What You Need to Know

This document includes final Employer Mandate and Employer Information Reporting Regulations and supersedes all prior versions.

July 7, 2014

For any questions, please email us at aca@ep.com.

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Affordable Care Act Employer Obligations for the Entertainment Industry

The federal health care reform law, known as the Patient Protection and Affordable Care Act (ACA), imposes a requirement on certain employers, originally to start January 1, 2014, and delayed to January 1, 2015, to offer substantially all of their full-time employees affordable and adequate health coverage or pay a penalty tax to the IRS for not doing so (Employer Mandate). The IRS issued proposed regulations at the end of 2012 and final regulations in early 2014 to implement this employer play-or-pay health coverage mandate. As promised, we indicated we would keep you up to date as the Employer Mandate regulations were finalized.

Entertainment Partners (EP) wants to provide general information about the Employer Mandate consisting of this introduction, frequently asked questions (FAQs), decision tree, and other materials to assist production companies as they plan for compliance. Although the Employer Mandate rules are complex, EP has streamlined ACA compliance by offering simple and complete solutions for clients to meet their ACA obligations. EP offers EP Cares™ health insurance through Anthem Blue Cross as an end-to-end solution for clients to cover their non-union production workforce. EP has also adjusted its Start and Time Card forms to accommodate ACA-pertinent data and has deployed an easy-to-use online module for clients to prepare required notices of government health exchanges for new hires. Additionally, EP has developed an industry-specific production worker employment data warehouse and reporting tool to help our clients easily manage and fulfill their ACA compliance obligations. EP will continue to provide updates in response to any additional regulations proposed or issued by the IRS. Production companies should consult their own advisors about their specific situations.

Are There Relaxed Requirements for 2015?

Yes, in several respects. Employers averaging or expecting to average 100 or more full-time employees or equivalents, instead of 50, in 2015 will be covered by the Employer Mandate (see FAQ 10). Further, covered employers in 2015 will only be liable for a non-coverage monthly penalty ($2,000 annually for each full-time employee) by not offering minimum coverage to at least 70% of their full-time workforce, rather than 95%, and the non-coverage penalty safe harbor excludes the first 80 as opposed to the first 30 full-time employees (see FAQ 10). Covered employers remain liable for the insufficient coverage monthly penalty ($3,000 annually) to the extent that they offer minimum coverage to at least the 70% threshold, but the remaining 30% or less are not offered coverage or such coverage is not affordable or adequate and they obtain subsidized coverage through a public exchange (see FAQ 10). While this booklet is framed for 2016 forward, covered employers in 2015 remain subject to many of the same Employer Mandate key concepts, such as controlled group aggregation rules, full-time employee status, and look-back periods.

Which Employers Are Covered?

The Employer Mandate covers employers averaging at least 50 full-time employees or their full-time equivalents (collectively, “FTEs”; see FAQs 2 and 12). For 2015, there is a 100 FTE minimum. We expect most entertainment productions will be subject to the Employer Mandate because they typically employ substantially more than 50 or even 100 full-time employees to complete a production, even if for a briefer period than a year (see FAQ 16). Moreover, employers in the same controlled group (i.e., common ownership) aggregate their headcount across all controlled group members, and all controlled group members are covered if the combined annual headcount averages 50 FTEs, even if a particular controlled group member does not reach the 50 FTE standard (see FAQs 17, 18, and 23). Many
productions will be included in this categorization because of controlled group relationships (i.e., parent-subsidiary or brother-sister) and high volumes of production workers employed to complete a production. Controlled group rules do not apply to a single production entity, but as explained above, most productions on their own will easily employ more than 50 FTEs (or 100 FTE count for 2015) and thus be subject to the Employer Mandate. As controlled group rules are complex, productions should consult their own advisors.

Existing Employers
Existing employers fall within the Employer Mandate if they averaged at least 50 FTEs during the previous year (100 FTE minimum in 2015). In the case of 2016, they will be covered if they met the 50 FTE average in 2015 (see FAQs 12–15).

New Employers
New employers conducting business on or after January 1, 2016, are covered the first year if they are reasonably expected to average 50 FTEs during the year (100 FTE minimum in the case of 2015; see FAQ 18). For subsequent years, applicability of the Employer Mandate will be measured looking back at FTE counts for the previous year as with existing employers. To illustrate, a new production company starting in January 2016 that plans to employ an average of 60 FTEs throughout 2016 will be covered immediately in 2016 and will be subject to the Employer Mandate in subsequent years (i.e., 2017), depending on the previous year’s (i.e., 2016) actual FTE headcount (see FAQ 18). EP has developed headcount data reports for clients to assist them in determining whether they will be subject to the Employer Mandate in 2015 forward. EP has also deployed a subscription-based data and reporting warehouse solution to fulfill this need for clients (see FAQs 99, 100, 106, and 108).

NEW Transitional and Grace Period Coverage Rules
As a special one-time transitional rule to determine employer coverage for 2015, an employer may determine whether the Employer Mandate applies by using any 6 consecutive calendar months in 2014 for determining FTE headcounts, instead of all of 2014 (see FAQ 13). Additionally, a permanent grace period rule was developed for newly-covered employers (based upon the prior year’s FTE headcounts) that insulates employers covered in their first year from penalties, provided that they offer compliant coverage to their full-time employees by April 1 of the inaugural year of employer coverage under the Employer Mandate; however, failure to do so by April 1 renders the first-year covered employer liable for penalties from January of the year (see FAQs 9 and 77).

Is the Client or EP Responsible for Covering Production Workers under the ACA?
Significantly, in co-employment relationships, such as those that exist in the entertainment industry, the ACA provides that the co-employer that directs and controls the worker’s day-to-day functions is the responsible employer for the ACA. Thus, as between the production company and EP, the production company will be responsible for providing coverage under the ACA as the controlling co-employer (see FAQ 11).
How Does the Production Company Determine Coverage?

As explained above, for 2016 forward, if the total of full-time employees plus full-time equivalents averages at least 50 for the year (100 FTEs for 2015), the employer is subject to the Employer Mandate.

Full-Time Employee

Each full-time employee counts as 1 toward the 50 full-time employee threshold. The ACA determines full-time status on a month-to-month basis, and an employee is considered full-time for a particular month if he or she is employed on average at least 30 hours per week for the month, or at least 130 hours of service for the month (see FAQ 12).

Full-Time Equivalents

For all full-time equivalents (i.e., employees who are not full-time employees for a particular month), headcount coverage toward the 50 full-time employee threshold is calculated by adding all of the hours worked or paid to all non-full-time employees during the month; capped at 120 hours per employee, dividing total hours by 120 to obtain the monthly average, and finally adding all monthly averages for the year and dividing that sum by 12 to obtain the yearly full-time equivalent average (see FAQ 12). If the yearly average equals at least 50 full-time employees, taking into account FTEs, the employer is covered.

Example

If a new employer in 2016 anticipates employing 40 full-time employees each month during the year (i.e., employed for at least 30 hours per week or 130 hours each month) and 20 part-time employees working 65 hours each month during the year, the employer would add 10 full-time equivalents:

- **Step 1**: 20 workers x 65 hours = 1300 monthly hours
- **Step 2**: 1300 monthly hours ÷ 120 = 10.83 monthly FTEs
- **Step 3**: Repeat steps 1 and 2 to obtain FTE monthly headcounts for months 2 through 12 which also will equal 10.83 FTEs for each of those months
- **Step 4**: Add all FTE monthly headcounts together (10.83 FTEs x 12 = 129.96 total FTEs for months 1 through 12)
- **Step 5**: Divide 129.96 total FTEs by 12 months which equals 10.83 FTE annual average (129.96 ÷ 12 = 10.83) which is rounded down to 10 FTE (annual average) and add to the 40 full-time employees equaling 50 full-time employees and full-time equivalents for the year

The employer in this example would be subject to the Employer Mandate because it averaged at least 50 full-time employees and full-time equivalents for the year (see FAQ 12).

Seasonal Workers

Seasonal workers are excluded from the FTE headcount calculation, provided that the employer’s workforce exceeds 50 full-time employees and equivalents (100 FTEs in 2015) for no more than 120 days (alternatively, 4 months) in the year and the employees exceeding the minimum during such 120-day (or 4-month) period are seasonal workers. The seasonal worker exclusion currently applies to holiday or agricultural workers or those with analogous recurring finite schedules, but those employed on an academic year or similar schedule represent too lengthy of an employment period during the year to be considered seasonal. For episodic television production, productions will need to review specific facts and
circumstances to determine whether television production workers will constitute seasonal workers. Note that the seasonal worker exclusion for employer coverage is distinct from the new seasonal employee category used for worker eligibility for a covered employer’s offer of health insurance (see FAQ 25).

Which Employees Must Be Offered Coverage?

Mandate Applies Only to Full-Time Employees

The Mandate applies only to full-time employees; no such obligation exists with respect to part-time employees or the concept of full-time equivalents. Thus, though nearly all employees count for purposes of the employer coverage 50 FTE calculation (100 FTEs in 2015), a covered employer need only offer health coverage to full-time employees and their dependents (see FAQs 2, 3, and 26–29). Qualified full-time employees are those averaging 30 hours/week as measured monthly, alternatively equating to 130 hours/month under the regulations. Hours counted for full-time status include hours worked as well as paid non-work hours (such as vacation, holiday, sick time, or jury duty).

Measurement/Stability Period

The Employer Mandate is a monthly obligation; the employer would review monthly which employees are full-time and offer or maintain coverage during those monthly periods where the employee is full-time. In recognition of the administrative challenges of monthly look-forward reviews to determine which individuals would likely qualify as full-time and thus be entitled to offers of coverage, the regulations allow as an alternative for the employer to use a designated “look-back” period of 3 to 12 months (“Measurement Period”) to determine whether an employee is a qualified full-time employee. If the employee averaged 30 hours/week or 130 hours/month during the Measurement Period, the employer generally must offer coverage for an equal period of time as the Measurement Period, known as the “Stability Period” (see FAQs 26 and 27). If a qualified full-time employee’s employment terminates during the Stability Period, the terminated full-time employee may be able to continue coverage on a self-pay basis under COBRA (see FAQs 44, 62, and 74). An employer using a Measurement Period of less than 6 months must still use a minimum Stability Period of at least 6 months (see FAQ 27).

We would expect most entertainment productions to use a 12-month Measurement Period to minimize coverage potential given the intermittent nature of employment in the industry. For instance, a worker who averaged 120 hours per month during a 12-month Measurement Period would not be entitled to coverage during the following 12-month Stability Period because the worker was not employed full-time during the preceding 12-month Measurement Period (i.e., 120 hours per month x 12 months = 1440 hours which is less than required 1560 hours for full-time status; see FAQ 27).

New Hires

New hires receive more favorable treatment their first year than those who have been employed for an entire Measurement Period. New hires qualify immediately if they are reasonably expected at their start date to average 30 hours/week (130 hours/month), subject to a waiting period of up to 90 days (see FAQs 28 and 29); note that California law reduces the waiting period to a maximum of 60 days for California insurance policies (see FAQ 60). For example, if an employer uses a 90-day coverage waiting period, the new full-time employee whose employment ends in 60 days is uncovered, but one whose employment ends in 6 months would be entitled to coverage for generally the last 3 months of employment. New hires completing a Measurement Period are analyzed thereafter as ongoing employees (see FAQ 29).
Ongoing Employees

Ongoing employees (i.e., those employed a full Measurement Period) qualify for coverage during the Stability Period (i.e., the coverage period) if they averaged full-time status (130 hours/month) during the previous Measurement Period (see FAQs 26 and 27). For instance, an employee who achieves full-time status during the Measurement Period in 2015 will be covered as a full-time employee during the following Stability Period in 2016. A covered full-time employee does not lose health coverage during the Stability Period just because he or she does not average full-time status during the Stability Period (see FAQs 26 and 35). Since the current Stability Period simultaneously counts as the Measurement Period for the next Stability Period, failure to satisfy full-time status during the current Stability Period would result in loss of coverage during the next Stability Period (see FAQs 26 and 27).

Short-Term/Variable/Seasonal/Part-Time Employees

Special rules apply to short-term, variable, seasonal, and part-time employees.

- **Short-Term Employees**: Provided that the employer offers health insurance coverage to qualified full-time employees, those full-time employees whose employment ends before the first of the month immediately following the employee’s initial three full calendar months of employment (i.e., short-term employees) will never become eligible for coverage if a plan imposes the maximum possible waiting period. Full-time employees employed more than three full months will become eligible for coverage after they satisfy the applicable waiting period. Many production workers will qualify as short-term employees and, in effect, fall outside of the Employer Mandate, provided that the production company offers health insurance to cover the full-time employees subject to their completion of the maximum possible waiting period (noting the shorter 60-day waiting period maximum for California insurance policies; see FAQs 30 and 60). Since employees must be given a reasonable period of time to consider an offer of insurance (we suggest at least one month) to be a valid offer of coverage, employers should consider offering coverage at the start of employment, subject to completion of a required waiting period, rather than offering coverage at the end of the waiting period.

- **Variable Hour Employees**: New variable hour employees do not qualify for coverage during their initial Measurement Period; the earliest they are entitled to coverage is the first Stability Period after completion of the initial Measurement Period. Variable hour employees mean those employees whose hours are sufficiently uncertain that the employer cannot reasonably determine at their start date whether they would be employed enough hours during the Measurement Period to qualify for full-time coverage. However, new hires employed full-time for a known period shorter than the Measurement Period would likely be classified as new full-time employees, not variable hour employees, because they are reasonably expected to work at least 30 hours per week or at least 130 hours in a particular month (see FAQ 32). Some day and weekly hires may qualify as variable hour employees. However, most freelance production workers will count as short-term full-timers instead of variable hour employees because their expected employment – though brief – will be reasonably known (see FAQ 30).

- **New Seasonal Employees**: As with variable hour employees, new seasonal employees are only entitled to health insurance coverage at the earliest after completion of the Initial Measurement Period. However, the “seasonal employee” concept for purposes of the Measurement and Stability Periods differs from the seasonal worker exclusion for purposes of determining whether an employer is subject to the Mandate. The final regulations define a seasonal employee as one holding a position for which the customary annual employment is six months or less. The intent of the “customary annual employment” criteria is to capture positions involving recurring finite schedules. Application of the seasonal employee exclusion to episodic
television production will depend on the traditional length of the series’ filming season (see FAQ 31).

- **NEW Part-Time Employees**: As a gap-filler measure, the final regulations added a part-time employee definition. A part-time employee is one who is not reasonably expected at the employee’s start date to be a full-time employee and is not a variable or seasonal employee. Like variable hour and seasonal employees, part-time employees are only entitled to health insurance coverage after completion of their initial Measurement Period and subject to satisfying full-time criteria during the initial Measurement Period (see FAQ 33).

**Relationship Between Ongoing and Initial Measurement/Stability Periods**

Ongoing measurement and Stability Periods apply only to those employees who have completed the employer’s standard Measurement Period. For example, for an employer with a standard Measurement Period of October 1 to September 30, as of the year 2015, a worker employed since 2012 will be an ongoing employee, but a worker starting May 1, 2015 will be analyzed as new employee until employed through September 30, 2016 (see FAQs 26 and 27). Unless a new hire starts on the first day of the standard Measurement period, the new hire will have his/her own initial Measurement and Stability Period until transitioning to the employer’s standard Measurement Period (see FAQs 28 and 29). To ease administration of initial Measurement/Stability periods, the employer is able to use the first of the next month after hire as the start of the initial Measurement Period. Additionally, in the event that the employee’s initial Stability Period elapses before the start of the first standard Stability Period that would apply to the employee, (i) where the employee is full-time in the initial Stability Period, the employer must continue to treat the employee as full-time for the remainder of the period up to the last day before the start of the first applicable standard Stability Period and (ii) where the employee is not full-time in the initial Stability Period, the employer may elect to continue treating the employee as non-full time up to the last day before the start of the first applicable standard Stability Period (see FAQ 35).

- **NEW Upgrades/Downgrades**

  The regulations clarify how an employer treats workers changing from part-time to full-time and vice versa. Employers using the default monthly review period adjust monthly to full versus part-time changes and offer or discontinue coverage using the monthly compliance period. For employers using look-back Measurement/Stability Periods (large majority), an ongoing employee’s status change does not typically impact status during the current Stability Period (e.g., if the employee qualified to be treated as full-time during the present Stability Period, the employee remains entitled to health coverage for the remainder of the Stability Period regardless of downgrade reduction in his or her hours). In the case of certain upgrades, a new part-time/variable/seasonal employee who upgrades to a full-time position is entitled to coverage no later than the earlier of the first day of the fourth month after the status change or first month after the initial Measurement Period (if the employee would have qualified as full time under the initial Measurement Period look-back calculation). For certain downgrades, the employer may be able to apply the monthly Measurement Period for the remainder of a previously full-time employee’s Stability Period if the employee averages less than 30 hours/week (130/month) for each of the three months following status change, and minimum value health coverage had been offered/in effect up to the status change; otherwise, the employee’s previous status applies for the applicable Measurement/Stability Period.

**IMPORTANT UPDATE**

**Breaks in Service**

Breaks in service are important to understand because length of a service break determines whether the worker’s prior service activity counts for health insurance coverage. Generally, a break in service...
restarting the employee’s status as a new hire means a time period of at least 13 weeks during which the employee has no credited hours/pay for service with the same employer – whether through a leave of absence or employment separation. For example, a 2-year full-time employee receiving employer health coverage that takes unpaid medical leave for 8 months and resumes full-time status is a new hire subject up to a 90-day waiting period before health coverage restarts because the employee experienced a break in service greater than 13 weeks (see FAQs 9, 39, 40, and 44).

Under a “special rule of parity” for short-term employments, an employee who is hired for a period shorter than 13 weeks counts as a new hire if the break in service before rehire is at least 4 weeks and is equal to or greater than the previous employment period. For example, a worker employed for 6 weeks and rehired 10 weeks later is a new hire despite the break being less than 13 weeks (see FAQ 39).

NEW 2014–15 Transitional Measurement Period

As another special one-time accommodation, the regulations specify that an employer intending to use a Measurement/Stability Period over six months may determine whether the Employer Mandate requires an offer of coverage to an employee in 2015 by using any consecutive six-month period in 2014 starting no later than July 1, 2014, and ending no earlier than 90 days before the first day of the plan year commencing on or after January 1, 2015, as opposed to using a longer Measurement Period that is equal to the length of the associated Stability Period.

What Is Compliant Coverage?

To avoid employer penalty taxes, a covered employer must offer affordable and adequate coverage to substantially all (qualified) full-time employees (see FAQ 64).

For offered coverage to be affordable, the employee’s share of premiums for the employee’s coverage cannot exceed 9.5% of an employee's household income. Because employers do not have visibility to an employee’s annual household income, the IRS regulations alternatively permit the employer to use current year W-2 income, monthly pay (capped at 130 hours for hourly workers), or the single individual poverty line. For example, if a qualified full-time employee earns $50,000 with the employer for the year, the employee cannot pay more than $395.83 ($50,000 x 9.5% ÷ 12 months) toward monthly premiums (see FAQs 64 and 65). Note that the single poverty level for 2014 is $11,670.00, which means that an employee cannot pay more than $92.38 per month ($11,670 x 9.5% = $1,108.65; divided by 12 = $92.38) in order for an employer to satisfy the affordability test based on the single poverty level (see FAQ 64). Offered coverage must include dependents, but the ACA does not restrict how much premium cost a qualified full-time employee must bear for dependent coverage; spouses may be excluded from offered coverage (see FAQs 8 and 54).

To be adequate, the offered-coverage must cover at least 60% of the value of benefits under the plan (see FAQ 64). Many health plans are excluded from having to offer particular types of “essential” benefits, either because they involve self-insured or large group plans or grandfathered plans outside of the regulated exchanges. If a plan is required to offer essential benefits (e.g., hospitalization, out-patient services, emergency care, prescription drugs, etc.), it is the plan’s responsibility to comply.
How Are Multi-Employer Plans Treated under the ACA?

An employer participating in a multi-employer health plan (i.e., collectively-bargained plans with multiple employer participants) will be compliant if the participating employer is required to contribute to the plan for the full-time employee, plan coverage is available to the employee and dependents subject to satisfaction of plan eligibility conditions, and the offered-coverage is affordable and has adequate value. The proposed and subsequent interim regulations specified that the multi-employer health plan transitional safe harbor applied only to 2014 (later, 2015), but the final regulations have indicated that transitional treatment is an ongoing interim rule; any changes would apply prospectively at least on the first January 1 that occurs six months or later after further guidance, if any, is issued. Since entertainment industry guild/union multi-employer plans generally provide fully employer-funded coverage for employees and the plans cover over 60% cost of benefits to employees and their dependents, the affordability and value requirements will likely not present a problem (see FAQ 36).

What Happens if Compliant Coverage Is not Offered?

A covered employer must pay a penalty tax if it does not “play” by offering compliant coverage. The penalty tax varies, depending on whether the employer offers no coverage at all or offers coverage that is unaffordable or lacks adequate value (see FAQs 3 and 63). Although controlled group employee populations are aggregated to determine employer coverage for all members, the penalty tax is assessed only on the individual non-compliant controlled group member, not all members (see FAQ 63).

If minimum essential coverage is not offered to substantially all full-time employees and their dependents and at least one of these employees obtains health coverage through an exchange and receives premium relief from the government toward purchase of exchange plan coverage, the employer must pay a penalty tax of $166.67 per month ($2,000 per year) for each full-time employee after the first 30 full-time employees. For example, an employer with 100 full-time employees who offers coverage to 90 of them must pay penalty across 70 of them (100 – 30) if one of the unoffered full-time employees obtains government-subsidized coverage on the exchange (see FAQ 63).

The 30 full-time employee penalty exclusion is pro-rated among controlled group members in relation to their full-time employee populations, with each controlled group member entitled to an exemption equaling at least one full-time employee, even if there are more than 30 members of the controlled group. If an employer’s contributions toward the monthly premium exceed the monthly pro-rata cost of the penalty (i.e., $2,000 divided by 12 = $166.67 per month for each full-time employee), the penalty option may be the cheaper alternative (see FAQs 63 and 82). As noted, the non-coverage penalty tax safe harbor exclusion is 80 full-time employees for 2015.

If the employer offers minimum essential coverage to substantially all full-time employees and their dependents but the coverage is unaffordable or contains inadequate value, the employer must pay a penalty tax of $250 per month ($3,000 per year) for each full-time employee not offered affordable or valuable coverage that receives government-subsidized exchange plan coverage. However, the total penalty for coverage that is unaffordable or inadequate is capped at the amount that would have been owed had no coverage been offered under the premise that an employer offering coverage proving to be inadequate/unaffordable should never pay more than an employer not offering coverage at all (see FAQs 63 and 64).

The final regulations clarify that where a full-time employee is working for two or more controlled group members simultaneously, a single controlled group member’s offer/maintenance of coverage extends to all other controlled group members to avoid a penalty (see FAQ 68). Additionally, if two or more controlled...
group members employ a full-time worker at the same time and do not offer/provide compliant insurance, the penalty is assessed against the controlled group member that employs the worker the most hours to avoid duplicate penalties, and in the case of multiple controlled group members employing the worker simultaneously for the same amount of time, the penalty is imposed on the member selected by the employer (see FAQ 68).

There is no Employer Mandate penalty imposed during the first month of a new hire’s employment as long as employment begins after the first of the month. This exception is more useful for those employers using the default monthly look-forward period than alternative look-back Measurement/Stability Periods (see FAQ 69).

Finally, the $166.67 monthly ($2,000 yearly) non-coverage and $250 monthly ($3,000 yearly) non-compliant health coverage penalty tax rates may increase yearly after 2014 to adjust for health insurance premium inflation. The U.S. Department of Health & Human Services (HHS) publishes the health insurance premium adjustment rate used for the penalty tax increase, if any, by October 1 of the year before the increase. The annualized increase rate is reduced to the lowest $10 multiple (e.g., $3,033 rounds down to $3,030). For example, in 2015, the penalty tax rate is presently slated to rise about 4.21% which would bring the non-coverage penalty tax to $173.33 monthly ($2,080 yearly) and the non-compliant coverage penalty to $260 monthly ($3,120 yearly).

How Are Services Performed Outside of the U.S. Treated?

The regulations generally provide that hours of service performed outside of the U.S. (meaning 50 states and District of Columbia) do not count for purposes of the ACA, regardless of whether the individual is a U.S. citizen or permanent resident alien. The hours of service must be considered U.S. source income, which means only those hours of service payable for work inside the United States count under the ACA (see FAQs 43 and 46).

NEW How Do Production Companies Report Data under the Employer Mandate to the IRS?

Employers subject to the Mandate will be required to report certain information on employer-provided group health coverage beginning in 2016 for coverage provided beginning in 2015. Note that the 2016 reporting of 2015 information still applies to employers with 50 to 99 employees, even though such employers are exempt from the Employer Mandate in 2015. The IRS issued proposed employer reporting regulations in September 2013 and published final regulations in March 2014. There are two sets of employer information returns – the first is a statement given to each full-time employee covering certain information specific to that employee. The second is an individualized return filed with the IRS for each full-time employee that combines all of the information in the employee statement plus other information. The two-fold purpose of the covered employer reporting is to enable the IRS to determine an employer’s compliance with the Mandate and a full-time employee’s eligibility for government-subsidized coverage on the government health exchanges (see FAQs 93 and 94).

The employer reporting generally includes:

- The production company’s name, address, and EIN
- Certification by month on whether the employer offered full-time employees (and their dependents) adequate coverage
- Cost to the employee of the lowest-price employee self-only coverage option
- Number of full-time employees employed each month

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• The name, address, and TIN of each full-time employee during the year and the months during which such employees were covered

The employer must file a separate return for each full-time employee along with a transmittal sheet covering employer or plan identifying information applicable to all returns. These returns must be filed with the IRS by February 28 after close of the subject prior calendar year. Simplified reporting is available under certain circumstances, but likely will not have utility in the entertainment industry (see FAQ 94).

The employee statement to each full-time employee must contain the information from the employer return relating to the employee; employers can use the individual return on the employee as the information statement given to the employee. The employer must provide the employee statement by January 31 after close of the prior calendar year reported.

Generally, the employer return must be filed electronically with the IRS unless subject to an exclusion for employers filing fewer than 250 returns. The employee statement must be distributed in paper form unless IRS requirements for electronic distribution consent have been satisfied. Non-compliance with the information return requirements subjects the employer to a penalty of $100 per non-compliant return/statement (see FAQ 93).

Health plans and self-insured employers must separately provide an information return to each individual subscriber and the IRS that identifies the subscribing individual and his/her dependents covered and period of coverage, along with identification of the employer, if employer-sponsored health coverage. Combined reporting is available for self-insured employers to fulfill the employer and plan sponsor reporting requirements. The purpose of the health plan reporting obligation is to monitor an individual’s compliance with the Mandate (not covered in this booklet) for individuals to obtain health coverage for themselves or dependents, or pay a penalty. Employers are not responsible for this reporting unless the plan is self-insured by the employer.

As noted in this booklet, EP has developed a simple-to-use, entertainment industry specific Data and Reporting Tool and ACA Management Reporting Service to help our clients manage and fulfill their ACA data tracking and reporting compliance obligations (see FAQs 106 and 108).

**Will EP Offer Updates of Major ACA Developments or Assistance with ACA Compliance?**

As the government indicated that it is considering issuing additional guidance or regulations in a number of areas, we will monitor any changes to the final regulations that affect the Employer Mandate and Employer Information Reporting obligations, and will help our clients navigate updated major regulatory developments or other guidance that could significantly impact the ACA’s application to the entertainment industry.

As mentioned elsewhere in this booklet, EP’s overarching objective is to simplify ACA compliance for our clients by providing:

• A fully-compliant and all-in-one health insurance program through Anthem Blue Cross that is targeted to fulfill clients’ non-union production worker insurance needs and manage all aspects of the health insurance process

• A straightforward Notice of Exchange (NOE) module for clients to develop their respective notices

• New onboarding start card and time card practices to comply with client needs for the Employer Mandate

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• An easy-to-use data warehouse and reporting solution for clients to use for their employer coverage, employee eligibility tracking, and employer-IRS information reporting needs (see FAQs 106 and 108)
• ACA Management Reporting Service that fulfills all government reporting responsibilities

We would be pleased to meet with you at your convenience to discuss the ACA Employer Mandate, our simple compliance tools, and how we can assist in administering the obligation for your company. If you would like to schedule a meeting or if you have any questions, please email us at aca@ep.com.
Decision Tree
Affordable Care Act Employer Mandate Health Coverage Obligations

NOTE: Decision Tree chart is an over-simplification for ease of usage.
Review “Affordable Care Act Employer Obligations for Entertainment Industry” and “Entertainment Partners Affordable Care Act FAQs” for further information.

Does the employer have 50 or more employees (100 for 2015)?
• count full-time employees (those employed at least 30 hrs/week [130 hrs/mo])
• count full-time equivalents – FTEs (i.e., non-full-time employees) by adding all hours paid in the month up to 120 hours and dividing by 120
• on business days during the preceding calendar year

YES

NO

No Penalty Tax

Does the employer offer health coverage to substantially all full-time employees (and dependents)?
“Substantially all” means greater of 95% (70% for 2015), or 5 full-time employees.

YES

NO

Does at least 1 full-time employee obtain coverage on the health exchange with a premium tax credit from the government?

NO

Penalty Tax Owed*

Monthly penalty tax is $166.67 ($2,000/yr) times the number of full-time employees excluding the first 30 (80 for 2015) for period of non-compliance.

YES

Penalty Tax Owed*

Monthly penalty tax is lesser of $250 ($3,000/yr) times each full-time employee not offered adequate or affordable coverage who obtains exchange-based coverage with premium relief, or $166.67 ($2,000/yr) times each full-time employee, excluding the first 30 (80 for 2015) for period of non-compliance.

NO

Is offered coverage affordable?
“Affordable” means each employee’s share of premium is no more than 9.5% of adjusted gross household income, or alternatively 9.5% of W-2 wages, or 9.5% of individual poverty level.

YES

NO

Does at least 1 full-time employee obtain coverage on the health exchange with a premium tax credit from the government?

NO

No Penalty Tax

YES

Is offered coverage adequate?
“Adequate” means that plan-wide, the value of the scheduled benefit for employees equals at least 60% of the benefit cost.

YES

NO

Does at least 1 full-time employee obtain coverage on the health exchange with a premium tax credit from the government?

* Adjusted yearly to account for health insurance premium inflation (see FAQ 63).

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Introduction

1. **When is the law effective?**

   The Affordable Care Act (ACA) mandates that certain employers provide health coverage for full-time employees beginning on January 1, 2015 (Employer Mandate); however, production companies need to start assessing their workforce now in 2014 to determine whether they will be subject to the Employer Mandate in 2015.

2. **What is the Employer Mandate?**

   The Employer Mandate applies to employers that employed an average of at least 50 full-time employees (including full-time equivalent employees or FTEs as defined in FAQ 12) during the preceding calendar year. For 2015 only, the FTE requirement is relaxed to 100. If a covered employer does not offer affordable health coverage that provides a minimum level of coverage to its full-time employees as defined in FAQs 63 and 64, the employer may be subject to a penalty tax if at least one of its full-time employees receives a premium tax credit for purchasing individual coverage on a health care state exchange.

3. **What is meant by “pay” or “play” under the Employer Mandate?**

   To “play” under the Employer Mandate means that the employer complies with the Mandate by offering legally sufficient health coverage. In contrast, if the employer does not “play” as explained in FAQ 63, the employer must pay a penalty tax to the IRS dependent on whether the employer offers no coverage at all or offers coverage that is insufficient. A covered employer’s obligation to “pay or play” applies only to full-time employees; no such obligation exists with respect to part-time employees or the concept of FTEs. For instance, if you are determined to be a covered employer during the preceding calendar year, and you employ 250 full-time employees and 120 part-time employees, you need only “pay or play” with respect to full-time employees.

4. **Is there any compliance grace period for fiscal year plans?**

   Yes. Covered employers maintaining a fiscal year health plan as of December 27, 2012 may not have to make a compliant offer of health coverage to certain employees until the plan’s first day of the fiscal year in 2015 (e.g., for July 1 – June 30 fiscal year, the health coverage offer deadline may be July 1, 2015), provided that certain requirements are satisfied. Because these requirements are complicated, production companies should consult with their tax and employee benefit advisors.
5. **NEW** Have the final regulations been provided by the IRS to define the Employer Mandate under the ACA?

Yes. The Treasury Department (Treasury) issued the final Employer Mandate regulations and accompanying guidance on February 10, 2014. While the final regulations resemble much of the proposed regulations issued more than one year ago, they include important changes that will impact the entertainment industry. In March 2014, Treasury published the final regulations on the Employer Information Reporting requirements (Information Reporting). However, Treasury has stated that it is considering issuing additional regulations and guidance in a number of instances regarding the application of the Employer Mandate and the Information Reporting regulations. EP will keep you apprised of further significant developments that impact the entertainment industry.

6. **NEW** Which employees must be counted?

Employers must count all of their “common law” employees, meaning those employees that the employer directs and manages in their day-to-day activities, even though the employer has engaged a motion picture payroll service company to pay wages and issue W-2s to the workers.

7. **NEW** What methods may an employer use to determine which employees are full-time?

Most employers will use the look-back period of 3 to 12 months to determine which employees are full-time; however, the final Employer Mandate regulations also allow an employer to use a monthly Measurement Period that considers employee hours on a month-by-month basis to determine full-time status. Due to the difficulty of tracking employee hours on a monthly basis, we believe that most production companies will use the look-back measurement method. Employers may use either the look-back Measurement Period or the monthly measurement method for certain categories of employees.

8. **NEW** Are employers required to offer insurance to dependents in 2015?

The requirement to offer dependents coverage will not apply in 2015 to employers that are taking steps during 2014 to arrange such coverage to begin by 2016. Employers are not required to subsidize any portion of dependent coverage under the ACA.

9. **NEW** What are the key changes between the proposed and final Employer Mandate regulations?

The final regulations contain some important permanent changes and clarifications:

- The multi-employer plan temporary transition exemption in the proposed regulations affording employers of union labor covered under a multi-employer collective bargaining agreement establishing a health plan has been extended indefinitely. If the IRS removes the relief, the removal would not take effect until January 1 of the year following at least six months after adoption of the change. The multi-employer exemption deems an employer to have satisfied its insurance offer obligations under the Employer Mandate if the employer has remitted required health contributions to the plan for which the CBA-covered employee would be able to participate if they meet plan requirements.

- Employers may treat a rehired or recalled employee as a new employee for ACA purposes if the employee failed to have a paid hour of service for 13 weeks (or, if shorter,
a period of at least 4 weeks and as long as the preceding period of employment). This break in service standard is relaxed in 2015 and future years from the proposed regulations, which defined a break in service as 26 weeks.

- A part-time employee non-full-time classification has been adopted to distinguish from variable and seasonal non-full-time groupings.

- A seasonal employee definition was added to cover individuals engaged on a recurring finite schedule not to exceed six months. The full-time, variable hour, seasonal, and part-time classifications all pertain to which employees are eligible to receive an offer of insurance from a covered employer.

- Downgrade and upgrade rules have been clarified, though they remain complicated to navigate. Full-time employees experiencing a personnel action status change to part-time or other non-full-time status can be removed from employer health coverage without penalty as long as the removal occurs within the first day of the fourth month of the downgrade and the employee does not reach any full-time activity in any of the three consecutive months following the downgrade. The rules also generally confer an employer a three-month-plus window to offer health insurance to upgraded full-time employees before facing the penalty tax.

- Separate final regulations for employer information reporting used by the IRS to monitor Employer Mandate compliance have been published. The reporting rules require the employer to file an employer return with specified information and provide full-time employees with employee statements (akin to a W-2) that contain employee-specific information. The employer return is due by February 28 after close of the prior tax year, and the employee statements must be circulated by January 31 after close of the prior tax year. The first employer returns and employee statements will be due on February 28, 2016, and January 31, 2016, respectively. The returns consist of employer and employee identifying information, employee headcount data, and certain plan cost and coverage information.

- The requirement to offer coverage to full-time employees’ dependents does not apply in 2015 to employers that are taking steps to provide such coverage in 2016.

**Is Transitional Relief for 2015 Available?**

10. **NEW** Are there relaxed requirements for employers in 2015?

Yes – the final Employer Mandate rules delay key ACA obligations and contain important transition relief for employers in 2015:

- **Medium-Size Employer Exception:** Employers that average at least 50 but fewer than 100 full-time/full-time equivalent employees in 2014 generally will not be subject to the Employer Mandate obligations until the first day of the employer’s health plan year beginning in 2016. The employer is required to certify that it did not reduce its workforce below the 100 full-time/full-time equivalent employee threshold to avoid the Employer Mandate in 2015, and that it did not cancel or materially alter any group health plan coverage in effect on February 9, 2014.

- **Special Transition Measurement Period:** Other special rules govern how to determine an employer’s size. Normally, the employer tallies its average number of full-time/full-time equivalent employees on the business days of the prior year. However, on a one-time basis, an employer can use a six-consecutive calendar month period in 2014, rather than
the entire year, to determine if it meets the 100 full-time/full-time equivalent employee threshold.

- **70 Percent Threshold and 80 Full-Time Employee Safe Harbor for $2,000 Annual Penalty**: Employers with 100 or more full-time/full-time equivalent employees will still be subject to the Employer Mandate starting in 2015. These employers need only offer coverage to 70 percent of their full-time workers in 2015, instead of the previously-required 95 percent, in order to avoid the penalty for failing to offer coverage to substantially all of their full-time employees ($2,000 annual penalty per full-time employee, minus the first 80 full-time employees in 2015). Starting in 2016, coverage must extend to 95 percent of full-time employees to avoid the $2,000 annual penalty per full-time employee (minus the first 30 full-time employees in 2016 and thereafter).

- **Some Penalties Still Apply to Employers that Fail to Offer Coverage to All Full-Time Employees**: While the reduced 70 percent threshold for 2015 described above might appear appealing to some employers, some penalties still apply to large employers (those who employ 100 or more full-time employees) who fail to offer coverage to all full-time employees. For example, if an employer offers coverage only to 75 percent of its full-time employees, and the full-time employees not offered coverage obtain subsidized insurance from a public exchange, the employer is subject to a $3,000 annual penalty for each full-time employee who obtains such subsidized coverage.

**Which Employers Are Covered?**

11. **Who is the responsible employer in the entertainment industry for complying with the Employer Mandate – EP or the production company?**

   It is the controlling or common law employer that matters for purposes of the Employer Mandate. The controlling employer directs and manages the worker's day-to-day functions. In most cases the production company operates as the controlling employer of the workers who perform services with respect to entertainment production, while EP acts as a co-employer of the workers handling payment of wages and other employment administrative functions. As a service for its clients, EP has developed a fully-compliant ACA health insurance plan at a low group cost and a Data and Reporting Tool that tracks, manages and reports worker hours across a controlled group for health benefit eligibility purposes under the Employer Mandate. Refer to the "How Can EP Help Employers Comply with the ACA?" section on page 52 of this booklet for more information.

12. **How do we calculate the number of full-time employees and FTEs to determine if we are subject to the Employer Mandate?**

   For purposes of calculating workforce headcount, you first count the number of full-time employees (those employed at least 130 hours for a particular month) for the month. You next count the number of FTEs (those not employed for at least 130 hours of service for the month) by adding their total hours for the month (up to 120 hours per employee) and dividing this amount by 120. Lastly, you count the number of full-time employees and FTEs for each month of the year and then average the total number.

   For example, for January through June 2014, a production company employed 40 full-time employees (those employed for at least 130 hours of service for the month) and another 10 employees, who each worked 65 hours each month. For July through December 2014, the
production company employed 60 full-time employees (those employed for at least 130 hours of service for the month) and another 10 employees, who each worked 65 hours each month.

To determine the number of full-time employees and FTEs, follow these steps:

### Full-time Employees

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1</td>
<td>Multiply 40 full-time employees by 6 months (40 full-time employees x 6 months = 240) and 60 full-time employees by 6 months (60 FT employees x 6 months = 360)</td>
</tr>
<tr>
<td>Step 2</td>
<td>Add 240 and 360 (240 + 360 = 600)</td>
</tr>
<tr>
<td>Step 3</td>
<td>Divide 600 by 12 months (600 ÷ 12 = 50 full-time employees)</td>
</tr>
</tbody>
</table>

### FTEs

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Step 1</td>
<td>Multiple 10 FTEs by 65 hours per month (10 x 65 = 650)</td>
</tr>
<tr>
<td>Step 2</td>
<td>Divide 650 hours per month by 120 hours (650 ÷ 120 hours = 5.41). As an option, employer may round the resulting monthly FTE calculation to the nearest one hundredth.</td>
</tr>
<tr>
<td>Step 3</td>
<td>Multiply 5.41 by 12 months (5.41 x 12 months = 64.92)</td>
</tr>
<tr>
<td>Step 4</td>
<td>Divide 64.92 by 12 months (64.92 ÷ 12 = 5.41 FTEs), which is rounded down to an average of 5 FTEs per month.</td>
</tr>
</tbody>
</table>

Accordingly, if a production company employed an average of 55 full-time and FTEs during 2014, the production company would be subject to the Employer Mandate beginning in 2016 due to the phase-in requirement for employers with 50–99 full-time employees and FTEs. Refer to FAQ 10 for more information.

Under the same facts above, if the same production company employed 100 full-time employees each month during 2015, in addition to the 10 FTEs working 65 hours per month during the year, the production company would average more than 100 full-time employees including FTEs during the year (100 FT employees plus 5 FTEs) and would be subject to the Employer Mandate in 2015 because it employed an average of at least 100 full-time employees and FTEs in 2014.

### 13. Do any special transitional rules exist to determine employer headcount for 2015?

As a special one-time transition rule for 2015, the ACA proposed regulations provide that an employer may determine whether the Employer Mandate will apply to it in 2015 by determining whether it employed an average of at least 100 full-time employees and FTEs during any 6-consecutive calendar month period in 2014, as opposed to all of 2014.

For example, assume that the production company decided to use a six-month Measurement Period from January through June 2014 to determine whether it would be subject to the Employer Mandate in 2015. For January 2014, the production company employed 40 full-time employees (those employed for at least 130 hours of service for the month), 5 employees who were each employed for 125 hours for January, and another 5 employees, each of whom was employed for 108 hours for the month.

To determine the number of FTEs for the month of January, add 600 hours of service for the 5 employees who were employed for 125 hours for the month (5 x 120 – no more than 120 hours are taken into account for any non-full-time employee) and 540 hours for the 5 employees who
were employed for 108 hours for the month (5 x 108 = 540) for a total of 1,140 FTE hours for the month. This is then divided by 120 to equal 9.5 FTEs for January.

Accordingly, for the month of January 2014, the production company employed 49.5 full-time employees and FTEs (40 full-time employees and 9.5 FTEs).

The next steps are:
1. Add up the numbers for each month of the 6-month Measurement Period in 2014.
2. Divide by 6.
3. Round the result down to the next lowest whole number.

If the production company employed an average of at least 50 full-time employees but less than 100 taking into account FTEs for the six-month Measurement Period in 2014, it is not subject to the Employer Mandate for all of 2015, regardless of how many full-time employees and FTEs it employed in 2015.

If the production company employed an average of less than 50 full-time employees including FTEs during the six-month Measurement Period in 2014, the production company would not be subject to the Employer Mandate for all of 2015, regardless of how many full-time employees and FTEs it employed in 2015.

If the production company employed an average of 100 or more full-time employees including FTEs during the six-month Measurement Period in 2014, the production company would be subject to the Employer Mandate for all of 2015, regardless of how many full-time employees and FTEs it employed in 2015.

14. **Does our production company need to document what Measurement Period it decides to use for 2014 to determine whether the Employer Mandate will apply to us in 2015?**

Yes. Production companies should document the Measurement Period that they decide to use for 2014. As noted, an employer may determine whether it is subject to the Employer Mandate in 2015 by determining whether it employed an average of at least 100 full-time employees and FTEs during any consecutive six-month period in 2014 beginning no later than July 1, 2014. This requirement decreases to 50 full-time employees and FTEs for 2016. Thus, for the first year that the Employer Mandate will apply in 2015, some production companies with fluctuating workforces may have the opportunity to minimize the possibility of coverage for 2015 by selecting the six-consecutive calendar month period during which their employee counts were lowest in 2014. EP is prepared to assist your company in deciding what Measurement Period to use in 2014 based on your individualized workforce activity.

Also, for each quarter in 2014, EP will provide clients with a report showing the client’s full-time employee count and FTEs paid by EP on a monthly basis in 2014 to assist in determining whether your company will be subject to the Employer Mandate in 2015.

For additional information about EP’s ACA Data and Reporting Tool, please refer to the “How Can EP Help Employers Comply with ACA?” section on page 52 of this booklet.
15. **Do different rules apply in determining whether our production company is subject to the Employer Mandate after 2014?**

Yes. Beginning in 2015, employers must use the entire calendar year to measure whether they satisfy the 50 full-time employee coverage requirement for 2016 and thereafter. Thus, beginning in 2015, employers will use the entire 12-month period in 2015 to determine whether they employed an average of at least 50 full-time employees (taking into account FTEs) to ascertain whether they will be subject to the Employer Mandate in 2016.

16. **Does a typical production have enough full-time employees and FTEs to be subject to the ACA?**

As you would expect, typically even the smallest productions will have more than 50 full-time employees and FTEs over the course of a project’s life, with the vast majority being employed in the latter stages of the prep phase, continuing through principal photography, and concluding with the wrap period. We would expect most of our production clients to be subject to the ACA.

17. **We own and operate three production companies through a parent entity. Are all four companies combined for purposes of determining whether they employ enough employees to be subject to the Employer Mandate?**

The answer will depend on the ownership structure. Related companies are counted together in determining the 50 full-time employee (100 for 2015 only) large employer threshold if they constitute a parent-subsidiary or brother-sister controlled group. If the combined headcount total of all controlled group companies meets the 50-employee threshold, then the Employer Mandate applies to each separate company in the controlled group, even those companies that individually do not employ enough employees to be covered.

Generally, a parent-subsidiary controlled group exists where a parent organization owns at least 80% of the subsidiary entity(ies). For example, A Corp owns at least 80% of B, C, and D Corps. A, B, C, and D Corps represent a parent-subsidiary controlled group.

Generally, a brother-sister controlled group exists among two or more entities if 5 or fewer individuals, trusts, or estates together own at least 80% of each entity and the same 5 or fewer individuals own more than 50% of each entity. For example, individuals A, B, C, D, and E own 100% of Corp A in equal 20% shares, and individuals A, B, and C own 100% of Corp B in equal 33% shares. Corps A and B represent a brother-sister controlled group.

The controlled group rules are complex and contain significant variations from the basic parameters above. Production companies should consult their tax and employee benefit advisors about their own specific situations.

18. **We intend to form a new production company in 2015 that will employ an average of more than 100 full-time employees during all of 2015. Since our company did not exist and had no employees in 2014, would our new production company be subject to the Employer Mandate in 2015?**

Yes. An employer not in existence during 2014 will still be treated as an employer subject to the Employer Mandate for 2015 if the company is “reasonably expected” to employ an average of at least 100 full-time employees and FTEs in 2015 (50 full-time employee and FTE threshold...
starting in 2016 and thereafter). For example, if your production company is formed on February 1, 2015, employs 5 full-time employees for February and March, and is expected to employ another 275 full-time employees from April through November 2015, your production company can reasonably be expected to employ an average of at least 100 full-time employees during 2015 (i.e., Step 1: 5 FT employees x 2 months = 10; Step 2: 275 FT employees x 8 months = 2200; Step 3: 10 + 2200 = 2210; Step 4: 2210 ÷ 12 months = 184 full-time employees per month average). Thus, your production company would be subject to the Employer Mandate in 2015.

19. **Do we need to count full-time loan-out workers as part of our employee headcount in determining whether we are subject to the Employer Mandate?**

No. Properly treated loan-out personnel are not common law employees and therefore do not count under the Employer Mandate.

20. **What is an “hour of service” for purposes of the Employer Mandate?**

For employees paid on an hourly basis, employers must calculate actual hours of service from records of hours worked and hours for which payment is made or due (e.g. leave, jury duty, illness, etc.). For employees not paid on an hourly basis, employers may calculate the number of hours of service by:

1. Counting actual hours of service as in the case of employees paid on an hourly basis and hours for which payment is made or due
2. Crediting the employee with 8 hours of service for each day for which the employee would be required to be credited with at least one hour of service
3. Using a “weeks worked” equivalency of 40 hours of service, provided it does not materially understate actual hours worked.

An employer may apply different methods for different classifications of non-hourly employees, so long as the classifications are reasonable and consistently applied.

21. **Who is the responsible ACA employer for background actors/extras?**

For those background actors registered with and cast by Central Casting, Central Casting and the production company are responsible co-common law employers under the ACA; for those background actors cast and paid by Central Casting, Central Casting will assume the Employer Mandate responsibility. For those background actors cast by the production company and only paid by Central Casting, the production company would be the sole responsible ACA employer.

22. **Is there any ACA impact to a production company that pays employees who are not its own common law employees?**

No, paying these employees alone does not obligate the production company under the ACA. Because the workers’ W-2s and paychecks will reference the paying production company, the production company may receive employment queries from the state exchanges or the IRS and have to explain its non-common law employer role, which could cause administrative inconvenience.
23. If my production controlled group forms a new controlled group entity in 2016, is the entity automatically a covered employer?

Not necessarily. New controlled group members inherit the status of the existing controlled group. If the controlled group is not a covered employer in 2016 because it did not employ at least 50 full-time employees (counting FTEs) during the 2015 year, the new controlled group entity will not be a covered employer, even if the new controlled group entity alone expects to employ more than an average of 50 full-time employees for all of 2016. Conversely, if the controlled group is a covered employer in 2016 because it did employ at least 50 full-time employees on average during the 2015 year, the new controlled group entity will be a covered employer even if the new controlled group entity expects to employ less than 50 employees on average for all of 2016.

24. Are limited liability company (LLC) members excluded from the ACA or are they considered common law employees subject to the ACA?

All loan-outs, whether formed as corporations or LLCs, are not subject to the ACA provided that the loan-out member(s) operates as a true independent contractor and not a disguised employee. Because single-owner LLCs that do not elect C corporation tax status are taxed directly at the owner level and are not separately taxed at the LLC level, EP will not payroll LLCs as 1099 income because the disregarded LLC lacks independent contractor substance.

25. Are seasonal workers excluded from the employer headcount for coverage?

Yes, under certain circumstances. Specifically, seasonal workers are excluded from the FTE headcount calculation, provided that the employer's workforce exceeds 50 full-time employees and equivalents (100 FTEs in 2015) for no more than 120 days in the year and the employees exceeding the minimum during such 120-day period are seasonal workers. The seasonal worker exclusion currently applies to holiday or agricultural workers or those with analogous recurring finite schedules, but those employed on an academic year or similar schedule represent too lengthy of an employment period during the year to be considered seasonal. For episodic television production, productions will need to review specific facts and circumstances to determine whether television production workers will constitute seasonal workers.

Which Employees Must Be Offered Coverage?

26. How do we determine who is an ongoing full-time employee under the Employer Mandate?

Employers using the default monthly Measurement Period assess each month whether an employee is full-time. Employers may alternatively use look-back periods to assess full-time status of their ongoing employees. Ongoing employees are those who have been employed for an entire Measurement Period. An employer can choose to use a designated look-back period of 3 to 12 months (Measurement Period) to determine whether an ongoing employee is a qualified full-time employee entitled to health coverage. If the ongoing employee averaged 130 hours/month during the Measurement Period, the employer generally must offer coverage for an equal period of time as the Measurement Period, known as the "Stability Period," which is the period of time after the end of the Measurement Period, during which an employee’s status as full-time or not full-time remains the same.

For example, if an ongoing employee averaged at least 130 hours per month during the Measurement Period consisting of a full calendar year (i.e., at least 1560 hours), the employer
must cover the employee for the entire Stability Period the following calendar year, even if the employee is changed to part-time status during the Stability Period. On the other hand, if the ongoing employee averaged less than 130 hours a month during the same Measurement Period, the employer does not need to cover the ongoing employee during the entire Stability Period the following calendar year, even if the ongoing employee is changed to full-time status during the Stability Period. There is a limited exception for downgrades (see FAQ 35).

27. **What Measurement Period should production companies typically use to determine which ongoing employees are full-time for coverage purposes?**

We would expect most productions to use a 12-month Measurement Period to minimize coverage potential due to the intermittent nature of industry employment. For example, assume the production company employs 100 ongoing employees from January through June to produce a motion picture and uses a 6-month Measurement Period from January through June and a corresponding 6-month Stability Period from July through December. The employees average 200 hours per month during the 6-month Measurement Period. Because the workers qualify as full-time employees during the 6-month Measurement Period (i.e., 200 hours per month x 6 = 1200 hours, which is greater than 6 months x 130 hours or 780 hours), the production company must treat the workers as full-time employees during the following 6-month Stability Period. Note, if a 3-month Measurement Period is used, the production would still need to provide a minimum 6-month Stability Period.

On the other hand, assume the same facts except that the production company uses a 12-month Measurement Period and corresponding 12-month Stability Period. Because the ongoing employees did not average at least 130 hours per month during the 12-month Measurement Period (i.e., 1200 hours is less than the required 1560 hours over the course of 12 months), the workers would not be treated as full-time employees during the following 12-month Stability Period and thus they would not be entitled to coverage.

28. **How do we determine if we have to offer coverage to new employees?**

New employees are those who have not been employed for an entire Measurement Period as determined by the employer (i.e., 3 to 12 months). New hires qualify immediately for coverage if they are “reasonably expected” at their start date to average 30 hours/week (130 hours/month; subject to an administrative or waiting period of up to 90 days after start of employment). In other words, if your production is covered under the Employer Mandate, hires a group of full-time employees for 6 months in 2015 to work on a feature film project, and adopts a waiting period of 90 days (60 days in California), you would be obligated to provide coverage to the full-time employees or pay the penalty tax for the full-time employees (excluding a safe harbor of 80 full-time employees – see FAQ 63) for at least the last 3 months of employment. Note that the safe harbor is decreased to 30 full-time employees starting in 2016.

29. **Using the example in FAQ 28, how do we decide if the full-time employees we hired in 2014 are eligible for coverage in 2015?**

New hires that complete a full Measurement Period as determined by the employer are thereafter analyzed as ongoing employees. In the example from FAQ 28, the group of new full-time employees’ eligibility for coverage in 2015 will be determined based on their hours in 2014. For instance, if these employees worked, on average, at least 30 hours per week during the Measurement Period in 2014, and your production company qualified as a large employer for
2015, your production company would be required to consider them as full-time employees during the following Stability Period in 2015 if they remained employed by your company in 2015. Note that these employees would remain eligible for health insurance coverage from your company in 2015 even if they were downsized to part-time status in 2015, subject to limited exception.

30. Do short-term full-time employees such as production workers need to be offered health coverage?

It depends. Provided that the employer offers coverage to qualified full-time employees, those full-time employees employed for 3 months or less generally will not become eligible for coverage if the plan imposes a 90-day waiting period (2 months or less for California that limits waiting periods to 60 days); full-time employees employed more than 3 months generally qualify for coverage, subject to a 90-day waiting period. For example, assuming the employer offers health coverage to all qualified full-time employees, if a worker is employed full-time and laid off 2 months later, the worker generally is not qualified to receive coverage because the worker did not exceed 90 days of employment. However, if the worker is employed full-time for 5 months and laid off, the worker qualifies and would need to be offered coverage, subject to a 90-day waiting period. Thus, the employer generally would need to provide health care coverage to the worker for the fourth and fifth months before the worker is laid off. Note that if the employer does not offer health coverage, the employer would owe the penalty tax based on all full-time employees (short-term full-time employees included) after the first 30 of them (80 in 2015).

31. **NEW** What is a seasonal employee?

In contrast to the seasonal worker exclusion from employer coverage (see FAQ 25), the final Employer Mandate regulations define a “seasonal employee” as one holding a position for which the customary annual employment is 6 months or less. The seasonal employee category’s significance is that a full-time seasonal employee does not have to be offered any health coverage during the initial Measurement Period; he/she only needs to be offered coverage for the next Measurement Period if he/she qualified as a full-time employee during the preceding Measurement Period. As noted in FAQ 28, the employer can designate a Measurement Period of 3–12 months to determine full-time status during the following Stability Period.

The intent of the “customary annual employment” criteria in the seasonal employee definition is to capture positions involving recurring finite work schedules. The seasonal employee exclusion currently applies to holiday or agricultural workers or those workers with analogous recurring finite schedules, but those employed on an academic year or similar schedule represent too lengthy of an employment period during the year to be seasonal.

Application of the seasonal employee exclusion to episodic television production will depend on the traditional length of the series’ filming season, and productions will need to review specific facts and circumstances to determine whether television production workers will constitute seasonal employees. As the Treasury provides further guidance on seasonal employees, EP will provide additional updates to clients on the potential application of the seasonal employee classification to the entertainment industry.
32. **What is a variable hour employee?**

New and on-going variable hour employees do not qualify for coverage during their initial Measurement Period; the earliest they are entitled to coverage is the first Stability Period after completion of the initial Measurement Period. Variable hour employees mean those employees whose hours are sufficiently uncertain that the employer cannot reasonably determine at their start date whether they would be employed enough hours during the Measurement Period to qualify for full-time coverage.

For example, a production company hires a grip as a daily employee and the grip is expected to work 20 to 35 hours a week over a 3-month period. The production company cannot determine with reasonable certainty whether the grip’s hours will exceed on average 30 hours per week for an extended period of time. Hence, the grip’s hours are sufficiently uncertain that the grip will be considered a variable hour employee and thus must complete an entire Measurement Period before it can be determined if the grip is entitled to coverage during the following Stability Period.

Many daily and weekly entertainment production workers may qualify as variable hour employees which would allow the production company not to offer any coverage to them during the initial Measurement Period of 3 to 12 months as determined by the production company. Note, however, that most production workers in the entertainment industry likely would be classified as short-term, full-time employees, not variable hour employees, because they are reasonably expected to work at least 30 hours per week or at least 130 hours in a particular month.

33. **What is a part-time employee?**

As a gap-filler measure, the final Employer Mandate regulations added a part-time employee definition. A part-time employee is one who is not reasonably expected at the employee’s start date to be a full-time employee and is not a variable or seasonal employee. Like variable hour and seasonal employees, part-time employees are only entitled to health insurance coverage after completion of their initial Measurement Period and subject to satisfying full-time criteria during the initial Measurement Period.

34. **We routinely hire, layoff, and rehire the same production workers based on business needs to complete a film or television show. How do we determine if a production worker must be covered under the Employer Mandate?**

Breaks in service are important to understand because the length of the service break determines whether the worker’s prior service activity counts for coverage. If the break in service between the end of the prior employment and rehire is 13 weeks or more, the worker is considered a new employee in determining whether the employer has to offer coverage. Note that new full-time employees qualify immediately for health coverage, subject to a maximum 90-day waiting period.

Under a “special rule of parity” for short-term employment, an employee who is hired for a period shorter than 13 weeks counts as a new hire if the break in service is at least 4 weeks long before rehire and is equal to or greater than the previous employment period (e.g., a worker employed 8 weeks and rehired 10 weeks later would be a new hire despite that their break is less than 13 weeks). For example, a production company hires a full-time grip on a television pilot for 10 weeks from March through May 2015. The production company offers health coverage to its full-time production employees. However, the grip does not satisfy the production company’s 90-day waiting period (60-day waiting period in California) to receive coverage at the time of the grip’s termination. The production company rehires the same grip 8 weeks later to work full-time on a television show for the remainder of 2015. Because the grip’s 8-week break in service is less than
his 10 weeks of service on the pilot, the grip would receive credit for his prior 10 weeks of service with the production company because no break in service occurred. Note that special recordkeeping rules may be needed in order to properly administer the “special rule of parity.”

35. **NEW** What happens if the employee’s status changes from part-time to full-time or vice-versa?

The final Employer Mandate regulations clarify how an employer treats workers changing from part-time to full-time status and vice versa. Employers using the default monthly review period adjust monthly to full versus part-time changes and offer or discontinue coverage using the monthly compliance period. For employers using look-back Measurement/Stability Periods (large majority), an ongoing employee’s status change generally does not impact status during the current Stability Period (e.g., if the employee qualified as full-time during the present Stability Period, the employee generally remains entitled to health coverage for the remainder of the Stability Period regardless of downgrade), subject to the limited downgrade exception below.

In the case of upgrades during an initial Measurement Period, a new part-time/variable/seasonal employee who upgrades to full-time status is entitled to coverage no later than the earlier of the first day of the fourth month after the status change or the first month after the end of the initial Measurement Period (if the employee would have qualified as full-time under the initial Measurement Period look-back calculation). For example, a new part-time employee hired on January 1 with a 12-month initial Measurement Period and upgraded to full-time status on March 20 is entitled to coverage no later than July 1.

For downgrades, the employer can apply the monthly Measurement Period for the remainder of an employee’s initial or ongoing Stability Period if the employer does so by the first day of the fourth month after the change, the employee was offered minimum value coverage for full-time employees as applicable up to the date of transfer, and the employee averages less than 30 hours/week (130/month) for each of the 3 months following the status change; otherwise, the employee’s previous status applies for the initial or ongoing Stability Period. For example, a new full-time employee hired on January 1 with a 12-month initial Measurement Period and downgraded to part-time status on June 20 can lose coverage at the end of September provided that the employer applies the monthly measurement method for the remainder of the employee’s initial Measurement Period and the employee averages less than 30 hours per week for each of the 3 months after the status change in June.

36. **NEW** Can production companies rely on union/guild-based multi-employer plans to satisfy their health coverage obligations for union employees?

The proposed and subsequent interim regulations specified that the multi-employer health plan transitional safe harbor applies only to 2014 (later to 2015), but the final regulations have indicated that transitional treatment is an ongoing interim rule; any changes would apply prospectively at least on the first January 1 that occurs 6 months or later after further guidance, if any, is issued.

An employer participating in a multi-employer health plan (i.e., union plans with multiple employer participants) will be compliant if the participating employer is required to contribute to the plan for the full-time employee, the full-time employee is covered by the applicable collective bargaining agreement, plan coverage is available to the employee and dependents subject to satisfaction of plan eligibility conditions, and the coverage offered is affordable and has adequate value. The employer will be deemed to be in compliance with the ACA by making such health care
contributions for covered employees even if they do not actually qualify for benefits or they lose benefits under the plan. Since entertainment industry guild/union multi-employer plans generally provide fully-employer-funded coverage for employees and the plans cover well over 60% cost of benefits to employees and their dependents, the affordability and value requirements will likely not present a problem.

37. If EP is the signatory to a union agreement, is EP responsible for complying with the Employer Mandate?

No. The controlling or common law employer (i.e., employer that directs and supervises the production workers) is responsible for complying with the Employer Mandate. As between EP and the production company, the production company acts as the controlling employer in most cases and thus would be responsible for complying with the Employer Mandate. As noted, EP has developed various products and services to help clients manage and administer the Employer Mandate and Employer Information Reporting obligations.

38. May an employer take an “administrative” period between the Measurement and Stability Periods to determine which ongoing employees qualify as full-time, notify them of coverage, and enroll those who elect coverage?

Yes. Subject to certain limitations, the ACA regulations allow an employer to use an Administrative Period of up to 90 days between the Measurement and Stability Periods to determine whether an employee achieved full-time status during the Measurement Period, advise full-time employees of coverage and enroll those full-time employees who elect coverage during the following Stability Period.

If an employer adopts the calendar year as the Stability Period, with a 90-day Administrative Period between the end of the Measurement Period and the start of the Stability Period, the employer must begin the Stability Period at the start of the calendar year. An Administrative Period cannot alter the length of the Measurement or Stability Periods and, to avoid a coverage gap, must overlap the Stability Periods. The following example demonstrates the Administrative Period in action: Measurement Period of October 3 through October 2; 90-day Administrative Period of October 3 through December 31; and Stability Period of January 1 through December 31. An employer using the same time period (e.g., January 1 through December 31) for the Measurement and Stability Periods cannot use an Administrative Period since the Administrative Period cannot alter the length of the Measurement and Stability Periods.

For 2014, under a special transition rule, an employer can elect to have a Stability Period of 12 months in 2015 even if the Measurement Period in 2014 is less than 12 months. Thus, an employer who adopts a 90-day Administrative Period for 2014 must end the Measurement Period no later than October 2 which is 90 days before the beginning of the following Stability Period in 2015. Assuming the employer uses a 6-month Measurement Period for 2014, this means that the 2014 Measurement Period must begin no later than April 1, 2014.

39. Can the 90-day waiting period for new employees be invoked each time an employee is rehired?

Not necessarily. As noted, a break in service must equal at least 13 weeks during which no credited hours of service are earned with the employer for the rehired employee to count as a new full-time employee restarting the maximum 90-day waiting period for coverage (60 days in
California). There is an exception for short-term employments using a rule of parity. Under this exception, an employer can treat an employee returning from a break in service of less than 13 weeks as a new employee if the break in service is at least 4 weeks long and is longer than the employee’s period of employment immediately preceding the break in service. For example, if an employee was employed 6 weeks and was rehired after a 12-week break in service, the employer would be able to count the employee as a new hire, subject to the maximum 90-day coverage waiting period, because the preceding employment was shorter than the break in service, which was at least 4 weeks.

40. If an employee is laid off and then rehired by the same production company, does coverage have to be offered again regardless of whether the employee accepted it or not for the previous project?

If the two projects are interrupted by a break in service, the fact that the employee declined health coverage on the first project has no bearing on whether the employee is entitled to health care coverage on the second project. For instance, an employee works full time for a production company from January through April 2015 and declines health care coverage. After a break in service of 5 months, the employee is rehired by the same production company on a new project to work full time from October 2015 through January 2016. Because the break in service of 5 months is greater than 13 weeks, the second project constitutes a new employment for ACA purposes and the employee would have to be offered health care coverage. On the other hand, assuming the break in service is for just one month and the employee is rehired to work full time from June through September 2015, the employer would need to offer the employee the ability to re-enroll in insurance if the employee elected insurance coverage on the first project because the two employments have not been separated by a break in service.

41. Are union employees exempt from the law regardless of whether they qualify for benefits or not?

Union employees are not exempt from the Employer Mandate (see FAQs 36 and 75).

42. Are loan-out workers considered full-time employees for purposes of offering coverage?

No. As noted, properly treated loan-out personnel are not common law employees and therefore do not count under the Employer Mandate.

43. Is there an ACA employer “play or pay” mandate obligation for U.S. citizens working outside of the United States?

The ACA employer “play or pay” mandate applies only to services performed within the U.S. (meaning 50 states and District of Columbia and not the U.S. territories). Services performed outside of the United States are excluded from consideration for purposes of the ACA employer “play or pay” mandate, whether or not performed by a U.S. citizen. The hours of service must be considered U.S. source income, which means only those hours of service payable for work inside the United States count under the ACA.
44. **Does a former employee receiving COBRA coverage regain coverage under the employer's plan upon rehire?**

The answer differs depending on the scenario. If the former full-time employee's break in service is at least 13 weeks or, if shorter than 13 weeks, at least 4 weeks and longer than the prior period of employment (e.g., 5-week employment and 6-week separation), the rehired full-time employee qualifies as a new full-time employee and is entitled to health coverage, subject to a waiting period of up to 90 days (60 days in California).

On the other hand, for a returning employee who does not experience a break in service and who restarts employment, the employee will regain coverage immediately for the remainder of the Stability Period upon rehire by the same employer. If returning to the same employer after the prior Stability Period has closed, the employee would regain coverage immediately if the employee qualified as full-time (30 hours/week or 130 hours/month) during the prior Measurement Period; if not, the returning employee would not regain coverage immediately upon rehire.

45. **How often must an employer offer open enrollment under the ACA?**

The ACA only requires that employers offer coverage to qualified ongoing full-time employees (and their dependents) at least once annually (typically referred to as an "open enrollment"). Newly-hired full-time employees (and their dependents), however, must be offered coverage following a waiting period of no more than 90 days (60 days in California). Other employee benefits laws, such as HIPAA (Health Insurance Portability & Accountability Act), may entitle employees to enroll themselves and/or dependents/spouses on account of specified triggering life events (e.g., marriage, divorce, birth of child, loss of spouse’s health coverage) in addition to any enrollment opportunities required by the ACA.

46. **Does the employer need to offer health coverage to a full-time employee working inside and outside the U.S.?**

It depends. While hours abroad do not count for ACA Employer Mandate purposes, if the employee’s U.S. hours were sufficient to qualify as full-time (30 hours/week or 130 hours/month) in the Measurement Period, the employer would need to offer the worker health coverage for the next Stability Period. To the extent the employee qualified as a full-time employee during the prior Measurement Period, the fact that the employee works outside of the U.S. during all or most of the Stability Period (e.g., employee works 8 months in Canada and 4 months in U.S. during 12-month Stability Period) does not impact the worker’s health coverage for the remainder of the Stability Period.

In the case of new hires, an employee, subject to a 90-day waiting period at the start of employment, qualifies for coverage during those months worked full-time in the U.S., but as a practical matter, since health plan products generally cover employees for a plan year and do not cycle the worker on and off the plan during the plan period, the worker would likely be entitled to coverage for the plan period despite that the employee works certain months inside and certain months outside of the U.S. (e.g., employed 10 weeks in the U.S., 5 weeks in the U.K., and 30 more weeks in the U.S.).
47. Does a production company contracting with another production company for a negative pick-up or other arrangement to acquire finished content have any ACA responsibility for the employees of the production company producing the contracted-for content?

The answer depends on whether the acquiring producer exercised sufficient direction and control over the activities of the employees who worked on the production to be considered a common law employer; if so, there would be ACA obligations, but, if not, then there would be no ACA impact.

48. Can a production company split an otherwise qualified full-time employee’s hours between two projects to avoid counting the employee as a full-time employee entitled to an offer of health coverage under the ACA?

No, because the production company common law employer is the same. Even if two different production companies were used, the employee’s hours would still be grouped together if the two entities were members of the same controlled group.

49. Are flexible-hour production workers on a weekly guarantee considered full-time or variable hour?

Because full-time status operates from an hours-paid basis, an employee with changing hours on a weekly guarantee who averages at least 130 hours per month will likely be considered full-time because such employee is paid a fixed minimum amount of hours. Guarantees are not recommended for flexible-hour employees because guarantees undermine variable-hour status.

50. Can an employer limit health coverage to qualified full-time employees who are U.S. citizens?

No. ACA health coverage responsibilities apply to any employee lawfully present and working full-time in the U.S. Hours spent working outside the U.S., whether by U.S. citizens or others, are excluded in determining whether the employee is full-time.

51. Are freelance daily hires excluded from health coverage under the ACA?

No. If it is reasonably expected at the time of hire that the individual will work full time (i.e., 130 hours/month), even if on a day-to-day basis, the daily freelance employee qualifies and must be offered coverage that will be effective no later than 90 days after the start of daily employment (60 days for California). Once the daily hire cycles through a full standard Measurement Period, then coverage for the freelance daily hire is decided in the same manner as other ongoing employees (i.e., entitled to coverage for entire next Stability Period if the worker averaged full-time in the preceding Measurement Period). It is possible that some daily hire employees may be classified as seasonal (cyclical employment not exceeding 6 months) in which case the employer need not offer health coverage until such employees have completed a full Measurement Period.
52. **Can an employer use different Measurement, Stability, and Administrative Periods for different groups of employees?**

Generally, an employer must use a uniform Measurement, Stability and Administrative Period for all of its employees. However, different Measurement and Stability Periods may be used for:

- Salaried and hourly employees
- Union and non-union employees
- Employees whose main places of work are in different states
- Each group of union employees covered by a separate CBA

53. **Can controlled group members use different Measurement, Administrative, and Stability Periods for their workforce?**

The ACA regulations allow each controlled group member to use separate Measurement, Stability, and Administrative Periods for its employees, but each controlled group member must use a uniform Measurement, Stability, and Administrative Period, subject to the four exceptions in the immediately preceding FAQ.

54. **Does an employer need to offer insurance to dependents directly or is notification to the employee sufficient?**

Employee notification alone will suffice. The regulations reference an offer of coverage to employees and their dependents but do not specify if the offer can just be communicated to the employee or has to be made directly to the dependents. Historically, employers have satisfied their dependent coverage notification responsibilities through notification to the subject employee on the dependents’ behalf. The ACA regulations do not state any responsibility to the contrary, and the U.S. Department of Labor appears consistent with employee-only notification, as the recently-updated exchange notice guidance requires employers to notify employees (not dependents) about availability of coverage through the state-run health exchanges. Employers are recommended to explore appropriate verbiage in notification and enrollment materials reflecting that the notified-employee is receiving communications and making coverage election decisions on the dependents’ behalf.

55. **What documents will an employee complete at a public exchange to apply for health coverage?**

Essential documentation involves the individual’s income and employment information. In addition, information about available employment-based health coverage would be needed because the government subsidy to reduce exchange policy costs depends on the individual’s earning level and the individual’s rejection of any qualified offer of coverage from the employer.
56. My production group has several employees who work simultaneously for two different company-owned entities. During the months when these employees work for both entities at the same time, is their work activity counted together when calculating whether or not my production group reaches the 50 full-time employee mark for employer coverage?

Assuming the entities comprise a controlled group, the answer is yes. Worker activity across all controlled group entities is counted together to determine if the controlled group surpasses the 50 FTE threshold. For example, an employee working 70 hours per month for controlled group member A, and another 70 hours per month for controlled group member B, is counted as 1 full-time employee (70 + 70 = 140 hours/month) toward the 50 FTE threshold for the entire group. However, the worker is only counted as 1 full-time employee of the entire controlled group; a worker logging 260 hours per month across the controlled group is not counted as 2 full-time employees.

57. If a parent company establishes a wait period for full-time employees, can the parent company (or its wholly-owned subsidiary) make distinctions between different groups, companies, or types of employees?

The ACA guidance permits each controlled group member to use its own Measurement, Administrative, and Stability Periods. However, subject to limited exceptions, each controlled group member/individual employer entity must use the same Measurement, Administrative, and Stability Periods for all its employees. The only exception is that the controlled group member/employer entity can differentiate Measurement, Administrative, and Stability Periods among the following employee groupings:

- Salaried versus hourly employees
- Union versus non-union employees
- Employees with the main place of work in different states (e.g., California office versus New York office)
- Each group of union employees covered by a separate CBA (e.g., grips versus electricians)

58. For Measurement Period purposes, should I use the actual hours worked or the guaranteed hours to determine employee status? Would the guaranteed hours at the time of the employee’s hiring apply to determine status?

Full-time status is determined by the hours paid to the employee, whether guaranteed or worked, whichever is greater. The reasonably expected hours for a new employee determines the status of a new hire, and guaranteed hours will be a factor in the upfront determination of the employee’s status.

59. We hire composers as independent contractors, and they occasionally elect to hire non-union musicians for the actual scoring sessions. Do we have any obligation to the musicians?

Your company would not owe any ACA “pay or play” obligations to the musicians if the musicians are not treated as your company’s common law employees. If the composer hires the musicians and manages their daily activities, the composer will be treated as the musicians’ common law employer for ACA purposes. Note that your company may be treated as the musicians’ co-
common law employer to the extent that your company also manages the musicians’ day-to-day work activities. And even if the musicians could be considered your company’s common law employees, they still would need to qualify as full-time employees in order to trigger any ACA obligations for your company.

60. **If we select a 12-month Measurement Period and we hire a freelance employee for more than 90 days, do we offer insurance coverage to that employee if he or she does not satisfy the ACA’s full-time status requirements?**

New hires qualify immediately for coverage if they are “reasonably expected” to average at least 30 hours per week (130 hours per month) at their start date, subject to a maximum 90-day waiting period (60 days in CA). The Measurement Period safe harbor is intended for ongoing employees (i.e., those employees who have been employed for at least one Measurement Period), not for new full-time employees. Once the new full-time employee has been employed for at least one Measurement Period, the employee is analyzed as an ongoing employee, and would either continue coverage or not during the next Stability Period, depending on whether the worker averaged full-time for the previous Measurement Period.

61. **If Production Company A offers a terminated employee COBRA continuation coverage, and at the same time the employee is also employed by Production Company B, how would Production Company A know to stop COBRA?**

Since COBRA continuation coverage (including up to a 2% administrative fee) is solely paid by the employee, there would not seem to be an employer impact. Also, an employee participating in COBRA self-pay continuation coverage from a prior employer is free to decline a new employer’s coverage and remain on COBRA with the prior employer for the remainder of the COBRA continuation period.

62. **Is COBRA at the employer’s expense or the employee’s expense?**

COBRA continuation coverage is solely at the employee/individual’s expense.

**What Are Consequences of Paying the Penalty Tax Versus Offering Compliant Coverage and Vice Versa?**

63. **If a production company chooses to “pay” rather than “play,” what is the annual penalty, and how is it apportioned for a partial year or project?**

The penalty tax is monthly. If the production company chooses to “pay” rather than provide compliant coverage (i.e., minimum essential coverage) to its full-time employees (and their dependents), it will owe a monthly penalty tax of $166.67 (up to $2,000 per year) for each full-time employee, excluding the first 30 (80 in 2015), if even one full-time employee procures health coverage on the regulated insurance exchange and qualifies for health premium financial assistance from the government. For example, a production company that elected not to “play” and employed 100 full-time employees for all of 2016 would owe a penalty tax of $140,000 (100 full-time employees – 30 = 70 full-time employees X $2,000 penalty tax per full-time employee = $140,000 total penalty tax). For 2015 only, that same production company would owe a penalty tax of $40,000 (100 full-time employees – 80 = 20 full-time employees X $2,000 penalty tax per
full-time employee = $40,000 total penalty tax). It is important to note that for clients in a
controlled group (brother-sister or parent-subsidiary companies), the 30-employee exclusion is
prorated among the controlled group members, so each controlled group client will receive less
than the 30-employee benefit of the exclusion.

Depending on the circumstances, an employer may prefer to pay the penalty tax if the penalty tax
is less than the amount that the employer would have to pay in the aggregate to provide coverage
to its full-time employees.

If the production company tries to “play” by offering compliant coverage (i.e., minimum essential
coverage), but that coverage is unaffordable for the employee or lacks adequate value (see FAQ
64 on affordability and adequacy), the production company would pay a monthly penalty tax of
$250 (up to $3,000 per year) for each full-time employee not offered affordable or adequate
coverage who obtains government-subsidized coverage on the exchange. This penalty tax is
cAPPED at a maximum of no more than what the production company would pay under the non-
coverage penalty because an employer that tries to “play” should never pay more than an
employer that does not “play” at all.

The penalty tax is assessed on the individual non-compliant controlled group member(s), and not
the entire controlled group.

Finally, the $166.67 monthly ($2,000 yearly) non-coverage and $250 monthly ($3,000 yearly)
non-compliant health coverage penalty tax rates may increase yearly after 2014 to adjust for
health insurance premium inflation. HHS publishes the health insurance premium adjustment rate
used for the penalty tax increase, if any, by October 1 of the year before the increase. For
example, in 2015, the penalty tax rate is slated to rise about 4.21% which would bring the non-
coverage penalty tax to $173.33 monthly ($2,080 yearly – rounded down to lowest $10 multiple
from $2,084) and the non-compliant coverage penalty to $260 monthly ($3,120 yearly).

64. Under the law, any coverage that is provided has to be “affordable” and “adequate.” What
is considered “affordable” and “adequate” coverage?

Offered-coverage is “affordable” if the employee’s share of premiums for the employee’s
coverage does not exceed 9.5% of an employee’s household income. Because employers do not
have visibility to an employee’s annual household income, the IRS regulations alternatively permit
the employer to use current year W-2 income, monthly pay (capped at 130 hours for hourly
workers), or the single individual poverty line. For example, if a qualified full-time employee earns
$50,000 with the employer for the year, the employee cannot pay more than $395.83 ($50,000 x
9.5%/12 months) toward monthly premiums. Using $11,670, the 2014 single individual poverty
level as the baseline, the employee cannot pay more than $92.38 ($11,670 x 9.5%/12 months)
against monthly premiums. Offered coverage must include dependents, but the law does not
restrict how much premium cost a qualified full-time employee must bear for dependent coverage;
spouses are excluded from offered coverage.

To be “adequate,” the offered-coverage must cover on an actuarial basis at least 60% of the
value of benefits available under the plan. For example, if the plan covers 50% of hospitalization
costs across the plan, the coverage may not be adequate; whereas if the plan covers 80% of
hospitalization costs across the plan, the coverage is adequate. Many health plans are excluded
from having to offer particular types of “essential” benefits, either because they involve self-
insured or large group plans or grandfathered plans outside of the regulated exchanges. If a plan
is required to offer essential benefits (e.g., hospitalization, out-patient services, emergency care,
prescription drugs, etc.), it is the plan’s responsibility to comply.
65. If a production company elects to “play” by offering compliant coverage, what is the likelihood that it will have to contribute premium for coverage to be “affordable?”

Due to minimum insurance company employer subsidy requirements, it is possible that employers will have to contribute the majority of the cost of the least expensive core medical insurance premium. However, the answer ultimately will depend on the premium amount and the employee’s income. The 9.5% household income or alternative 9.5% W-2, monthly salary and poverty line income base safe harbor ceilings (see FAQ 64 above) make it likely that employers will need to contribute a premium for the coverage to be affordable with respect to some full-time employees. For example, if an employer’s monthly premium for health insurance coverage is $560.00 per month, and the employee earns $50,000 with the employer for the year, the employee cannot pay more than $395.83 ($50,000 x 9.5%/12 months) toward the monthly premium, and the employer would have to pay the balance of $164.17 toward the premium.

66. What is minimum essential coverage?

Minimum essential coverage (MEC) exists if:
- The individual/employee deductible caps at $3,500,
- The employee/individual co-insurance does not exceed 40%
- The individual/employee out-of-pocket maximum is $6,350

The ACA does not specify any particular health benefits that must be provided as part of MEC. MEC has two-fold relevance. First, an individual’s acquisition of MEC enables the individual to avoid a separate penalty tax under the ACA Individual Mandate (distinct from the Employer Mandate and not covered in these materials). Second, a covered employer’s offer of MEC to at least 95% of qualified full-time employees (and their dependents) avoids the $166.67 monthly ($2,000 annual) penalty across all full-time employees minus the first 30 (80 in 2015 only). However, an employer’s offer of MEC does not avoid the $250 monthly ($3,000 annual) penalty for failing to provide affordable and valuable coverage. The nuances of MEC are outside the scope of these Employer Mandate FAQs, and readers are encouraged to consult with insurance and employee benefits advisors for further information and guidance.

67. How is the penalty apportioned over the course of a year if an employee has multiple employers that do not offer coverage?

As noted in FAQ 63, the penalty tax is assessed monthly, so each employer would be liable for the penalty tax for those months where the worker is employed by the employer and not offered coverage. If an employee qualifies for health coverage with more than one employer during the same month, each employer must offer compliant coverage and is separately responsible for the penalty tax if not so offered. Should the worker choose one employer’s coverage over another or acquire its own coverage, the employer would not be liable for the penalty tax, provided the employer at least offered compliant coverage, even if the worker declined.

68. How do offers of coverage work when a full-time employee is working for two or more controlled group members simultaneously?

The final Employer Mandate regulations clarify that when a full-time employee is working for two or more controlled group members simultaneously, a single controlled group member’s offer/maintenance of coverage extends to all other controlled group members to avoid a penalty.
Additionally, if two or more controlled group members employ a full-time worker at the same time and do not offer/provide compliant insurance, the penalty is assessed against the controlled group member that employs the worker the most hours to avoid duplicate penalties, and in the case of multiple controlled group members employing the worker simultaneously for the same amount of time, the penalty is imposed on the member selected by the employer.

69. **NEW** Is there a penalty imposed during the first month of a new hire’s employment?

There is no penalty tax imposed during the first month of a new hire’s employment as long as employment begins after the first of the month. This exception is more useful for those employers using the default monthly look-forward period than the alternative monthly measurement method.

70. **Will better coverage be available through the exchanges, which might direct the employee to seek coverage there?**

The answer will depend upon the private large employer group insurance program. Because EP has priced its health insurance program for non-union production workers across the entire non-union workforce in the industry, the public exchanges generally will be more expensive than the EP Cares™ program, and workers will not receive the benefit of the employer subsidy contribution when purchasing insurance through a public exchange. In addition, it should be pointed out that the ACA does not attempt to control insurance costs. As a result, carriers are free to set prices as they deem appropriate, which may result in increased costs on public exchanges to the extent that they attract individuals that are more likely to draw on the benefits provided and do not attract enough healthy young people to enroll.

71. **If an employer is subject to a penalty tax, when will it be billed?**

It is expected that the penalty tax will be billed approximately six months after the close of the calendar year under review. For example, the IRS will bill for 2015’s penalties in or around July 2016.

72. **Will EP’s systems be able to accrue the penalty tax if a client chooses the “pay” versus “play” option?**

EP has developed a method to accrue the penalty on a pro-rata basis for clients and can furnish a report to clients showing the amount of the penalty tax on a monthly basis.

73. **If an employee elects coverage offered by our production, what responsibility do we have when the employee shifts to another project with a different controlled group?**

As with current medical plans, the employer must offer COBRA at the individual’s sole expense, even if the employer is contributing towards the premium during the employee’s active employment. Other than that, the employer has no responsibility except to comply with the reporting obligations.
74. **What happens if an employee elects coverage through a company-sponsored plan and their employment is terminated when their assignment ends? Can coverage continue under these circumstances?**

Yes, an employee could elect COBRA coverage under the plan and continue to be covered for up to 18 months or 36 months depending on the situation.

75. **Does our company have to count union employees covered by a multi-employer plan (MEP) that offers compliant coverage in the penalty tax if we don’t provide coverage to our non-union employees?**

It depends. If the employer does not satisfy its obligation to “play” by (a) providing minimum essential coverage for substantially all full-time employees (defined as at least 70% of its full-time workforce in 2015 and 95% in 2016 and onward) and (b) at least one full-time employee receives government-subsidized group health insurance coverage from an exchange, the employer would have to “pay” and include the union employees covered by MEPs in the overall penalty tax assessment. For instance, a production company employs 100 full-time employees on a production during each month in 2016. This production company is signatory to all industry collective bargaining agreement applicable to the picture. Among the 100 employees, 94 employees are union and are covered by SAG, DGA, or motion picture health plans; 6 employees are non-union production assistants who are paid by a payroll service and are not covered by a health plan offered by the production company. In this example, because the production company did not provide minimum essential coverage for at least 95% of its employees, and assuming at least one full-time employee qualified for the tax subsidy and purchased insurance from a public exchange, the production company would be subject to the penalty tax for all 100 full-time employees. In this instance, the production company would owe a penalty tax of $140,000 (100 full-time employees – safe harbor of 30 full-time employees = 70 full-time employees x $2,000 penalty tax = $140,000). As noted above, this coverage threshold is relaxed to 70% and an 80 employee safe harbor for 2015 only.

76. **What happens if a worker declines compliant coverage (that is affordable and adequate) from the employer?**

If the employer satisfies its obligation to offer compliant coverage that is affordable and adequate and the employee declines the coverage, the employer would not owe the penalty tax because the employer satisfied its obligation to provide legally sufficient coverage. In addition, a worker who receives an offer of legally compliant coverage from an employer will not be eligible to receive a federal subsidy to purchase insurance on a state-regulated exchange.

77. **Do any special grace period rules apply to newly-covered employers?**

Yes, the final Employer Mandate regulations added a permanent grace period rule for newly-covered employers that insulates employers covered in their first year from penalties (because of prior year employee counts), provided that they offer compliant coverage to their full-time employees by April 1 of the inaugural year of employer coverage under the Employer Mandate; however, failure to do so by April 1 renders the first-year covered employer liable for penalties beginning in January of the year.
78. **For 2016, is an employer offering minimum essential coverage (MEC) to at least 95% of its qualified full-time employees (70% in 2015) penalized if at least 1 uncovered employee obtains exchange coverage with a government subsidy?**

Yes. Though the no-coverage penalty ($166.67 monthly penalty for each full-time employee excluding the first 30) is inapplicable since the employer offered minimum essential coverage to at least 95% of its qualified full-time workforce, the employer is still subject to the insufficient coverage penalty ($250 monthly penalty for each qualified full-time employee obtaining government-subsidized exchange coverage that was not offered affordable and adequate minimum essential coverage).

79. **How will the IRS and exchanges interact to monitor Employer Mandate compliance?**

The exchanges will collect employment and income information from individuals seeking to purchase health coverage on the exchange in order to determine if the individuals are eligible for a government subsidy that reduces the price of coverage. Since an employer’s offer of compliant coverage would disqualify the individual from a subsidy if the individual opts to buy health coverage on an exchange, the exchanges will collect employer information from individual applicants. If an employer was not providing coverage, the exchanges would forward relevant employer information to the IRS to be taken into account for purposes of any Employer Mandate penalty.

Employers will also be required to file an Internal Revenue Code section 6056 information return. The 6056 return generally requests identifying information about the employer, number of full-time employees and identifying information about each full-time employee for each month of the tax year, certification of whether health coverage was offered to employees, and information about the health coverage offered. The IRS will use the 6056 return and information that it receives from the exchanges to calculate any penalty owed and bill the employer.

80. **Can a production company switch between “pay” or “play” approaches during the same year or Stability Period?**

Under the ACA, the answer is yes, because the “pay” or “play” obligation is monthly, but the insurance product may limit the production company’s cancellation rights and other laws may restrict ad hoc coverage cancellation.

81. **Will the IRS permit companies to form different entities for the singular purpose of limiting penalty exposure, or will the IRS disregard the separate entities as an alter ego of the controlling company and penalize the controlling company?**

We cannot predict the IRS’s enforcement position, but the regulations specify that the ACA penalties are imposed on the individual entity in a controlled group and not across the entire controlled group for one member’s non-compliance. However, employers who seek to form different entities in order to isolate penalty tax exposure need to confirm that the designated employing entity is in fact the employer and that there is sufficient evidence to corroborate this position.
82. Is the 30 full-time employee safe harbor (80 employees in 2015) for the non-coverage penalty (not offering minimum essential coverage to at least 95% of full-time employees; 70% in 2015) prorated among controlled group members?

Yes, in proportion to the size of each controlled group member's workforce. For controlled groups with more than 30 members, each member of the controlled group will be allocated a safe harbor of at least 1 employee.

83. Is there a relationship between exchanges and the “pay” option?

Yes. The government-administered health exchanges offer an alternative for individuals to obtain MEC to satisfy their individual mandate duty (not examined here). An individual can satisfy his or her own mandate duty by showing proof of MEC from an employer. If an employer does not offer MEC that is affordable and adequate, the employer is liable for a penalty if the qualified employee obtains exchange coverage with a premium subsidy from the government.

84. What is the danger of misclassifying a worker as an independent contractor or loan-out for ACA purposes?

Besides wage and hour, tax and tort exposure, an employer's improper treatment of common law employees as independent contractors may lead to severe consequences under the ACA. Misclassification could result in “large employer” status and could lead to penalties for failure to offer coverage to qualified full-time employees. Moreover, misclassification of workers as independent contractors has recently attracted increased scrutiny from the U.S. Department of Labor, IRS, and state agencies. Therefore, employers should review their current loan-out structure and ensure that they correctly treat workers as loan-out personnel.

85. Does a production company have to offer health insurance to its non-union employees or pay the fine?

Part-time employees (whether union or non-union) are not covered. Generally, you must offer coverage to full-time non-union employees, but some exceptions apply and are addressed in the booklet. Also, a penalty will not trigger if no qualified non-union full-time employee purchases health coverage on the government-run exchanges, or all such employee(s) acquiring exchange coverage earn too much to be eligible for a government premium credit; however, these scenarios are highly improbable.

86. Are we obligated to take any action when the majority of our crew is union and covered by that health plan?

The Employer Mandate protects all full-time employees – whether union or non-union. So even if your production company has a coverage solution for a large segment of its full-time workforce, the production company must have a health plan in place to offer the remaining qualified full-time population or risk penalty exposure.
87. If we choose to “pay,” is the $166.67 monthly ($2,000 yearly) penalty for the entire crew or per crew member?

The penalty is assessed for each individual full-time employee of the covered employer, minus the first 30 full-time employees for each month (80 employees in 2015) where at least one qualified full-time employee secured health coverage through a government exchange with a government credit towards premiums.

88. What is the incentive for large employers to offer coverage to anyone if it is more expensive to offer insurance than pay the penalty tax?

For employers with unionized populations, the incentive is to avoid double-payment. For example, if a covered production company does not offer health insurance to its non-union employees and the non-union population exceeds 5% of the production’s workforce (30% for 2015 only), the production company would have to pay a $2,000 per worker penalty across all full-time employees, minus the first 30 (80 for 2015 only) – even the union employees for whom the production is already remitting health contributions to a guild or union plan. However, when health coverage is more costly than the penalty tax, the employer would generally not be incentivized. If, however, an employer is faced with the choice of paying $2,000 per worker into the system without any boost to the worker’s total employment package (pay and benefits) versus spending a few extra hundred dollars over $2,000 per worker to add health coverage as an attraction to a total employment package, some employers may choose to pay the extra money to build or maintain a competitive employment package. Also, lower cost, affordable, and adequate plans may evolve to become mostly a worker investment, or at least an employer investment under $2,000 per year per worker. Finally, it may have been Congress’s purpose to encourage insurance through the exchanges rather than employers. The bottom line is that an employer’s decision to pay the penalty tax or offer insurance is highly dependent on the specific circumstances of the employer’s situation.

89. Do production companies need to fund the entire production worker annual insurance cost or just the monthly premiums during the production worker’s employment?

The ACA “play” obligation to offer and (if accepted) provide insurance is a monthly obligation lasting for the extent of the qualified production worker’s employment. After the production worker’s employment ends, the worker may be eligible to continue coverage under COBRA on a self-pay basis. Additionally, as long as the premium is affordable (i.e., not exceeding 9.5% of worker income), the worker – even during employment – can be required to pay the entire premium if it does not eclipse the 9.5% affordability ceiling, and the employer will not have to pay any premium. Because of minimum employer subsidy requirements imposed by insurance carriers, it may not be possible for employers to shift the entire cost of coverage to employees whose income is sufficient to pay for the entire insurance premium consistent with affordability limits.
90. How does the production company know that the health coverage provided to its qualified full-time employees accepting coverage is adequate (i.e., plan covers at least 60% of aggregate cost of scheduled benefits on an actuarial basis)?

The production company would need to:

1. Obtain certification or credible proof from the carrier that the plan coverage is adequate under the ACA

2. If possible, negotiate that, as between the production company and carrier, the carrier warrants adequate coverage and is responsible to the production company for any liability of the production company if the coverage is later determined to be inadequate

What Are the Reporting and Recordkeeping Requirements Associated with the ACA?

91. What kind of recordkeeping obligations does the ACA impose on employers?

Employers will have to comply with a host of new recordkeeping requirements. These will include, but are not limited to, documentation and retention of employee start dates, work activity, job category, last date worked, and union affiliation, as well as circulation of the Notice of Exchange (NOE) at the outset of employment. In addition, employers will need to document and retain memoranda detailing the Measurement and Stability Periods for all groups of employees and retain sufficient documentation showing that employees have been offered effective coverage and have declined or accepted such coverage. EP has developed an ACA Management Reporting Service to assist clients with these record-keeping obligations. Please refer to the “How Can EP Help Employers Comply with the ACA?” section on page 52 of this booklet for additional details.

92. Will EP’s systems be able to provide support for client-reporting obligations?

EP is committed to providing our clients with all data required to be reported under the Act to which we have access. We are unable to supply data generated by another payroll service, but we will consider ways that we can assist in consolidating this information if requested by our clients. Please see the “How Can EP Help Employers Comply with the ACA?” section on page 52 of this booklet to learn about EP’s different ACA Services Offerings.

93. How do production companies report data under the Employer Mandate to the IRS?

Employers subject to the Mandate will be required to report certain information on employer-provided group health coverage beginning in 2016 for coverage provided in 2015. Note that the 2016 reporting of 2015 information still applies to employers with 50 to 99 employees, even though such employers are exempt from the Employer Mandate in 2015.

Basically, there are two sets of employer information returns – the first is a statement given to each full-time employee covering certain information specific to that employee, and the second is an individualized return filed with the IRS for each full-time employee that combines all of the information in the employee statement plus other information. The two-fold purpose of the covered employer reporting is to enable the IRS to determine an employer’s compliance with the
Mandate and a full-time employee’s eligibility for government-subsidized coverage on the government health exchanges. Depending on the nature of a production company’s offer of insurance coverage to its workers and the percent of workers to whom coverage is offered, alternative simplified reporting methods may be available.

Employers must issue the statement that must be provided to each full-time employee by January 31 after close of the prior calendar year reported. The employer returns must be filed with the IRS by February 28 after close of the subject prior calendar year. Generally, the employer return must be filed electronically with the IRS unless subject to an exclusion for employers filing fewer than 250 total 6056 returns. The employee statement must be distributed in paper form unless IRS requirements for electronic distribution consent have been satisfied. Non-compliance with the information return requirements subjects the employer to a penalty of $100 per non-compliant return/statement.

The IRS has not yet published the actual 6056 information reporting return. Once the IRS publishes the form, EP will update its client base.

As noted in this booklet, EP has developed a specialized Data and Reporting Tool to help clients easily manage and fulfill their ACA data tracking and reporting compliance obligations (see FAQ 106). The Data and Reporting Tool is currently available and clients should contact EP to schedule a demonstration.

**94. What is a production company generally required to report under its IRS 6056 obligation?**

Employers subject to the Employer Mandate (i.e., those with at least 50 full-time employee equivalents) generally must report to the IRS on an EIN basis for the following:

1. Employer EIN contact information and calendar year of coverage
2. Certification on whether the employer offered its full-time employees (and dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, by calendar month
3. Number of full-time employees for each month of the calendar year
4. Name, address, and TIN of each full-time employee during the calendar year and the months, if any, during which that employee was covered under an eligible employer-sponsored plan
5. For each full-time employee:
   a. The months during the calendar year for which minimum essential coverage was available
   b. The employee’s share of the lowest cost monthly premium option for coverage providing minimum value offered to the employee by calendar month.

**95. What occurs if a public exchange receives incorrect information from an employee?**

Because an individual’s entitlement to a government tax credit for health coverage on an exchange is dependent on whether the individual was eligible for and declined qualified coverage from an employer, the exchanges will need to establish procedures to verify with the employer any information about the individual’s employment and health coverage status with the employer. The precise form of that query from the exchange is not clear as of now.
96. **Is the exchange notification (NOE) requirement confined to covered employers (i.e., only those with at least 50 full-time employees and equivalents)?**

No. All employers subject to the Fair Labor Standards Act (FLSA) must provide the notification to all employees — whether full-time, part-time, union, or non-union. Generally, the FLSA applies to any enterprise with at least $500,000 in annual sales, or employers with at least one employee engaged in or producing goods or services for interstate commerce, which would cover just about all productions because of the inherently interstate nature of the entertainment industry.

Employers must distribute the exchange notification to new employees at the time of hire (which, through 2014, has been relaxed to within 14 days of their start date). The U.S. Department of Labor issued model notices for employers that offer and do not offer health coverage. As a preliminary note, Part B of the model exchange notification to be used by employers maintaining health coverage for at least some employees requires details about the coverage and eligible employee groups; an optional component of this Part B solicits details about the recipient employee’s eligibility for coverage and provides other information helpful to the employee’s understanding of plan affordability and adequacy. As explained in FAQ 103, EP has created a user-friendly online automated template generator to simplify the NOE process and assist employers with this NOE requirement.

97. **If EP provides the W-2 for an employee, what information about the health plan participation should be presented by a production company?**

The production company will need to file an information return on IRS form 6056. Form 6056 is independent of the W-2 or payroll tax returns prepared by EP. As noted, basic information covered by form 6056 involves identifying information about the employer, the number of employees for each month of the tax year, identifying information about each full-time employee for each month of the tax year, certification of whether health coverage was offered to employees, and information about the health coverage offered.

**How Can EP Help Employers Comply with the ACA?**

98. **NEW** Will EP be able to assist clients in providing insurance coverage that meets both the “affordable” and “adequacy” tests under the “play” option?

Yes. EP has created the EP Cares™ insurance program as an all-in-one solution so the entertainment industry can offer ACA-compliant health care coverage to full-time non-union production workers and easily meet their Employer Mandate obligations. Please see FAQs 104 and 105 for additional program details.

99. **NEW** How does a production company document Measurement and Stability Periods, and will EP assist with any form or document to accomplish this function?

The Measurement and Stability Periods should be memorialized in writing. If a production company “plays,” these periods should be memorialized in the written eligibility provisions for the group health plans that are offered to full-time employees. If a production company “pays,” the periods could be memorialized in a production policy manual, handbook, or memorandum, provided that the applicable document is available to employees or auditors. EP has developed a production company checklist that includes a reminder for establishing and documenting Measurement and Stability Periods.

This document is provided for general information purposes only. Nothing in this document constitutes advice. Readers of this document should consult their attorneys or other advisors for guidance about their specific situation.
100. What mechanism is available to track production worker movement among different groups of the same studio client?

EP payroll activity with clients can accommodate different client IDs for a studio subgroup/division as a controlled group. Additionally, for instances in which different client sub-groups constitute one controlled group, EP has developed a report that aggregates all of the sub-group activity in one report and provides information for the group to help determine employer coverage and full-time employee eligibility.

101. Is there an available health plan option for commercial producers utilizing a non-union workforce?

Yes. The Association of Independent Commercial Producers (AICP) has a pension and benefit plan (PHBP) available for interested commercial producers to cover non-union freelance commercial production workers and staff. Click the AICP PHBP link for further information about this alternative: http://www.phbp.org. Participating commercial producers would need to obtain certification or reliable proof from the AICP PHBP administrator validating that coverage is adequate (i.e., covers at least 60% of cost of scheduled benefits on an actuarial basis).

102. What is EP doing to keep employers informed of ACA updates?

EP has developed specialized web pages containing ACA updates, information, and downloadable help documents tailored specifically for both production companies and production workers. These websites can be accessed by visiting our ACA Compliance Center at http://www.ep.com/aca/.

103. What is EP doing to help employers with Notice of Exchange (NOE) requirements?

EP has created an easy-to-use online automated template generator to assist employers with this requirement. Employers can simply submit their production company information online and a customized template will be generated. For more details, please visit our website at https://www.ep.com/aca_production_companies_noe/.

104. What is EP doing to help employers with providing ACA-compliant insurance coverage to its full-time non-union production workers?

EP has partnered with Anthem Blue Cross and Lockton Companies to create the EP Cares™ Insurance Program, an all-in-one, ACA-compliant, entertainment industry solution that includes insurance, enrollment, administration, support, and program management for full-time non-union production crew. Our EP Cares™ Insurance program is fully implemented and began offering coverage to non-union production workers starting on January 1, 2014 in California and New York.
105. **NEW** What are program highlights of EP Cares™?

The EP Cares™ Insurance Program is a complete and end-to-end industry-specific platform designed to allow clients to easily meet their “play” obligations under the Employer Mandate. It includes the following basic features:

- ACA-compliant insurance offering for non-union production workers
- Entertainment Partners (EP) manages all financial, administrative, and compliance responsibilities
- Available to entire entertainment industry, irrespective of payroll provider
- EP has integrated the insurance process into its existing payroll procedures
- Multiple ACA-compliant medical plan options, including HMO and PPO, with optional dental, vision, life, and AD&D insurance
- No additional fees beyond competitive insurance premiums
- Program rates assessed across the entire non-union production worker pool, instead of on a per-company basis, resulting in low premiums that are uniform across the entire industry with no additional fees
- Transferable coverage for workers across participating production companies
- Employee deductibles and out-of-pocket maximums are transferable across different employments if in the same plan during a calendar year
- EP Cares™ Contact Center representatives will assist both production companies and workers with insurance inquiries, onboarding, enrollment, and ongoing support

106. **NEW** What is EP doing to help employers track and manage their workforce data?

EP has developed a simple-to-use Data and Reporting Tool which will track, report, and manage workforce data for production companies regarding health care eligibility and required government reporting.

The primary features of the Data and Reporting Tool include the following:

- Collect and aggregate payroll data from all payroll providers and in-house payroll systems across all shows, production companies, and divisions within a controlled group
- Track and record hours to determine worker status for health benefit eligibility
- Aggregate payroll data across all payroll systems to assess Measurement and Stability Periods, Administrative Periods and breaks in service
- Transmit relevant payroll data to health insurance administrator(s)
- Generate the information needed for the client to prepare and file IRS 6056 reports for government reporting for each calendar year
- Provide for role-based security, allowing different access levels for corporate, division, and show personnel
- Supply data stewardship services including code mapping, organizational structure maintenance and quality assurance through automated validation testing
- Generate advanced and multiple workforce reports
107. **NEW** What basic ACA services does EP offer at no additional cost?

To simplify ACA compliance for our clients, EP provides various complimentary ACA services, including:

- NOE
- W-2 reporting of cost of employer group health coverage
- Employee paycheck deductions within ACA affordability limits
- ACA Compliance Website at [http://www.ep.com/aca](http://www.ep.com/aca)
- Start card ACA employee category classification and time card showing a termination field
- Updates on ACA changes and industry-specific impact
- ACA explanatory materials
- Obtain union benefit plan minimum value coverage and affordability certificate
- Determine maximum affordability level for employee health care premium to minimize health insurance costs for production companies
- ACA consulting and evaluation assistance
- EP payroll reports show full-time activity across all shows/EINs in controlled group

108. **NEW** What is EP doing to help employers meet the ACA filing and reporting requirements?

As explained in FAQ 100, EP will provide payroll reports that reflect EP employee activity across all shows and EINs in a controlled group to help you determine full-time employee status. EP also has developed the specialized and user-friendly EP Data and Reporting Tool to collect data from all payroll sources and track and manage production worker activity across all shows/EINs in the controlled group for health benefit eligibility purposes. In addition, EP will provide an ACA Management Reporting Service that will prepare and file all client IRS 6056 returns, issue all required employee statements, assist clients in fulfilling their recordkeeping obligations, and manage interactions with the IRS and exchanges. Please contact EP at [aca@ep.com](mailto:aca@ep.com) for more information and pricing on these services.

We would be pleased to meet with you at your convenience to discuss the ACA Employer Mandate and how we can assist in administering the obligation for your company. If you would like to schedule a meeting or if you have any questions, please email us at [aca@ep.com](mailto:aca@ep.com).