees working 40 hours per week, along with 20 part-time employees working 15 hours per week. The 20 part-time employees are counted as 10 full-time equivalent employees. Company X has 50 full-time employees and is subject to the employer shared responsibility provisions.

- To determine whether it is subject to Employer Shared Responsibility for a given calendar year, the employer looks to the size of its workforce in the **prior** calendar year.

Note: Transition relief means that employer responsibility payments will not be collected for 2014. Transition relief also means that employers with 50 – 99 Full-time/Full-time Equivalent employees are not subject to these rules in 2015 provided they meet certain certification requirements.

How does a business know whether it is large enough to be subject to Employer Shared Responsibility?

1

Full-time Employees

(Employee who averages 30 hours per week or 130 hours per month)

Qty.

Subject to ESR if avg is ≥ 50 per month for the prior calendar year¹

OR

2

Full-time Employees

(Employee who averages 30 hours per week or 130 hours per month)

and

Full-time Equivalent Employees

(Aggregate hours worked by non-full-time employees in a month divided by 120)

Qty.

+

Qty.

Sum

Subject to ESR if avg is ≥ 50 per month for the prior calendar year¹

¹ See Proposed Treasury Regulation §54.4980H-2 for seasonal worker exceptions and controlled group rules and examples in determining whether an employer is subject to employer shared responsibility.

Note: Transition relief means that employer responsibility payments will not be collected for 2014. Transition relief also means that employers with 50 – 99 Full-time/Full-time Equivalent employees are not subject to these rules in 2015 provided they meet certain certification requirements.

Special counting rules for determining whether an employer is subject to Employer Shared Responsibility

- **Aggregation Rule**: Certain affiliated employers with common ownership or who are part of a controlled group must aggregate their employees for purposes of determining whether they are subject to employer shared responsibility.

Example: For 2016, Corporation P owns 100% of all classes of stock of Corporations S and T. This makes P, S, and T a controlled group of corporations under tax rules. P has no employees at any time in 2016. For every month in 2016, S has 20 full-time employees and T has 15 full-time employees and 15 full-time equivalents (FTEs). Because P, S, and T have a combined total of at least 50 full-time employees (or equivalents) during 2016, each of P, S, and T is subject to employer shared responsibility for 2017.

- **Seasonal Worker Exception**: If an employer's workforce equals or exceeds 50 full-time employees (or equivalents) for 120 days or fewer during a calendar year solely due to seasonal workers, the employer is exempted from employer shared responsibility.

Note: Transition relief means that employer responsibility payments will not be collected for 2014. Transition relief also means that employers with 50 – 99 Full-time/Full-time Equivalent employees are not subject to these rules in 2015 provided they meet certain certification requirements.