

HUB



Understanding U.S. Health Care Reform

What Canadian Companies with U.S. Operations Need to Know

The Affordable Care Act (ACA) is complex, but it can be managed.

Does your Canadian-based company need to offer health insurance to your American employees? What are your obligations to your employees? What do you need to do now to be compliant with this U.S. law and what can you postpone?

The main purpose of the law is to create improved access to health coverage. However, with increased access comes increased responsibility. The law requires all individuals to have health coverage. It also requires many employers to offer affordable, minimum value health insurance to full-time employees, and it obligates employers to report on their offerings in detail.

Penalties – enforced by the Internal Revenue Service – apply to individuals and employers who fail to comply.

Canadian Employer Obligations

Canadian employers with U.S. operations should assess their responsibilities and potential exposures. ACA requires employers that had 50 or more full-time workers in the U.S. in the prior year to offer affordable, comprehensive insurance—or face penalties of up to \$2,320 (adjusted annually) per full-time employee.

The language of the law can be quite vague, but there are specific requirements that a plan must meet. It's important to know the legal terms so you understand what kind of plan you need to offer your employees. Review these FAQs to learn more:

1. WHO IS AN EMPLOYER?

Any company that has operations in the U.S. is considered an employer. All related companies – called “controlled groups” – are considered to be a single employer. Controlled group status can be triggered at just 80% ownership (or lower in some cases), even when the parent company or individual owners are not based in the U.S. For purposes of figuring if your controlled group has more than 50 full-time employees in the U.S., each part-time employee counts as part of a full-time employee, using a specific IRS calculation.

2. WHO IS CONSIDERED A FULL-TIME EMPLOYEE?

An employee who works 30 hours per week is considered full-time. An employer that does not offer compliant coverage to absolutely all of its employees must count hours worked for at least some employees to defend itself against government penalties and private lawsuits for benefits. Actual hours as well as paid time off and certain leaves of absence (even if unpaid) count toward the hours worked, and certain timeframes (called “measurement periods”) are used to determine if an employee has earned benefits based on past hours worked.

3. WHAT DOES AFFORDABLE MEAN?

Affordable coverage costs less than 9.56% (indexed annually) of an employee's income. There are safe harbors an employer can use instead of an employee's actual income. Keep in mind, however, that an employer only has to offer one option that's affordable, and the plan only needs to be affordable for employee-only coverage, not for coverage including his spouse or children.

4. WHAT IS THE MINIMUM VALUE?

Employers are required to provide a plan that protects individual employees so they're not paying too much out of pocket. “Minimum value” means the plan would pay, on average, about 60% of an individual's medical costs. Note that prior to health care reform, 98% of existing plans would have fulfilled this requirement. Plans must cover hospitalization.

ACA is not a new, complete government system. Instead, it provides governmental oversight over the existing healthcare insurance system. The same insurance companies that existed in the U.S. prior to ACA will continue to offer coverage under the new law's parameters.

How Employee Classification Impacts an Employer's Obligation

A Canadian employer doesn't have to offer coverage to all U.S. employees. As the law states, only full-time employees need to be offered coverage. Determining that status can be fairly simple—but it is also essential for your business.

ACA identifies three categories of workers:

- Full-time
- Seasonal
- Variable hour

Record-keeping and reporting become crucial in the world of ACA. The government wants to ensure that employers are offering coverage to their employees, and you need to be prepared to prove you've met the benchmarks.

1. STEP 1: PUT IN THE OFFER LETTER

Your workers must know what type of employee they are. In fact, HUB International recommends notifying them of that category in writing at the time of hire. All full-time employees must be offered coverage to avoid penalties.

2. STEP 2: TRACK THEIR HOURS

If you haven't offered coverage to seasonal and variable hour employees, be certain these workers satisfy the specific variable and seasonal definitions. Seasonal people work in positions that are staffed about the same time each year and last for 6 months or less. An employee is considered a variable hour employee if you cannot reasonably tell whether the person will be working at least 30 hours a week – a tricky standard. Track the hours of all employees who aren't full time. This type of documentation will support the fact that they're working fewer than 30 hours per week—and, therefore, aren't full-time workers.

3. STEP 3: OFFER COVERAGE TO THEIR CHILDREN

An employer must offer coverage to the eligible employee's children. It includes adult children up to age 26, whether or not they are employed elsewhere or living in their parent's home. Child coverage does not have to be affordable. An employer is not obligated to offer coverage to the employee's spouse.

4. STEP 4: BE PREPARED TO REPORT COMPLIANCE (OR NOT) TO THE IRS

Any employer with over 50 full-time employees must report specific information to those employees and the IRS. The IRS will use the information to impose penalties on individuals and on employers, so it needs to be both timely and accurate. Technology seems to be the only prudent approach to completing these forms (Forms 1094-C and 1095-C), and current systems should be evaluated and upgraded or replaced

Do your Canadian employees working in the U.S. on E2 visas need to have American health insurance, even if they have insurance in Canada?

If your employee is required to file a tax return in the U.S., he may be required to have U.S. health insurance through 2019. Contact your local HUB benefits advisor for more information.

How many full-time employees do you have?

Count your employees on a control group basis. A controlled group likely includes every division of your operations in the U.S. The determination is based on common ownership of the different divisions. The divisions can represent different locations of the same business or different businesses owned by a common parent company or a small group of common owners. It can also include businesses that frequently provide services together to third parties with only a minimal level of common ownership. Even if your different divisions have separate tax ID numbers, for health coverage purposes you'll still count them together. If you are unsure, get a legal opinion.

Types of Plans You are Obligated to Offer to Your U.S. Employees

ACA defines a certain minimum health plan value, which is intended to create a threshold for what the employer's plan has to provide.

The costs can vary widely, and health plans use different methods of determining coverage.

Employers are offering a variety of plans, commonly referred to as different "metal levels" of coverage. The category determines how employers and employees share the cost of the health plan.

- **PLATINUM PLANS** cover, on average 90% of total costs of a person's care, etc, leaving 10% for the employee.
- **GOLD PLANS** cover 80%, leaving 20% for the employee.
- **SILVER PLANS** cover 70%, leaving 30% for the employee.
- **BRONZE PLANS** cover 60%, leaving 40% for the employee.

Some employers have begun self-funding non-traditional health plans - so-called skinny plans. These are low-cost plans that come in at almost exactly 60% in terms of minimum value, but provide only preventive benefits and hospitalization coverage. This is almost certainly not what the U.S. Congress intended in passing ACA. A typical program for an individual to have health coverage on a group basis costs approximately \$6,000, while a typical program covering a family costs just under \$12,000. The costs for these skinny plans come nowhere close to these numbers, but may be all an employer or an employee can actually afford. However, in some cases, you could still be liable for a penalty even if you offer a skinny plan. Such an offering must be evaluated carefully.

If you do opt to offer a skinny plan, keep in mind that employee education and record-keeping are imperative. You must be able to document that your employees are aware of what the plan covers. Keep written proof, either in paper or electronic form, of that disclosure.

Whatever plan you offer, there are other U.S. compliance obligations that will also apply.

The Benefit of Offering Good Options

ACA will likely impact your business in unexpected ways. As an employer, you want to attract and retain the best talent possible. The most talented individuals will be looking at the whole package when weighing a new job option — and that includes health coverage. Not only do individuals need to prove that they have health insurance, but an employer offering a gold-level plan may have the edge in employee attraction and retention over one offering only a skinny plan. On the other hand, if you opt not to offer health coverage, employees may demand larger salaries in order to purchase their own insurance. Think of health coverage as the carrot to entice exceptional employees to join your team.

Understanding the Law is Half the Battle

When you're ready to take the next step, choose an insurance broker who understands your unique needs. Put our expertise in cross-border risk management to work for you. Contact HUB International to request an evaluation of your employee benefits program.

FAST FACTS

 **30** hours/week
Full-time workers
work at least 30 hours per week.

Seasonal workers

are hired at the same time of year for less than six months at a time.



 **30** hours/week
Variable hour

workers are those workers whose employers cannot reasonably tell whether they will work at least 30 hours per week.

Retain records to document your designation for each employee!

UNION EMPLOYEES

Employers may be off the hook if they have employees who are members of a union that offers a health plan. However, beware of those plans that don't meet minimum value or that aren't considered affordable. If the union plan doesn't hit those benchmarks, the employer is still obligated to offer appropriate insurance to those employees.

\$2,000 PENALTIES

ACA requires employers with 50 or more full-time workers in the U.S. to offer affordable, comprehensive insurance—or face penalties of \$2,320 (indexed annually) per full-time employee.

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