



Are You Required to Provide Health Insurance Under the Affordable Care Act?

If you're an employer, you may be surprised by the answer!

The Affordable Care Act (ACA) requires employers who meet its Applicable Large Employer (ALE) criteria to provide certain employees with health insurance or face a significant penalty. Some companies that don't consider themselves a large company may be surprised to learn they actually are under this law. If your company was not subject to the ACA for 2015, be aware that the thresholds changed dramatically for 2016.

Overview

The rules for determining whether your company is an ALE and, therefore, subject to what's called the employer mandate, are complex.

For 2016, an organization becomes an ALE when it employs an average of 50 or more full-time and full-time equivalent (FTE) employees on business days during the calendar year. Organizations average their number of employees across the months in the current year to determine whether they will be an ALE for the following reporting year.

Key Fact: FTEs are not the same as conventional full-time 40-hour-per-week employees, and this difference can trigger compliance for thousands of unsuspecting organizations.

Your CPA can explain the impact of the obligations on your organization (such as penalties), which are referred to as the shared responsibility provisions. However, you'll also need to ensure that your payroll team or external payroll provider is taking the necessary steps now to correctly determine whether you are an ALE, regardless of your tax filing status.

The need to comply with the employer mandate will be clear for organizations whose full-time employees number well above or below 50 starting in 2016.

However, for those near the cusp of the 50-employee mark, careful record-keeping policies and systems and calculation processes need to be in place now and going forward to determine whether the organization is an ALE.

Who Is Counted as an Employee for ALE?

A full-time employee (for any calendar month) is an employee who:

- Has an average of at least 30 hours of service per week during the calendar month; or
- At least 130 hours of service in a calendar month.

The working hours of *part-time* employees are combined and counted as equivalent full-time employees to determine ALE.

The employer does not need to direct or control the manner in which services are performed for an individual to be counted as an employee for ALE.

It is sufficient if the employer has the right to do so.

DO SEASONAL WORKERS COUNT?

When determining if an employer is an ALE, the employer must measure its workforce by counting all of its employees. However, an exception exists for seasonal workers.

An employer is exempt from the mandate if both of the following apply:

1. The employer's workforce exceeds 50 in 2016 full-time employees (including FTEs) for 120 days or fewer during the calendar year, and
2. The employees in excess of 50 in 2016 employed during a 120-day period are seasonal workers.

A seasonal worker, such as a retail cashier employed exclusively for a holiday, generally is considered an employee who performs labor or services on a seasonal basis.

Small businesses with fewer than 50 full-time equivalent employees or an ALE with exactly 50 employees have the option to purchase affordable insurance through the Small Business Health Options Program (SHOP), which may provide less expensive health insurance than an independent benefits program.

PENALTIES

For 2016, ALEs must offer at least 95% of their full-time employees and their dependents (up to age 26) health insurance that offers minimum essential coverage.

The annual penalty for not offering required coverage generally is \$2,160 per employee minus 30 full-time employees.

A different penalty applies when coverage is offered but fails to meet the affordability and minimum value test, and/or an employee obtains a marketplace subsidy. This annual penalty is \$3,240 per employee, subject to certain modifications and ceilings.



WHO IS NOT AN FTE?

Individuals who are excluded from the calculation of the number of ALE employees include:

- Sole proprietors
- Partners in a partnership
- 2% (or more) S-corporation shareholders
- Leased employees
- Temporary employees invoiced through an agency
- Independent contractors
- Real estate agents
- Direct sellers

BUT, to the extent that a sole proprietor, or the partner or shareholder, provides services as an employee to the organization, he or she is an employee with respect to his or her hours of service as an employee.





MORE ON PENALTIES

Penalties apply when:

1. An ALE does not offer minimal essential coverage to its full-time employees, FTEs and their dependents, and at least one of the full-time employees receives a premium tax credit to help pay for coverage; or
2. An employer *does* offer health coverage to its full-time employees and FTEs, but at least one full-time employee received a premium tax credit. This may occur because the employer did not offer coverage to that employee or because the coverage was either unaffordable or didn't provide the minimum value.

Each member entity within a controlled or affiliated service group will be treated separately when determining penalties — penalties will be charged *only* to the entity(ies) that failed to meet shared responsibility requirements.

The annual deadline to report coverage or insurance information to the IRS for most employers is Feb. 28 (March 31 if filed electronically). Also, the deadline to send coverage information (Form 1095-C) to employees is Jan. 31.

REPORTING RESPONSIBILITIES

- ALEs must file an annual information return with the IRS that reports the terms and conditions of health care coverage.
They must also provide full-time employees with statements of the reported information and notify them that it was also provided to the IRS. Failure to do so may result in a penalty.
- ALEs who provide self-insured health coverage to full-time employees must file an annual return with the IRS that reports certain information for each covered employee.

Please contact your CPA to learn more about the impact of the Affordable Care Act and other legislation affecting your business.

