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GROUP BENEFITS



Health Care Reform under the ACA:

# Employer Shared Responsibility



# Employer Shared Responsibility

*Health Care Reform Under the ACA*

## Under new Code Section 4980H, the Affordable Care Act's the "Employer Mandate," applicable large employers are now required to:

- 1 Manage employee information and track employees' hours of service for benefit eligibility & affordability compliance, as well as to maintain the data required for audit/ reporting purposes.
- 2 Offer ALL (95%) full-time employees (*and their children up to age 26*) minimum essential health insurance coverage OR pay a **\$2,000\*** per employee penalty for ALL full-time employees if at least one full-time employee receives a marketplace subsidy (minus the first 30).
- 3 Offer coverage that provides minimum value: Plans must cover 60% of costs (such as deductible, co-insurance, co-payments) OR pay a penalty: **\$3,000\*** per each full-time employee using tax credit to fund exchange purchase.
- 4 Offer coverage that is affordable: The single premium for lowest cost plan must be no more than **9.5%\*** of your lowest paid employee's household income OR pay a penalty: **\$3,000\*** per each full-time employee using tax credit to fund exchange purchase.
- 5 Comply with new IRS information reporting requirements used to administer the employer shared responsibility provisions of section 4980H OR pay a penalty: **\$270\*** per return up to **\$3.275 million.**

*\*Starred amounts are adjusted with inflation each year.*

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# ALE (Applicable Large Employer) Determination

## *Calculating your number of FTEs*

Under the ACA a “large employer” subject to the play-or-pay mandate is one who employed an average of at least 50 full-time equivalent employees (FTEs) on business days during the preceding calendar year.

To determine whether it constitutes an “applicable large employer” in the current year, an employer must calculate the actual hours worked by all (both full- and part-time) employees during the previous year.

### Calculating the number of FTEs:

*Done on a monthly basis to determine annual average*

- a. **Actual full-time employees** (those who worked over 120 hours during the month)
- +
- b. **Any “full-time equivalents”** (combining the monthly hours of all employees who work part-time and dividing that number by 120).

**Example:** A firm has 35 full-time employees (working over 120 hours per month) and 20 part-time employees who each work 96 hours per month. These part-time employees’ hours would be treated as equivalent to 16 full-time employees for the month, based on the following calculation:

$$20 \text{ employees} \times 96 \text{ hours} / 120 = 1920 / 120 = 16 \text{ FTEs}$$

Here, the firm would be considered a “large employer,” based on a total FTE count of 51 (35 full-time employees + 16 FTEs based on the number of part-time hours worked)

### Special Rules:

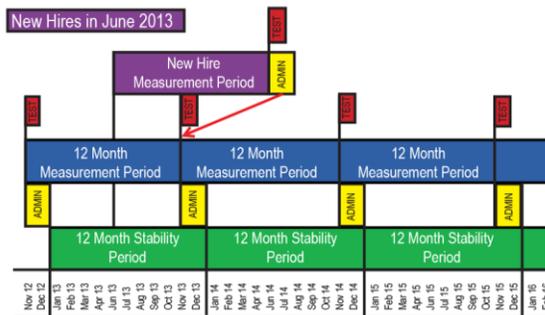
- **Seasonal Employees:** Full-time seasonal employees who work under 120 days during the year are excluded from FTE calculation. Meaning, if an employer’s workforce exceeds 50 full-time equivalent employees for 120 days or fewer during a calendar year and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers, the employer is not an “applicable large employer.”
- **Controlled Groups & Aggregation Issues:** The Internal Revenue Code (IRC) Section 414 treats two or more employers as a single employer if there is sufficient common ownership or a combination of joint ownership and common activity. All entities treated as a controlled group under IRC § 414 (e.g. parent-subsidiary, brother-sister) will be treated as a single employer for purpose of ALE determination. Meaning, the full-time equivalent employees of all members of the controlled group are aggregated to determine whether the group constitutes a single “applicable large employer.” When the combined total of FTEs meets the threshold, each separate company or ALE member is subject to the employer shared responsibility provisions even if a particular company or companies individually do not employ enough employees to meet the 50-full-time-employee threshold.

# Tracking Employees for Full-Time Eligibility Purposes

Generally, under Employer Shared Responsibility provisions, no penalty can be imposed on a large employer who offers group health plan coverage to at least 95% of its full-time employees and dependents, if that coverage is affordable and provides minimum value. Full-time is defined as working on average at least 30 hours per week or 130 hours per month.

## Employers May Identify ACA Full-time Employees Using:

1. **The “month-to-month” method:** Employer identifies full-time employees on a monthly basis.
2. **The “look-back” measurement period:** Employer tracks employee eligibility on a periodic basis, looking back at a defined “**standard measurement period**” (3-12 months) to determine full-time status for subsequent “**stability period**” (the greater of 6 months or the length of the standard measurement period).
  - Employers may use “administrative periods” of up to 90 days between the measurement period and the stability period to make ACA full-time employee determinations and perform other administrative functions (e.g. providing enrollment material)
3. **Measuring new variable hour & seasonal employees:**
  - A variable hour employee is one who, based on the facts and circumstances at the start date, is not reasonably expected to work on average at least 30 hours per week; Employers can delay coverage for new variable hour employees during their measurement period.
  - Start tracking hours the first day of month following date of hire; **NOTE: the total combined length of an initial measurement period plus the subsequent administrative period may not exceed 13 months**, plus any portion of a month remaining until the first day of the following month. New hires will merge into the “Standard Measurement Period” during their “Initial Stability Period” (see below):



## Special Rules:

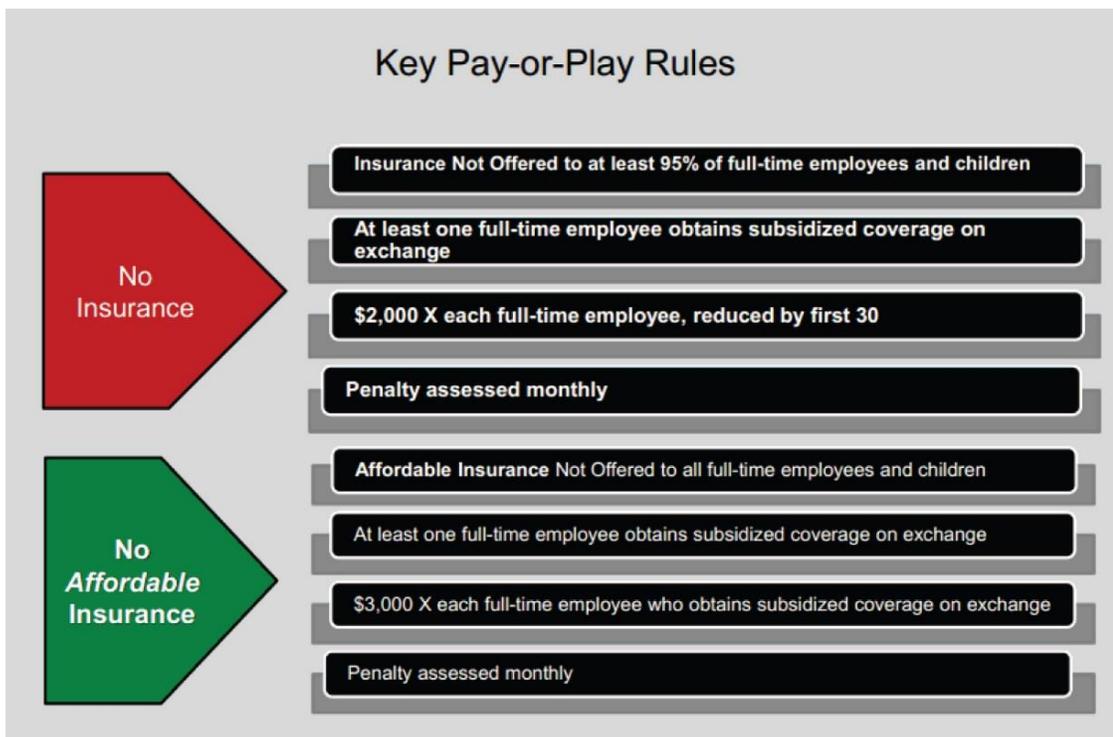
- For both variable hour & seasonal employees count: Actual hours + Hours of paid time off; Credit hours of federally-mandated leave (e.g. FMLA) using average hours method
- Special rules for schools: Give credit for periods of unpaid school closing (e.g. summer break) up to 501 hours; Include class prep time for professors (2 ¼ hours counted for each classroom hour)
- 13 week break in employment: Disregard prior hours & treat as new hire (\*26 weeks for professors; \*Rule of parity)
- Classifications of Non-Hourly Workers: Employers may employ different methods of determining full-time status for different classes of non-hourly workers as long as the separate classification of employees is reasonable and applied consistently

# Pay or Play Penalties

## 2 major types of penalties can be triggered for failure to comply with the ACA:

- 1. Pay Penalty:** (or no offer penalty/"Sledgehammer" penalty)
  - Triggered when an employer fails to offer "substantially all" full-time employees (and their dependents) minimum essential health insurance coverage
  - "Substantially all"=95% of full-time employees
  - \$2,000 (+inflation) per year for each full-time employee if at least one full-time employee obtains federally subsidized coverage, with the first 30 employees excluded from calculation
- 2. Play Penalty:** (or defective coverage penalty/"Icepick" penalty)
  - Triggered when an employer offers coverage, but that coverage is defective in some way
  - Defect can be related to minimum value (MV), affordability, or both
  - When affordable MV coverage is not offered, there is a \$3,000 (+inflation) penalty for each full-time employee who actually receives a premium tax credit via the Health Insurance Marketplace.

*Note: When an Employer offers an employee coverage that is affordable and provides minimum value, the employee is NOT eligible for a premium subsidy through the Exchange.*



# ACA Minimum Value and Affordability

- **Minimum Value (MV):** What cost sharing (deductible, co-insurance, co-payments) are included?—Plans which pay 60% of costs=MV (Bronze level plans or higher, usually not a problem)
- **Affordability:** What premiums are employees are required to pay? Look at the single premium for lowest cost plan—is it no more than 9.5% (indexed for inflation each year) of your lowest paid employee’s household income? (**Biggest challenge for employer**)

## 1. W-2 Safe Harbor

*Allows employers to use each employee’s W-2 income (Box 1) from the current year to determine affordability*

**Calculation:** When using this method, the W-2 Form for the current year is used. That is, the total W-2 compensation for a year (from a particular employer) determines the maximum monthly amount that employer can charge the employee for self-only coverage, meaning the employer must make assumptions regarding expected wages for the year. The final regulations provide that the employee’s required contribution during the year must remain a consistent dollar amount or a consistent percentage of all Form W-2 wages during the year; an employer is not permitted to make discretionary adjustments for a pay period.

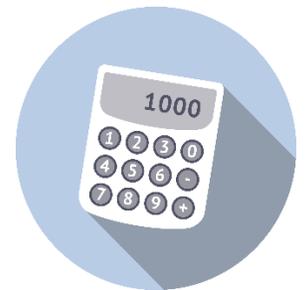
To calculate affordability for full time employees not employed the full year, multiply the W-2 wages for the calendar year by a fraction equal to the months for which coverage was offered to the employee over the months the employee was employed; **Example:** an employee worked nine months of a calendar year, and was offered coverage during six of those months. At the end of the year, the employee received a Form W-2 reflecting wages of \$30,000. To calculate, multiply \$30,000 by 6/9 to get an adjusted W-2 wages of approx. \$20,000. Then calculate the applicable affordability percentage of that amount.

### Disadvantages:

- Box 1 income does not include pre-tax contributions for 401(k) or cafeteria plans, so if an employee makes these pre-tax contributions this will reduce the maximum affordable amount.
- This is calculated on an employee-by-employee basis, and will have to be calculated each month if W-2 income varies. This can be administratively burdensome and time consuming.
- An employer might not want to use the W-2 method if it has variable hour or seasonal employees, or if it has employees whose hours of service or compensation vary over the course of the year.

### Advantages:

- The W-2 income safe harbor generally will result in a higher monthly premium “affordable” amount.
- This is because the W-2 method includes all hours the employee actually worked and hours for which no work was performed but the employee was paid or entitled to payment (e.g., paid holidays and vacation, paid leave and disability). It is not limited to 130 hours/month, as is the Rate of Pay safe harbor below.
- An employer might want to use the W-2 method if it has a stable workforce comprised mostly of regular full-time employees who work 40 hours per week and whose compensation is unlikely to decrease during the year.



## IRS Affordability Safe Harbors:

1. *W-2 income*
2. *Rate of Pay (Monthly)*
3. *Federal Poverty Line*

## 2. Rate of Pay (Monthly) Safe Harbor

*Design-based method allows employers to calculate affordability on a monthly basis*

### Monthly Income Calculation:

- For hourly employees: 130 hours multiplied by the employee's hourly rate as of the first day of the plan year or the lowest hourly rate of pay during the calendar month.
- For non-hourly employees: use the employee's monthly salary (yearly salary/12) as of the first day of the plan year (regardless of hours on which is based).
- Once monthly income is calculated, multiply this amount by the applicable affordability percent to determine maximum cost for this employee.

An employer can use the "rate-of-pay" safe harbor even if the employer reduces an employee's hourly pay rate during the plan year, but the rate-of-pay safe harbor will apply separately for each month. This will result in a lower maximum "affordable" rate for those months an employee's hourly rate has been reduced. **Note that if an employer uses the rate of pay of the lowest-paid employee and multiplies this by 9.5% (as indexed), the resulting monthly amount will meet the test for all employees.**

### Disadvantages:

- The employer can only multiply the hourly amount by 130 hours per month, even if employees actually work more hours.

### Advantages:

- Although technically this is calculated on an employee-by-employee basis, it can also be a "fail-safe" design-based safe harbor because if this Affordability test is met for the lowest-paid employee, then it will also be met for all other employees.
- This affordability calculation will apply even if an employee works fewer hours or is on leave during some months (e.g. if a full-time hourly employee earns \$12 per hour in a calendar month, coverage is affordable if the employee cost for employee-only coverage is not more than 9.5% of \$12 x 130 hours, or \$148.20, even if the employee has a significant amount of unpaid leave or otherwise reduced hours in one or more calendar months.
- The employer can calculate the maximum amount for affordability as of the beginning of the plan year (and on a monthly basis if hourly rate is reduced during the year), and need not wait until after the end of the year to determine it.

### 3. Federal Poverty Line Safe Harbor

*Allows employers to use 100% of the Federal Poverty Line income (for a household size of one) to determine affordability*

#### Calculation:

There is no calculation other than taking the FPL figure, dividing it by 12, and calculating 9.5% (as indexed) of that figure.

The final regulations allow an employer to use the FPL rate in effect six months prior to the start of the plan year, rather than at the start of the plan year. Employers generally set rates three to six months before the start of the plan year.

#### Disadvantages:

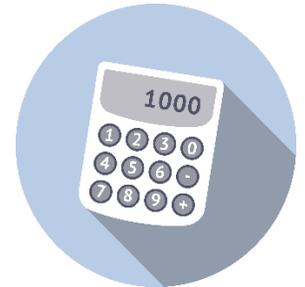
- **The Maximum Amount:** This method typically provides the lowest threshold allowed for the monthly premium. For example, in 2017 100% of FPL for one person was \$11,880.00, so the maximum employee contribution (for self-only coverage) per month was only \$95.93.
- Other methods generally allow a higher monthly premium charge.

#### Advantages:

- This is not a separate calculation for each employee. It is a “fail-safe” safe harbor that will apply even if the amount is less than a particular employee’s actual income for the month or year.
- An employer who uses this safe harbor will always meet the affordability standard each month.
- This safe harbor may be most useful for employers who use the look-back measurement period to determine if variable hour or seasonal employees have full-time status (if an employer’s lowest paid employee is a “moving target” may have to check affordability each month throughout year unless they use this “100% of FPL” method).
- May be useful to employers with employees whose hours of service are higher earlier in the year

# New 6055/56 Requirements

The Affordable Care Act added section 6055 & 6056 to the Internal Revenue Code, which requires submission of information returns the IRS will use to administer the employer shared responsibility provisions of section 4980H, and to show compliance with the individual shared responsibility provision in section 5000A.



- **Deadline to file the reports:**
  - Returns due to full-time employees by January 31<sup>st</sup>
  - Returns due to the IRS by February 28 if filing on paper; and March 31 if filing electronically
- **Employers with insured health plans:**
  - **Section 6056** of the IRC requires applicable large employers (ALEs) to file information returns with the IRS and provide statements to their full-time employees about the health insurance coverage the employer offered.
  - Each ALE member may satisfy the requirement to file a section 6056 return by filing a Form 1094-C (transmittal) and, for each full-time employee, a Form 1095-C (employee statement), or other forms the IRS may designate.
- **Employers with self-insured health plans:**
  - **Section 6055** to the Internal Revenue Code provides that every provider of minimum essential coverage will report coverage information by filing an information return with the IRS and furnishing a statement to individuals.
  - An ALE member that maintains a self-insured plan also uses a Form 1095-C to satisfy the reporting requirements under section 6055. The Form 1095-C will have separate sections to allow ALE members that sponsor self-insured group health plans to combine reporting to satisfy both the section 6055 reporting requirements and the section 6056 reporting requirements, as applicable, on a single return.

**The following tables describe:**

- i) the type of information required under sections 6055 & 6056; and
- ii) the specific information required on forms 1094-c & 1095-c

Type of Reporting	Affected Employers	Required Information
<b>Code 6056 –</b> Large employer health coverage reporting	Large employers (at least 50 full-time employees, including full-time equivalents)	Terms and conditions of health plan coverage offered to full-time employees (helps the IRS administer the ACA's shared responsibility penalty for large employers)
<b>Code 6055 -</b> Reporting of health coverage by health insurance issuers and sponsors of self-insured plans	Employers with self-insured health plans	Information in each individual provided with coverage (helps the IRS administer the ACA's individual mandate)

ii) 1094-C (employer cover sheet)	1095-C (individual employer form)
<p>Transmittal form insurers and self-funded plans will file with IRS along with all the Forms 1095-C.</p> <ul style="list-style-type: none"> <li>▪ The name and contact information of the employer</li> <li>▪ The total number of Form 1095-C to be filed (line 18)</li> <li>▪ Monthly ALE Member Information:               <ul style="list-style-type: none"> <li>a) Minimum Essential Coverage Offer indicator; b) Full-Time Employee Count for ALE Member; c) Total Employee Count for ALE Member; d) Aggregated Group Indicator; e) Code Section 4980H Transition Relief Indicator</li> </ul> </li> </ul>	<p>Coverage information form required for each full-time employee.</p> <ul style="list-style-type: none"> <li>▪ Identify the type of health coverage offered to a full-time employee for each calendar month, including whether that coverage offered minimum value and was affordable for that employee. Employers must use a code to identify the type of health coverage offered and applicable transition relief.</li> <li>▪ Employers that offer self-insured health plans also must report information about each individual enrolled in the self-insured health plan, including any full-time employee, non-full-time employee, employee family members, and others.</li> </ul>

### Penalties & Available Defenses:

Penalties for inaccurate filings or failure to file:

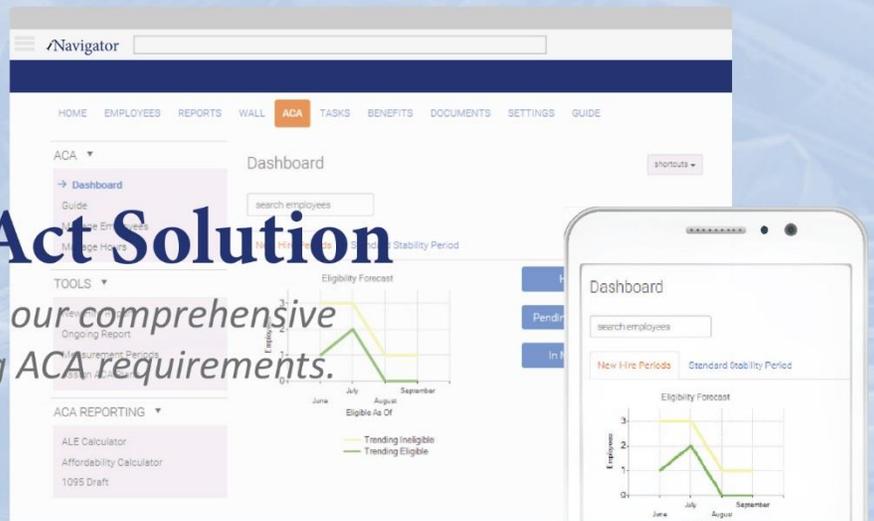
- **\$270 per return, with a maximum of \$3.275 million under Code sections 6721 and 6722.**
- **Penalties apply separately to Code sections 6055 and 6056 reporting:**
  - **Section 6721 (filing with the IRS) penalty:** may apply to a provider that fails to file timely information returns, fails to include all the required information, or includes incorrect information on the return
  - **Section 6722 (reporting to the employee) penalty:** may apply to a provider that fails to furnish timely the statement, fails to include all the required information, or includes incorrect information on the statement.

Penalty Relief Provisions:

- Under Code section 6724, the IRS will not impose penalties under sections 6721 and 6722 on reporting entities that can show that they have made **good faith efforts** to comply with the reporting requirements.
- No relief is provided in the case of reporting entities that cannot show a good faith effort to comply with the information reporting requirements or that fail to timely file an information return or furnish a statement.

# Affordable Care Act Solution

Providing you peace of mind with our comprehensive technology solution for managing ACA requirements.



## iNavigator ACA Compliance Dashboard



### IRS FORM SUBMISSIONS

- 1095-C Printing & Mailing
- 1094-C Printing & Mailing



### PENALTY RISK MANAGEMENT

- Eligibility Tracking
- Affordability Testing



### EASY TO IMPLEMENT & MAINTAIN

- For all Payroll/Software Systems
- Standalone or HRIS Integrated



### SMART & RESPONSIVE

- ACA-Fluent Support
- Automatic Updates & Alerts

## iNavigator

Marshall & Sterling saves your business time, money, and resources by providing the tools you need to work through the Employer Mandate and other Health Care Reform regulations.

## Understanding Employer Whats & Whens



### Annually

- Provide Form 1095-C to all ACA-defined full-time employees
- File 1094-C / 1095-C copies with IRS
- Determine ALE status



### Monthly

- Calculate employee eligibility for offers of health coverage
- Track cost of the coverage offered
- Track affordability of offers



### Continuously

- Track all employee hours of service
- Track employment and benefit data

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