



AFFORDABLE CARE ACT
26 USC § 4980H
SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE
2016 UPDATE

BACKGROUND:

There are two potential employer penalties under health care reform related to group medical coverage, “Pay or Play”.

The “Pay” penalty applies if an *applicable large employer* (average of 50 or more full-time employees (including full-time equivalents) in the preceding calendar year) **does not offer** all (or substantially all) full-time employees and their dependents minimum essential coverage and one full-time employee receives a subsidy in the Exchange.

This penalty is \$2,160 multiplied by the number of full-time employees in excess of 30.

The “Play” penalty applies if an *applicable large employer* (ALE) **does offer** minimum essential coverage to all (or substantially all) full-time employees, but that coverage is either unaffordable (exceeds 9.66% of employees wages), or does not provide a minimum value (60%), and one full-time employee receives a subsidy in the Exchange.

This penalty is \$3,240 multiplied by the total number of full-time employees who receive the government subsidy in the Exchange, with a maximum penalty of the “No Coverage” penalty

WHO IS AN APPLICABLE LARGE EMPLOYER?

The term “applicable large employer” means, with respect to a calendar year, an employer who employed an average of at least of 50 or more full-time employees (including full-time equivalents) in the preceding calendar year.

For purposes of determining whether an employer is an ALE subject to the employer shared responsibility provisions, an employer must convert part-time employees into full-time equivalents (even though such individuals would not trigger the tax by receiving a premium subsidy.)

RULES TO HELP WITH THE DETERMINATION:

- **Full-time Employee:** A full-time employee is one who, with respect to any month, works at least 30 hours per week. 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week.
- **Controlled Group:** Health care reform for the purpose of the employer mandate applies the controlled group test, meaning that all entities treated as a single employer under Code § 414(b), (c), (m), or (o) are treated as a single employer for purposes determining an applicable large employer. Thus, the employees of all employers within the controlled group are taken into account in determining whether any member of the controlled group is ALE. The regulations clarify that for a calendar year during which an employer is an ALE, the health care reform standards generally are applied separately to each person that is a member of the controlled group comprising the employer (with each person referred to as an “applicable large employer member”) in determining liability for, and the amount of, any assessable payment.
- **Common Law Employees:** An “employee” is an individual who is an employee under the common-law standard. Careful consideration should be given to independent contractors and employees from

temporary staffing agencies because such individuals are often misclassified. Failure to accurately account for all common-law employees could result in a false conclusion as to whether an employer is an “applicable large employer”.

DO NOT COUNT

- Sole proprietors
- 2% Sub Chapter S Corps shareholders
- Leased employees
- Real estate agents and direct sellers

One: Calculate the number of full-time employees (including seasonal workers) for each calendar month in the calendar year.

January full-time employees:	_____
February full-time employees:	_____
March full-time employees:	_____
April full-time employees:	_____
May full-time employees:	_____
June full-time employees:	_____
July full-time employees:	_____
August full-time employees:	_____
September full-time employees:	_____
October full-time employees:	_____
November full-time employees:	_____
December full-time employees:	_____
TOTAL	_____

Two: Calculate the number of full-time equivalents (including seasonal workers) for each calendar month in the calendar year using the method described below.

- Calculate the aggregate hours of service in a month for employees who are not full-time employees for that month. (Do not include more than 120 hours of service for any employee.)
- Then divide the total hours of service by 120.

The result is the number of full-time equivalent employees for the month.

January non full-time employees _____	Divided by 120	=	January FTE _____
February non full-time employees _____	Divided by 120	=	February FTE _____
March non full-time employees _____	Divided by 120	=	March FTE _____
April non full-time employees _____	Divided by 120	=	April FTE _____
May non full-time employees _____	Divided by 120	=	May FTE _____
June non full-time employees _____	Divided by 120	=	June FTE _____
July non full-time employees _____	Divided by 120	=	July FTE _____
August non full-time employees _____	Divided by 120	=	August FTE _____
September non full-time employees _____	Divided by 120	=	September FTE _____
October non full-time employees _____	Divided by 120	=	October FTE _____
November non full-time employees _____	Divided by 120	=	November FTE _____
December non full-time employees _____	Divided by 120	=	December FTE _____
TOTAL		=	_____

Three: Add the number of full-time employees and full-time equivalents obtained in Steps 1 and 2 **for each month of the calendar year.**

January full-time employees _____	+	January FTE _____	=	January Total _____
February full-time employees _____	+	February FTE _____	=	February Total _____
March full-time employees _____	+	March FTE _____	=	March Total _____
April full-time employees _____	+	April FTE _____	=	April Total _____
May full-time employees _____	+	May FTE _____	=	May Total _____
June full-time employees _____	+	June FTE _____	=	June Total _____
July full-time employees _____	+	July FTE _____	=	July Total _____
August full-time employees _____	+	August FTE _____	=	August Total _____
September full-time employees _____	+	September FTE _____	=	September Total _____

October full-time employees _____	+	October FTE _____	=	October Total _____
November full-time employees _____	+	November FTE _____	=	November Total _____
December full-time employees _____	+	December FTE _____	=	December Total _____

TOTAL			=	_____

Four: Add up the monthly numbers from Step 3 and divide the sum by 12. This is the average number of full-time employees for the preceding calendar year.

Five: If the number obtained in Step 4 is less than 100 / 50, then the employer is not an ALE for the current calendar year. If the number obtained in Step 4 is 100 / 50 or greater there are two additional rules that may reduce the employer's count to below 100 / 50.

- **Seasonal Worker Special Rule:** An employer with 50 or more full-time employees can avoid ALE status if the employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year; and the employees in excess of 50 employed during such 120-day period were seasonal workers.



For 20__ the employer has determined it is not an applicable large employer and should not be subject to the penalties in 20__.



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