Q&A from Assurex Global Webinar	March 20, 2014
Question	**Answer**
1 Q: Are seasonal employees exempt from determining the overall FTE count for determining if an employer is an Applicable Large Employer.	A: Whether an employer is an "applicable large employer" (50 or more FTEs) must consider hours of service each month for all employees (including seasonal employees). There is a limited exception (see language from the final rules below) that applies only to a limited number of employers who exceed 50 FTES for 120 days or less during the year due to their seasonal employees: *An employer is not considered to employ more than 50 full-time employees if (1) the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and (2) the employees in excess of 50 employed during such 120-day period are seasonal workers. For this purpose, the proposed regulations define the term seasonal worker as a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including (but not limited to) workers covered by 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons.*
2 Q: Are stockholder/owners who work in the business included in the count for full time employees	A: An "employee" is an individual who is an employee under the common-law standard. A leased employee (as defined in Code § 414(n)(2)). Sole proprietors, partners in a partnership, and 2% S corporation shareholder are generally not each considered employees.
3 Q: Are students that work 30+ hours/week and receive a stipend considered full-time employees?	A: The final rules do not require employers to credit hours of service for federal/state work study students. However, any student employees or interns entitled to payment other than through a federal/state work study program must be credited with hours of service and considered for ACA purposes the same as any other employees.
4 Q: Are the exceptions to eligibility counts (volunteers, etc.) still counted in determining ALE?	A: No. If the employer is not required to credit any hours of service (bona fide volunteers, work study students, unpaid interns and certain members of a religious order), the individual is not counted toward determining applicable large employer status.
5 Q: Can you define what a "material reduction" in benefits is? Q: Is an increase in the employee's premium contribution split considered a "Material Reduction" that would disqualify an employer from the 50-99 transition relative for 2015?	A: Final rules state that an employer will not be seen as eliminating or materially reducing coverage if: (i) it continues to contribute at least 95% of the dollar amount or the same (or higher) percentage as it was contributing toward coverage as of Feb 9, 2014; (ii) in the event there is a change in benefits, the coverage provides minimum value after the change; and (iii) it does not narrow or reduce the class/classes of employees (or the employees' dependents) to whom coverage was offered on Feb 9, 2014
6 Q: Are there two choices.... month to month or look back measurement period which would also include the stability period?	A: Yes, that's correct. Employers may choose between 2 methods of determining full-time status: (i) Monthly method - determine which employees achieve 130 hours of service or more each month and offer coverage accordingly (ii) Look-Back Measurement Method - average employee's hours of service over a 3-12 month measurement period; any employee averaging 30 hours of service/wk or 130 hours of service/mth must be treated as full-time for a corresponding stability period of at least as long as the measurement period, but no less than 6 mths
7 Q: But I thought he B penalty could not exceed the A Liability? Q: On the last slide, I thought if the A penalty was $0, why would the employer have to pay the B penalty, if the B penalty is capped at the A penalty.	A: 4980H(b) penalty cannot exceed the maximum potential penalty under 4980H(a). Example - 100 full-time employees. For an employer with 100 full time employees, the total potential penalty under 4980H(a) is 70 (waiver for the first 30 full-time employees) multiplied by $2000, which is $140,000. The IRS has provided a safe harbor however, and if the employer offers coverage to at least 95% of the full-time employees (70% in 2015), no penalty 4980H(a) would apply. However, this safe harbor does not eliminate all 4980H(b) penalty liability. A penalty could still apply under 4980H(b) for any full-time employees for whom the coverage is not minimum value or affordable (and the individual enrolls for subsidized coverage through a public Exchange) up to maximum 4980H(a) liability of $140,000.
8 Q: Can we have different plans for those who are eligible for the health coverage as long as it meets the ACA regs and have another plan for those that are classified as FT who are eligible for vac, sick, etc.?	A: Yes, so long as the plan does not discriminate in favor of the highly compensated. For self-funded plans, nondiscrimination rules apply under Section 105(h). For fully-insured plans, enforcement of nondiscrimination rules has been delayed, but we expect to receive guidance soon that will implement similar rules for fully-insured plans.

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9 Q: Will we need to re-classify the PT employee to FT and offer them the other benefits that we currently offer our FT employees such as vacation, sick, holidays, etc. or only offer them medical benefits? Q: If an employee is defined as a full time employee by the 30 hour per week, and the requirement for full time paid benefits, i.e. vacation, 401k, etc. is 40 hours per week; is the 30 hour per week employee now eligible for paid vacation, 40lk, etc.?	A: It is only necessary to define full-time as 30 hours of service per week (130/mth) and offer a medical plan that provides minimum value and is affordable to avoid penalties under the shared responsibility rules for employers (4980H). It is not necessary to use the same definition for full-time for purposes of other benefits or even to offer any of the other benefits for purposes of these rules.
10 Q: Did I hear correctly that paid interns/summer hires who work full time schedules would have to be offered coverage according to the same waiting period as other hires? If we use a staffing agency for these temporary roles, does that eliminate the need to offer coverage because the agency is the employer? Q: full time temporary must be offered coverage? How does that apply to temporary who are employees of a temp to hire company?	A: Yes, temporary, short-term employees, as well as interns working full-time must be treated as other employees in determining full time status. The common law employer is responsible for the offer of coverage, whether it is the contracting company or the staffing agency. However, if the contracting company is the common law employer, the final rules do allow for the staffing agency to make an offer of coverage on behalf of the contracting company so long as the contracting company pays a higher fee for such employees on account of the benefits being provided.
11 Q: How about summer college interns that work more than 30 hours a week, but only for say 3 or 4 months of the year?	A: Under the shared responsibility rules for employers, so long as full-time employees are offered coverage no later than the 1st of the 4th month following hire, there won't be any penalties. Therefore, if the temporary employees (whether summer interns or otherwise) are employed for 3 months or less, it isn't necessary to worry about offering coverage for purposes of avoiding penalties under the shared responsibility rules.
12 Q: If we hire a paid summer intern who is working at least 30 hours - we need to offer them health insurance (we have no waiting period)? Could we possibly get around this due to the 70%/95% rule?	A: So long as summer interns total less than 5% (or 30% in 2015) of total full-time employees, it would not be necessary to worry about them for purposes of the penalty 4980H(a) so long as the employer is offering coverage to the rest of its full-time employees. Keep in mind, there may still be penalties that apply under 4980H(b) of $250 per month for any full-time employees, including summer interns (if they qualify as a full time employee), that are not offered minimum value, affordable coverage and enroll and qualify for subsidized coverage through a public Exchange.
13 Q: do i have to include our union employees to determine large employer status? union employees have health coverage through their local union, which is funded by our company. Q: How are union members or collectively bargained employees counted towards the FTE's	A: Yes, union employees are counted when determining total full-time equivalents (FTEs) for applicable large employer status. However, the final rules allow for a union to make an offer of coverage on the employer's behalf (for purposes of the penalties) so long as the employer is contributing funds toward the benefits.
14 Q: is offering coverage including union plans offered through the union?	A: Yes, so long as the employer contributes to the union plan on behalf of the employees coverage.
15 Q: If you are a control group of 3 different companies, is the margin of error exception 30 (0r 80) employees for each company, or only 30/80 for whole control group?	A: For purposes of calculating the penalty under 4980H(a), the waiver of the first 30 (or 80 in 2015) is applied to each entity on a pro rata basis between the entities/members. For example, Company A, B and C are all part of a controlled group. Company A has 50 employees, Company B has 30 employees, and Company C has 20 employees. Company A receives a waiver for the first 15 employees (.5 x 30) Company B receives a waiver for the first 9 employees (.3 x 30) Company C receives a waiver for the first 6 employees (.2 x 30)

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16 Q: For W-2 reporting purposes, is the "large employer" definition considered 250+, not based on 100 FTEs? Q: Does the W-2s apply to everyone?	A: W-2 reporting is a reporting requirement unrelated to the reporting requirements under Section 6055/6056 and the shared responsibility rules under section 4980H. Employers filing 250 or more W-2s in the previous calendar year are required to report the cost of health coverage on W-2s.
17 Q: For a client with a July renewal, may an employee leave the employer plan during open enrollment and join the public exchange for July 1?	A: Generally, no. An individual may only enroll for coverage through a public Exchange during open enrollment unless the individual experiences a life event allowing for a special enrollment period such as: • Losing other minimum essential coverage; • Gaining or becoming a dependent through marriage, birth, adoption, or placement for adoption; • Becoming newly eligible or newly ineligible for the premium tax credit or experiencing a change in eligibility for cost-sharing reductions; • Gaining status as a citizen, national, or lawfully present individual in the U.S; • Experiencing an error in enrollment; and • New QHPs offered through the Exchange becoming available to a qualified individual or enrollee as a result of a permanent move. In addition, there may be some additional flexibility, at least in 2014, for difficulties enrolling by March 31 because of the current application process or hardships experienced (i.e. natural disasters, severe illness).
18 Q: For restaurant employees, can cooks be considered variable hour? Or only servers?	A: It depends for both…a variable hour employee means "based on the facts and circumstances at the start date, it cannot be determined that the employee is reasonably expected to work at least 30 hours per week for the entire measurement period". The final rules provided some factors to consider when making the determination between variable hour and full-time, which include: • whether the employee is replacing an employee who was or was not a full-time employee, • the extent to which employees in the same or comparable positions are or are not full-time employees, and • whether the job was advertised, or otherwise communicated to the new hire or otherwise documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week
19 Q: temporary employees which we use from a staffing company on a temp to hire basis, do not have to be counted as our FT EEs until we hire them correct?	A: It depends on who is the common law employer. The common law employer, whether it is the contracting company or the staffing agency, is required to count the temporary employees' hours of service toward total FTEs in determining applicable large employer status. You should discuss with your staffing firm and/or your legal counsel which company is considered the common law employer. It can vary from situation to situation.
20 Q: We meet the alternative option right now do we still need to do the Statement to EEs? Q: If an employer can use the simplified reporting, alternative #2 for example, they must still provide statements to the individual employees, correct?	A: For Section 6055/6056 reporting, those employers meeting the criteria allowing for simplified reporting will still be required to report both to the IRS and separately to the employees, but the amount of information required will be much less. A simple model statement will be made available by the IRS to be used for the statement to the employees.
21 Q: How does the Employer Shared Responsibility rule apply to contracted employees? Temp employees from a staffing agencies?	A: It depends…the common law employer is responsible for the offer of coverage, whether it is the contracting company or the staffing agency. However, if the contracting company is the common law employer, the final rules do allow for the staffing agency to make an offer of coverage on behalf of the contracting company so long as the contracting company pays a higher fee for such employees on account of the benefits being provided.
22 Q: How will a company be able to determine if an employee has purchased coverage on the exchange?	A: The Exchange and/or the IRS will contact employers with employees who purchased subsidized coverage through a public Exchange to determine whether or not the employee was eligible for minimum value, affordable employer-sponsored coverage and should not have received a subsidy or whether the employee should have been considered full-time and offered coverage. It is important for this reason that employers carefully document their processes for determining full-time status and offering coverage so that it can be proven one way or the other.

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23 Q: If I have a plan year 7-2014 through 6/2015...how do I calculate, the look back?	A: We suggest that the employer work backwards from the stability period…generally employers choose to use a 12-month measurement/stability period and have the stability period align with the plan year, so the following might be appropriate for ongoing employees: • Standard Stability Period: July 1 - June 30 • Administrative Period: May 1 - June 30 • Standard Measurement Period: May 1 - April 30
24 Q: If the employer has a fiscal year plan, as opposed to a calendar year plan, does the employer use the previous fiscal year (as a opposed to the calendar year) for determining the number of FTEs?	A: No. Total FTEs is always determined on a calendar year basis. Status as an applicable large employer in 2015 is determined by total FTEs during the 2014 calendar year.
25 Q: I am a construction employer and our seasonal employees are not paid for hours they do not work, i.e., weather issues, lack of work. Can they be considered variable hour, even if they do often work well over 30 hours (assuming the weather is good)?	A: It depends…variable hour and seasonal employees that may be subjected to an initial measurement period are defined as the following: **Variable Hour Employee** means "based on the facts and circumstances at the start date, it cannot be determined that the employee is reasonably expected to work at least 30 hours per week for entire measurement period". The final rules provided some factors to consider when making the determination between variable hour and full-time, which include: • whether the employee is replacing an employee who was or was not a full-time employee, • the extent to which employees in the same or comparable positions are or are not full-time employees, and • whether the job was advertised, or otherwise communicated to the new hire or otherwise documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week **Seasonal Employee** means an employee in a position for which the customary annual employment is six months or less. The reference to customary means that by the nature of the position, an employee in this position typically works for a period of six months or less, and that period should begin each calendar year in approximately the same part of the year, such as summer or winter
26 Q: If you choose to use the month to month method for calculating FT EE status; would their status change month to month (as well as eligibility for benefits)? So if they work one month at 130 hrs, then the next month they are eligible and if they work 120 hours the following month, they would then lose coverage at the start of the next month?	A: Yes, generally that may be correct depending on the specific eligibility rules for the plan (i.e. waiting period and when coverage may be terminated). Some employers may voluntary choose to offer coverage for a period of time that would not be required so as to minimize the number of times employees lose and regain eligibility. An example of a monthly approach could be as follows. Waiting period is 1st following 60 days, and coverage is terminated at the end of any month that the employee doesn't achieve 130 hours of service or more: - If an employee is under 130 hours of service for January and February, but then at 140 hours of service for March, coverage would need to be offered no later than May 1. - If the employee has 130 hours of service or more through May, but then has 120 hours of service in June, coverage could be terminated at the end of June.
27 Q: what is a month, our month is 173.3 not 4 wks x 40.	A: For purposes of the shared responsibility rules and associated penalties, which apply on a calendar month basis, full-time status is an employee that averages 30 hours of service or more per week or achieves 130 hours or more per calendar month. The final rules recognize that 130 isn't the exact calculation (4.3 x 30 may be a little over or under) for each month, but it averages out over 12 months.
28 Q: Are you supposed to count call hours, when employee is put on call?	A: For positions that are challenging to determine or track hours of service, the final rules indicate that employers are required to use a reasonable method of crediting hours of service that is consistent with shared responsibility rules. Specifically for on-call hours, the final rules indicate It is not reasonable for an employer to fail to credit an employee with an hour of service for any on-call hour for which payment is made or due by the employer, for which the employee is required to remain on-call on the employer's premises, or for which the employee's activities while remaining on-call are subject to substantial restrictions that prevent the employee from using the time effectively for the employee's own purposes.

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29 Q: Is there a specific period of time an employer must use to determine the number of full-time employees for the 70% requirement ?	A: Penalties under section 4980H apply on a monthly basis. Therefore, each month in 2015 that an employer fails to offer coverage to at least 70% of its full-time employees (or 95% for 2016 and beyond), the employer could face 4980H(a) penalties.
30 Q: Is there an exception for home care workers employed by an agency?	A: The final rules specifically addressed home care workers and made it clear that there are no special exceptions for them; rather, they should be treated just as any other full-time employee under the shared responsibility rules. However, if the agency is considered to be the common law employer, the agency would be responsible for compliance with the shared responsibility rules if applicable; keep in mind that these agencies may be less than 50 full-time equivalents (FTEs) and therefore not required to follow the rules and offer coverage to full-time employees.
31 Q: Non - Calendar year plan....Do 25% of eligible employees need to be covered or 25% of employees? Q: I thought seasonal employees who worked for less than 6 months do not need to be part of the FTE calculation. Is that correct?	A: For non-calendar plan year transition relief in 2015, the employer needs to satisfy the significant percentage test (amongst other criteria). For the significant percentage test, the plan must meet one of the following: • Have 1/4 of all employees covered on any date within the 12 months prior to Feb 9, 2014 OR have offered coverage to at least 1/3 of all employees during the most recent open enrollment prior to Feb. 9, 2014; -OR- • Have 1/3 of all full-time employees covered on any date within the 12 months prior to Feb 9, 2014 OR have offered coverage to at least 1/2 of all full-time employees during the most recent open enrollment prior to Feb. 9, 2014.
32 Q: Please expand/clarify what is meant by FTE generally defined as any employee AVERAGING 30 hours of service per week.	A: **Full-time employee**, for purposes of the shared responsibility rules under section 4980H, is an individual that has 30 hours of service or more per week (or 130 hours of service per month). An employer choosing to use the look-back measurement method to determine full-time status over a 3-12 month measurement period will treat any employee averaging 30 hours of service over the entire measurement period as full-time (i.e. 1560/52 wks = 30 or 1560/12 mths = 130) **Full-time equivalent (FTE)**, for purposes of the shared responsibility rules under section 4980H, is (i) each full-time employee as defined above; plus (ii) all other hours of service from part-time employees divided by 120
33 Q: RE affordable of coverage. IF the company offers a wellness discount, would it be 9.5 % of well or standard rate? Q: Were there any further clarifications regarding premium rewards when satisfying the affordability test?	A: Affordability in regards to wellness incentives should be determined assuming that each employee fails to satisfy the requirements of the wellness program, except for the requirements of a wellness program related to tobacco use. Therefore, other than wellness incentives for tobacco use, coverage is affordable only if the higher premium or contribution level required by the employee for single coverage (prior to consideration of the wellness program deduction) is affordable (cannot exceed 9.5% of household income) for the employee.
34 Q: So if I offer coverage to 100% of my fulltime employees, if the coverage is not deemed affordable to some will I have to pay any b penalty?	A: Yes, but only if any such employees enroll for coverage through a public Exchange and qualify for subsidies. If the employer offers minimum essential coverage to all full-time employees, no penalty will apply under 4980H(a). However, if that coverage fails to provide minimum value or is not affordable, the employer will pay a penalty under 4980H(b) for each such employee that enrolls and qualifies for subsidized coverage through a public Exchange.
35 Q: So if we have a 2015 calendar plan yr, we couldn't use the 6 month look back starting July 1 2014, because of the admin period? Correct?	A: For an employer choosing to use the look-back measurement method and planning to use a 12 mth stability period. Typically, the measurement period is required to be 12 mths as well. For determining full-time status in 2015 only, the employer is allowed to use a shorter measurement period so long as it is at least 6 mths, starts no later than July 1, 2014 and ends no more than 90 calendar days prior to the start of the stability period. So for a calendar year plan, the following might be appropriate: • Standard Measurement Period: May 1 - Oct 31, 2014 • Administrative Period: Nov 1 - Dec 31, 2014 • Standard Stability Period: Jan 1 - Dec 31, 2015 If the employer were to use a 6 month measurement period beginning July 1 for a calendar year plan, they would have to make all the necessary full time determinations on Dec. 31st for a Jan. 1 effective date!

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36 Q: on the coverage rules discussing offering coverage to the % of FT employees, does the coverage have to be MEC, or can mini-med plans count? Q: Under the ER shared responsibility rule, is the penalty based on the employer offering minimum essential coverage or minimum value plans?	A: For purposes of avoiding the penalties under the shared responsibility rules, the employer must offer minimum essential coverage (MEC) to avoid penalty 4980H(a). The coverage must provide minimum value (60% actuarial value) and be affordable (employee contribution for single coverage cannot exceed 9.5% of household income) to avoid penalty 4980H(b).
37 Q: So, if calculating the 4980(h)(b) penalty for 2015, there is a significantly smaller chance of penalty payment, due to the 4980 (h)(a) transition rule subtracting 80 employees from the "a" calculation. Correct?	A: The employer will still face a penalty under 4980H(b) for any full-time employee that enrolls and qualifies for subsidized coverage through a public Exchange, but the total penalty that could apply is substantially reduced as it is capped by total penalty under 4980H(a) - and the waiver of 80 versus 30 significantly reduces the total potential penalty calculation under 4980H(a).
38 Q: Can you confirm, at what point you have to offer coverage to seasonal and variable employees? Please explain how hours are counted with look back period/stability period. Don't understand how to calculate this.	A: For employees meeting the definitions of variable hour or seasonal, generally they must still be offered coverage if they achieve 130 hours of service or more in any given month. However, the employer may choose to subject such employees to an initial new hire measurement period between 3-12 months (most employers choose 12). If the variable hour or seasonal employee averages 30 hours of service per week or 130/mth over the entire measurement period, the employee must to be treated as full-time and offered coverage for a corresponding stability period (the stability period must be at least as long as the measurement period, but no shorter than 6 mths). If not, the employee is essentially locked out and doesn't have to be offered coverage for the stability period.
39 Q: We offer insurance to well over the 70%, if we offer full-time employees insurance but they choose to purchase from the market place instead will we pay the B penalty?	A: The only way an employer will face the risk of the 4980H(b) penalty is if the coverage offered by the employer is unaffordable to the employee or does not provide minimum value (60% actuarial value).
40 Q: What about workmen's compensation payments for hours of service counts?	A: It is not included when counting hours of service. IRS prop. reg. § 2530.200b-2(a)(2)(ii): "… An hour for which an employee is directly or indirectly paid, or entitled to payment, on account of a period during which no duties are performed is not required to be credited to the employee if such payment is made or due under a plan maintained solely for the purpose of complying with applicable workmen's compensation, or unemployment compensation or disability insurance laws"
41 Q: What forms or how will these penalties be filed/paid?	A: The IRS will contact employers to inform them of their potential liability under 4980H and provide them an opportunity to respond. Generally, the contact will not occur until after employees' individual tax returns are due for that year claiming premium tax credits and after the due date for filing the employer information returns under sections 6055 and 6056. If an employer is liable for a penalty payment, the IRS will send a notice and demand for payment with instructions on how to make the payment (employers will not be required to include the payment on any tax return that they file).
42 Q: what's rule of parity?	A: Under the break in service rules...Rule of Parity – an employee can be treated as new employee if the break in service is (i) at least 4 weeks long, and (ii) longer than the weeks of employment prior to the break

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43 Q: with the employment status does that also work when an employee goes from part time to full time from a status change they are not eligible until the next plan year? Or after waiting period?	A: For an employer choosing to use the look-back measurement method, the following rules apply for a change in employment status: • If a variable hour/seasonal new hire has a change in status to full-time, the employee must be offered coverage the earlier of (i) 1st of the fourth month following status change (or according to the employer's waiting period rules); or (ii) 1st of the first month following the end of the initial measurement period (following any allowed administrative period) • If an ongoing employee (employed for one full standard measurement period) has a change in status (i.e. part-time to full-time or vice versa), eligibility for coverage is generally not affected through the end of the stability period, but rather is captured in the subsequent stability period; however, the final rules provided an exception… For an employee originally hired as full-time (and offered coverage within the required 90 calendar days) that is then moved to part-time, the employer may choose to terminate coverage the 1st of the fourth month following the status change to part-time so long as the employee averages less than 30 hours of service per week for the three months following the status change. This is optional – the employer may choose not to take advantage of this option and always capture status changes in the subsequent stability periods for ease of administration
44 Q: When we discover through the look back approach that an employee is now full time, do they need to be added to our plans immediately or do they sit through the eligibility waiting period first (ours is first of the month following 60 days).	A: The answer depends on whether it is a new hire or an ongoing employee… • Ongoing employees (employed for one full standard measurement period) - after the standard measurement period, there can be an administrative period for up to 90 calendar days before the start of the standard stability period • New employees (subject to an initial measurement period) - the initial measurement period and the administrative period combined may not extend beyond the last day of the first calendar month beginning on or after the one-year anniversary of the start date (at most, 13 months plus a fraction of a month); therefore an employer using a 12 month initial measurement period cannot have more than a 1 month administrative period
45 In talking with our attorney about transition relief for employers, he also explained that beyond no material reductions allowed to the plan, employers also cannot change their plan year to a later date. For large employers over 100, this means no plan year change after 12/27/12 and for under 100 employers, it means no plan date change after 2/9/14. He was explaining that this could be an issue for groups that drag their feet and change a month later to a new carrier than what had previously been their anniversary date, assuming this also changed their ERISA plan year date. Please confirm this is also their understanding of a requirement for transition relief in Pay or Play?	A: Employers with 100 or more full-time equivalents (FTEs) are required to comply with the shared responsibility rules January 2015 unless they satisfy the transition relief criteria for non-calendar plan years: • **The non-calendar plan year must have been in place as of Dec 27, 2012 and not changed to a date later in the year since then (unless for a bona fide business reason such as a sale, merger, etc.)** • The plan must meet one of the following "significant percentage tests": (a) Have 1/4 of all employees covered on any date within the 12 months prior to Feb 9, 2014 OR have offered coverage to at least 1/3 of all employees during the most recent open enrollment; (b) Have 1/3 of all full-time employees covered on any date within the 12 months prior to Feb 9, 2014 OR have offered coverage to at least 1/2 of all full-time employees during the most recent open enrollment • The plan must offer minimum essential coverage to at least 70% of full-time employees (and their dependents) no later than the first day of the 2015 plan year