Pay or Play Calculators and Guidance

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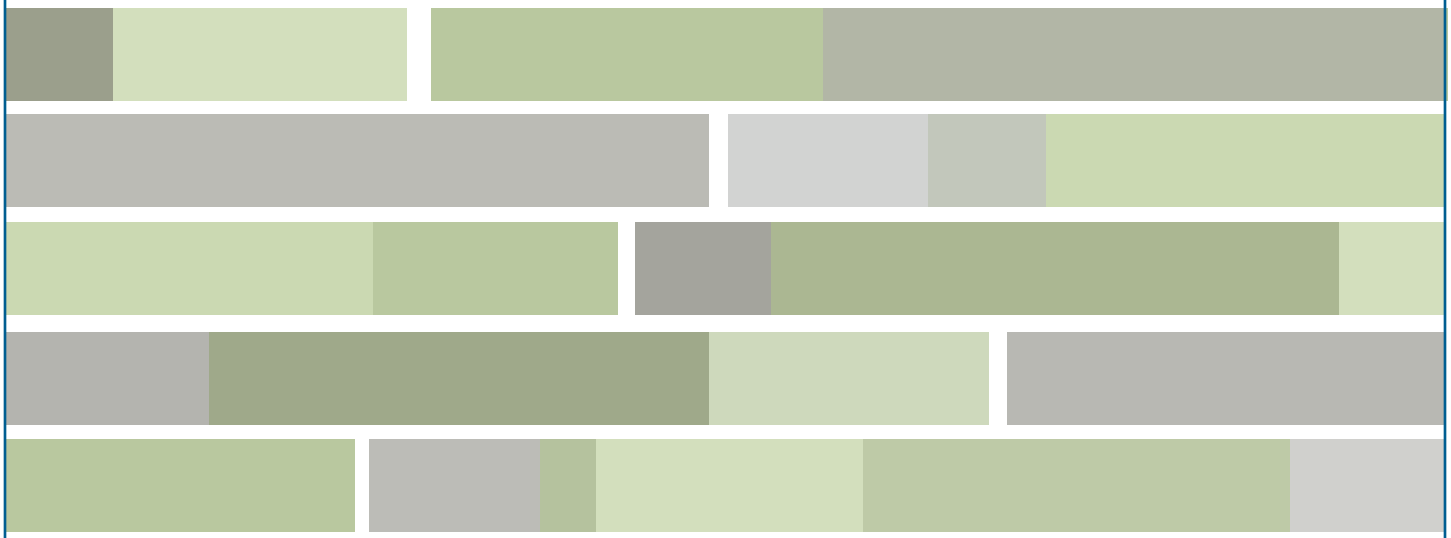

Pay or Play Calculators and Guidance

This tool provides step-by-step guidance to help applicable large employers (ALEs) understand key areas of the Affordable Care Act's "pay or play" provisions, including:

- Calculators to help determine ALE status, coverage affordability, and penalty amounts;
- How to identify full-time employees;
- How to determine whether coverage is affordable and provides minimum value; and
- How to determine if a penalty applies.

Calculators

The following three calculators will help ALEs in determining their pay or play obligations:

ALE Status Calculator

This calculator tracks an employer's number of full-time employees for each month, allowing employers to determine whether they are subject to the pay or play requirements for a calendar year. Based on information entered by the employer for each month, the spreadsheet will calculate the average number of full-time employees (including calculating full-time equivalents based on hours of service) to determine whether the employer reaches the 50 full-time employee threshold.

Click here to access the ALE Status Calculator

Affordability Calculator

This calculator determines whether an employer-sponsored group health plan is affordable for purposes of pay or play, using three affordability safe harbors provided in agency regulations. The calculator will automatically calculate whether health coverage is affordable after employers select the affordability safe harbor they want to use and enter key information, such as employee contributions, employee Form W-2 wages, months for which coverage is offered, or employees' monthly and/or hourly rates of pay.

Click here to access the Affordability Calculator

Penalty Calculator

This calculator is used to calculate the potential amount of a penalty for 2018 (the 2019 penalty amounts have not yet been released by the IRS). The employer manually enters data on the number of full-time employees and employees receiving a premium tax credit or cost-sharing reduction for a month, and the spreadsheet calculates the estimated penalty for the month.

Click here to access the Penalty Calculator

Determining ALE Status

Whether an employer is considered an ALE that is subject to the pay or play provisions is determined each calendar year, **and generally depends on the average size of an employer's workforce during the prior year**. For example, an employer will use information about the size of its workforce during 2018 to determine if it is an ALE for 2019.

All employers that are ALEs are subject to the pay or play provisions, including for-profit and nonprofit (whether or not a tax-exempt organization) employers.

General Rules

If an employer has **at least 50 full-time employees**, including full-time equivalent employees, on average during the prior year, the employer is an ALE for the current calendar year.

If an employer has **fewer than 50 full-time employees**, including full-time equivalent employees, on average during the prior year, the employer is **not** an ALE for the current calendar year and is therefore not subject to pay or play for the current year.

Exceptions

For purposes of determining if an employer is an ALE, all employees are counted, regardless of whether the employees are eligible for coverage from other sources, subject to the following limited exceptions:

- **TRICARE/Veterans Administration Coverage.** An employee will not be counted toward the 50-employee threshold for a month in which the employee has medical care through the military, including Tricare or Veterans' coverage.
- **Seasonal Workers.** An employer that exceeds 50 full-time employees, including FTEs, for 120 days or less (or 4 calendar months) during the preceding calendar year is not subject to the requirements for the current year if the employees in excess of 50 during that period were seasonal workers. A seasonal worker performs labor or services on a seasonal basis as defined by the U.S. Department of Labor, including workers covered by 29 C.F.R. § 500.20(s)(1) and retail workers employed exclusively during holiday seasons. Employers may apply a reasonable, good faith interpretation of the term "seasonal worker" and the regulation, including as applied by analogy to positions not otherwise covered.
- **Employees Working Outside the U.S.** Employees (U.S. citizens or non-citizens) working only abroad generally are not taken into account for purposes of determining whether an employer is an ALE.

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Employer Aggregation Rules

Companies with a common owner or that are otherwise related under certain rules of section 414 of the Internal Revenue Code are generally **combined and treated as a single employer for determining ALE status.**

If the combined number of full-time employees and full-time equivalent employees for the group is large enough to meet the definition of an ALE, **then each employer in the group (called an ALE member) is part of an ALE and is subject to the pay or play provisions, even if separately the employer would not be an ALE.**

Important Note: The rules for combining related employers **do not apply** for purposes of determining whether a particular company owes a pay or play penalty or the amount of any penalty. That is determined **separately** for each related company, taking into account that company's offer of coverage (or lack thereof) and based on that company's number of full-time employees. Thus, one ALE member may fail to offer coverage and may owe a pay or play penalty while another ALE member may offer coverage and not owe a penalty.

Identifying Full-Time Employees

An employer's number of full-time employees matters both for purposes of whether the pay or play requirements apply to the employer and whether the employer owes a penalty (and the amount of any penalty). An employer identifies its full-time employees based on each employee's **hours of service**.

Who is a Full-Time Employee?

For purposes of pay or play, an employee is a full-time employee for a calendar month if he or she averages **at least 30 hours of service per week** (130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week).

Who is a Full-Time Equivalent Employee?

Full-time equivalent employees are counted by combining the hours of part-time employees, each of whom individually is not a full-time employee, but who in combination count as one or more full-time employees. For purposes of pay or play, the number of an employer's full-time equivalent employees is **only** relevant for purposes of determining whether the employer is an ALE.

Determining Full-Time Employee Status

There are two methods for determining full-time employee status:

1. The **monthly measurement method**, under which the employer determines if an employee is a full-time employee on a month-by-month basis by looking at whether the employee has at least 130 hours of service for each month; and
2. The **look-back measurement method**, under which an employer may determine the full-time status of an employee during a future "stability period" based upon the hours of service of the employee in a prior "measurement period." (This method may be used **only** for purposes of determining and computing liability, and not for determining whether the employer is an ALE that is subject to pay or play.)

Note that these methods **do not affect** whether an employer may offer coverage to part-time employees. Employers always may make additional employees eligible for coverage, or otherwise offer coverage more expansively than would be required to avoid an assessable pay or play penalty.

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Determining Full-Time Employee Status for Different Categories of Employees

Employers are permitted to use **different methods of identifying full-time employees** (i.e., monthly vs. look-back), as well as **different measurement and stability periods** that differ either in length or in their starting and ending dates, for the following categories of employees **only**:

- Salaried employees and hourly employees;
- Employees whose primary places of employment are in different states;
- Collectively bargained employees and non-collectively bargained employees; and
- Each group of collectively bargained employees covered by a separate collective bargaining agreement.

IRS Notice 2014-49 addresses situations in which an employer **changes its measurement method** for one or more categories of employees.

Variable-Hour & Seasonal Employees

The look-back measurement method provides special rules that apply in various circumstances, such as for new **variable-hour employees** and **seasonal employees**:

- **Seasonal Employee:** An employee that is hired into a position for which the customary annual employment is **6 months or less** and for which the period of employment begins each calendar year in approximately the same part of the year, such as summer or winter.
- **Variable-Hour Employee:** A new employee for which, based on all the facts and circumstances at his or her start date, it cannot be determined whether he or she is reasonably expected to be employed an average of at least 30 hours of service per week during the initial measurement period because the employee's hours are variable or otherwise uncertain.

Note: The terms *seasonal worker* and *seasonal employee* are both used in the pay or play provisions, but in two different contexts. The term *seasonal worker* is only relevant for determining whether an employer is an ALE subject to the pay or play provisions. The term *seasonal employee* is relevant for determining whether an employee is a full-time employee under the look-back measurement method.

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Hours of Service

Hours of service **include** hours for which an employee is paid or entitled to payment even when no work is performed (e.g., vacation or sick leave).

Hours of service **do not include** any hour of service performed as a bona fide volunteer for a government entity or tax-exempt organization (even if certain compensation is received for those hours); as part of a federal work-study program (or a substantially similar program of a state or political subdivision thereof); or to the extent the compensation for services performed constitutes income from sources without the United States. It also does not include any hours after an individual terminates employment.

Determining Hours of Service for Interns

For purposes of determining hours of service, **interns are treated like all other employees**. Therefore, under the general rule, an employee, including an intern, who receives no payment from an employer will not have any hours of service. An employee, including an intern, who is paid, or entitled to payment, for the performance of duties (or for a period of time during which no duties are performed) will have hours of service. However, as described above, an hour of service does not include any hour of service performed as a bona fide volunteer for a tax-exempt entity or as part of a federal work-study program, among other things.

Determining Hours of Service for Employees of Aggregated Employers

For purposes of determining any potential pay or play penalty, if, during a calendar month, an employee works for more than one member of an aggregated ALE group, the employee is treated as an employee of the employer member for whom the employee **has the greatest number of hours of service for that calendar month**. If the employee has an equal number of hours of service for two or more employer members of the same aggregated ALE group for the calendar month, those employers must treat one of the employers as the employer of that employee for that calendar month.

If an employee is employed by two employers that are **unrelated** and, therefore, are not treated as a single employer for purposes of pay or play, an employee's hours of service for one of the employers are not treated as hours of service for the other employer.

Other Special Rules

Additional rules are still being considered for **determining hours of service for certain categories of employees whose hours are particularly challenging to identify or track**, or for

whom the general rules for determining hours of service may present special difficulties (including adjunct faculty, commissioned salespeople and airline employees), as well as certain categories of work hours associated with some positions of employment, including layover hours and on-call hours. Until further guidance is issued, employers are required to use a **reasonable method of crediting hours of service** that is consistent with the requirements under the law. The preamble to the final rules includes examples of methods that are reasonable and that are not reasonable, including a method that is considered reasonable for crediting hours of service for adjunct faculty members.

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Affordability & Minimum Value

In general, under the pay or play provisions an ALE may either offer **affordable** minimum essential coverage that provides **minimum value** to its full-time employees (and their dependents) or potentially owe a penalty payment to the IRS.

Affordable Coverage

Coverage is generally affordable for plan years beginning in 2019 if an employee's **required contribution** for self-only coverage does not exceed **9.86%** of his or her household income for the taxable year. This threshold is adjusted for inflation each year.

If an employer offers **multiple healthcare coverage options**, the affordability test applies to the lowest-cost self-only option available to the employee that also meets the minimum value requirement.

Affordability Safe Harbors

Because ALEs are not likely to know their employees' household incomes, ALEs can take advantage of one or more of three **optional** affordability safe harbors. If an ALE meets the requirements of any of these safe harbors, the offer of coverage will be deemed affordable for purposes of pay or play.

The three affordability safe harbors that can be used instead of household income in making the affordability determination are:

- **Form W-2 Wages Safe Harbor.** This is generally based on the amount of wages paid to the employee that are reported in Box 1.
- **Rate of Pay Safe Harbor.** This is generally based on the employee's rate of pay at the beginning of the coverage period, with adjustments permitted, for an hourly employee, if the rate of pay is decreased (but not if the rate of pay is increased).
- **Federal Poverty Line Safe Harbor.** This generally treats coverage as affordable if the employee contribution for the year does not exceed a certain percentage (9.86% for 2019) of the federal poverty line for a single individual for the applicable calendar year.

Note that an ALE may use one or more of the safe harbors above **only if** the ALE offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan that provides minimum value for the self-only coverage offered to the employee.

In addition, an employer may choose to use one or more of the safe harbors for all of its employees or for any **reasonable category of employees**, provided it does so on a uniform and consistent basis for all employees in a category.

Determining the Employee Required Contribution Amount

The employee required contribution includes amounts paid through salary reduction or otherwise, and takes into account the effects of employer arrangements such as health reimbursement arrangements (HRAs), wellness incentives, flex credits, and opt-out payments.

Note on Opt-Out Arrangements: The IRS has stated that until final regulations on opt-out arrangements are applicable, employers can rely on the opt-out arrangement guidance provided in IRS Notice 2015-87 and a subsequent proposed rule. That guidance generally provides that, **for purposes of pay or play, employers are only required to increase an employee's required contribution by the amount of an unconditional opt-out arrangement adopted after December 16, 2015.** An unconditional opt-out arrangement provides payments conditioned solely on an employee declining coverage under employer-sponsored coverage and not on an employee satisfying any other meaningful requirement related to the provision of health care to employees, such as a requirement to provide proof of other coverage.

In addition, the **employee required contribution may not be the same amount as the premium the employee pays for coverage if**, for example:

- The employee chooses to enroll in more expensive coverage such as family coverage; or
- The employer, in addition to or in conjunction with the coverage, offers other arrangements that could affect the employee's cost of coverage, including certain HRA contributions, wellness program incentives, flex credits, and opt-out payments.

Minimum Value

A health plan provides minimum value if both of the following apply:

- The plan covers **at least 60%** of the total allowed cost of benefits that are expected to be incurred under the plan; and
- The plan provides **substantial coverage of** inpatient hospitalization services and physician services.

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Pay or Play Penalties

There are two potential pay or play penalties, based on whether the ALE offers health coverage to certain employees:

1. **ALEs Not Offering Coverage:** The ALE does not offer health coverage or offers coverage to **fewer than 95% of its full-time employees** (and their dependents), and at least one full-time employee receives a premium tax credit; **or**

2. **ALEs Offering Coverage That Is Not Affordable Or Does Not Provide Minimum Value:** The ALE offers health coverage to at least 95% of its full-time employees (and their dependents), but at least one full-time employee receives a premium tax credit, which may occur because the ALE did not offer coverage **to that employee** or because the coverage the ALE offered that employee was either **unaffordable to the employee or did not provide minimum value**.

How to Calculate the Penalty

ALEs Not Offering Coverage

For **ALES that do not offer coverage**, the ALE owes a penalty equal to:

- The number of **full-time employees*** the ALE employed for the calendar year (minus up to 30);
- Multiplied by **$2,320** (for 2018; 2019 amount not yet released by the IRS).

*Part-time employees and full-time equivalent employees are **not counted** for this purpose. In addition, certain full-time employees in a "limited non-assessment period" (for example, very generally, a full-time employee in a waiting period), are **not counted** for this purpose. See the definition of limited non-assessment period in § 54.4980H-1(26) of the regulations.

For an ALE **offering coverage for some months but not others** during the year, the penalty is computed separately for each month for which coverage was not offered. The penalty for the month equals the number of full-time employees for the month (minus up to 30) multiplied by 1/12 of $2,320 (for 2018).

ALEs Offering Coverage That Is Not Affordable Or Does Not Provide Minimum Value

An ALE that offers affordable coverage that provides minimum value to less than 100% of full-time employees may nevertheless owe a penalty if an employee who is not offered coverage receives a premium tax credit or cost-sharing reduction.

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For an ALE that offers coverage to at least 95% of its full-time employees and their dependents, but has one or more full-time employees who are certified to receive a premium tax credit, the penalty is **computed separately for each month**, as follows:

- Number of **full-time employees*** receiving premium tax credit or cost-sharing reduction;
- Multiplied by **$3,480** (for 2018; 2019 amount not yet released by the IRS).

However, under this scenario, the penalty is **capped** at the amount that would be owed if the ALE did not offer coverage, to ensure that an ALE offering coverage will never pay more than it would owe if it did not offer coverage.

*Part-time employees and full-time equivalent employees are **not counted** for this purpose. In addition, certain full-time employees in a "limited non-assessment period" (for example, very generally, a full-time employee in a waiting period), are **not counted** for this purpose (refer to the definition of limited non-assessment period in § 54.4980H-1(26) of the regulations for more details). Employees who were offered the opportunity to enroll in coverage that met one or more of the affordability safe harbors are also **not counted for this purpose**.

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