



## Be Ready for Affordable Care Act Requirements

### ACA penalties may still apply — and they're increasing for 2026

Many small businesses don't have enough employees to worry about the play-or-pay provisions of the Affordable Care Act (ACA). However, as your business grows, these rules can apply sooner than expected. This issue also may not be on your radar because there's a common misconception that the repeal of ACA penalties under the Tax Cuts and Jobs Act applied to both individuals and businesses. While the *individual* mandate penalty was eliminated beginning in 2019, the *employer* shared responsibility rules are still in effect.

Don't let ACA compliance become a blind spot for your business. Here's what you need to know to comply with the law's requirements.

#### The play-or-pay threshold

The ACA's employer shared responsibility rules apply to applicable large employers (ALEs). In general, ALEs are businesses with 50 or more full-time employees, including full-time equivalents (FTEs). Once a business crosses that threshold, it must comply with several requirements related to employee health coverage. An employer's size for the year is determined by the number of full-time employees plus FTEs in its prior year.

The challenge is that many business owners don't realize they're approaching the ALE threshold until it's too late.

First, for ACA purposes, a full-time employee generally is an individual employed on average at least 30 hours of service per week or 130 hours per month. So some employees you might consider to be part-time because they work less than 40 hours a week may be considered full-time for ACA purposes.

Second, FTEs are determined by adding all hours of service for the month for employees who weren't full-time employees (but no more than 120 hours per employee), and dividing by 120. This can push a company into ALE status faster than expected. For example, a small company with 35 full-time employees and a significant number of part-time workers could exceed the 50-full-time-employee threshold once part-time hours are aggregated.

## **2 types of penalties**

Under the ACA, an ALE may incur a penalty if it doesn't offer minimum essential coverage to its full-time employees and their eligible dependents or if it offers such coverage, but that coverage isn't affordable and/or fails to provide minimum value. The penalty is typically triggered when at least one full-time employee receives a premium tax credit for buying individual coverage through a Health Insurance Marketplace.

One of two penalty structures may apply, depending on the circumstances. First, under Section 4980H(a), a penalty may be assessed if an ALE fails to offer coverage to at least 95% of its full-time employees and their dependents. This penalty is calculated based on the total number of full-time employees, excluding the first 30. Second, under Section 4980H(b), a penalty may apply for each full-time employee who receives a premium tax credit for purchasing coverage through a Health Insurance Marketplace because the employer's coverage is unaffordable or doesn't provide minimum value.

## **Updated penalties for 2026**

The adjusted penalty amounts (per the applicable number of full-time employees used to calculate the specific penalty) for failures occurring in the 2026 calendar year are:

- \$3,340 (up from \$2,900 in 2025) under Sec. 4980H(a), for ALEs not offering health coverage, and
- \$5,010 (up from \$4,350 in 2025) under Sec. 4980H(b), for ALEs offering coverage but that have employees who qualify for premium tax credits or cost-sharing reductions.

The IRS uses Letter 226-J to inform ALEs of their potential liability for an employer shared responsibility penalty. A response form — Form 14764, “ESRP Response” — is included with Letter 226-J so that an ALE can inform the IRS whether it agrees with the proposed penalty. A response is generally due within 30 days. Be on the lookout for this letter so that you’re prepared to promptly review and respond if the IRS contacts you.

### **Considerations for growing businesses**

As your workforce expands, it’s important to address the following questions:

- How close is your company to the 50-full-time-employee threshold?
- Are you properly identifying who’s a full-time employee under the ACA and calculating your number of FTEs based on part-timers’ hours?
- If your company becomes an ALE, how will it structure health coverage to satisfy affordability and minimum value requirements?
- Are your payroll and human resource systems prepared to support ACA reporting requirements, including Forms 1094-C and 1095-C?

Addressing these issues early can help ensure that expansion plans don’t come with unexpected ACA penalties.

### **For more information**

Careful compliance with the ACA remains critical for companies that qualify as ALEs. Growing small businesses should be particularly wary as they become midsize ones. Contact us with questions about your obligations and ways to better manage the costs of health care benefits.