Employer Mandate

The Affordable Care Act's Employer Mandate

The Patient Protection and Affordable Care Act (the "ACA") implementation, which took effect in 2010, was the most significant set of tax law reforms in more than 20 years and had an impact on millions of taxpayers.

The Employer Mandate under the Affordable Care Act becomes mandatory on January 1, 2015. The Congressional Budget Office predicted in 2016 that penalties for businesses that refused to provide coverage to their full-time workers or provided coverage that was insufficient would total $228 billion. This is merely a drop in the ocean, years later.

Employers who did not supply the 2015 tax reporting information (as required by the ACA) were sent Letter 226J tax penalty notices, which marked the start of the IRS's enforcement of the Employer Mandate. Since then, enforcement has been extended to include the tax years 2016, 2017, 2018, 2019, and 2020, with other tax years to follow. The IRS may continue to impose penalties for any prior year because there is no statute of limitations on ACA penalties.

It is crucial for employers to comprehend and carefully navigate the complex regulatory landscape of the ACA while making sure that their offers of coverage satisfy ACA requirements without unduly increasing healthcare costs. Most employers with more than 50 employees provide some form of health coverage. Understanding the risks and expenses of the ACA is necessary for implementing optimal practices. To that aim, we've created this summary of ACA rules, including tax fines, reporting requirements, and disclosure requirements.

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Who is impacted by the Affordable Care Act’s Employer Mandate?

Applicable Large Employers (ALEs) are required by the ACA to comply with the Employer Mandate requirements. ALEs are businesses that employ at least fifty employees full-time or at a full-time equivalent. These businesses typically had at least 50 full-time or full-time equivalent employees on business days during the preceding year. To determine how many full-time employees are employed at any given moment and whether they are regarded an ALE in any calendar year, an organization must compute the total number of full-time hours worked by all of its employees. Notably, businesses must consider the previous tax year when deciding whether organizations qualify as ALEs for the current year. Exceptions might be made if the workforce (a) consists of more than 50 full-time or full-time equivalent employees for 120 or fewer days per calendar year and (b) consists of "seasonal workers.“

When calculating if an organization is an ALE, both full-time and full-time equivalent (FTE) workers are included. An employee who regularly puts in at least 30 hours per week is considered full-time. Employees who work less than 30 hours per week are converted to FTEs by adding up their monthly service hours, then dividing that sum by 120. When the sum of an employer's full-time and full-time equivalent workforce is more than 50, the employer is considered an applicable large employer.

The number of full-time and part-time employees in the previous year is used to calculate an employer's ALE status for the current calendar year. In 2023, for instance, an organization's ALE status is calculated using data from 2022 regarding the number of employees.

Employees of companies that are controlled by the same person, that are in the same controlled group of corporations, trades, or businesses under common control, or that are part of the same linked service group, shall be considered to work for the same employer. Therefore, if two or more connected businesses have a total of 50 FTEs or FTE equivalents, they will be considered one ALE, with each component business being an ALE member.

The ALE must include not only the current employer, but also any predecessors or successors of the current employer. In the meantime, taxpayers may rely on a reasonable, good faith interpretation of the statutory provision on the predecessor (and successor) employers for purposes of the ALE determination.

Full-time employee status criteria

The IRS has provided employers some guidance when it comes to determining an employee's full-time status. In general, if an employee averages working 30 or more hours per week, they should be considered a full-time employee. The Monthly Measurement Method and the Look-Back Measurement Method are two options for determining an employee's status.

- The **Monthly Measurement Method** is applicable to salaried employee workforces. With its measurement and stability periods technique, the Look-Back Measurement Method may be better suited for the complexities of variable-hour employee workforces.
- The **Look-Back Measurement Method** requires the employer to look back at a defined period of not less than three, but not more than twelve, consecutive calendar months (the measurement period) to determine whether the employee averaged at least 30 hours of service per week or at least 130 hours of service per calendar month during the measurement period to determine each employee's full-time status.

****ALL EMPLOYEES MUST BE ANALYZED TO DETERMINE AN EMPLOYER'S ALE STATUS****

Employees who were classified as full-time during the measurement period would also be treated as such during a subsequent "stability period" — a period of at least six consecutive calendar months immediately following the measurement period and no less than the measurement period.

If the employee was not determined to be full-time during the measurement period, the employer may classify the person as not full-time during the next stability period.

It should be noted that the stability period cannot exceed the measurement period. For example, if the employer picked an eight-month measuring period to determine full-time employment, the stability period would immediately follow and would also be eight months long.

What kind of coverage is required?

Employers must provide "Minimum Essential Coverage (MEC)" that has a "Minimum Value (MV)" and is "affordable."

To avoid penalties, the Employer Mandate requires an ALE to provide "MEC" to all full-time employees and their dependents, and that such coverage meets the employee's "MV" and "affordability" for each month.

MEC is defined specifically to include Government Sponsored Programs, Eligible Employer-Sponsored Programs, Individual Market Plans, and Grandfathered Health Plans that were in force on the date of the ACA's adoption. Failure to satisfy MEC subjects the ALE to penalties.

To avoid consequences, the ALE offering MEC must also meet MV requirements. MV signifies that the "plan's share of the total allowed costs of benefits provided under the plan" is at least "60% of such costs."

Employers who provide MEC must also verify that the employee's portion of the premium is "affordable." To be affordable, the employee's required contribution to the plan may not exceed 9.5% of the taxpayer's household income.

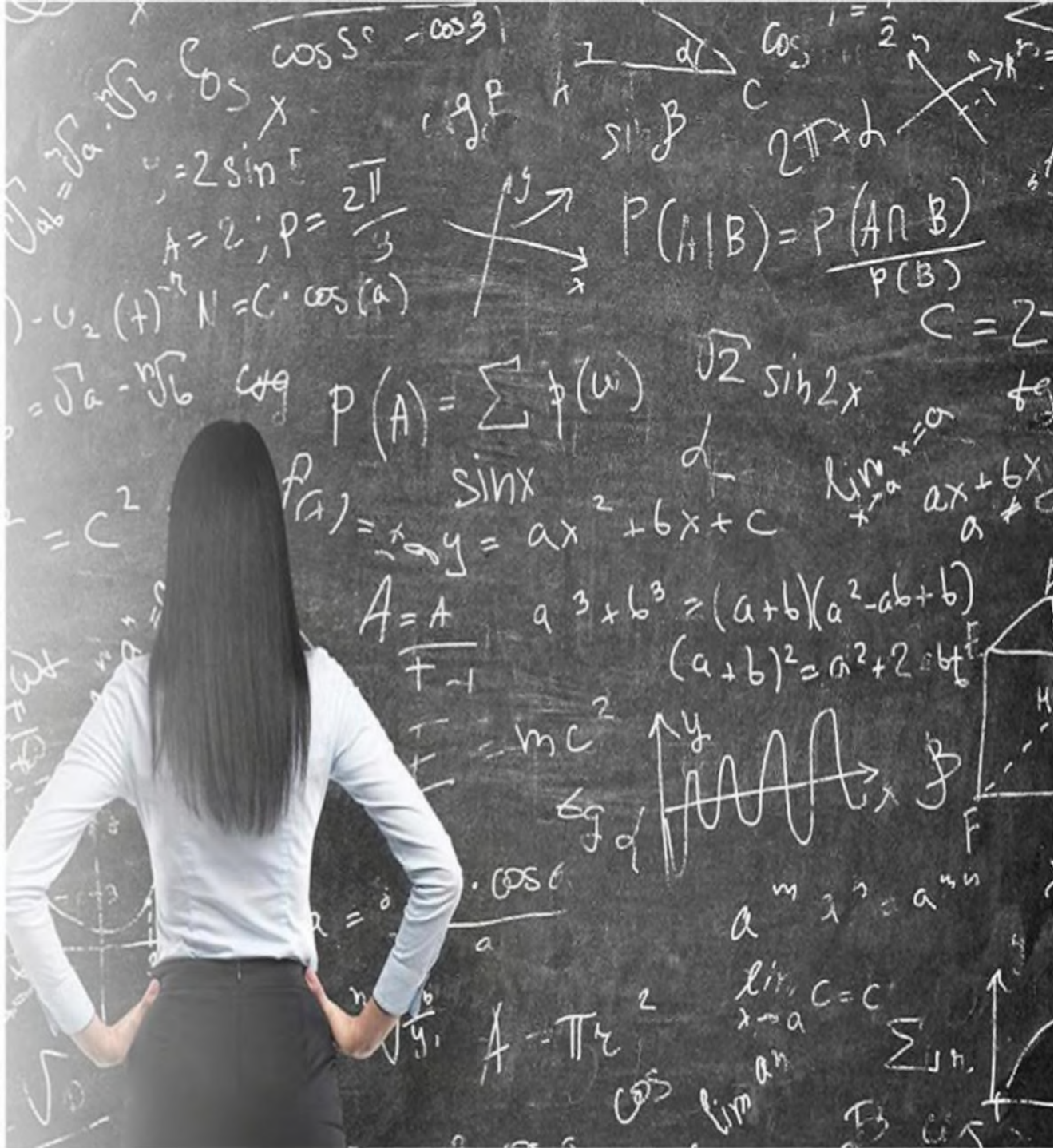
What is the ACA affordability mandate?

Employers should be aware that the 9.5% affordability cap was temporarily decreased to no more than 8.5% of household income for the 2021 and 2022 tax years after the American Rescue Plan (ARP) was enacted in March 2021. The Inflation Reduction Act, which was passed on August 16, 2022, then extended until 2025.

The adjustments to affordability and improved Premium Tax Credits only apply to specific individuals. Only consumers who purchase insurance through a state or federal health exchange are subject to the 8.5% household income cap.

Additionally, a spouse of an employee and anyone else qualified to join the plan due to their relationship with the employee are also subject to the affordability examination. This clause also applies to any person who is qualified to participate in the plan by virtue of a relationship he or she has with the employee.

At this time, the employee's self-only coverage is appropriate for the affordability analysis to determine whether any fines will be imposed on an ALE. This could change as the IRS has proposed regulations to correct the "family glitch" and calculate affordability based on coverage for spouses and dependents as well as the employee's self-only coverage.



What are the penalties for ACA Employer Mandate non-compliance?

A. Employers Who Do Not Provide Minimum Essential Coverage

Full-time employees of ALEs must have the option to enroll in MEC through an Eligible Employer-Sponsored Plan. An ALE is required to make an "assessable payment equal to the applicable payment amount times the number of individuals employed by the employer as full-time employees during such month" if at least one full-time employee in any given month has been certified as having been enrolled in a health plan through an exchange in that same month and for which the employee was allowed or paid a PTC (Premium Tax Credit) or cost sharing reduction.

The relevant payment amount for any given month in 2022 is 1/12 of $2,750, adjusted annually, for each full-time employee each month. Companies who do not offer health insurance are penalized at a rate of 1/12 of $2,750 (adjusted annually). Keep in mind that the number of full-time employees shall be reduced by 30 solely for purposes of calculating" the assessable payment when determining the number of full-time employees. In other words, the $2,750 per employee fine does not apply to the first 30 full-time employees.

B. Employers With Coverage That Is Expensive or Does Not Meet Minimum Value Requirements

Employers who provide MEC with self-only coverage that does not adhere to the rules for affordability and/or minimum value are subject to a tax fine. Only those employees who receive an applicable PTC or cost-sharing allowance are subject to the penalty. The employer will be charged a fine on a monthly basis for all such certified employees if one or more full-time employees have been certified as having enrolled in a qualified health plan through the exchange for which the employee has received or been permitted an applicable PTC or cost-sharing allowance.

The total tax penalty for each given month in 2022 was determined by multiplying 1/12 of $4,120 by the number of certified employees. However, there is a total penalty cap that is determined by multiplying the number of full-time employees, minus 30.

The lowest-priced option must be made available to all full-time employees for them to choose from in order to avoid fines for not providing qualified MEC. The 9.5% affordability ceiling (updated annually) for premium costs, which corresponds to the lowest-earning full-time employee without dependents, is expected to form the basis of a cautious low-cost option.

Having an affordable option does not, of course, prevent the employer from offering other, more expensive options. Making an inexpensive option available is critical. Insurance companies will probably always have this option accessible given the MEC requirements.

C. Penalty Assessment Process

An ALE that has employees who legitimately received PTCs and/or cost-sharing reductions through the exchange may be subject to fines. Such employers have a 90-day window under the ACA after receiving notice to contest the charge. To the extent permitted by law, the employer will have access to the information used to make the decision, including whether the employee's salary is above or below the affordability threshold, and will have the chance to share information with the exchange.

Before determining any tax liability, the IRS will contact employers to let them know about their potential responsibility and give them a chance to react. The contact for a particular calendar year won't happen until after the deadline for employees to file their individual tax returns for that year in which they claim PTCs and after the deadline for ALEs to file their information returns identifying their full-time employees and outlining any healthcare benefits they provided. The IRS will then send notice and a demand for payment after giving notice and a chance to respond.

What Reporting Requirements Apply to the IRS?

The ACA reporting requirements necessitate the monthly tracking of employee work hours and pay, dependents who are insured, and premium-related data.

A. Reporting W-2

According to the ACA, all firms with 250 or more W-2s are generally required to report the total costs of employee health benefits for employer-sponsored group health coverage starting with tax years after 2011.The idea behind this reporting requirement is to give employees access to relevant, comparative consumer information on the price of healthcare coverage.

On the employee's W-2 form, in box 12 with code "DD," the report specifically asks for the identification of the total cost of employer-sponsored health care for each employee and each of his or her dependents. Contributions to Health Savings Arrangements (HSA), Archer Medical Savings Accounts (Archer MSA), and Flex Spending Accounts funded exclusively by salary reductions to the employee are not required to be reported.

B. Reporting of Coverage for Applicable Large Employers

Beginning in 2015, these reporting and disclosure requirements must be completed annually for the previous tax year. The IRS has published IRS Forms 1094-C and 1095-C along with accompanying instructions on how to fill them out in accordance with the IRS Final Reporting Regulations.

The transmittal form, known as Form 1094-C, is used to report monthly data about each ALE member, such as whether specific qualifying-offer methods apply, whether MEC was made available to 95% of full-time employees and their dependents, the total number of employees and full-time employees, as well as the identification of all ALE members.

Form 1095-C needs detailed information about each full-time worker for each month of the reporting year. This includes the type of coverage offered to the worker, the lost cost monthly payment for self-only coverage, and any safe harbor codes that apply.

Reporting on the nature of coverage includes whether the MEC was offered to the employee, spouse, and/or dependents, whether spousal coverage was conditional, enrollment status, employment status, the applicability of any affordability safe harbors (FPL, W-2 safe harbor, or rate of pay), the application of limited non-assessment periods, and other indicator codes related to the type of offer of coverage. Self-insured ALEs must provide more details about people who are covered.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