



# Maine Municipal Employees Health Trust

60 COMMUNITY DRIVE, AUGUSTA, MAINE 04330-9486

(207) 621-2645 [www.mmeht.org](http://www.mmeht.org)

To: Health Trust Participating Employers  
From: Anne Wright, Assistant Director, MMEHT  
Date: January 24, 2014  
Re: The Affordable Care Act and Health Care Reform –  
Are You a “Large Employer”?

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*Please note: Copies of these Health Care Reform updates may be found on the Health Trust website, at [www.mmeht.org](http://www.mmeht.org). Click on the link for Health Care Reform. Updates are at the bottom of the page; simply click on the link for the update you wish to read.*

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One of the provisions of the federal Affordable Care Act (ACA) that is causing a great deal of discussion among employers is the Employer Shared Responsibility provision, also known as the “Play or Pay” provision of the law. This provision will affect “large employers” (also called “applicable large employers”), defined by the ACA as those employers with 50 or more full-time employees, including full-time equivalent (FTE) employees. Although it does not require large employers to offer health insurance to employees, it does impose a penalty on those employers, under certain circumstances, for not offering coverage.

The Employer Shared Responsibility provision, and the accompanying penalty, were originally slated to become effective January 1, 2014. However, in July of 2013, the Treasury Department announced that implementation of this portion of the law would be delayed for one year, until January 1, 2015. Although the delay means that employers will not be liable for any penalties for not offering health insurance coverage in 2014, it is very important for employers to begin the process now of determining how many full-time and full-time equivalent employees they have, how many hours each of these employees works, and whether the employer is meeting all applicable provisions of the ACA, in order to avoid having to pay the penalty in 2015.

Over the next several weeks, we will address each of these provisions, as well as describing the various conditions that must be met in order for an “applicable large employer” to avoid the penalty. This is a very complicated subject, with many twists and turns along the way, so we’ll be taking it one step at a time, and breaking it down into several, hopefully more manageable, pieces.

The first question, of course, is: Which employers are subject to the Employer Shared Responsibility provision?

As stated above, the Employer Shared Responsibility provision applies to “**large employers**” – that is, those with **50 or more full-time and full-time equivalent employees**. The ACA defines a full-time employee as one working an average of 30 or more hours per week on a regular basis. For purposes of the ACA, “hours worked” includes not only hours actually worked, but also hours for which the employee is paid or entitled to payment even when no work is performed (for example, vacation, sick time, or PTO).

It’s fairly easy for an employer to determine whether or not it employs 50 or more full-time employees, using this definition. Each employee working 30 or more hours per week is counted as one full-time employee. (This is true whether the employee works 30, 40, or even 50 hours per week – each person is still counted as one full-time employee.) However, the law goes on to say that, strictly for purposes of determining whether or not it is a large employer within the definition of the law, the employer must also

calculate the number of full-time equivalent (FTE) employees it has, and add that number to the number of full-time employees. This calculation should be done on a monthly basis.

To calculate the number of full-time equivalent employees in any given month, an employer must add up the total number of hours of service (again, including hours actually worked plus hours for which the employee is paid or entitled to payment) for all employees working less than an average of 30 hours per week during that month, then divide that total by 120. The resulting number will be the number of full-time equivalent employees during that month.

Once the employer has determined the total number of employees (full-time employees plus full-time equivalent employees) for each month, the employer should add the totals for all 12 months, then divide by 12. This will determine whether the employer is an “applicable large employer” as defined by the ACA, and thus, whether the employer is subject to the Employer Shared Responsibility provision in 2015.

This means that an employer with fewer than 50 full-time employees could be considered as a large employer, and thus subject to the Employer Shared responsibility provision. Here’s an example:

The Town of Anytown has 35 full-time employees, each of whom works 30 or more hours per week on a regular basis. The Town also employs 20 part-time employees, all of whom work less than 30 hours per week (or 120 hours per month). To determine the number of full-time equivalent employees, the Town will add up all of the hours worked by the part-time employees each month, then divide that number by 120 to get the total for that month. At the end of the year, the Town will add up all the monthly totals (including both full-time and full-time equivalent employees) and divide by 12, to determine whether or not it meets the threshold to be considered an “applicable large employer”.

If the Town’s 20 part-time employees each work 100 hours per month, that equates to 16.67 full-time equivalent employees each month ( $20 \times 100$  divided by  $120 = 16.67$ ). When 16.67 is added to 35 (the number of full-time employees the Town has), the resulting number (51.67) is greater than 50. If Anytown has the same number of employees (full-time plus full-time equivalents) throughout calendar year 2014, Anytown will be considered an “applicable large employer” in 2015, and thus, will be subject to the Employer Shared Responsibility provision.

It is important to note that, even though employees working fewer than 30 hours per week are included in the calculation of whether or not an employer is considered to be a “large employer” and thus subject to the Employer Shared Responsibility provision of the ACA, employers will **not** have to offer coverage to these employees in order to avoid the penalty in 2015. In the next few updates, we will discuss when an “applicable large employer” may find itself subject to the penalty, how much the penalty might be, and how to avoid the penalty.

In future memos, we will also address the issues of temporary or seasonal employees, volunteer or per diem employees (for example, volunteer firefighters), measurement periods and how to determine which employees will meet the 30-hour threshold for 2015. If there are other ACA-related topics of interest to you, please feel free to e-mail me at [awright@memun.org](mailto:awright@memun.org), and I will add them to the list.

*Please note that the Maine Municipal Association and the Maine Municipal Employees Health Trust are sharing this information to assist you with your compliance planning. We recommend that you contact your legal counsel with specific questions relating to this law.*