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Affordable Care Act

Key Facts and Figures

Employer Health Care Responsibilities

Employer Health Care Mandate

Beginning in 2015, an applicable large employer will be liable for an Employer Shared Responsibility payment (i.e., assessable payment) if either:

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| (1) the employer fails to offer its full-time employees (and after 2015 their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (Code Sec. 4980H(a) liability) | (2) the employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan but the coverage was either unaffordable to the employee or did not provide minimum value (Code Sec. 4980H(b) liability). |
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For any calendar month, an applicable large employer may be liable for either assessable payment, but not both. Minimum essential coverage means coverage under an employer-sponsored plan offered in the small or large market within a state that meets the requirements for group health plans or group health insurance coverage under section 2791 of the Public Health Service Act.

Applicable Large Employer

An applicable large employer is any employer that employed on average at least 50 full-time employees or full-time equivalents (FTEs) (or some combination) on business days during the preceding calendar year.

50 Employee Threshold	Employer averages the number of employees across the months in the previous calendar year (i.e., sum of full-time employees and FTEs for each calendar month of preceding year, divided by 12).	New Employers	A new employer is an applicable large employer for the current year if it is reasonably expected to employ an average of 50 or more full-time employees (including FTEs) on business days during the year.
Full-Time Equivalents (FTEs)	FTEs are determined by adding all hours of service for the month for employees who were not full-time employees (up to 120 hours per employee), and dividing by 120.	Common or Related Employers	Employers with common ownership such as controlled groups under Code Sec. 414(b) or (c), or related employers such as an affiliated service group under Code Sec. 414(m) are combined for the 50 employee threshold.
Common Law Employers	Applicable large employer includes all common law employers, including for-profit businesses, tax-exempt organizations, and government entities (Federal, State, local, and Indian tribes).	Seasonal Workers	An employer is not an applicable large employer if it has more than 50 full-time employees for 120 days or less (or four months) during the preceding calendar year, and the employees in excess of 50 during that period were seasonal workers.
Predecessor and Successor Employers	Applicable large employer threshold applies to predecessor and successor employers.		A seasonal worker is a worker who performs labor or services on a seasonal basis, as defined by DOL (including certain agricultural workers and retail workers employed during holiday season).

Full-Time Employee or FTE

A full-time employee for purposes of determining applicable large employer status is an employee who was employed on average at least 30 hours of service per week or 130 hours of service in a calendar month.

Employee Defined	Employee is defined under the common law standard (i.e., right to control, direct). An employee does not include a leased employee, sole proprietor, partner in partnership, or 2% S corporation shareholder (unless services provided as both an employee and a nonemployee).	Change in Employment Status	<ul style="list-style-type: none"> • If a new variable hour or seasonal employee has a change in employment status during the initial measurement period so that the employee would be reasonably expected to be employed on average at least 30 hours per week, he or she will be treated as a full-time employee. • Full-time employee status begins either on (1) the first day of the 4th month following the employment status change, or (2) if earlier and the employee averages more than 30 hours of service per week during the measurement period, the first day of the first month following the end of the initial measurement period and any optional administrative period. • The change in employment status rule only applies to new variable hour and seasonal employees. A change in employment status for an ongoing employee does not change the employee's status during the stability period.
Hours of Service	<p>An hour of service includes each hour for which the employee is paid or entitled to be paid for services performed in the United States for the employer (including periods of paid leave).</p> <ul style="list-style-type: none"> • Hourly employee — Hours of service determined from records of actual hours worked and other hours for which payment is due. • Non-hourly employee — Hours of service determined from actual hours worked/hours for which payment is due, days-worked equivalency (8 hours of service), or weeks-worked equivalency (40 hours of service). • Employer may use different method for different classification of non-hourly employees as long as reasonable and consistently applied. 		

Look-Back Measurement — Ongoing Employees (Safe Harbor)	<ul style="list-style-type: none"> • An employer may determine each ongoing employee's status as a full-time employee by looking back at a standard measurement period of between 3 and 12 consecutive months. • If an employee was employed on average at least 30 hours of service per week during the standard measurement period, then the employee is deemed a full-time employee during the subsequent stability period. • The stability period must be at least six consecutive calendar months. The employer may add an administrative period of up to 90 days between the measurement period and the stability period. • An employer may begin and end measurement periods with the beginning and ending of regular payroll periods if the payroll period is one week, two weeks, or semi-monthly. 	Reporting and Tax Credit	
Look-Back Measurement — New Employees (Safe Harbor)	<ul style="list-style-type: none"> • If a newly hired employee is reasonably expected to be a full-time employee (and not a seasonal employee), an employer that offers health care coverage does not have to offer such coverage to the employee for the first 3 calendar months of employment. • For newly hired variable hour or seasonal employees, an employer may determine full-time employee status by using a measurement period of between 3 and 12 consecutive calendar months, and an administrative period of up to 90 days (combined periods limited to 13 months and a fraction of a month). • The stability period for new variable hour or seasonal employees determined to be full-time must be the same length as the stability period for ongoing employees. 	Notification of Coverage Options	<ul style="list-style-type: none"> • All employers must notify new employees of availability of coverage options through a Health Insurance Exchange and general information on health coverage offered by the employer. Model notices are available at www.dol.gov/ebsa/healthreform.
		Reporting by Applicable Large Employers	<ul style="list-style-type: none"> • An applicable large employer must file an annual information return with the IRS reporting health care coverage provided to full-time employees on and after January 1, 2015. The return must be filed on or before February 28 (or March 31, if filed electronically) of the following calendar year. The employer must also provide a statement of coverage to each full-time employee by January 31 of the following calendar year.
		Reporting Minimum Essential Coverage	<ul style="list-style-type: none"> • Any employer or other entity that provides minimum essential health care coverage to an individual beginning on or after January 1, 2015, must file an annual information return with the IRS reporting such coverage. The return must be filed on or before February 28 (or March 31, if filed electronically) of the following calendar year. The employer must also provide a statement of coverage to each individual by January 31 of the following calendar year.
		Small Employer Health Insurance Credit	<ul style="list-style-type: none"> • After 2013, among other changes, the credit increases to 50% for eligible small employers (35% if tax-exempt); the average annual wage amount for 2014 is adjusted for inflation to \$50,800; and the credit may be claimed only for two additional tax years, and only if the employer offers a qualified plan through a Health Insurance Exchange.

Code Sec. 4980H(a) Liability*

For months beginning on or after January 1, 2015, an applicable large employer is liable for an Employer Shared Responsibility payment under Code Sec. 4980H(a) if:

- (1) the employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for any month, and
- (2) at least one full-time employee is certified by HHS as enrolled in a qualified plan through a Health Insurance Exchange and eligible to receive an applicable premium tax credit or cost-sharing reduction payment.

Offer of Coverage	<ul style="list-style-type: none"> An employer is treated as offering coverage for a calendar month if it offers coverage to at least 95% of its full-time employees (and their dependents). The employee must have the opportunity to elect to enroll in or decline coverage at least once during the plan year. A dependent is the employee's child who is under the age of 26. It does not include anyone other than children and does not include the employee's spouse. If an employee enrolls in coverage but fails to pay his or her share of premiums on a timely basis, the employer is nonetheless treated as offering coverage for that coverage period. If an employer offers minimum essential coverage to its full-time employees (and their dependents), it will not be subject to the Code Sec. 4980H(a) penalty, regardless of whether the coverage it offers is affordable to the employees or provides minimum value.
Calculation of Code Sec. 4980H(a) Payment	<ul style="list-style-type: none"> The Code Sec. 4980H(a) assessable payment with respect to any calendar month equals the number of the employer's full-time employees (reduced by 30), multiplied by 1/12 of \$2,000 (i.e., \$166.67 per month). The \$2,000 amount will be adjusted for inflation after 2014. The 30-employee reduction applies only for purposes of calculating the assessable payment. It does not apply for determining if the employer is an applicable large employer (i.e., 50 employee threshold). Also, a full-time employee does not include a FTE for purposes of the payment calculation. Employers with common ownership or otherwise related are allowed only one 30-employee reduction which is allocated ratably among all the related employers (members allocated less than 1 employee may round up). Under transition relief for eligible employers for 2015, dependents do not need to be offered coverage, the 95% figure is 70%, the 30 headcount reduction is 80, and applicable large employers with between 50 and 99 full-time and full-time equivalent employees are not subject to assessable payments.

Code Sec. 4980H(b) Liability*

For months beginning on or after January 1, 2015, an applicable large employer is liable for an Employer Shared Responsibility payment under Code Sec. 4980H(b) if:

- (1) the employer offers minimum essential coverage under an eligible employer-sponsored plan to its full-time employees (and their dependents) for any month, but
- (2) at least one full-time employee is certified by HHS to receive an applicable premium tax credit or cost-sharing reduction payment because the coverage was not affordable to the employee or did not provide minimum value.

Affordable Coverage	<ul style="list-style-type: none"> Coverage for an employee is affordable if the employee's share of the premium for self-only coverage (not family coverage) does not exceed 9.5% of the employee's annual household income. The affordability test applies to the lowest-cost option available to the employee. An employer may use one of three safe harbors for the test. W-2 Safe Harbor — Employee's share does not exceed 9.5% of employee's W-2 wages from the employer (Box 1) for the calendar year of coverage. Rate of Pay Safe Harbor — Employee's share does not exceed 9.5% of his or her monthly salary or for a non-salary employee, an amount equal to 130 hours multiplied by the employee's hourly rate of pay as of the first day of coverage. Federal Poverty Line Safe Harbor — Employee's share does not exceed 9.5% of the federal poverty line for a single individual for the year.
Minimum Value	<ul style="list-style-type: none"> An employer-sponsored plan fails to provide minimum value if the plan's share of the total allowed costs of benefits provided under the plan is less than 60% of the costs. An eligible employer-sponsored plan may determine minimum value by: (1) a minimum value calculator provided by HHS and IRS; (2) actuarial certification; (3) certain safe harbor plan designs specified by HHS and IRS; and (4) for plans in the small group market, meeting the requirements for metal level coverage (bronze, silver, gold, or platinum).
Calculation of Code Sec. 4980H(b) Payment	<ul style="list-style-type: none"> The Code Sec. 4980H(b) assessable payment with respect to any calendar month equals the number of the employer's full-time employees who receive a premium tax credit or cost-sharing reduction, multiplied by 1/12 of \$3,000 (i.e., \$250 per month). The \$3,000 amount will be adjusted for inflation after 2014. The amount of the Code Sec. 4980H(b) payment for any calendar month is capped at the Code Sec. 4980H(a) payment the employer would owe if it did not offer minimum essential coverage to its full-time employees. Under transition relief for eligible employers for 2015, applicable large employers with between 50 and 99 full-time and full-time equivalent employees are not subject to assessable payments.

Form W-2 Reporting of Employer

Beginning with the 2012 tax year, all employers (not just applicable large employers) are required to report the value of the health care coverage provided to an employee during the calendar year. The amount is reported in Box 12 of Form W-2, Code DD. Transitional relief is available for certain employers, types of coverage, and situations.

Reporting on Form W-2	<ul style="list-style-type: none"> The amount reported should include both the portion of coverage paid by the employer and the portion paid by the employee. Form W-2 is not required to be issued by an employer solely to report the value of the coverage for retirees or former employees. Reporting the value of coverage in Box 12 of Form W-2 does not affect tax liability, as the amount continues to be excluded from an employee's income. The reporting requirement is for information purposes only. 	Coverage Optional to Report on W-2 (pending further IRS guidance)	<ul style="list-style-type: none"> Dental or vision coverage not integrated into another medical or health plan, or which gives the employee the choice of declining or electing and paying an additional premium Health Reimbursement Arrangement (HRA) contributions Self-funded plans not subject to COBRA Multi-employer plans
Reporting on Form W-2 is Optional (pending further IRS guidance) for:	<ul style="list-style-type: none"> Employers who filed fewer than 250 Forms W-2 for the preceding calendar year (determined without application of any entity aggregation rules for related employers). Forms W-2 furnished to employees who terminate before the end of a calendar year and request a Form W-2 before the end of the year. Forms W-2 provided by third-party sick-pay provider to employees of other employers. 	Coverage NOT Reported on W-2 (pending further IRS guidance)	<ul style="list-style-type: none"> HSA or Archer MSA contributions (employer or employee) Health FSA funded solely by salary-reduction amounts Accident or disability income; workers compensation Long-term care Hospital indemnity or specified illness (insured or self-funded), paid on after-tax basis Liability insurance; automobile medical payment insurance Payment or reimbursement of premiums for 2% shareholders-employees Excess reimbursement to highly compensated individuals Government plans providing coverage for military members and families Indian tribal government plans Credit-only insurance
Coverage Required to Report in Box 12 on W-2	<ul style="list-style-type: none"> Major medical coverage Health FSA value for the plan year in excess of employee's cafeteria plan salary reductions for all qualified benefits. Hospital indemnity or specified illness (insured or self-funded), paid through salary reduction (pre-tax) or by employer. Domestic partner coverage included in gross income. If the employer charges a COBRA premium, then include applicable employer sponsored coverage provided through employee assistance plans (EAPs), on-site medical clinics, and wellness programs. 	<p>* The IRS will inform an employer of its potential Code Sec. 4980H(a) or Code Sec. 4980H(b) liability and provide it with an opportunity to respond before the liability is assessed. If the employer is determined to be liable, the IRS will send a notice and demand for payment. In the case of a disregarded entity, liability is imposed on the entity and not on the owner of the entity.</p> <p>* A payment for Code Sec. 4980H(a) or Code Sec. 4980H(b) liability is not required to be included with the employer's tax return. The payment, however, is not deductible as a business expense by the employer.</p>	

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