



December 21, 2012

## Employer Responsibility and the ACA: Questions and Answers

One of the main goals of the Affordable Care Act (ACA) is to expand health insurance coverage. Although the ACA does not mandate employers to offer health insurance, numerous provisions within the legislation offer incentives and penalties in order to increase employer-sponsored coverage of health insurance.

The IRS has issued a number of guidance documents to help employers assess their level of responsibility to provide coverage moving forward in 2014. (Most recently [Notices 2012-58](#), [2012-59](#), which followed [Notice 2011-36](#).) The Department of Labor (DOL) also issued a [frequently asked questions technical assistance document](#) in February of this year.

The Department of Health and Human Services (HHS), DOL and IRS are expected to propose regulations on the shared responsibility sections of the ACA in 2013.

The ACA does not have an exception for workers under the 14(c) program. Employers should consider the numbers of hours worked and the time period over which the hours were worked by the 14(c) personnel, just as they would other categories of workers, when making insurance considerations as pertains to the ACA. This Q&A document is meant to apply to employers and employees broadly, and is not meant to exclude any category of personnel or employer, nor meant to provide advice specific to any one employer or employee's situation.

The following questions and answers are provided for informational purposes only, and **should NOT be interpreted as legal, financial or business advice**. ACCSES strongly recommends you seek the advice of accounting and legal tax professionals in regards to how the Affordable Care Act shared responsibility provisions specifically affect your business.

### Background

*Are employers required to offer health insurance coverage under the ACA?*

No, the ACA does not mandate employer-sponsored coverage. However, the Shared Responsibility Provision within the ACA specifies the conditions under which penalties can be levied against large employers who fail to offer affordable insurance to their employees.

*Can employers purchase insurance for their employees on a new health insurance exchange?*

Yes. The ACA created the Small Business Health Options Program (or SHOP Exchange) as a marketplace to allow small businesses to compare and purchase insurance for employees. Until 2016, states have the authority to limit participants in the SHOP exchange to businesses with 50 employees or less. After 2016, all businesses with 100 or fewer FTE employees will be able to purchase insurance through SHOP Exchanges.<sup>1</sup> The CBO estimates

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<sup>1</sup> <http://www.kff.org/healthreform/upload/8275.pdf>

that 2.6 million employees will obtain insurance through the exchanges in 2014. By, 2017 an estimated 3.7 million employees will get insurance coverage through the SHOP exchanges.<sup>2</sup>

## **Full-Time Equivalent Employee Calculation and Large Employers**

*How does the Affordable Care Act define “large employer?”*

If an employer has 50 or more full time equivalent (FTE) employees, the employer is a large employer under the Affordable Care Act. Beginning in 2014, large employers will be subject to a fine for any month a full-time employee receives a premium credit or cost-sharing reduction to purchase coverage through an exchange.<sup>3</sup>

*How does the ACA define Full-Time Equivalent (FTE) employees?*

Hours worked both by full-time and part-time employees, including [leased employees](#) and seasonal workers who work for more than 120 days in a fiscal year, are included in the FTE calculation.<sup>4</sup> In order to calculate the number of FTE employees it has, an employer can sum the number of hours for which wages were paid to employees for a year and divide that number by 2,080 (the numbers of hours worked by a single full-time employee over a 52-work week year, at 40 hours per week).<sup>5</sup>

In [Notice 2011-36](#), the IRS lists three different ways that businesses can determine the hours of work for FTE Employees:

- Using time sheets and other records, the amount of hours worked by employees are calculated. Paid leave is included.
- An alternative strategy involves crediting an employee with 8 hours of work each day, including for paid leave.
- The last approach listed involves using a standardized 40-hour a week formula to calculate the number of hours an employee worked or took paid leave.
- The IRS permits small businesses to change the method of calculating the employees each year.<sup>6</sup>

*How does the IRS calculate the fines for certain large employers?*

If a large employer does not offer any health insurance coverage to full-time employees, then penalties will be assessed if a full-time employee receives a tax credit to purchase insurance on the Exchange.<sup>7</sup> The employer will be fined \$2,000 per full-time employee annually excluding the first 30 employees for not offering coverage.<sup>8</sup>

If the employer offers coverage, but it is not affordable or meet the minimum coverage standard, the business can also be fined if the full-time employee receives credits to purchase insurance on the exchange. The minimum value of benefits offered to employees is defined as covering at least 60% of the value of actuarial benefits. In order to be considered affordable, the premiums that employees pay for individual coverage cannot be more than 9.5% of their household income.<sup>9,10</sup>

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<sup>2</sup> <http://www.kff.org/healthreform/upload/8275.pdf>

<sup>3</sup> <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>

<sup>4</sup> <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-Questions-and-Answers--Determining-FTEs-and-Average-Annual-Wages>

<sup>5</sup> <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-Questions-and-Answers--Determining-FTEs-and-Average-Annual-Wages>

<sup>6</sup> <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-Questions-and-Answers--Determining-FTEs-and-Average-Annual-Wages>

<sup>7</sup> <http://healthreform.kff.org/faq/will-employers-pay-a-penalty.aspx>

<sup>8</sup> [Kaiser Health; http://healthcoverageguide.org/tools-and-charts/summary-of-coverage-rules-vs-options.php](http://healthcoverageguide.org/tools-and-charts/summary-of-coverage-rules-vs-options.php)

<sup>9</sup> <http://www.kff.org/healthreform/upload/8275.pdf>

<sup>10</sup> <http://healthreformgps.org/wp-content/uploads/Nancy-Employee-Responsibility-pdf.pdf>

*If my full-time employee is eligible for Medicaid in my state, can I be fined for not offering that employee private insurance?*

No. In order to be fined for not offering your employee private insurance, you need to be considered a large employer and at least one full-time employee must access a premium tax credit or cost-sharing reduction to purchase insurance through an Exchange. Government subsidies to purchase insurance through the Exchange will only be given to participants who earn incomes between 100% and 400% of the federal poverty line (FPL) and are ineligible for Medicaid in their state. If your state expands Medicaid eligibility to 138% of the FPL, no employee with income at or below 138% will be eligible for subsidies because they will also be eligible for Medicaid. However, employees eligible for Medicaid are included in the FTE calculation as well as the fine assessment.

*Are large employers required to report information about the health plans offered?*

Yes. Every business that meets the standards of a “large employer” must submit an annual return to the Secretary of Treasury saying whether or not the employer offers minimum essential coverage to full-time employees, and the number, name, address and the taxpayer identification number of each fulltime employee and the months during which the employee was covered.<sup>11</sup> If the insurance is offered, the employer must submit: information regarding the length of the waiting period; the months in which the plan was available; the monthly premium for the lowest cost option in each enrollment category; the employer’s share of total allowed costs of benefits under the plan; and the option under which an employer pays the highest share of plan costs.

## **Requirements and Procedures for Assessing Full-Time Employees**

*What is the “Look Back” approach?*

[IRS Notice 2012-58](#) provides employers the **voluntary** option to use a look-back measurement period of up to 12 months to determine whether ongoing, new or variable hour employees or seasonal employees are full-time employees, without being subject to fines in respect to those employees. Under the look-back/stability period safe harbor method, an employer would determine each employee’s full-time status by looking back at a defined period to determine whether during the measurement period the employee averaged at least 30 hours of service per week. If the employee were determined to be a full-time employee during the measurement period, then the employee would be treated as a full-time employee during a subsequent “stability period,” regardless of the employee’s number of hours of service during the stability period, so long as he or she remained an employee.

The notice also provides an additional “administrative period” of up to 90 days for employers who need time between the measurement period and the associated stability period to determine which ongoing employees are eligible for coverage, and to notify and enroll employees. Any administrative period between the standard measurement period and the stability period may neither reduce nor lengthen the measurement period or the stability period.

*What is the 90 Day Wait Time Requirement?*

The Public Health Service Act Section 2708 established that after January 1, 2014, the wait time for an eligible employee or dependent to enter a group health plan cannot exceed 90 days.<sup>12</sup>

*What is the “Automatic Enrollment” Provision of the ACA?*

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<sup>11</sup> Source: [Health Reform](#)

<sup>12</sup> [http://www.dol.gov/ebsa/newsroom/tr12-02.html#\\_UMZZVmeJvTo](http://www.dol.gov/ebsa/newsroom/tr12-02.html#_UMZZVmeJvTo)

Section 1511 of the ACA amended the Fair Labor Standards Act (FLSA) to include Section 18A, which requires “any employer who has over 200 employees to automatically enroll new full-time employees in one of the employer’s health benefits plans (subject to any waiting period authorized by law), and to continue the enrollment of current employees in a health benefits plan offered through the employer.”<sup>13</sup>

## **Small Employers and the ACA**

*What are the eligibility requirements for receiving the Small Business Health Care Tax Credits?*

Businesses must meet certain criteria in order to receive the Small Business Health Care Tax Credit. Businesses may be eligible for credit if they have 25 FTE employees or less, and pay for at least half of their employees’ health insurance. Employees must earn on average below \$50,000 annually.<sup>14</sup> Notices [2010-51](#) and 2010-82 provide additional guidance on how tax credits may apply to small employers.

*What is the reimbursement rate offered by the Small Business Health Care Tax Credit?*

The Small Business Health Care Tax Credit currently reimburses up to 35% of a small business’s health premiums, and up to 25% of a nonprofit’s health premiums. In 2014, the reimbursement rate will increase to 50%.<sup>15</sup>

*How do I know if my business qualifies to apply for the Small Business Health Tax Credit?*

The IRS published a three-step process to help small businesses determine if they qualify for the Small Business Health Tax Credit.<sup>16</sup>

*How can my businesses apply for the Small Business Health Care Tax Credit?*

In order to claim the credit for small businesses, the [Form 8941](#) should be used.<sup>17</sup>

*I am a business owner with fewer than 25 FTE, and cannot afford to provide my employees with the option to obtain health insurance. Are there any provisions in place that will help them obtain coverage?*

Yes. Beginning in 2014, individuals will be able to obtain subsidies to help purchase insurance through exchanges. Individuals with incomes up to 400% of the federal poverty line may be eligible to receive tax credits.<sup>18</sup>

## **Wellness Programs**

*What are the Wellness Grant Programs?*

Businesses with less than 100 employees who work on average more than 25 hours per week who don’t have a pre-existing wellness program are eligible to apply for Wellness program grants.<sup>19</sup>

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13 <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-Questions-and-Answers:-Determining-FTEs-and-Average-Annual-Wages>

14 <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers>

15 <http://www.whitehouse.gov/healthreform/small-business/tax-credit>

16 [http://www.irs.gov/pub/irs-utl/3\\_simple\\_steps.pdf](http://www.irs.gov/pub/irs-utl/3_simple_steps.pdf)

17 <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers>

18 [http://durbin.senate.gov/public/index.cfm/frequently-asked-questions-about-health-care-reform#smallBusiness\\_employees](http://durbin.senate.gov/public/index.cfm/frequently-asked-questions-about-health-care-reform#smallBusiness_employees)

19 <http://www.kff.org/healthreform/upload/8275.pdf>

*What elements need to be included in Wellness Programs?*

According to the ACA, elements of Wellness Programs include:

- Initiatives that include health education, preventive screenings, and health risk assessments;
- Mechanisms to maximize employee participation and engagement;
- Initiatives to change unhealthy behaviors and lifestyle choices, including counseling, seminars, online programs and self-help materials; and
- Supportive environment efforts that include workplace policies to encourage healthy lifestyles, healthy eating, increased physical activity, and improved mental health of individuals.<sup>20</sup>

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<sup>20</sup> <http://www.oca125.com/wp-content/uploads/2012/02/smallbusinesswellnessgrants.pdf>