

ACA OVERVIEW

Provided by Hickok & Boardman HR Intelligence

Pay or Play Penalty—Common Ownership Aggregation Rules

The Affordable Care Act (ACA) requires applicable large employers (ALEs) to offer affordable, minimum value health coverage to their full-time employees or possibly pay a penalty. This employer mandate is also known as the “employer shared responsibility” or “pay or play” rules.

To determine if a company is an ALE, aggregation rules apply for companies that are related or commonly owned. Under these rules, all employees of a controlled group of businesses or an affiliated service group are taken into account to determine if an employer is subject to the employer shared responsibility rules.

This ACA Overview summarizes the ACA’s guidance on how these rules apply to companies that are treated as a single employer under Internal Revenue Code (Code) Sections 414(b), (c) or (m) because they form a controlled group of businesses or an affiliated service group.

LINKS AND RESOURCES

- On July 9, 2013, the Internal Revenue Service (IRS) issued [Notice 2013-45](#) to provide formal guidance on the one-year delay.
- On Feb. 12, 2014, the Internal Revenue Service (IRS) published [final regulations](#) on the employer shared responsibility rules.
- The IRS has also provided [Questions and Answers](#) for employers on the employer shared responsibility rules.

This ACA Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

HIGHLIGHTS

APPLICABLE LARGE EMPLOYERS

Only ALEs are subject to the employer shared responsibility rules.

- ALEs are employers that employ, on average, **at least 50 full-time employees, including full-time equivalents (FTEs)**, during the preceding calendar year.
- All ALEs are subject to these rules, including for-profit, nonprofit and government employers.

COMMONLY OWNED COMPANIES

Aggregation rules apply to determine:

- If a company is an ALE subject to the employer shared responsibility rules;
- If an ALE is eligible for the 2015 plan year transition relief for ALEs with 50-99 employees); and
- An employee’s status as full-time.

Aggregation rules do not apply to calculate a company’s liability for an employer shared responsibility penalty.



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The final regulations address how the ACA's employer shared responsibility rules apply to companies that are treated as a single employer under Internal Revenue Code (Code) Sections 414(b), (c) or (m) because they form a controlled group of businesses or an affiliated service group.

The final regulations:

- Apply aggregation rules to determine if a company is an ALE subject to the employer shared responsibility rules;
- Apply aggregation rules to determine if an ALE is eligible for the 2015 transition relief for ALEs with 50-99 full-time and FTE employees;
- Apply aggregation rules for determining an employee's status as a full-time employee; and
- Do not apply aggregation rules to calculate a company's liability for an employer shared responsibility penalty.

APPLICABLE LARGE EMPLOYER STATUS

Only companies that meet the ALE threshold are subject to the ACA's employer shared responsibility rules. An employer must employ, on average, at least **50 full-time employees, including FTEs**, on business days during the preceding calendar year to qualify as an ALE.

To determine if a company is an ALE, aggregation rules apply for companies that are related or commonly owned. *Under these rules, all employees of a controlled group of businesses or an affiliated service group are taken into account to determine if an employer is an ALE subject to the employer shared responsibility rules.*

If the combined total meets the ALE threshold, each separate member of the group is subject to the employer shared responsibility rules—even those companies that, on their own, do not have enough employees to meet the ALE threshold. Each of the companies that are combined under these aggregation rules is referred to as an ALE member, and the aggregated group of employers is called an Aggregated ALE Group.

EXAMPLE

For all of 2015, Corporation Z owns 100 percent of all classes of stock of Corporation Y and Corporation X. Corporation Z has no employees at any time in 2014. For every calendar month in 2015, Corporation Y has 30 full-time employees and Corporation X has 80 full-time employees. Corporations Z, Y, and X are a controlled group under Code Section 414(b). Because Corporations Z, Y and X have a combined total of 110 full-time employees during 2015, each of Corporations Z, Y, and X is an ALE member for 2016.

The employer shared responsibility final regulations do not address how the aggregation rules apply to government entities or churches or conventions or associations of churches. Until the IRS provides further guidance on this issue, these entities may apply a reasonable, good faith interpretation of the Code's aggregation rules in determining their status as an ALE.

2015 PLAN YEAR TRANSITION RELIEF FOR MEDIUM-SIZED ALES

The final regulations delay implementation of the employer shared responsibility rules for medium-sized ALEs. In general, ALEs that have fewer than 100 full-time employees will have an additional year, until 2016, to comply with the employer shared responsibility rules.

The rules that apply in determining whether an employer is an ALE subject to the employer shared responsibility rules also apply in determining whether an ALE qualifies for this transition relief. *Thus, all employees of a controlled group or an affiliated service group are taken into account to determine if an ALE is eligible for the 2015 plan year transition relief.*

Under the example above, Corporations Z, Y and X are each ineligible for the 2015 plan year transition relief because they collectively have more than 100 full-time employees.

HOURS OF SERVICE AND FULL-TIME EMPLOYEE STATUS

A full-time employee is an employee who is employed, on average, at least **30 hours of service per week**. In general, an ALE's potential liability for an employer shared responsibility penalty depends on whether the ALE offers affordable, minimum value health coverage to substantially all of its full-time employees (and dependents). Thus, to avoid an employer shared responsibility penalty, it is important for ALEs to identify which employees must be offered health coverage based on their full-time status.

Two methods are available to identify full-time employees—the **monthly measurement method** and the **look-back measurement method**. Members of a controlled group or affiliated service group may use:

- Different measurement methods for identifying full-time employees; and
- Different starting and ending dates and lengths of measurement and stability periods for the look-back measurement method.

Also, in determining an employee's hours of service and full-time status for all purposes under the employer shared responsibility rules, hours of service must be aggregated for ALEs that are part of a controlled group or an affiliated service group. Thus, an employee's hours of service for one ALE that is part of a controlled group or an affiliated service group are treated as hours of service for all other ALE members that are part of that same group.

EXAMPLE

An employee who, for a calendar month, averaged 25 hours of service per week at one ALE member and 15 hours of service per week at another member of the same Aggregated ALE Group would be a full-time employee for that calendar month.

CALCULATION OF PAY OR PLAY PENALTY

The monthly penalty assessed on ALEs that do not offer coverage to substantially all full-time employees (and dependents) equals the number of full-time employees (minus 30) multiplied by 1/12 of \$2,000.

For 2015 (plus any calendar months of 2016 that fall within an ALE's 2015 plan year), an ALE with at least 100 full-time (and FTE) employees may calculate this penalty by **reducing its number of full-time employees by 80, rather than by 30**.

The monthly penalty assessed on ALEs that offer health coverage to substantially all of their full-time employees equals 1/12 of \$3,000 for each full-time employee who receives a premium tax credit for any applicable month. However, the total penalty for the ALE is limited to the total number of the company's full-time employees (minus 30, or 80 for the 2015 plan year for ALEs with at least 100 full-time and FTE employees) multiplied by 1/12 of \$2,000 for any applicable month.

After 2014, the penalty amounts are indexed by the premium adjustment percentage for the calendar year. The adjusted penalty amounts are **\$2,080** and **\$3,120** for 2015, and **\$2,160** and **\$3,240** for 2016.

Common Ownership Rules

The aggregation rules for companies that are part of a controlled group or an affiliated service group **do not apply** for purposes of determining whether an employer owes a penalty under the employer shared responsibility rules, or the amount of the penalty owed. The ACA's employer shared responsibility penalties are determined on an individual member basis.

Thus, for example, an ALE member of a controlled group will not be subject to a penalty if it offers health coverage to its full-time employees that satisfies the ACA's employer shared responsibility standards, even if other ALE members in its controlled group do not offer health coverage to their full-time employees (or offer health coverage that is unaffordable or does not provide minimum value).

Also, if a controlled group or an affiliated service group member is liable for an employer shared responsibility penalty, the penalty will be calculated based on the ALE member's full-time employees, and not based on the entire Aggregated ALE Group's full-time employees.

However, if companies are treated as a single employer under the Code's aggregation rules, only one 30-employee reduction (or 80-employee reduction, for the 2015 plan year) is allowed with respect to the entire Aggregated ALE Group for purposes of calculating the penalty amount. The reduction is allocated among the related companies on the basis of the number of full-time employees employed by each. If a company's total allocation is not a whole number, the allocation is rounded to the next highest whole number. This may result in an overall reduction to the group of more than 30 employees. Also, the 30-employee reduction must be spread across the entire group—even to those ALE members that are not liable for an employer shared responsibility penalty.

In addition, for a full-time employee who is employed by two or more companies that are treated as a single employer under the Code's aggregation rules:

- The company that employs the employee for the greatest number of hours must treat the employee as a full-time employee for purposes of the employer shared responsibility rules; and

- An offer of coverage by one company to the employee is treated as an offer of coverage by all other members of the controlled group or affiliated service group.

MORE INFORMATION

Please contact Hickok & Boardman HR Intelligence for more information on the ACA's employer shared responsibility rules.