

## Health care reform at-a-glance

# Employer duty to provide coverage

The Affordable Care Act (ACA or health care reform law) says an employer with 50 or more full-time (or full-time equivalent) employees will get a penalty if the employer does not offer its employees health coverage and if any employee gets government aid (also called subsidies or advance premium tax credits) to lower their coverage cost through the health insurance marketplaces (also called the health insurance exchanges).

In late December 2012 the Departments of Labor, Health and Human Services, and Treasury released proposed rules which employers can use in 2013 to determine whether they have to offer full-time employees coverage in 2014. At the same time, the IRS released a set of [FAQs](#) that summarize the requirements and are a helpful guide.

If an employer is large enough to have to comply, the requirement to offer coverage begins on January 1, 2014, but employers with fiscal year plans have until the plan year beginning in 2014 to comply. For example, if an employer's plan begins and ends each July 1, the employer has until July 1, 2014 to meet the requirements.

An employer must do two different types of calculations:

1. Count the number of employees in the prior year, to determine whether the employer must offer coverage to full-time employees; and
2. Determine which employees are full-time and must be offered coverage by their employer.

<u>Issue</u>	<u>Task</u>
Is my business big enough to make it subject to the requirement to offer coverage?	Count full-time and full-time equivalent employees in prior calendar year. If there are 50 or more, your business is an "applicable large employer" subject to this requirement.
What if my business is owned by another company?	Count all employees commonly owned. If there are 50 or more full-time or full-time equivalent employees in the entire group of companies, the requirement applies.
Which of my employees are full-time?	They work, or were hired to work, at least 30 hours per week for more than 8 months of the year.
When must my business offer coverage?	Beginning January 1, 2014.
My business has a fiscal year health plan. When do I have to implement this rule?	If you had a plan in place on or before 12/27/2012 (the day before the proposed rule was released), your plan does not have to comply until the start of its fiscal year in 2014.
How do I determine which employees are full-time?	<ul style="list-style-type: none"> <li>• Separate employees into categories – ongoing, new, variable hour, seasonal</li> <li>• Set look-back, administrative, and stability periods</li> <li>• Strategic decision: set different periods for different classes of employees (e.g., collectively-bargained versus non-collectively-bargained)</li> <li>• Analyze employees during the look-back period to determine whether they are full-time.</li> </ul>
How do I treat new full-time employees?	They must be offered coverage within their first 90 days of starting work.
What if a employee goes from part-time to full-time?	They must be offered coverage within 90 days of going full time.
How do I treat rehired employees?	In general, if they have not worked at all for 26 weeks, treat them as a new hire. If they have been off work less than 26 weeks, special rules apply.
How do I know if my business has to pay a penalty?	You will be notified by the IRS.

### WHICH EMPLOYERS MUST OFFER COVERAGE

**Q. Which employers must offer coverage to their employees?**

- A. Only those employers having:
- 50 or more full-time employees, or
  - A mixture of full-time and part-time employees that make up 50 full-time employees

**Q. When does an employer count its employees?**

- A. Employers count how many employees they had in the prior calendar year. So, to determine if an employer must offer coverage in 2014, the employer looks at how many employees it had in 2013.

**Q. How does an employer count its employees?**

- A. An employer must use this calculation:
- 1) Count the number of employees working 30 hours per week each month (including seasonal employees)
  - 2) Count the number of employees considered full time based on the formula by adding the number of hours worked by all part-time employees (as well as seasonal) and dividing by 120 (if the number is not a whole number, round down to the next lowest whole number)
  - 3) Add the monthly totals of steps 1 and 2 and divide by 12

If the result is less than 50, the employer does *not* have to offer coverage to full-time employees in the next coverage period.

If the average is 50 full-time employees or more, the business must also decide if the seasonal employee exception applies (see example below).

*The sample calculations used below are models only. Refer to the proposed rule for more information.*

**Example 1: Employer with full-time employees.**

*In 2015, ABC Business had 20 full-time employees working an average of 30 hours per week each month. ABC Business also had 40 part-time employees who work 90 hours per month, and no seasonal employees.*

- 1) *Count the number of employees working at least 30 hours per week, per month = 20*
- 2) *Count the number of employees who are equivalent to full time based on the formula by adding the number of hours worked by all part-time employees (as well as seasonal) and dividing by 120.  
Part-time employees:  $40 \times 90 = 3600$  divided by  $120 = 30$*
- 3) *Add  $20 + 30 = 50$*

*ABC Business must offer coverage to full-time employees in 2014 because its average number of employees in 2013 is 50.*

**Q. What is a seasonal employee?**

- A. A seasonal employee does work only during a season, such as a department store employee during the holidays.

**Q. What is the seasonal employee exemption?**

- A. Employers with more than 50 full-time employees (as well as those who qualify as full-time based on the formula) for 120 days (or four months) or less can get the seasonal employee exemption, which means that the employer would not have to provide coverage to its employees. This means that those seasonal employees are not counted in deciding whether an employer must offer coverage.

**Q. Do the 120 days (or four months) need to be in a row for a business to get the seasonal employee exemption?**

- A. No. The 120 days or four months need not be in a row.

**Example 2 – Seasonal Employee Exemption:**

*In 2015, LMN Business has 40 full-time employees for the whole year. It also has 80 seasonal full-time employees who work September through December, 2015.*

- 1) *LMN Business had 40 full-time employees for eight months, and 120 full-time employees for four months. The average number of employees for the year is 66.5 employees (rounded down to 66 employees).*
- 2) *But there were only four months where LMN Business' workforce was equal to or more than 50 full-time employees. The number of full-time employees would be less than 50 in those months if seasonal employees were not counted.*

*LMN Business is **not** considered an employer required to offer coverage for 2014 because the average number of employees, not counting the seasonal employees, is less than 50.*

**Q. How does the requirement to offer coverage apply to a group of businesses?**

- A. If there is a group of businesses owned by the same company, the calculation combines the numbers of employees at each separate company. For instance, if a group of businesses consists of a parent business that has 40 full-time employees and two subsidiary businesses that each have 5 full-time employees, since all the businesses combined have 50 full-time employees, all of the businesses within the group must offer coverage to their full-time employees or they may get a penalty.

**Example 3 – Group of Businesses:**

*In 2015 and 2016, Company A owns 100 percent of Company B and Company C. In 2015, Company A has 10 employees, Company B has 40 full-time employees, and Company C has 50 full-time employees.*

*Because Companies A, B and C all together have 100 full-time employees, all of the companies must offer coverage to their full-time employees to avoid a penalty.*

**WHICH EMPLOYEES MUST BE OFFERED COVERAGE**

**Q. What is the definition of a full-time employee to whom an employer must offer coverage to avoid a penalty?**

- A. A full-time employee is one who is in a job at least 30 hours of service per week.

**Q. What are “hours of service”?**

- A. Hours of service are:
- Hours a employee is paid for providing a service, or
  - Hours a employee is paid during which no duties are performed – such as paid time off, sick time, or holiday
  - Hours of service worked outside the United States do **not** count

**Q. How does an employer measure whether a employee is full-time and must be offered coverage?**

- A. An employer uses a measurement, or “look-back,” period in the previous year. If the employee worked full-time during this look-back period, then the employee must be offered coverage for a period going forward. There are many special situations that may change this general rule, depending on the type of employee.

**Q. What look-back period can an employer use as a measurement period?**

- A. In general, employers may choose a period of time between three and twelve months to use as a measurement period.

**Q. How is the look-back period used?**

- A. If during the look-back period the employee worked full-time, then the employee must be offered coverage and is considered to be full-time for a stability, or “look-forward” period. In other words, if a business uses a six-month look-back period and a employee is considered to be full-time during that period, that employee must be considered a full-time employee for the next six months (the stability period), even if the employee works less than an average of 30 hours per week during the stability period.

**Q. What is a stability period?**

A. The future period during which an employer must keep coverage on a full-time employee.

**Q. What stability period may an employer choose?**

- A. An employer may choose a stability period that is the greater of:
- Six calendar months in a row, or
  - The length of the look-back (measurement) period the employer chooses.

**Q. Can either the look-back or stability period be different by class of employee (hourly, salary, etc.)?**

A. A business can use different look-back or stability periods for certain classes of employees, such as hourly employees, salaried employees or employees in separate collective bargaining units.

**Q. What are the different kinds of employees that an employer may have?**

A. An employer may have the following kinds of employees: ongoing, new, rehired, new variable hour, seasonal, short-term, temporary employees from a staffing agency.

**Q. Can the start and end dates of a look-back period be changed so a pay period is not split?**

A. Yes, employers can change the start and end dates of their look-back periods to avoid splitting a normal payroll period.

**Example 4: Look-back and stability period**

*In 2013, ZYX Business has 40 full-time employees working an average of 30 hours per week each month. ZYX Business also has 40 part-time employees who work 90 hours per month, and no seasonal employees.*

*In January 2014, ZYX Business decides to use four months as a look-back measurement period (September through December). This means that ZYX Business must use six months (through June) as the stability period (since six months is the minimum stability period allowed).*

- 1) *Count the number of employees working at least 30 hours per week, per month during the look-back period = 40*
- 2) *Count the number of employees who are equivalent to full time based on the formula by adding the number of hours worked by all part-time employees (as well as seasonal) and dividing by 120.  
Part-time employees:  $40 \times 90 = 3600$  divided by  $120 = 30$*
- 3) *Add  $40 + 30 = 70$*

*ZYX Business must offer coverage to full-time employees in 2014 because its average number during the look-back period is 70.*

*In March 2014, 10 of the 40 full-time employees will drop down to part time, but those 10 must continue to be offered coverage through June because all employees considered full time for the look-back period must be considered full time for the next six months going forward.*

**Example 5: Look-back and stability period**

*In 2013, CBA Business has 40 full-time employees working an average of 30 hours per week each month. CBA Business also has 40 part-time employees who work 90 hours per month, and no seasonal employees.*

*In January 2014, CBA Business decides to use all twelve months in 2013 as a look-back measurement period. This means that CBA Business must use all twelve months of 2014 as the stability period (since the stability period must be the greater of six months or the look-back period).*

- 1) *Count the number of employees working at least 30 hours per week, per month during the look-back period = 40*
- 2) *Count the number of employees who are equivalent to full time based on the formula by adding the number of hours worked by all part-time employees (as well as seasonal) and dividing by 120.  
Part-time employees:  $40 \times 90 = 3600$  divided by  $120 = 30$*
- 3) *Add  $40 + 30 = 70$*

*CBA Business must offer coverage to full-time employees in 2014 because its average number during the look-back period is 70.*

*In June 2014, CBA business plans to eliminate all part-time employees. Even though CBA Business will drop below 50 full-time employees for the last 6 months of 2014, the remaining full-time employees must continue to be offered coverage through the end of 2014 because all employees considered full time for the look-back period must be considered full time for the entire stability period.*

**Q. What is an administrative period?**

A. The administrative period is up to 90 days falling between the look-back and stability periods. Employers can use the administrative period to determine whether employees are eligible for coverage, for open enrollment, or for other administrative purposes.

**Q. Do employers need to offer coverage to new employees?**

A. If the new employee is expected to work an average of at least 30 hours per week, then the business must offer coverage within the new employee's first full three calendar months of employment.

**Q. What if a new employee's average number of hours is not set when the employee is hired? (This type of employee is called a "variable hour" employee.)**

A. Employers may use a first look back period between three and twelve months to find the average number of hours worked by a variable hour employee. The look back period may not go past the last day of the month after the one-year anniversary of the employee's start date. For instance, if a employee is hired on May 15, 2013, the first look back period cannot go past May 31, 2014.

**Q. Is a rehired employee considered a new employee?**

A. A rehired employee is sometimes considered a new employee. If the employee leaves his job for more than 26 weeks, he must be treated as a new employee. And if the employee leaves the job for at least 4 weeks and the time away from the job is longer than worked the first time, the employee would also be treated as a new employee. For example, if the employee worked 3 weeks, then was off of work for 6 weeks, when rehired the employee must be treated as a new employee.

**Q. How does the employer handle employees who have gone out on special types of unpaid leave during the look back period?**

A. If the employee has had special types of unpaid leave – such as leave under the Family and Medical Leave Act, Uniformed Services Employment and Reemployment Rights Act (USERRA), or jury duty – the employer must take the average of the employee's hours of service per week during the look back period, exclude this special unpaid leave, and use the remaining average for the entire period.

**Q. How does an employer measure teachers and other educational employees?**

A. If these types of employees are working 30 or more hours per week during the school year, they are full-time employees.

**Q. When will employers get a penalty under the duty to provide coverage requirement?**

A. An employer will incur a penalty when it:

- does not offer the chance to enroll in minimum essential coverage for its full-time employees and their dependent children to age 26, and one or more full-time employees gets government aid to lower the cost of their coverage; or
- offers minimum essential coverage and is affordable to at least 95% of its full-time employees and their dependent children to age 26, but one or more full-time employees gets government aid to lower the cost of their coverage. This could happen because:
  - the employer did not offer coverage to that employee;
  - the coverage is not affordable for that employee; or
  - the coverage does not provide minimum value

This penalty can never be more than the penalty an employer would get if the employer offered no coverage.

**Q. What does it mean for coverage to be “affordable”?**

A. The coverage is “affordable” if the cost for self-only coverage is no more than 9.5% of the employee’s pay.

**Q. How can an employer tell whether the coverage is affordable to the employee?**

A. An employer can use either the employee’s Form W-2, a calculation using the employee’s rate of pay, or use 9.5% of the most recent Federal Poverty Level income for a single person.

**Q. What is the definition of minimum value?**

A. Minimum value means that at least 60% of benefits are covered under the plan.

**Q. How can an employer determine if the coverage it offers is minimum value?**

A. The federal agencies plan to release a minimum value calculator, like the actuarial value calculator, in the near future. Employers will be able to use that minimum value calculator to determine whether coverage they offer meets minimum value.

**Q. To which dependents of full time employees must an employer offer coverage, and when does this take effect?**

A. An employer must offer coverage for dependents that are children up to age 26 of full-time employees. This requirement does not take effect until January 1, 2015, although in 2014 employers must take steps to adopt the requirement.

**Q. When can a full-time employee get government aid to help pay for health coverage?**

A. A full-time employee can get government aid to help pay for health coverage if:

1. The business does not offer full-time employees (and their children up to age 26) the chance to sign up for coverage; or
2. The coverage the business offers to full-time employees and their children up to age 26 is unaffordable or does not give minimum value.

**Q. What is the penalty for an employer that does not offer insurance to full-time employees if one of its full-time employees gets government aid to lower to the cost of coverage?**

A. The penalty is the number of full-time employees for the year minus the first 30 full-time employees, times \$2,000.

**Example for illustrative use only:**

*In 2015 Company D has 50 full-time employees for the whole year. Company D does not offer health coverage to its employees and one of its employees gets government aid to lower the cost of coverage.*

*The penalty is calculated as follows:*

*50 full time employees – 30 = 20*

*20 x \$2,000 = \$40,000 for the year.*

**Q. What is the penalty for an employer that offers coverage for part of the year?**

A. The penalty is computed for each month the business did not offer coverage. This amount will be the same as:

- The number of full-time employees for the month minus 30 full-time employees, times 1/12 of \$2,000

**Example for illustrative use only:**

*In 2015 Company E does not offer coverage during the months of May, June, July and August.*

*The number of full-time employees (and those who qualify as full-time) is counted by month. The fine is:*

**May:** 50 full time employees – 30 = 20      20 x 1/12 of \$2,000 = 20 x \$166.67 = \$3,333.40

**June:** Same as May      20 x 1/12 of \$2,000 = 20 x \$166.67 = \$3,333.40

**July:** 80 full time employees – 30 = 50      50 x 1/12 of \$2,000 = 50 x \$166.67 = \$8,333.50

**August:** Same as July      50 x 1/12 of \$2,000 = 50 x \$166.67 = \$8,333.50

*Add all 4 months together*      **Total fine = \$23,333.80**

**Q. What is the penalty for an employer that offers insurance to 95% of its full-time employees but one or more full-time employees gets government aid to lower cost their coverage cost because the coverage is not “affordable” or does not provide “minimum value”?**

A. The penalty will be computed for each month using this formula:

- The number of full-time employees who received government aid for that month times 1/12 of \$3,000

**Example for illustrative purposes only:**

*In 2015 Company F offers insurance to 97% of its full-time employees, but five employees get government aid to lower their cost of coverage for four months of the year. The penalty is as follows:*

- 5 employees get government aid to lower their cost of coverage
- $5 \times 1/12 \text{ of } \$3,000 = 5 \times \$250 = \$1,250 \text{ per month}$
- $\$1,250 \times 4 \text{ months} = \$5,000 \text{ total penalty}$

**Q. How does the penalty apply to a group of businesses?**

A. For purposes of the penalty, each business in a group of businesses is looked at separately. For example, if no business in a group offers coverage, each business is looked at alone. If the company does not offer coverage, the 30 employees subtracted are divided among the companies depending on how many employees they have.

**Example for illustrative purposes only:**

*In 2015 Company G has 40 full-time employees and Company H has 35 full-time employees, neither company offers coverage for the whole year and one full-time employee for each company got government aid to lower the cost of his coverage. The total number of employees for both companies is 75.*

*The number of full-time employees subtracted for Company G would be 40 divided by 75 =  $0.533 \times 30 = 16$ .*

*The number of full-time employees subtracted for Company H would be 35 divided by 75 =  $0.47 \times 30 = 14$*

*The penalty for Company G would be  $40 - 16 = 24 \times \$2,000 = \$48,000$ .*

*The penalty for Company H would be  $35 - 14 = 21 \times \$2,000 = \$42,000$ .*

**Q. What kind of penalty is this?**

A. The penalty is an extra tax that the employer has to pay to the IRS. It is a nondeductible tax.

**Q. How will an employer know if it has received a penalty?**

A. The IRS will notify businesses that may get a penalty and give them time to reply before assessing the fine. If the business is responsible, the IRS will send a notice and bill.

**Q. What don't we know yet about the employer duty to provide coverage?** We don't know:

- **How to determine “minimum value.”** In the future federal agencies will offer a calculator to employers.
- **How or when the employer will know which employees got government aid** to lower their cost of coverage.\*

Employee Measurement Chart

Type of Employee	Initial Look Back Period	Optional Permissible Administrative Period	Permissible Stability Period
Ongoing*	3-12 months	Up to 90 days <i>Must overlap with prior stability period, if any</i> <i>Can have different periods for different employee categories, but must be uniformly applied</i>	The greater of 6 months or the length of the look-back period <i>Employees considered full time in look-back period remain full-time during stability period, regardless of hours of service</i>
*Transition relief for 2014	Can look back 6 months in 2013, even if stability period selected is 12 months Must begin no later than 7/1/2013	Same as Ongoing	Same as Ongoing
New, full-time	None	Insurance must be offered no later than 90 days after first day of employment	N/A
New, variable hour and new seasonal  See change of employment and testing rules	3-12 months <i>May begin on any date between employee's start date and 1<sup>st</sup> day of next calendar month following employee start date</i> <i>Beginning 1/1/2015, employer must assume employee will continue employment during entire look-back period</i>	Up to 90 days Cannot exceed last day of first calendar month after 1-year anniversary	Must be the same as for ongoing employees <i>For employees considered full time in look-back period, must be at least 6 consecutive calendar months</i> <i>For employees not considered full time in look-back periods, cannot exceed look-back period by more than one month, nor exceed remainder of look-back period, plus any administrative period, in which initial look-back period ends</i>
Rehired	See break in service. If meets criteria, treat as new	See break in service. If meets criteria, treat as new	See break in service. If meets criteria, treat as new
New, short-term working less than 3 months (not from staffing agency)	No offer of insurance	No offer of insurance	No offer of insurance
New, short-term working more than 3 months (not from staffing agency)	Unclear IRS soliciting comments	Unclear IRS soliciting comments	Unclear IRS soliciting comments
Temporary from staffing agency	Unclear IRS soliciting comments	Unclear IRS soliciting comments	Unclear IRS soliciting comments
High turnover	Unclear IRS soliciting comments	Unclear IRS soliciting comments	Unclear IRS soliciting comments
Commission-based employees, adjunct faculty, transportation employees	Use reasonable method for crediting hours of service. IRS soliciting comments	IRS soliciting comments	IRS soliciting comments



### Rules for Break in Service:

- If no work was done at all for at least 26 weeks, the employee is considered “new”.
- If break is at least 4 weeks long, and is longer than worked before the break, the employee is considered “new”.

**Rule for special unpaid leave (FMLA, USERRA, jury duty):** Take average hours worked each week during look-back period, subtract special unpaid leave, and use resulting average for entire period.

### Examples for illustrative purposes only:

*Company A selects a 6-month look-back period. Jane works an average of 35 hours each week, but had 8 weeks of unpaid FMLA leave during the look-back period to care for her mother after a surgery.*

- 6 month look-back period = 4 weeks per month x 6 = 24 weeks
- 24 weeks – 8 weeks of FMLA = 16 weeks
- Jane worked an average of 35 hours each week during the 16 weeks, so 35 hours is the resulting average

*Company B selects a 4-month look-back period. Joe works an average of 40 hours each week for 2 months, and average of 25 hours each week for 1 month, but had 4 weeks of unpaid leave for jury duty during the look-back period.*

- 4 months = 4 weeks per month x 6 = 16 weeks
- 16 weeks – 4 weeks of unpaid leave for jury duty = 12 weeks
- Joe’s average hours each week worked during the look-back period = 35 hours
  - 40 hours x 8 weeks = 320 hours
  - 25 hours x 4 weeks = 100 hours
  - 320 + 100 = 420 hours divided by 12 weeks = 35 hours

### Change from “new variable” or “new seasonal” employee to full-time employee status, during initial look back period:

- Treat employee as full time starting on the first day of the fourth month after change of status
- If employee averages at least 30 hours of service each week during look back period, treat as full time starting the first day of the first month after the end of the initial look back period.
- **Does not apply to ongoing employees.** A change of status for ongoing employees does not change the employee’s status during the stability period.

### Examples for illustrative purposes only:

*Company C is using January through April 2013 as their initial look-back period. Sara is hired by Company C as a new variable employee in February of 2013; her hours vary each week, ranging from 10 hours to 30 hours. In April of 2013, Company C decides to hire Sara as a full-time employee. Sara will be considered a full-time employee starting on the first day of the fourth month after her change in status. April is counted as the first month, so Sara will be treated as a full-time employee starting on July 1, 2013.*

*Company D is using January through March 2013 as their initial look-back period. Steve is hired by Company D as a new seasonal employee in January of 2013. He averages 35 hours each week. In March, Company D decides to hire Steve as a full-time employee. Because he is averaging at least 30 hours each week, Steve will be treated as full time starting the first day of the first month after the end of the initial look-back period. The look back-period ends March 31. Steve will be treated as a full-time employee starting on April 1, 2013.*

**Testing of new employees to determine full-time status:** After a new employee has worked for an entire look-back period, the employer must “test” the new employee for full-time status beginning with the same look-back period, at the same time and under the same conditions as ongoing employees.

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