The Affordable Care Act and Requirement of Large Employers to Offer Health Coverage
Revised October 2016

The Affordable Care Act (ACA or health care reform law) states that in order to avoid a penalty, Applicable Large Employers are required to offer health insurance coverage that is both Affordable and provides Minimum Value to full-time employees. Under the ACA, an Applicable Large Employer that does not offer Affordable, Minimum Value coverage could be assessed a penalty if any of the employer's Full-Time employees qualifies for a Tax Credit/Premium Subsidy through a Health Insurance Marketplace. This is referred to as "Pay or Play" or the Employer Shared Responsibility – requiring the Large Employer to either "Play" (that is, offer affordable, minimum value coverage) or "Pay" (the Employer Shared Responsibility payment, or penalty).

The following addresses major elements of the final Shared Responsibility regulations.

Step 1 – Are you a Large Employer?

1. <u>How to determine if your business is a Applicable Large Employer (ALE)</u>

An Applicable Large Employer (ALE) is an employer with at least 50 Full-Time employees, including Full-Time Equivalent employees, on business days during the preceding calendar year. Here are steps to calculate the number of employees.

1. **Full-Time Employees:** Count number of full-time employees (e.g., 30+ hours) for each month. Each employee working 30 or more hours per week (130 hours per month) is counted as one full-time employee, regardless of how many hours in excess of 130 they work in that month.

2. **Full-Time Equivalents (FTEs):**
   a) Calculate the aggregate number of hours of service (but not more than 120 hours of service for any employee) for all employees who were not full-time employees for that month.
   b) Divide the total hours of service in step (1) by 120. This is the number of FTEs for the calendar month

   (We believe that any employees with 120+ hours per month should also be counted as Full-Time employees for that month.)

3. **Total Full-Time / FTE Employees:** Add the number of full-time employees to the number of FTEs for each month. To determine the average number of full-time employees / FTEs in a calendar year, you complete these steps for each month of the year, add all the numbers together, then divide by 12.

Full time is defined an average of <u>30 hours of service per week</u> or 130 hours per month.

Employers count the full 12 months of a calendar year to determine whether the employer is an Applicable Large Employer (ALE) for the following year.

Note: Seasonal employees do not need to be counted **<u>if</u>** the employer only exceeds 50 full-time employees for 120 or fewer days during the calendar year, **and** the only reason the employer exceeds 50 employees is because of the seasonal employees. In such a case, the employer would not be considered an Applicable Large Employer, and would not be subject to the Employer Shared Responsibility provision.

2. What if I own multiple businesses?

Employers need to count all employees within the commonly owned businesses. If there are 50 or more full-time employees, including full-time equivalent employees, (see above) then you are an Applicable Large Employer.

If your business is not an Applicable Large Employer as defined by the ACA, then you are a Small Employer and therefore not subject to the Employer Requirements described in this overview.

Step 2 – Your Business is an Applicable Large Employer

3. My business is an Applicable Large Employer. How does the ACA impact me?

As a Large Employer, you may be subject to a Shared Responsibility Penalty as outlined below:

Coverage Criteria	Penalty Amount
If the Applicable Large Employer: • Does not offer Minimum Essential Coverage[1] (MEC); or • Offers MEC to less than 95% of full-time employees[2], And 1 or more full-time employee enrolls in health insurance through the Health Insurance Marketplace (Exchange) and qualifies for a premium subsidy/tax credit.	$2000 for each full-time employee per year less the first 30 employees. The penalty is not tax deductible.
If the Applicable Large Employer offers MEC to at least 95% of full-time employees but the coverage is not: • Affordable (9.5% wages for employee only coverage) • Minimum Value (the health insurance plan pays, on average, at least 60% of the covered medical expenses)	The lesser of: • $3,000 annually for each FT employee receiving tax credit/subsidy through the exchange; or • $2000 for each FT employee less the first 30 employees. The penalty is not tax deductible.

Notes:

1. Minimum Essential Coverage (MEC) is defined as an "Employer-sponsored plan."
2. Full-time employee is defined as an employee with 30 or more hours of service per week, or 130 hours per month.

The Affordability Safe Harbor percentage and the Shared Responsibility Penalty Assessment amounts are adjusted annually. See below for the current adjustments:

	Safe Harbor Affordability	Failure to Offer Coverage	Not offered Affordable/ Minimum Value Coverage
2014	9.5%	$2000	$3000
2015	9.56%	$2080	$3120
2016	9.66%	$2160	$3240
2017	9.69%	$2260	$3390

4. To Whom Must I Offer Health Coverage?

- **Full-Time Employees.** Full-Time is defined as an average of at least 30 hours of service per week or 130 hours of service in a calendar month.

- **Full-Time employees' dependent children up to age 26.** Requires employers to offer coverage to dependent children to age 26.
- **Temporary/short term employees.** The regulations do not provide relief for temporary or short term employees. If a temporary employee is hired to work full-time then the employee must be offered health insurance coverage like any other full-time employee or the employer could be at risk for a penalty if this employee purchases health insurance coverage through the Exchange and qualifies for a subsidy.
- **Part-Time employees.** You do not need to offer coverage to Part-Time employees (i.e., those employees working less than 30 hours per week), although employers may choose to cover Part-Time employees if they wish to do so.
- **Seasonal employees.** A seasonal employee means an employee in a position for which the customary annual employment period is six (6) months or less, occurring each year during the same part of the year (for example, retail employees hired each Christmas holiday season). Employers are permitted to measure the hours of Seasonal Employees (as described below) to determine if they will qualify for coverage.

Note: Hours of Service include any time for which an employee is paid, or entitled to be paid, including vacation time, holiday time, sick time, layoff, jury duty, military duty or leave of absence.

5. How do I measure whether an employee is Full-Time and must be offered coverage?

The regulations permit employers to measure part-time, seasonal and variable hour employees 2 ways:

- Measure hours monthly.
- Establish longer Measurement Period, Administrative Period and Stability Period processes to average hours over a longer period of time.

This process is outlined in detail in a separate document. Please see the compliance page on our website. https://www.holdenagency.com/employee-benefits/health-care-reform-and-compliance

6. Am I required to offer coverage to all full-time employees?

Applicable Large Employers with 50 or more full-time employees, including Full-Time Equivalents, are required to offer Minimum Essential Coverage (MEC) to at least 95% of full-time employees in order to avoid the penalty. If the MEC coverage offered is also Affordable and meets the Minimum Value requirements for all full-time employees, then the employer likely has met the Shared Responsibility provisions and will not be subject to a penalty.

If the MEC offered is not Affordable and/or does not meet Minimum Value requirements for some or all full-time employees, those employees may potentially qualify for a tax credit/premium subsidy at a public exchange (also referred to as the Marketplace). For any full-time employees who qualify for a tax credit/premium subsidy, the employer will be responsible for the penalty as described under #3, above.

7. How do I determine if the coverage we offer is Affordable?

Per the Shared Responsibility regulations, health coverage is affordable if the lowest cost plan, which provides Minimum Value (see below), meets one of the following options regarding the employee's contribution for self-only coverage:

1. **W2 Wages:** The employee's contribution does not exceed 9.5% of the employee's wages as reported on Box 1 of Form W-2 (modified adjusted gross income) for that calendar year (e.g., the wages from 2016 are used to calculate affordability for the 2016 plan year). Note: Box 1 reduces wages by elective deductions such as 401K and health insurance contributions.
   a. If an Employee is employed less than a full year, the W-2 wages are adjusted to reflect the period during which the employee was offered coverage. Wages are compared to the employee's share of self-only premium during that period.
2. **Rate of Pay Safe Harbor:** Use the employee's hourly rate x 130 hours per month to determine affordability based on the resulting monthly wage amount. For salaried employees, the monthly salary would be used instead of hourly rate. Multiply the monthly wages by 9.5%.
3. **Federal Poverty Level Safe Harbor:** Employers may use the Federal Poverty Level (FPL) for a single individual to determine Affordability. If the employee's cost for self-only coverage does not exceed 9.5% of the FPL for a single individual then the coverage is affordable. Employers can use the most recently published poverty guidelines as of the first day of the plan year of the employer's plan.

These safe harbors are optional for an employer. An employer may choose one or more of these safe harbors (for example, different methods for different categories of employees) as long as it does so on a uniform and consistent basis.

Note: The 9.5% is adjusted annually. See page 2 for details.

8. How is Minimum Value of the health coverage I offer determined?

The federal government has released a "minimum value calculator" that will be used to enter information such as deductible, coinsurance, and out-of-pocket amounts to calculate a health plan's value. If your health coverage is fully insured, the carrier will provide you with the Value of the benefit plan(s) you offer. If your health coverage is Self-Insured, you may be responsible for determining your plan's Minimum Value.

Note: If an employee has access to employer-sponsored health insurance coverage that is Affordable and provides Minimum Value, the employee and any dependents eligible to enroll in the employer sponsored plan <u>will not</u> qualify for a premium subsidy/tax credit at the exchange (e.g. the employee and dependents are "Locked Out").

9. What if an employee leaves and is then rehired. How do I determine their eligibility for health coverage?

The regulations permit the following:

- An employer may treat a rehired employee as a new hire if the employee is not credited with an hour of service for at least 13 consecutive weeks.

- An employer may use a "rule of parity" for an employee whose preceding employment period was less than 13 weeks and may treat the employee as a new hire if:
    - the break in service period is at least 4 weeks but less than 13 weeks, and
    - the break is at least as long as the employee's preceding period of employment.

As always, please note that EBS is sharing this information to assist you with your compliance planning. We recommend that you contact your legal counsel and/or accounting resource with specific questions relating to this law.

Sources:
Federal Register, Shared Responsibility for Employer Regarding Health Coverage; Final Rule, February 12, 2014
U.S. Treasury Department Fact Sheet, "Final Regulations Implementing Employer Shared Responsibility Under the Affordable Care Act (ACA) for 2015," February 2014