

at Employee A's start date, Employer Z reasonably expects that Employee A will average at least 30 hours of service per week. Accordingly, Employer Z offers coverage to Employee A beginning on September 1, 2015, and offers coverage continuously to Employee A for all calendar months through May 2021.

(ii) *Conclusion.* Same as *Example 1*.

(g) *Nonpayment or late payment of premiums.* An applicable large employer member will not be treated as failing to offer to a full-time employee (and his or her dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for an employee whose coverage under the plan is terminated during the coverage period solely due to the employee failing to make a timely payment of the employee portion of the premium. This treatment continues only through the end of the coverage period (typically the plan year). For this purpose, the rules in § 54.4980B-8, Q&A-5(a), (c), (d) and (e) apply under this section to the payment for coverage with respect to a full-time employee in the same manner that they apply to payment for COBRA continuation coverage under § 54.4980B-8.

(h) *Additional guidance.* With respect to the determination of full-time employee status, including determination of hours of service, the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(i) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

[T.D. 9655, 79 FR 8577, Feb. 12, 2014]

**§ 54.4980H-4 Assessable payments under section 4980H(a).**

(a) *In general.* If an applicable large employer member fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for any calendar month, and the applicable large employer member has received a Section 1411 Certification with respect to at least one full-time employee, an assessable payment is imposed. For the calendar month, the applicable large employer member will owe an assess-

able payment equal to the product of the section 4980H(a) applicable payment amount and the number of full-time employees of the applicable large employer member (other than employees in a limited non-assessment period for certain employees and as adjusted in accordance with paragraph (e) of this section). For purposes of this paragraph (a), an applicable large employer member is treated as offering such coverage to its full-time employees (and their dependents) for a calendar month if, for that month, it offers such coverage to all but five percent (or, if greater, five) of its full-time employees (provided that an employee is treated as having been offered coverage only if the employer also offers coverage to that employee's dependents). For purposes of the preceding sentence, an employee in a limited non-assessment period for certain employees is not included in the calculation.

(b) *Offer of coverage—(1) In general.* An applicable large employer member will not be treated as having made an offer of coverage to a full-time employee for a plan year if the employee does not have an effective opportunity to elect to enroll in the coverage at least once with respect to the plan year, or does not have an effective opportunity to decline to enroll if the coverage offered does not provide minimum value or requires an employee contribution for any calendar month of more than 9.5 percent of a monthly amount determined as the federal poverty line for a single individual for the applicable calendar year, divided by 12. For this purpose, the applicable federal poverty line is the federal poverty line for the 48 contiguous states and the District of Columbia. Whether an employee has an effective opportunity to enroll or to decline to enroll is determined based on all the relevant facts and circumstances, including adequacy of notice of the availability of the offer of coverage, the period of time during which acceptance of the offer of coverage may be made, and any other conditions on the offer. An employee's election of coverage from a prior year that continues for the next plan year unless the employee affirmatively

elects to opt out of the plan constitutes an offer of coverage for purposes of section 4980H.

(2) *Offer of coverage on behalf of another entity.* For purposes of section 4980H, an offer of coverage by one applicable large employer member to an employee for a calendar month is treated as an offer of coverage by all applicable large employer members for that calendar month. In addition, an offer of coverage made to an employee on behalf of a contributing employer under a multiemployer or single employer Taft-Hartley plan or multiple employer welfare arrangement (MEWA) is treated as made by the employer. For an offer of coverage to an employee performing services for an employer that is a client of a staffing firm, in cases in which the staffing firm is not the common law employer of the individual and the staffing firm makes an offer of coverage to the employee on behalf of the client employer under a plan established or maintained by the staffing firm, the offer is treated as made by the client employer for purposes of section 4980H only if the fee the client employer would pay to the staffing firm for an employee enrolled in health coverage under the plan is higher than the fee the client employer would pay the staffing firm for the same employee if that employee did not enroll in health coverage under the plan.

(c) *Partial calendar month.* If an applicable large employer member fails to offer coverage to a full-time employee for any day of a calendar month, that employee is treated as not offered coverage during that entire month, regardless of whether the employer uses the payroll period rule set forth in § 54.4980H-3(d)(1)(ii) or the weekly rule set forth in § 54.4980H-3(c)(3) to determine full-time employee status for the calendar month. However, in a calendar month in which the employment of a full-time employee terminates, if the employee would have been offered coverage for the entire calendar month had the employee been employed for the entire calendar month, the employee is treated as having been offered coverage for that entire calendar month. In addition, an applicable large employer member is not subject to an

assessable payment under section 4980H with respect to an employee for the calendar month in which the employee's start date occurs if the start date is on a date other than the first day of the calendar month, and, in addition, with respect to the calendar month in which the start date occurs, such an employee is not included for purposes of the calculation of any potential liability under section 4980H(a).

(d) *Application to applicable large employer member.* The liability for an assessable payment under section 4980H(a) for a calendar month with respect to a full-time employee applies solely to the applicable large employer member that was the employer of that employee for that calendar month. For an employee who was an employee of more than one applicable large employer member of the same applicable large employer during a calendar month, the liability for the assessable payment under section 4980H(a) for a calendar month applies to the applicable large employer member for whom the employee has the greatest number of hours of service for that calendar month (if the employee has an equal number of hours of service for two or more applicable large employer members of the same applicable large employer for the calendar month, those applicable large employer members can treat one of those members as the employer of that employee for that calendar month for purposes of this section, and if the members do not select one member, or select in an inconsistent manner, the IRS will select a member to be treated as the employer of that employee for purposes of the assessable payment determination). For a calendar month, an applicable large employer member may be liable for an assessable payment under section 4980H(a) or under section 4980H(b), but will not be liable for an assessable payment under both section 4980H(a) and section 4980H(b).

(e) *Allocated reduction of 30 full-time employees.* For purposes of the liability calculation under paragraph (a) of this section, with respect to each calendar month, an applicable large employer member's number of full-time employees is reduced by that member's allocable share of 30. The applicable large

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employer member's allocation is equal to 30 allocated ratably among all members of the applicable large employer on the basis of the number of full-time employees employed by each applicable large employer member during the calendar month (after application of the rules of paragraph (d) of this section addressing employees who work for more than one applicable large employer member during a calendar month). If an applicable large employer member's total allocation is not a whole number, the allocation is rounded to the next highest whole number. This rounding rule may result in the aggregate reduction for the entire group of applicable large employer members exceeding 30.

(f) *Example.* The following example illustrates the provisions of paragraphs (a) and (e) of this section.

*Example.* (i) *Facts.* Applicable large employer member Z and applicable large employer member Y are the two members of an applicable large employer. Applicable large employer member Z employs 40 full-time employees in each calendar month of 2017. Applicable large employer member Y employs 35 full-time employees in each calendar month of 2017. Assume that for 2017, the applicable payment amount for a calendar month is \$2,000 divided by 12. Applicable large employer member Z does not sponsor an eligible employer-sponsored plan for any calendar month of 2017, and receives a Section 1411 Certification for 2017 with respect to at least one of its full-time employees. Applicable large employer member Y sponsors an eligible employer-sponsored plan under which all of its full-time employees are eligible for minimum essential coverage.

(ii) *Conclusion.* Pursuant to section 4980H(a) and this section, applicable large employer member Z is subject to an assessable payment under section 4980H(a) for 2017 of \$48,000, which is equal to  $24 \times \$2,000$  (40 full-time employees reduced by 16 (its allocable share of the 30-employee offset ( $(40/75) \times 30 = 16$ )) and then multiplied by \$2,000). Applicable large employer member Y is not subject to an assessable payment under section 4980H(a) for 2017.

(g) *Additional guidance.* With respect to assessable payments under section 4980H(a), the Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(h) *Effective/applicability date.* This section is applicable for periods after December 31, 2014.

[T.D. 9655, 79 FR 8577, Feb. 12, 2014]

### § 54.4980H-5 Assessable payments under section 4980H(b).

(a) *In general.* If an applicable large employer member offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for any calendar month (including an offer of coverage to all but five percent or less (or, if greater, five or less) of its full-time employees (provided that an employee is treated as having been offered coverage only if the employer also offers coverage to that employee's dependents)) and the applicable large employer member has received a Section 1411 Certification with respect to one or more full-time employees of the applicable large employer member, then there is imposed on the applicable large employer member an assessable payment equal to the product of the number of full-time employees of the applicable large employer member for which it has received a Section 1411 Certification (minus the number of those employees in a limited non-assessment period for certain employees and the number of other employees who were offered the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that satisfied minimum value and met one or more of the affordability safe harbors described in paragraph (e) of this section) and the section 4980H(b) applicable payment amount. Notwithstanding the foregoing, the aggregate amount of assessable payment determined under this paragraph (a) with respect to all employees of an applicable large employer member for any calendar month may not exceed the product of the section 4980H(a) applicable payment amount and the number of full-time employees of the applicable large employer member during that calendar month (reduced by the applicable large employer member's ratable allocation of the 30 employee reduction under § 54.4980H-4(e)).