

## Small Employers and the Affordable Care Act (ACA)

The Affordable Care Act when passed defined Small Employers as employers with fewer than 100 full-time employees including Full-Time Equivalents (FTEs). The ACA permitted states to define Small Employers as fewer than 50 FTEs until 2016. Maine adopted this provision. The ACA was revised in October 2015 to limit Small Employers to under 50 unless a state chooses to expand to 100. Maine has elected to keep Small Groups to under 50.

The Shared Responsibility requirement (aka Employer Mandate) applies to businesses with 50 or more FTEs. These employers, referred to as an Applicable Large Employer (ALE), are required to offer health insurance coverage. Employers with fewer than 50 FTEs are not required to offer health insurance coverage and not subject to related penalties under the Shared Responsibility provisions.

This document provides an overview of important elements to Small Employers from the ACA.

**How do I know if my business is an Applicable Large Employer (ALE) vs. a small employer with fewer than 50 FTEs? This calculation will determine if an employer is an ALE and is subject to the Shared Responsibility requirements.**

Here's the process for counting the number of FTEs.

- Full-time is defined as working an average of 30 hours of service per week or 130 hours per month.
- Count the average number of employees during the preceding calendar year: Add the number of Full-time Employees plus number of Full-Time Equivalents (FTEs). Here are 4 steps:
  1. Count the number of full-time employees for each month (any employee averaging 30 hours of service per week or 120 hours per month)
  2. Add the 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 each month.
  3. Divide the total hours of service in step (2) by 120. This is the number of FTEs for the calendar month.
  4. Add the number of Full-Time employees and FTEs for each month from the preceding calendar year and divide by 12.

**Note:** Seasonal employees do not need to be counted if 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.

Small Employers with fewer than 50 FTEs will not have to pay penalties if they do not offer health insurance coverage or if the coverage offered does not meet the same standards required by large employers.

Employers are required to calculate the number of employees each calendar year to determine whether the business is a Large or Small Employer for the following year.

**My small business offers health insurance coverage. Can my employees still go the Exchange to purchase coverage?**

If an employer offers health insurance coverage that is both Affordable\* and meets the Minimum Value\* standard under the ACA, employees and their dependents are not eligible for a tax credit/premium subsidy if they were to purchase Individual Health Insurance coverage through the Health Insurance Marketplace (Exchange).

**Can my small business purchase health insurance coverage through the Exchange?**

The Insurance Marketplace has a program referred to as the Small Business Health Options Program (the SHOP). Starting in 2015 the SHOP website will be accessible for online enrollment. Maine's SHOP is managed by the Federal Government ([www.healthcare.gov](http://www.healthcare.gov)).

The Maine Bureau of Insurance has information about the health insurance companies that are selling health insurance products through the SHOP posted on their website. Go to Bureau's website at <http://www.maine.gov/pfr/insurance/> for more information.

**What is the Exchange / Health Insurance Marketplace?**

The Health Insurance Marketplace is a website operated by either a state or federal government where individuals and small employers can go to purchase health insurance. The Exchange for small businesses is referred to as the SHOP (Small business Health Options Program). Maine is using the federal government's website [www.healthcare.gov](http://www.healthcare.gov).

Individual Health Insurance Coverage:

- Individuals can go to the Health Insurance Marketplace to purchase coverage for themselves and/or family members.
- The Health Insurance Marketplace will determine a person's eligibility for a premium subsidy/tax credit. A subsidy/tax credit may be available to individuals with household incomes between 100% and 400% of the Federal Poverty Level.
- A premium subsidy reduces the cost of the health insurance premium.

**Note:** Employees who have health insurance available to them through their employer (both large and small employers) that is both Affordable and meets the Minimum Value standards as defined by the Affordable Care Act will not be eligible for a tax credit/premium subsidy through the Health Insurance Marketplace.

Small Business Health Options Program (SHOP)

- Small employers are able to contract with an Exchange to purchase coverage much the same way as they purchase coverage now. For example, employers who currently allow employees to deduct the cost of health insurance on a pre-tax basis can continue that approach.

- Employees of small businesses are not eligible for a tax credit/subsidy in addition to their employer's contribution.
- Small employers who purchase health coverage through the SHOP are required to offer coverage to all "full-time employees" as defined by the ACA (30 hour/week or 130 hours/month). Small employers who purchase coverage from a carrier outside the SHOP are not required to follow the same guidelines and can determine eligibility as permitted by the carrier.
- Online access to the SHOP began in 2015.
- Small business tax credits are only available through the SHOP.

<http://www.irs.gov/Affordable-Care-Act/Employers/Small-Business-Health-Care-Tax-Credit-and-the-SHOP-Marketplace>

### **Do I have to notify my employees about the Health Insurance Marketplaces?**

Yes, all employers have an obligation to provide notice to all employees, including part-time, temporary, and seasonal employees, about the Health Insurance Marketplaces. The federal government has provided model notices. Please link provided below to view the notices.

<http://www.dol.gov/ebsa/faqs/faq-noticeofcoverageoptions.html>

### **What Carriers are selling coverage through the SHOP?**

Carriers that are licensed to operate in Maine can apply to sell health insurance products on the SHOP. The Maine Bureau of Insurance has a list of carriers that plan to sell health coverage to small businesses on the SHOP. See this link - <http://www.maine.gov/pfr/insurance/>.

### **What coverage can I buy for my small business?**

Carriers are required to sell plans referred to as Bronze, Silver, Gold and Platinum levels both inside and outside the Health Insurance Marketplaces. The colors refer to the actuarial value of the plans' benefits.

- Bronze – 60% value
- Silver – 70% value
- Gold – 80% value
- Platinum – 90% value

The amount of the deductible, coinsurance, out-of-pocket maximum and other factors are used to determine the value of the plan. The value will be calculated based on the overall experience of the benefit plan offered by a carrier, but will not be specific to any employer.

### **How are Small Group premium rates calculated?**

Upon renewal starting in 2014, the premium rates issued by carriers in the small group market were member specific and based on age, geography, number of dependents, and possibly tobacco status. As the law has progressed, carriers have the option of issuing rates with either member specific rates or composite rates.

### **Do I have to contribute a certain amount towards the cost of employee's health insurance premiums?**

While small employers (< 50 FTEs) are not required to make coverage Affordable to employees (see Key Terms at the end), employees may be eligible for a tax credit/premium subsidy if the coverage offered is not Affordable as defined by the ACA. Here are the three (3) Safe Harbor approaches to determine Affordability:

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. Box 1 reduces wages by elective deductions (401k, health insurance premiums, etc.)
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.
3. **Federal Poverty Line Safe Harbor:** Employers may use a designated-based safe harbor using the Federal Poverty Line (FPL) for a single individual. 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.

### **Do I have to contribute toward the cost of dependent or family coverage?**

There are no requirements to contribute towards the cost of dependent or family coverage. Note, if employees have Affordable coverage as defined by the ACA, the employee and his/her dependent children may not be eligible for a tax credit/premium subsidy through the Health Insurance Marketplace.

### **Will I be able to use my current broker?**

Yes.

### **Do I need to change my current Waiting Period?**

Maybe. A Waiting Period is the period of time a new employee or newly eligible employee must wait before becoming eligible for health insurance. The ACA prohibits all employers that are offering health insurance from imposing a Waiting Period of greater than 90 calendar days, including holidays and weekends.

### **Will the Excise (or Cadillac) Tax apply to my small business?**

Yes. Starting in 2018, a 40% excise tax will be assessed to high cost health coverage offered by employers or insurance carriers that sponsor the coverage. The requirement will impose a 40% nondeductible excise tax on the aggregate cost of employer sponsored coverage which exceeds certain statutory limits. The limits for 2018 will be \$10,200 for individual coverage and \$27,500 for family coverage. Preliminary guidance indicates that the cost of the following coverages will be included: medical and prescription drug costs, contributions to FSAs, possibly contributions to HSAs and Archer MSAs, possibly HRAs and other services.

## **What is the Individual mandate?**

Starting in 2014 each of us is required to have health insurance coverage or may pay penalty.

- 2014 – Penalty is \$95 per adult and \$47.50 per child (up to \$285 per family) or 1% of family income, whichever is greater.
- 2015 – Penalty is \$325 per adult and \$262.50 per child (up to \$975 per family) or 2% of family income, whichever is greater.
- 2016 and Beyond – Penalty is \$695 per adult and \$347.50 per child (up to \$2,085 per family) or 2.5% of family income, whichever is greater.

Certain exemptions will apply where individuals will not be penalized if they do not purchase coverage.

## **\* Key Terms:**

**Applicable Large Employers (ALEs)** – An employer with 50 or more Full-Time Employees including Full-Time Equivalents.

**Affordable premiums** – The cost of employee only coverage does not exceed 9.5% of the employee's wages.

**Minimum Value** – The overall value of the health insurance plan (based on deductibles, coinsurance amounts, out-of-pockets amounts and other plan elements) is at least 60%. This means for example, on average a plan pays 60% of the cost of health care services. This does not include an employer's contribution towards the cost of health insurance premiums.

**Individual health insurance coverage** – When a person purchased a health insurance policy directly through an insurance company, not through an employer.

*We will update this document as more information becomes available. This is for informational purposes only and is not intended to be legal advice.*

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