



IN THE BUSINESS OF YOUR SUCCESS®

Affordable Care Act (ACA): Glossary of Terms

 **Table of Contents**

May 23, 2014

HR. Payroll. Benefits.

Table of Contents

• \$2,000 Penalty	1	• Individual Mandate	3
• \$3,000 Penalty	1	• Measurement Period.....	3
• Administrative Period.....	1	• Marketplace	3
• Affordable/Affordability	1	• Medical Loss Ratio (MLR) Rule	3
• Affordable Care Act (ACA).....	1	• Minimum Essential Coverage	3
• Applicable Large Employer	1	• Minimum Value	3
• Automatic Enrollment.....	1	• New Employees	3
• Cadillac Tax.....	1	• Nondiscrimination Provisions	3
• Community Rating.....	1	• Ongoing Employees.....	3
• Controlled Groups	1	• Premium Credits	3
• CO-OP Exchange	2	• Private Exchange.....	3
• Dependent	2	• Rate-of-Pay Safe Harbor	3
• Employer “Play or Pay” Mandate	2	• Regional Exchange	3
• Essential Health Benefits.....	2	• Seasonal Employee.....	4
• Essential Health Benefits Package.....	2	• Seasonal Worker	4
• Exchange (also known as the “Marketplace”).....	2	• Shared Responsibility Provision	4
• Excise Tax	2	• SHOP Exchange	4
• Federal Poverty Line Safe Harbor.....	2	• Small Business Tax Credit	4
• Full-Time Employee	2	• Stability Period.....	4
• Full-Time Equivalent Employee.....	2	• Variable Hour Employee.....	4
• Hours of Service.....	3	• W-2 Safe Harbor	4

- **\$2,000 Penalty:** Nondeductible tax penalty assessed annually (but calculated on a monthly basis) if an Applicable Large Employer fails to offer Minimum Essential Coverage to at least 95% of its full-time employees (and their children up to age 26) and at least one full-time employee receives a Premium Credit for Exchange coverage. The requirement is only to offer coverage. No employer contribution or minimum plan design is necessary to avoid this penalty — just the offer of coverage. If one full-time employee receives a Premium Credit, then the employer will owe \$2,000 per full-time employee less the first 80 full-time employees in 2015 and less the first 30 full-time employees in 2016 and later. Penalties will not be imposed in 2015 (and months in 2016 in the 2015 plan year) on employers with 50-99 full-time employees and full-time equivalent employees as long as those employers do not restructure their workforce or change their health coverage in 2014-2015. For employers with 100 or more full-time employees and full-time equivalent employees, transition relief applies for 2015 (and months in 2016 in the 2015 plan year) under which the employer will not be assessed the \$2,000 penalty if it offers coverage to at least 70% of its full-time employees in 2015.
- **\$3,000 Penalty:** Nondeductible tax penalty assessed annually (but calculated on a monthly basis) if an Applicable Large Employer offers Minimum Essential Coverage to at least 95% of its full-time employees (and their children up to age 26), but the coverage offered is either not Affordable or does not provide Minimum Value, and at least one full-time employee receives a Premium Credit for Exchange coverage. If one full-time employee receives a Premium Credit, then the employer will owe the lesser of (a) \$3,000 for each full-time employee who receives a Premium Credit or (b) \$2,000 per full-time employee less the first 80 full-time employees in 2015 and less the first 30 full-time employees in 2016 and later. Penalties will not be imposed in 2015 (and months in 2016 in the 2015 plan year) on employers with 50-99 full-time employees and full-time equivalent employees as long as those employers do not restructure their workforce or change their health coverage in 2014-2015.
- **Administrative Period:** Administrative Period: This is a period of time of up to 90 days in between the Measurement Period and the corresponding Stability Period (and before the initial Measurement Period begins for new employees) for the employer to perform administrative functions, such as enrolling eligible employees in coverage. Certain restrictions apply to the length of Administrative Periods to New Employees (the initial Measurement Period and an Administrative Period combined cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date).
- **Affordable/Affordability:** Coverage is affordable if an employee's contribution for single coverage under the employer's lowest cost plan that provides Minimum Value does not exceed 9.5% of the employee's household income. Employers may use a "safe harbor" to make this determination based on "W-2 Wages," the "Federal Poverty Level" or an employee's "Rate of Pay."
- **Affordable Care Act (ACA):** The Affordable Care Act is the shorthand term for the collection of laws that comprise national Health Care Reform. The ACA was signed into law on March 23, 2010, and contains sweeping changes to the U.S. health care system.
- **Applicable Large Employer (for purposes of the Shared Responsibility provision):** An employer that employed, on average, 50 or more full-time employees, including full-time equivalent employees on business days during the preceding calendar year.
- **Automatic Enrollment:** Employers with more than 200 employees must automatically enroll all full-time employees in the employer's group health plan as soon as they are eligible for coverage. The employer must notify employees of the automatic enrollment procedure and provide an opportunity to opt out. *The U.S. Department of Labor (DOL) has advised that the effective date of this requirement has been delayed beyond 2014.*
- **Cadillac Tax:** See Excise Tax.
- **Community Rating:** Strict rules under the ACA permit individual and small group policies to vary premiums only by age, tobacco use, single/family status, and geographic area. Factors traditionally used to develop premiums, such as health status and gender, will no longer be allowed. Under community rating, premiums tend to rise for young, healthy individuals and decrease for individuals in poor health.
- **Controlled Groups:** Ownership interests in other companies, stores or franchises (or even unrelated entities) may require the employees of all entities to be counted together to determine whether any one company, store or franchise is an Applicable Large Employer. While actual

determination should be made with the assistance of counsel, in general, 80% common ownership between entities is sufficient to establish controlled group status. A controlled group also exists if the same five (5) or fewer individuals collectively own at least 80% of each entity, and effectively control more than 50% (taking into account the ownership of each person only to the extent such ownership interest is identical with respect to each individual).

- **CO-OP Exchange:** A Consumer Operated and Oriented Plan (CO-OP) program is a not-for-profit, consumer-governed health insurer. In other words, this is a nonprofit insurance company; it's not operated by the government. CO-OPs may sell qualified health plans in an Exchange.
- **Dependent:** For purposes of the Employer "Play or Pay" Mandate, dependent means an employee's children under age 26, and includes natural and adopted children. Spouses, foster children, step children, and most children who are not U.S. citizens or nationals are excluded from the definition of dependent.
- **Employer "Play or Pay" Mandate:** This is the "Employer Shared Responsibility" provision of the ACA. An Applicable Large Employer must offer Affordable, Minimum Value health insurance coverage to its full-time employees and their dependent children up to age 26 or be required to "Pay" a penalty.
- **Essential Health Benefits:** A list of ten broad categories of benefits mandated under the ACA — including emergency services, hospitalization, maternity and newborn care, mental health care and prescription drugs. Group health plans and group health insurance coverage for large employers (101 or more employees, or 51 or more in certain states until 2016) — are not required to offer coverage for all Essential Health Benefits; however, they are prohibited from imposing annual dollar limits on any covered Essential Health Benefits.
- **Essential Health Benefits Package:** Starting in 2014, Exchange coverage options and nongrandfathered individual and small group insurance plans must contain the Essential Health Benefits Package, which includes coverage for all Essential Health Benefits categories. The Essential Health Benefits Package will generally be determined at the state level.
- **Exchange (also known as the "Marketplace"):** By 2014, every state must establish a health insurance Exchange for use by the uninsured (or default to a federally facilitated Exchange). The Exchange will offer fully insured contracts that provide Essential Health Benefits at different levels of coverage (i.e., platinum, gold, silver and bronze).
- **Excise Tax:** Although many of the taxes under the ACA are excise taxes (i.e., nondeductible penalty taxes), this term refers to the excise tax known as the "Cadillac tax," which is a 40% excise tax on the value of health insurance benefits exceeding \$10,200 for single coverage and \$27,500 for family coverage (indexed to inflation). The thresholds are higher for qualified retirees and "high risk" professions (\$11,850 for single and \$30,950 for family). The tax appears to include all employer and employee amounts paid for health coverage, including pretax employee premiums, and certain contributions made to health FSAs, HRAs and HSAs. It does not include stand-alone dental or vision coverage.
- **Federal Poverty Line Safe Harbor:** Coverage under a plan is affordable if the cost of employee-only coverage, in the lowest price plan that provides Minimum Value, does not exceed 9.5% of the Federal Poverty Level for a single individual.
- **Full-Time Employee (for purposes of the Shared Responsibility provision):** An employee who is, with respect to a calendar month, employed and reasonably expected to work full-time at time of hire an average of at least (or averages during any given Measurement Period at least) 30 Hours of Service per week (or 130 Hours of Service per month) for an employer.
- **Full-Time Equivalent Employee:** This concept applies only for determining an employer's status as an Applicable Large Employer for purposes of the Shared Responsibility provision. To determine the number of full-time equivalents for a month, take all of the Hours of Service for a month (up to 120 per employee) of all part-time employees (those working less than 30 hours per week) and divide by 120. The total for each month is then added together and divided by 12 for each year to determine the number of full-time equivalent employees in a year.

- **Hours of Service (for purposes of the Shared Responsibility provision):** “Hours of Service” include hours for which an employee is paid (or entitled to payment), and paid time off due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, or leave of absence. An employee’s hours worked outside of the United States are disregarded, provided that the compensation for those hours of service constitutes foreign source income.
- **Individual Mandate:** The requirement that all adults maintain Minimum Essential Coverage (health insurance) for themselves and their dependents starting in 2014. Some exceptions apply, based on income, immigration status or other factors.
- **Measurement Period:** A period of 3-12 months chosen by an Applicable Large Employer to measure employees’ hours to determine if they will be considered full-time employees during the employer’s Stability Period. Certain new Employees have an *initial* Measurement Period based on their date of hire, whereas Ongoing Employees have a *standard* Measurement Period for Ongoing Employees.
- **Marketplace:** See Exchange.
- **Medical Loss Ratio (MLR) Rule:** Requires insurance companies to provide an annual rebate to policyholders if the insurer fails to spend at least 85% of premium dollars on health care and related services (80% in the small group or individual market).
- **Minimum Essential Coverage:** : Group health insurance coverage offered by an employer to an employee that is a governmental plan or available in the small or large group market, or a self-insured group health plan offered by or on behalf of an employer. Also includes Medicare, Medicaid, grandfathered health plans, and individual insurance policies.
- **Minimum Value:** In general, a plan provides Minimum Value if it is designed to pay, on average, at least 60% of participants’ covered medical expenses.
- **New Employees (for purposes of the Shared Responsibility provision):** Employees who have not yet worked for their employer for one complete standard Measurement Period and therefore, if they are variable hour, seasonal, or part-time employees, may have “initial” Measurement and Stability Periods, based on their date of hire until they become Ongoing Employees.
- **Nondiscrimination Provisions:** Rules under the ACA designed to prevent employers from favoring highly compensated employees with respect to eligibility or benefits under a non-grandfathered plan. Compliance with these provisions is currently delayed, pending further guidance.
- **Ongoing Employees (for purposes of the Shared Responsibility provision):** Employees who have worked for their employer for at least one complete standard Measurement Period.
- **Premium Credits:** Income-based subsidies from the federal government to help individuals purchase coverage through an Exchange. Available to individuals with household income below 400% of the Federal Poverty Line who are without access to affordable, minimum value employer coverage or Medicaid. These are advanceable, refundable subsidies that are paid by the federal government directly to the insurance companies.
- **Private Exchange:** Private Exchanges predate the ACA and are essentially online Web portals that allow consumers to select from among a number of health insurance options.
- **Rate-of-Pay Safe Harbor:** In general, coverage is affordable for the month if the contribution for employee-only coverage for the lowest price plan that provides Minimum Value does not exceed 9.5% of 130 hours × each hourly employee’s hourly rate of pay. For non-hourly employees, the determination is generally based on salary.
- **Regional Exchange:** A regional Exchange is an Exchange formed by states to create an alternative or supplement to a state Exchange.

- **Seasonal Employee:** An employee who is hired into a position for which the customary annual employment is 6 months or less. The period of employment generally should begin in the same part of each year, like summer or winter. In certain unusual circumstances, an employee can still be considered seasonal if the employment period extends beyond its customary duration, like ski instructors during a long snow season.
- **Seasonal Worker:** A worker who performs labor or services on a seasonal basis as defined by DOL and retail workers employed exclusively during holiday seasons. Employers may apply a reasonable, good faith interpretation of the term and existing U.S. Department of Labor guidance on seasonal employees. If the sum of an employer's full-time employees and full-time equivalent employees exceeds 50 for 120 days or less during the preceding calendar year, and the employees in excess of 50 who were employed for that period of no more than 120 days are seasonal workers, the employer is not considered to employ more than 50 full-time employees and full-time equivalent employees and is not an Applicable Large Employer for the current year.
- **Shared Responsibility Provision:** Employer mandates under the ACA commonly referred to as the "Play or Pay" mandate. This section of the ACA imposes penalties on certain employers who either do not offer group health insurance to at least 95% (70% for 2015) of their full-time employees and their dependents, or who offer insurance that is deemed not Affordable or does not provide Minimum Value, and who have at least one full-time employee who obtains Premium Credits to purchase health insurance for himself or herself on an Exchange.
- **SHOP Exchange:** SHOP is the Small Business Health Options Program for employers with 100 or fewer employees (states may set the limit at 50 employees until 2016). Employees purchasing coverage through a SHOP may pay for the Exchange premiums on a pretax basis if it is purchased through an employer's cafeteria plan.
- **Small Business Tax Credit:** Credit available under the ACA designed to encourage small employers to offer health insurance coverage for the first time or maintain coverage they already have. Beginning in 2014, the maximum tax credit is 50% of premiums paid by eligible small employers who participate in a SHOP Exchange. The maximum credit goes to smaller employers, with 10 or fewer full-time equivalent employees, paying annual average wages of \$25,000 or less. The tax credit phases out at 25 employees and \$50,000 in average annual wages. The credit is available to employers for a maximum of two consecutive tax years.
- **Stability Period:** A period selected by an Applicable Large Employer that follows and corresponds with an initial or standard Measurement Period (and any Administrative Period). The Stability Period should be a period of at least six (6) months that is no shorter than the corresponding Measurement Period (and no longer than the corresponding Measurement Period if an employee's status is not full-time). An employee's status as full-time (or not full-time) is based on the Measurement Period, and is fixed for the duration of the Stability Period as long as the employee remains employed. For Stability Periods beginning in 2015, employers may adopt a transition measurement period that is shorter than 12 consecutive months but that is no less than 6 consecutive months and that begins no later than July 1, 2014, and ends no earlier than 90 days before the first day of the plan year beginning on or after January 1, 2015, and still use an up to 12-month Stability Period.
- **Variable Hour Employee:** An employee with respect to whom, at his or her start date, it is unclear whether he or she is reasonably expected to work an average of 30 or more hours per week during the initial measurement period.
- **W-2 Safe Harbor:** Coverage under a plan is affordable for the year if the contribution for employee-only coverage in the employer's lowest price plan that provides Minimum Value does not exceed 9.5% of an employee's Form W-2 wages, as reported in Box 1 for that year.



IN THE BUSINESS OF YOUR SUCCESS®

This document was created in partnership with the law firms of Proskauer Rose LLP (Proskauer) and The Groom Law Group, Chartered.

The information above is not, is not intended to be, and shall not be construed to be, the provision of legal advice, nor does it necessarily reflect the opinions of Proskauer, our lawyers or our clients. No client-lawyer relationship between you and the firm is or may be created by your access to or use of these materials or any information contained in them. Rather, the content is intended as a general overview of the subject matter covered. Proskauer is not obligated to provide updates on the information presented herein. Those viewing this presentation are encouraged to seek direct counsel on legal questions.