



Employer Guide to ACA Play or Pay Rules

Employer Shared Responsibility Provision 2024–2025

This in-depth guide helps employers navigate the ACA employer shared responsibility (ESR) provision.

The Affordable Care Act employer shared responsibility provision (“employer mandate” or “play or pay”) requires large employers (those with 50 or more employees) to offer health coverage to their full-time workers or face a potential penalty.

Small employers with fewer than 50 full-time and full-time equivalent (FTE) employees are exempt.

The concept behind play or pay is simple: To **play**, the employer must offer health coverage to full-time employees who work on average 30 or more hours per week. Employers that fail to offer coverage, or fail to offer adequate coverage, will **pay** penalties if any full-time employees receive government subsidies to buy individual insurance through an Exchange (Marketplace).

The concept may be simple but the details are complicated. Is the employer an applicable large employer (ALE) and subject to play or pay? How are full-time employees defined? What type of coverage is adequate? When must coverage be offered? How are penalties calculated?

This guide offers step-by-step guidance about the basic play or pay rules for employers, brokers, and advisors assisting employers and provides general information based on IRS regulations (26 CFR Parts 1, 54, and 301, published in the Federal Register on February 12, 2014) and related federal guidance.

The play or pay rules, similar to most federal tax laws, are extremely complex with many optional provisions. The guide focuses on the most common provisions applicable to typical employer groups. Reporting requirements under Internal Revenue Code §§ 6055 and 6056 are not discussed. All employers are advised to review their unique situation with experienced legal counsel.



KEY DEFINITIONS

Employee

Employee means a common-law employee.

Employee does not include persons defined as self-employed individuals under IRS rules, such as:

- Sole proprietors
- Partners in partnerships (LLPs) or members of LLCs
- 2%-or-more shareholders in Subchapter S corporations
- Persons correctly classified as independent contractors

Note regarding professional employer organizations (PEOs):

The employer may have a co-employment arrangement with a PEO. In that case, the workers are typically common-law employees of the client-employer, not of the PEO, because the client-employer has authority over how work is performed. Although the PEO may be the group health plan sponsor, the client-employer is generally deemed the employer under play or pay.

Note regarding staffing agencies:

The employer may be leasing workers from a staffing agency. Typically the agency recruits and hires workers, assigns them to various clients, and assigns them to other clients when projects end. In that case, the workers are generally common-law employees of the agency and not of the client. Employers are advised to review their situation with legal counsel and to confirm their understanding in writing with the agency.

Full-Time Employee

A *full-time* employee generally means an employee who averages 30 or more hours of service per week. One definition of fulltime employee applies for purposes of determining whether the employer is an ALE. Another definition of full-time employee applies for purposes of the coverage offer requirement. For details, see the respective sections of this guide.

Full-Time Equivalent Employee

A *full-time equivalent* (FTE) employee means an employee other than a full-time employee. FTEs are counted only for the purpose of determining whether the employer is an ALE subject to play or pay. There is no requirement to offer coverage to employees who are not full-time employees, as defined by the ACA.

Hour of Service

Hour of service means each hour for which the employee is paid or entitled to payment for:

- Performance of duties; and
- Vacation, holiday, illness, disability, layoff, jury duty, military leave, and leave of absence.

For hourly employees, use records of actual work hours and other hours for which payment is made or due.

For salaried or other non-hourly employees:

- Use records of actual work hours and other hours for which payment is made or due;
- Assume eight hours of service for each day with an hour of service (days-worked equivalency method); or
- Assume 40 hours of service for each week with an hour of service (weeks-worked equivalency method).

The employer may use different methods for different classes of salaried or non-hourly employees if the classifications are reasonable and consistent. Do not use an equivalency method if the result would understate the employee's hours. For instance, if a salaried employee normally works 10 hours per day three times a week, use either the records method or the weeks-worked equivalency method. Do not use the days-worked equivalency method in this case since it would understate the employee's hours of service (24 hours/week versus 30 hours/week).

Special cases:

- **Work abroad:** Disregard hours worked outside the United States if paid with non-U.S. source income.
- **On-call hours:** In addition to paid hours, include unpaid hours if the employee must remain on the premises or cannot use the time for their own purposes without substantial restrictions.
- **Government programs:** Exclude hours performed by bonafide volunteers (i.e., certain employees of governmental entities or tax-exempt organizations) or by participants in a federal work-study program or similar governmental program.

The IRS also provides guidance for colleges/universities employing adjunct faculty (to account for preparation time outside the classroom) and for airline/transit employers (to account for layovers).

KEY DEFINITIONS (CONT.)

Minimum Essential Coverage

Minimum essential coverage means any employer-sponsored group health plan, other than excepted benefits such as standalone dental or vision coverage.

Affordable Minimum Value Coverage

Affordable minimum value coverage means an employer-sponsored group health plan, other than excepted benefits, that meets both of the following standards:

1. The employee's contribution (e.g. payroll deduction) to enroll for self-only coverage does not exceed 8.39% in 2024, or 9.02% in 2025, of the employee's income from the employer; and
2. The plan's share of total allowed cost of benefits is at least 60% of such costs.

Penalty A

On a monthly basis, penalty A is equal to 1/12 of \$2,970 times the number of full-time employees (minus the first 30 such employees) in 2024 (\$2,900 in 2025).

Penalty B

On a monthly basis, penalty B is equal to 1/12 of \$4,460 times the number of full-time employees that receive subsidies due to an employer's failure to offer affordable minimum value coverage in 2024 (\$4,350 in 2025). However, penalty B is limited to the amount that would be calculated under penalty A (if A had applied).



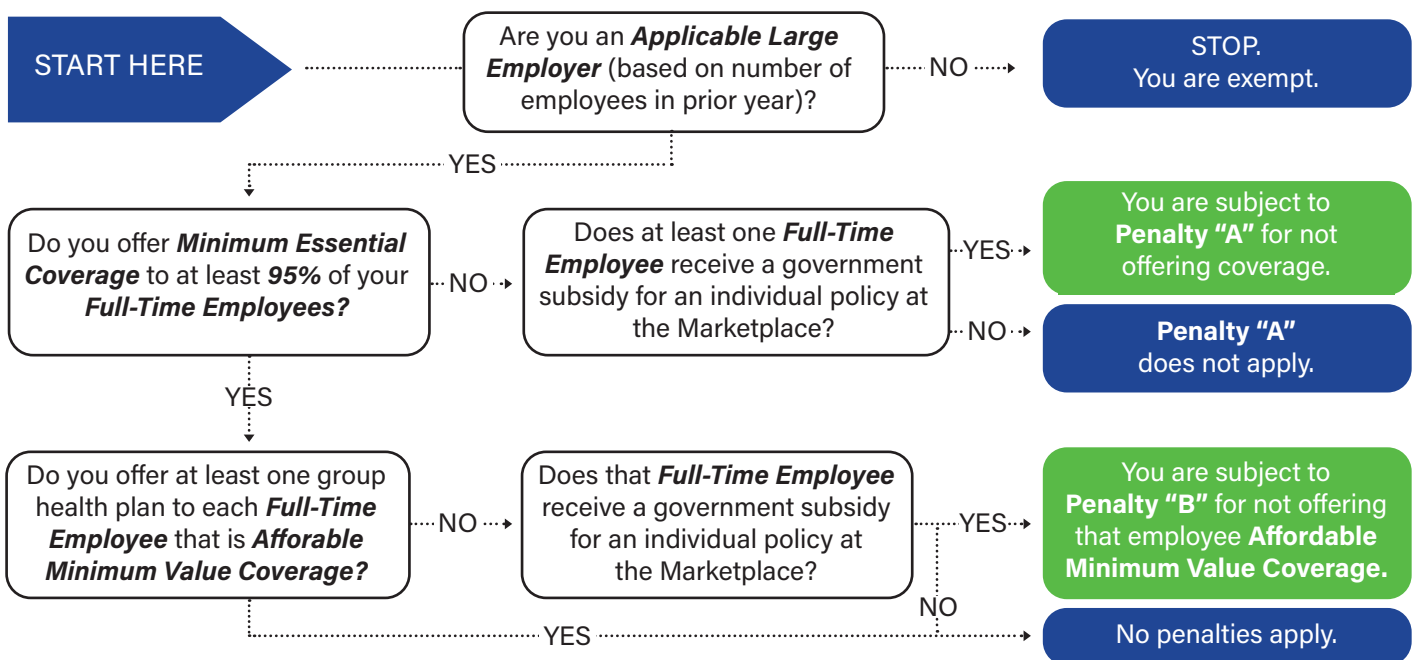


PLAY OR PAY BASICS

The Affordable Care Act’s Employer Shared Responsibility (ESR) provision — often called “the Employer Mandate” or “Play or Pay” — requires Applicable Large Employers (ALEs) to offer health coverage to full-time workers or face potential penalties if the workers obtain government subsidies through an insurance Marketplace (Exchange).

Play or Pay is a two-prong test:

- A** First, does the employer offer basic health coverage to most full-time employees and their children? If not, the employer is at risk for a large penalty.
- B** For employers that pass the first prong without a penalty, the second test is whether the employer offers all full time employees and their children affordable coverage providing minimum value. If not, the employer is at risk for a different (smaller) penalty.



Note: Employers that meet various criteria may qualify for transition relief to avoid penalties for a period of time.



Contact Us With Questions We Are Here To Help.

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