# AFFORDABLE CARE ACT
## Some transitional relief granted for employers

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On Feb. 10, the Internal Revenue Service released the final regulations implementing the employer shared responsibility mandate. The mandate was initially set to take effect beginning in 2014.

In July, the IRS issued guidance, which delayed the employer shared responsibility mandate until 2015 for all employers. The final regulations retain this delay, but also provide an extended delay for smaller "large employers," which include employers with an average of 50 to 99 full-time employees (including full-time employee equivalents or "FTEs"). Those employers will not be required to comply with the mandate to offer employees affordable health insurance until the first day of their plan year starting in 2016.

"Full-time employees" are those who work 30 or more hours per week. In determining the number of FTEs during each calendar month, an employer must aggregate number of hours of service for that calendar month for employees who were not full-time employees (but not more than 120 hours of service for any employee) and divide that number by 120.

To take advantage of the transitional relief period, an employer must satisfy the following conditions:

- During the period beginning Feb. 9 and ending Dec. 31, the employer does not reduce the size of its workforce or the overall hours of service of its employees in order to fall under the 100 full-time employees threshold.

- During the period beginning Feb. 9 and ending Dec. 31 (for an employer with a calendar year plan), or ending on the last day of the plan year that begins in 2015 (for an employer with a non-calendar year plan), the employer does not eliminate or materially reduce the health coverage, if any, it offered as of Feb. 9.

- The employer certifies that it satisfies all of the foregoing requirements on a designated form to be issued by the IRS.

Given that this additional delay of the employer mandate only applies to employers with 50 to 99 full-time employees including FTEs, it is imperative that employers with approximately 100 full-

time employees including FTEs determine whether they fall below the 100 threshold as that will dictate the type of relief that applies to them.

During the 2014 calendar year, an employer can use a six-month "look back" period of at least six consecutive months to determine whether they had at least 100 full-time employees including FTEs.

The final regulations also contain a favorable transition rule for larger "large employers," which include employers with 100 or more full-time employees including FTEs. While those employers are still subject to the employer shared responsibility mandate beginning in 2015, the final regulations loosen the rules governing the application of the "no coverage penalty" for 2015. As a reminder, this penalty applies if a large employer fails to offer coverage to at least 95 percent of its full-time employees and their dependents, and one of its full-time employees obtains coverage through a marketplace and qualifies for premium assistance.

Employers that do not satisfy this coverage requirement are subject to an annual penalty of $2,000 - adjusted for inflation after 2014 -multiplied by its number of full-time employees minus 30.

As a result of this transitional relief, employers with 100 or more full-time employees including FTEs need to offer coverage to 70 percent of their full-time employees in 2015 and 95 percent in 2016 to avoid this $2,000 penalty.

In addition, for 2015 - plus any calendar months of 2016 that fall within a large employer's 2015 plan year - if an applicable large employer with 100 or more full-time employees including FTEs on business days during 2014 is subject to a penalty for failing to offer coverage, then the penalty with respect to the transition relief period will be calculated by reducing an applicable large employer number of full-time employees by 80 rather than 30.

The final regulations also extend transitional relief to employers who are revising their plans to provide coverage for employees and dependents, which for purposes of the employer mandate does not include spouses, rather than employees alone. An employer that takes steps during a plan year that begins in 2015 toward offering coverage for dependents will not be liable for any potential penalty for that plan year.

However, this transitional relief only applies to employers for the 2015 plan year with respect to plans under which dependent coverage is not offered; dependent coverage that does not constitute minimum essential coverage is offered; or, dependent coverage is offered for some, but not all, dependents.

These transition rules should provide needed relief to employers who are working through the inherent difficulties of complying with the employer shared responsibility mandate. However, employers should keep in mind that these transition rules are temporary and limited.

So, while delaying planning for compliance with these final regulations until late 2014 (or late 2015 for employers with 50 to 99 full-time employees) might seem attractive, employers should begin working with trusted advisers now to make sure they are compliant by 2016 when the transitional relief ends.

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**Want to Learn More?** Willcox Savage is offering a complimentary workshop with limited seating on the Affordable Care Act on Wednesday, May 7, from 8:00 am until 10:30 am. The workshop will focus on practical issues faced by employers with 50 or more employees. Learn more at: www.willcoxsavage.com.