BUKATY COMPANIES
Expertise you experience®

HEALTH CARE REFORM

EMPLOYER GUIDE

INTRODUCTION

Passage of the Affordable Care Act (ACA) on March 23, 2010, represents the most significant overhaul of the U.S. health care system in the nation's history. While the ACA affects providers, insurers and consumers, this guide is intended to assist employers.

There are numerous provisions employers must comply with to avoid fines and penalties. Additionally, the law dictates plan design features, benefits and other requirements that plan sponsors and issuers must address. This guide is intended to provide an overview of the various ACA requirements. It is not to be viewed as legal advice[1]. Due to frequent regulatory changes information can be quickly outdated[2].

STEP 1: DETERMINE APPLICABLE LARGE EMPLOYER STATUS

The final regulations require an applicable large employer (ALE) to offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (employer-sponsored group health coverage that provides 10 core benefits) or face penalties. An ALE is defined as having employed, on average, at least 50 full-time equivalents on business days during the preceding calendar year.

For employers with a large workforce, it's easy to determine if the group is an ALE. For groups hovering around the 50-plus employee mark, the calculation can be more challenging.

Considerations

- Controlled Group rules — Businesses with common ownership may be subject to IRS Controlled Group rules. In the event a Controlled Group has 50 or more full-time employees, the Controlled Group is viewed as an ALE subject to the shared responsibility penalties.
- The ALE calculation must include full-time employees, those who work at least 130 hours a month, part-time and seasonal employees. The Internal Revenue Services (IRS) provides a link to help determine your ALE status.
- An employer not in existence during the entire preceding calendar year is an ALE if in the current calendar year it is reasonably expected to employ an average of at least 50 full-time equivalent employees on business days during that current calendar year.
- An employer includes a predecessor employer; however, rules defining this relationship as it relates to an ALE are expected from the IRS.
- Certain individuals (primarily veterans) can be disregarded for purposes of the ALE determination. An employee who has medical coverage provided by TriCare or under certain Veteran's Affairs health care programs are not taken into account for any month enrolled in such coverage, beginning after December 31, 2013 (Surface Highway & Veteran's Health Care Choice Improvement Act).

[1]Bukaty Companies may not be considered your legal counsel. [2]Updated 2022

STEP 2: CALCULATE SHARED RESPONSIBILITY PENALTIES

SECTION 4980H(A) PENALTY - $2,750 PER FULL-TIME EMPLOYEE

The ACA requires an ALE to provide minimum essential coverage, or employer-sponsored health care coverage that provides 10 core benefits, to at least 95% of full-time employees (and their dependents) or be subject to a shared responsibility penalty. A spouse is not considered a dependent.

ALEs who elect not to offer minimum essential coverage to at least 95% of full-time employees (and their dependents) will be subject to a penalty under IRS Section 4980H(a). The penalty calculation, illustrated below, is triggered if just one full-time employee receives subsidized coverage through the Health Insurance Marketplace. The payment calculation is based on the number of full-time employees (excluding 30 full-time employees) multiplied by one-twelfth of $2,750 or approximately $230 per calendar month.

Example

ABC Tire Co. is an ALE that does not provide minimum essential coverage. One full-time employee received subsidized coverage through the Health Insurance Marketplace, triggering a penalty under Section 4980H(a).

Penalty calculation

150 full-time employees – 30 = 120

Penalty amount

120 X $2,750 = $333,000 (Not a deductible expense)

While seasonal and part-time employees are used in the ALE calculation, only full-time employees are factored into the penalty equation.

SECTION 4980H(B) PENALTY - $4,120

Another potential penalty exists if an eligible employee receives subsidized coverage through the Health Insurance Marketplace because the employer's offer of coverage did not meet minimum value (see page 9) or affordability standards (see page 9).

Coverage provides minimum value if at least 60% of allowable charges are paid by the plan. Coverage is affordable if the employee's required contribution for self-only coverage does not exceed 9.61% of the employee's household income for the taxable year. A Section 4980H(b) penalty occurs for each employee who received subsidized coverage through the Health Insurance Exchange. The penalty is $4,120 for the year or $343.33 for each calendar month.

Example

Computer World is an ALE that provides minimum essential coverage to "substantially all" full-time employees (and their dependents). However, the coverage is not affordable for nine employees because their share of premium cost exceeds 9.61% of the respective employees' W-2 wages for the year. These nine employees receive subsidized coverage through the Health Insurance Marketplace.

Penalty calculation

9 employees receive subsidy X $4,120

Penalty amount

$37,080 (Not a deductible expense)

There are three safe harbors employers can adopt to meet the affordability test (see page 9).

Considerations

- Employers who employ at least 50 full-time employees or an equivalent combination of full-time and part-time employees are subject to the employer shared responsibility provisions, including for-profit, non-profit and government entity employers.
- Businesses within a Controlled Group are viewed as separate entities for purposes of the shared responsibility penalty. The full-time employee reduction for purposes of the penalty calculation is allocated on a pro-rata basis among the members of the Controlled Group. If any member of a Controlled Group elects to provide minimum essential coverage, its share of the employee exemption is not reallocated to the other member groups.
- Dependents are defined as an employee's child who is under 26 years of age. An employee's spouse, foster children and stepchildren are not considered dependents.

PENALTIES FOR EMPLOYERS

Does the employer have at least 50 full-time equivalent employees?

NO → **Penalties do not apply to small employers.** *If the employer has 25 or fewer employees and the average wage is $50,000 or less, the employer may be eligible for a health insurance tax credit.*

YES → Does the employer offer coverage to at least 95% of full-time employees and their dependents?

NO → Did at least one employee receive a premium tax credit or cost-sharing subsidy through the Marketplace?

- YES → **The employer must pay a penalty for not offering coverage.** *The penalty is $2,750 annually times the number of full-time employees minus 30. The penalty is increased each year by the growth in insurance premiums.*
- NO → There is no penalty payment required of the employer.

YES → Does the insurance pay for at least 60% of covered health care expenses for a typical population?

NO → Did at least one eligible employee buy coverage through the Marketplace and receive a premium tax credit?

- YES → **The employer must pay a penalty for not offering qualified coverage.** *The penalty is $4,120 annually for each full-time employee receiving a tax credit. The penalty is increased each year by the growth in insurance*
- NO → There is no penalty payment required of the employer.

YES → Do any employees have to pay more than 9.61% of household income for self-only coverage?*

YES → Did at least one eligible employee buy coverage through the Marketplace and receive a premium tax credit?

- YES → **The employer must pay a penalty for not offering qualified coverage.** *The penalty is $4,120 annually for each full-time employee receiving a tax credit. The penalty is increased each year by the growth in insurance premiums.*
- NO → There is no penalty payment required of the employer.

NO → There is no penalty payment required of the employer.

*IRS provides three safe harbor options to meet affordability requirements. See page 9.

STEP 3: EVALUATE FULL-TIME STATUS

An ALE must provide "substantially all" full-time employees and their dependents with minimum essential coverage or be subject to the shared responsibility penalty. Determining full-time status of employees who work variable-hour schedules can be challenging. The proposed regulations offer employers an optional look-back/stability period safe harbor measurement method that allows an employer to determine each employee's full-time status by looking back at a defined period of time.

NEW HIRES

If at the time of hire an employer is not certain that an employee is expected to work a consistent 30-hour, full-time schedule, the employee is treated as a variable-hour employee or seasonal employee. For a period of time, the employer may track the employee's hours of service before making a determination as to whether or not the employee achieved full-time status. During this measurement period, the employer will not be subject to the shared responsibility penalty.

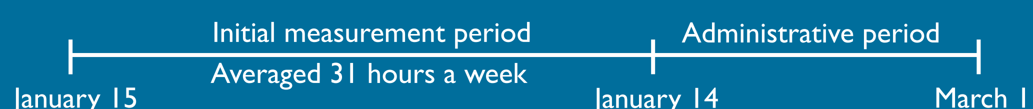
The measurement period for a new hire is called the initial measurement period, and it can be between 3 and 12 months, as determined by the employer. For ease of administration, it is recommended that the initial measurement period begins on the first day of the month following date of hire.

If at the end of the initial measurement period the employee's hours averaged 30 hours of service per week, the employee must be treated as a full-time employee for a corresponding stability period. During the stability period, the employee, based on the 30-hour determination in the initial measurement period, must be offered minimum essential coverage, even if moving forward hours worked fall below 30 hours per week. The stability period must be the same length of time as the initial measurement period, but no less than six months. If coverage is not offered, the employer is subject to the shared responsibility penalty in the event the employee received subsidized coverage through the Health Insurance Marketplace.

Prior to the start of the stability period, employers are also allowed to establish an administrative period of no more than 90 days to allow time to calculate an employee's hours of service, issue enrollment packets and address other related administrative matters. However, the measurement period and the administrative period combined may not extend beyond the last day of the first calendar month beginning on or after the new hire's one-year anniversary (no more than 13 months and a fraction of a month).

Example

- Start date: January 15, 2021
- Initial measurement period: 12 months (January 15 – January 14)
- Administrative period: 45 days
- Coverage effective date: March 1, 2022



ONGOING EMPLOYEES

A similar measurement process is also allowed for ongoing employees. Ongoing employees are measured for a standard measurement period which can last between 3 and 12 months as determined by the employer. A standard measurement period can be any fixed period of time the employer chooses. For example, it can run on a calendar year cycle, a non-calendar year cycle, or coincide with the employer's plan year.

A new employee transitions to ongoing employee status once the employee has worked for an entire standard measurement period. As with a new hire, there is an associated stability period in which the employee is entitled to minimum essential coverage if deemed eligible for benefits following the standard measurement period calculation. The stability period is at least six consecutive calendar months and no shorter in duration than the standard measurement period. While in the stability period an employee is entitled to coverage regardless of the number of hours of service, so long as he or she remains an employee. A special rule exists for employees who have a status change from full time to part time. Visit with your Bukaty benefits consultant for details.

Employers may adopt an administrative period between the standard measurement period and the stability period. The administrative period can be no longer than 90 days.

Example

- Start date: April 12, 2018
- Standard measurement period: 12 months (December 1 – November 30, 2020)
- Administrative period: 30 days
- Coverage effective date: January 1, 2021

Standard measurement period — Administrative period

Averaged 32 hours a week

December 1 — November 30 — January 1

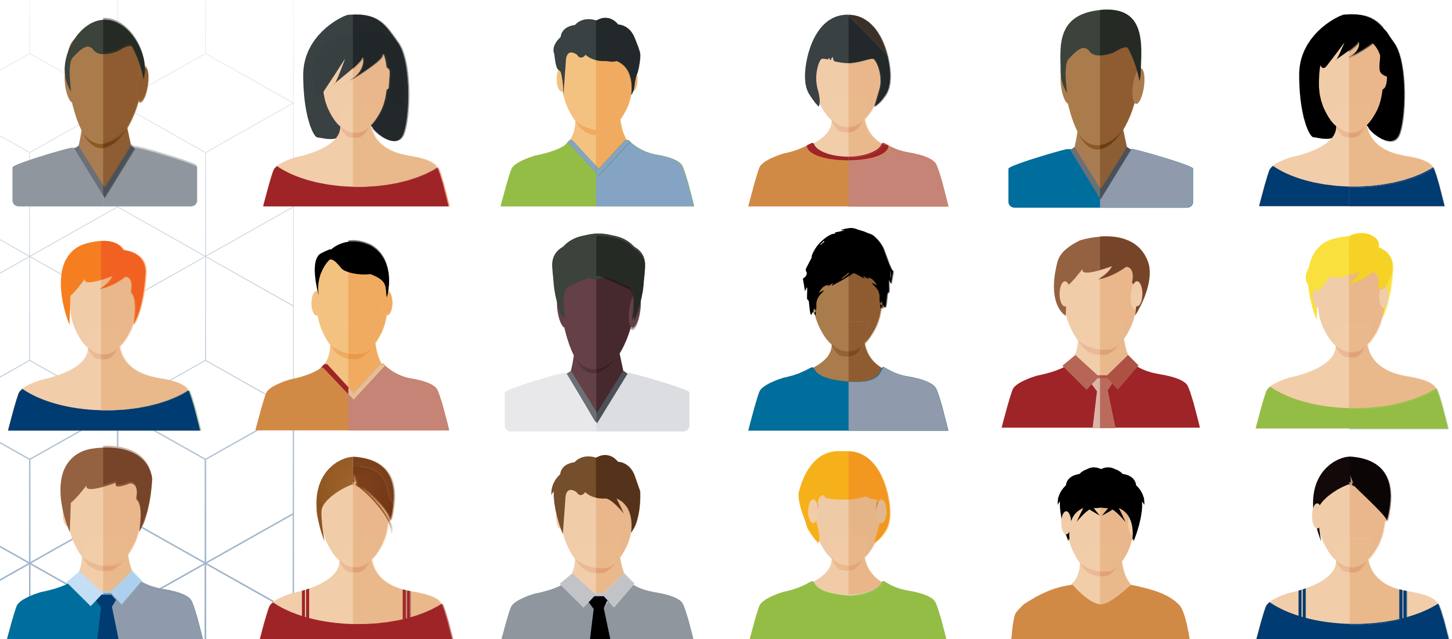
Considerations

- Different measurement and stability periods may be used for different categories of employees, such as
  - collectively bargained employees and non-collectively bargained employees,
  - salary and hourly employees,
  - employees of different entities, and
  - employees in different states.
- Hours of service include not only hours when work is performed, but also hours for which an employee is paid or entitled to payment even when no work is performed. Employees working only abroad, whether or not U.S. citizens, generally will not be taken into account for purposes of determining whether an employer meets the 50 full-time employee (or equivalents) threshold.
- The final regulations limit the number of hours of service that an employer who is an educational organization is required to take into account in a calendar year when no work is performed. The limit is 501 hours based on long-standing limits that apply to retirement plans. No such rule applies for special unpaid leave.
- If the period for no hours of service is at least 13 consecutive weeks (26 weeks for an employee of an educational organization), an employee who returns to work can be viewed as a new employee subject to a new measurement period. An employer may also apply a rule of parity if the period for no hours of service is at least four consecutive weeks long and is longer than the employee's period of employment immediately preceding that period with no credited hours of service.
- For employees paid on a salary basis, employers can calculate the number of hours of service using one of three methods: counting actual hours of service, a days-worked equivalency or a weeks-worked equivalency.

- Hours of service for employees who, after a special unpaid leave, return to work are calculated using an averaging method. Special unpaid leave refers to unpaid leave while on Family and Medical Leave, military duty and jury duty. The employer determines the average hours of service per week for the employee during the measurement period, excluding the special unpaid leave, and uses that average for the entire measurement period. An alternate averaging method allows employers to credit special unpaid leave at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that were not special unpaid leave.

- Employment breaks of at least four consecutive weeks (disregarding special unpaid leave described above) for employees of an educational organization must be factored into hours of service using one of the two averaging methods described above.

- Employers must include seasonal workers in the ALE determination. If an employer's workforce exceeds 50 full-time 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 would not be considered an applicable large employer. Final regulations define a seasonal employee as one who works six months or less.



STEP 4: VERIFY MINIMUM VALUE

An ALE who offers minimum essential coverage to "substantially all" full-time employees (and their dependents) will still be subject to a $4,120 shared responsibility penalty if the coverage offered fails to provide minimum value. The penalty applies for each employee who receives subsidized coverage through the Health Insurance Marketplace. A plan meets the minimum value threshold when it pays 60% of the total allowed cost of services.

Considerations

- The IRS suggested three potential approaches for determining whether minimum essential coverage provides minimum value.
  - An actuarial value or minimum value calculator is available at cms.gov. The calculator permits an employer-sponsored plan to enter information about the plan's benefits, covered services and cost-sharing terms to determine whether the plan provides minimum value.
  - A design-based checklist that would provide a simple, straightforward way to determine minimum value.
  - For plans with nonstandard features that preclude the use of the minimum value calculator without adjustments, an appropriate certification by a certified actuary, in accordance with prescribed continuance tables, recognized actuarial standards, and other conditions that may be prescribed in administrative guidance, may assess a plan's minimum value.
- A plan that provides 60% of allowed costs will be considered a bronze plan on the Health Insurance Marketplace.
- Deductibles, coinsurance, copayments and out-of-pocket limits factor into the minimum value equation.
- Employer contributions to an HSA and HRA can be factored into the minimum value equation. Accumulated HSA balances are not included in the calculation. Contributions made by an employee or covered individual would not be reflected in the minimum value calculation.

STEP 5: VERIFY COVERAGE AFFORDABILITY

To avoid the employer mandate penalty, an ALE who offers minimum essential coverage to substantially all full-time employees (and their dependents) must ensure coverage is affordable. Coverage is not affordable if the employee's required contribution exceeds 9.61% of the employee's household income for the taxable year.

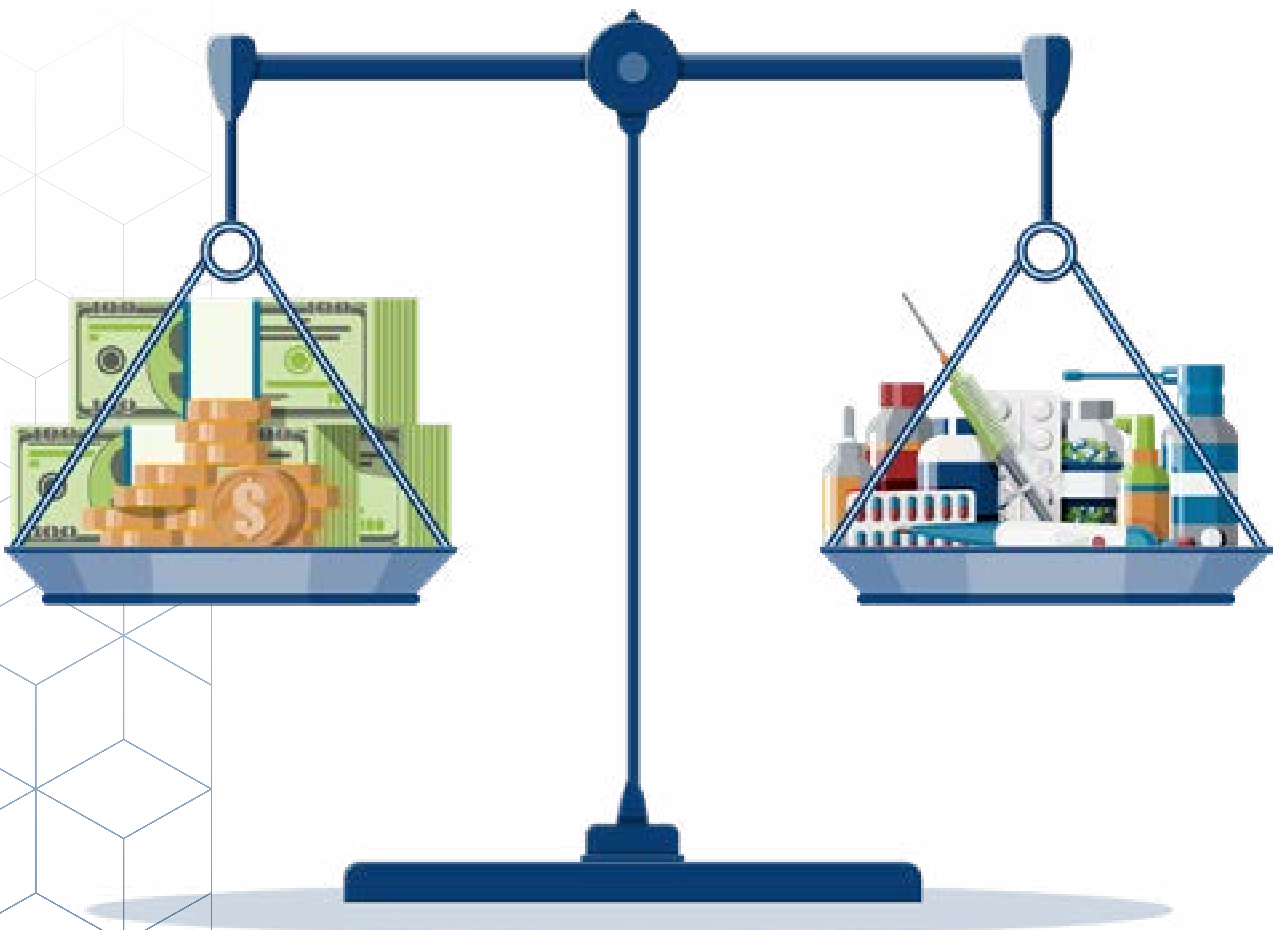
The final rule established three affordability safe harbors that can be used to determine whether an employer's coverage satisties the 9.61% affordability test. The safe harbors also would not affect an employee's eligibility for a premium tax credit, which continues to be based on the cost of coverage relative to an employee's household income.

Considerations

- Form W-2 Safe Harbor – The 9.61% affordability test is based on an employee's Form W-2 wages as reported in Box 1 for the calendar year, rather than household income. Determination of this safe harbor is made at the end of the year, taking into account the employee's Form W-2 wages for the year. Adjustments are allowed for employees who do not work a full calendar year. Employers should keep in mind that Box 1 excludes elective deferrals that an employee makes in a retirement plan or a section 125 cafeteria plan, thus lowering an employee's reported income. To qualify for the Form W-2 Safe Harbor, an employer is not permitted to make discretionary adjustments to the required employee contribution for a pay period. In other words, the employee's required contribution must remain a consistent amount or percentage of wages during the year. For an employee who doesn't work a full calendar year, the Form W-2 wage is adjusted to determine affordability. W-2 wages are multiplied by a fraction equal to the number of calendar months for which coverage was offered over the number of calendar months in the employee's period of employment. If coverage is offered during at least one day during the calendar month, or the employee is employed at least one day during the calendar month, the entire calendar month is counted in determining the applicable fraction.

- Rate-of-Pay Safe Harbor – Employers can determine affordability based on the lowest hourly pay rate as of the coverage period's first day (or the lowest rate of pay for the month) for each full-time, hourly employee, multiplied by 130 hours per month. If the employee's monthly contribution for self-only coverage is equal to or lower than 9.61% of the computed monthly wage, coverage is deemed affordable. Under this safe harbor an employer may also use a non-hourly employee's monthly salary (rather than the 130 hours times rate of pay), but only if the monthly salary is not reduced, including due to a reduction in work hours. Under the Rate-of-Pay Safe Harbor, if an hourly, full-time employee earns $10 per hour in a calendar month (and earned at least $10 per hour as of the first day of the coverage period), but has one or more calendar months in which the employee has a significant amount of unpaid leave or otherwise reduced hours, the employer may still require an employee contribution of up to 9.61% of $10 multiplied by 130 hours ($124.93). Not practical for tipped and commissioned employees.
- Federal Poverty Level (FPL) Safe Harbor – Under this method, coverage is affordable if the employee's required contribution for the lowest-cost, self-only plan does not exceed 9.61% of the FPL for a single individual for the applicable calendar year. Employers can use the most recently published poverty guidelines in effect six months prior to the beginning of the plan year. For 2022 the FPL is $12,880.

The safe harbors are all optional. Employers can apply the safe harbors based on a reasonable employment category, so long as it does so on a uniform basis, for example hourly or salary.



EXPERTISE YOU **EXPERIENCE**

NEED HELP? JUST ASK.

With more than 25 years of experience, Bukaty Companies is Kansas City's trusted employee benefits consultant. We work with thousands of businesses to provide the expertise needed to manage the challenges posed by health care reform.

For help with health care reform questions, contact us at **913.345.0440**.

JUST ask.

MAIN: 913.345.0440
FAX: 913.345.2608

INFO@BUKATY.COM

4601 COLLEGE BLVD., STE. 100
LEAWOOD, KS 66211

WWW.BUKATY.COM