FREQUENTLY ASKED QUESTIONS

Applicable Large Employer

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Now You're an Applicable Large Employer

The first year as an Applicable Large Employer ("ALE") under the Affordable Care Act ("ACA") can be baffling and sometimes overwhelming. You're now dealing with new compliance obligations that weren't on your plate before. These Frequently Asked Questions (FAQs) address the initial questions most new ALEs have. The ACA employer mandate is complex and HUB has additional resources to help you understand your responsibilities.

First, an Overview

The ACA employer mandate is not actually a mandate. It's a tax penalty that applies if certain employers do not offer compliant health coverage. It is sometimes called the "employer shared responsibility penalty." The idea is that employers should "share" in the "responsibility" of expanding health insurance coverage to the U.S. population. Employers do this by offering coverage to their full-time employees.

If an employer does not "share" in this "responsibility," then their full-time employees can receive tax credits for buying individual coverage through the exchange. Since those tax credits cost the government money, the government expects employers to pay a penalty if a full-time employee actually receives a tax credit.

The good news is that an employer can offer compliant coverage to avoid the penalty. Merely offering coverage helps the employer avoid the penalty; employees are not required to enroll for the employer to avoid the penalty.

If you are an ALE, this now applies to you. To avoid a penalty, you should:

1. Identify your full-time employees (see "Who are Full-Time Employees?" below)
2. Secure (if you don't have it already) coverage that provides minimum value
3. Make sure your employee-only coverage is affordable
4. Offer coverage to your full-time employees and their dependents
5. Continue to identify full-time employees

These FAQs are designed to answer the most common questions we have received from companies who are new to the ACA employer mandate. HUB International is here to help you each step of the way.

Contents

What is an Applicable Large Employer ("ALE")?

The Affordable Care Act ("ACA") employer mandate to offer compliant health insurance applies to an employer that is an Applicable Large Employer ("ALE"). An ALE is an employer that employed 50 or more full-time and full-time equivalent employees in the prior calendar year. This is based on an average of employees employed for each month.

In this calculation, each full-time employee counts as one. For part-time employees, their hours are added together and then divided by 120. That number is the number of "full-time equivalent" employees. For this purpose, no more than 120 hours are included for any part-time employee. There are also special rules for businesses that cross over the 50 threshold because of seasonal workers.

If you're reading these FAQs, we assume you've already concluded you are an ALE. However, if you are unsure, Hub International has a worksheet to help you work through that calculation. You can also find additional information on the IRS website.

What does the ACA Employer Mandate require?

If you are an ALE, the ACA employer mandate generally requires that you offer Affordable, Minimum Value, Minimum Essential Coverage to your Full-Time Employees, and offer Minimum Essential Coverage to their dependent children by April 1st of the first year as an ALE. If you don't offer compliant coverage, you will pay a penalty. The ACA divides the requirements into two components that each have different penalties:

- **The "A" Requirement:** The employer must offer Minimum Essential Coverage to at least 95% of its full-time employees
- **The "B" Requirement:** The employer must offer coverage that meets the Minimum Value actuarial standards (the carrier calculates this) and it must be Affordable.

The April 1st grace period applies only the first time a business becomes an ALE. If you stop being an ALE next year (or any future year) and then become an ALE again, you would have to offer coverage by January 1st.

In the first quarter of the following year, you will also have to report to the IRS and to the employees on the coverage you offered.

Do I have to offer this coverage to all employees of all of our companies/entities?

These rules apply to all of the organization's entities that are part of the controlled group (as defined by the IRS). This means that certain related companies are all treated as a single employer for purposes of the ACA employer mandate.

Related companies can include parent-subsidiary businesses, businesses that have one or more common owners, or businesses that have a close relationship, even if they have little or no common ownership interest.

This means that you cannot avoid being an ALE merely by splitting up your employees into separate related entities, with separate tax ID numbers.

If your organization has multiple entities, or if you or your business owners own multiple entities, HUB recommends you seek the advice of an experienced employee benefits attorney to determine if those entities fall within a "controlled group".

Must employers ensure that its employees enroll in the coverage?

No. While the employer is obligated to offer ACA-compliant coverage, it is not obligated to ensure that all qualified employees enroll (it's the employee's choice to accept or decline coverage). This means that the employer will generally not face a penalty if it offers compliant coverage and its employee waives coverage, goes to the Marketplace, gets a plan, and gets a subsidy. While not legally-required, it is a good idea to obtain documented waivers (either electronic or signed paper) to show that coverage was offered to an employee, but he or she declined.

Who are "Full-Time Employees"?

Generally, those who work more than an average of 30 hours each week or 130 hours each month (please note that this formula is different than the one used to determine if the organization was an ALE – that formula is based on an average of 120 hours worked each month). There are two ways to determine whether an employee is full-time and benefits eligible for ACA purposes:

1. **Employees Classified as Full-Time:** These are employees who, at the time they are hired into their position, are reasonably expected to work an average of 30 hours each week or 130 hours each month. For example, when you hired the employee did you tell the employee that he or she is expected to work Monday through Friday from 8:30 am to 5:00 pm each day, or did the job posting indicate the position was full-time? If so, that would indicate that you "reasonably expect" that employee to work an average of 30 hours each week or 130 hours each month, or;

2. **Measured Variable Hour/Part-Time Employees:** If you have employees with variable work schedules or who are seasonal, there are special rules that allow you to measure their hours over a measurement period (such as 12 months) to determine if they averaged 30 hours per week. If you adopt those rules, and an employee averages at least 30 hours per week over the measurement period, you have to offer them coverage that will be available for a specified period (often 12 months). The period coverage is available is sometimes called the "stability period." These rules have some nuances and HUB can provide more detail as necessary. Measuring employees for the first time as a new ALE can be complicated process. Please work closely with your payroll vendor and HUB Account Manager to better understand this process.

What does "Affordable" mean?

"Affordable" means the employee's share of self-only coverage under your plan is not more than 9.78% for months in 2020 (9.83% for months in 2021) of the employee's household income. The percentage is adjusted (upward or downward) annually for changes in the cost of living.

Note that the obligation to offer "affordable" coverage only applies to employee-only coverage; you can charge up to the full cost of dependent coverage. Determining whether your plan is affordable can be tricky since most employers do not know an employee's household income. However, under a special rule, the IRS will treat your coverage as affordable if the cost is 9.78% (for months in 2020; 9.83% for months in 2021) of one of the following:

1. **Federal poverty level safe harbor**
   - Employer assumes employee earns income at the U.S. federal poverty level for the state the employee is employed (in 2020 $12,760 for the mainland, $15,950 for Alaska and $14,680 for Hawaii; in 2021 the figures are $12,880, $16,090, and $14,820, respectively).
   - The employer only charges 9.78% (for months in 2020; 9.83% for months in 2021) of that amount for employee-only coverage for each month during a calendar year.
   - This is often the most expensive option, but also the easiest to use.
2. **Rate of pay safe harbor**
   - Employee share of employee-only coverage not to exceed 9.78% (for months in 2020; 9.83% for months in 2021) of hourly rate for hourly employees and salary for others in effect at the beginning of the plan year.
   - Works well for many groups (but not restaurant servers or commission employees).
3. **W-2 safe harbor**
   - The premium cannot be more than 9.78% (for months in 2020; 9.83% for months in 2021) of an employee's Box 1 compensation of the W-2 for the calendar year.
   - The challenge is that employers do not know this before the year starts, so they may have to estimate/project and could be wrong.
   - This must be used for an entire calendar year. The employer cannot change to another safe harbor mid-year.

There are specific rules regarding using these alternatives. HUB can provide more information as requested.

What does "Minimum Value" mean?

In broad terms, "Minimum Value" means the health insurance has an actuarial value of 60%. This means it will typically cover at least 60 cents out of every dollar of medical expenses on average. Obviously, individual participant experiences will vary.

The health insurance carrier generally makes this determination for fully-insured plans. Virtually all major medical plans offered by insurers are minimum value. CMS provides a minimum value calculator that self-insured plans can use to make the determination. They can also get an actuarial certification. You can identify whether your plan is a Minimum Value plan by looking at the Summary of Benefits Coverage (SBC). Please work with your and HUB Account Manager to better understand this requirement.

What Is "Minimum Essential Coverage"?

"Minimum Essential Coverage" (or "MEC") is major medical plan coverage (i.e. doctor's office visits and prescriptions) offered by an employer. Limited benefit plans (like fixed indemnity insurance or cancer-only policies) are not MEC. Most major medical plans from an insurer and offered by an employer will constitute MEC.

What happens if I don't offer coverage (or offer coverage that doesn't comply)?

You could be subject to penalties. It's important to keep in mind that you will only be assessed a penalty if one of your Full-Time Employees receives subsidized individual coverage from an ACA Marketplace/Exchange. The penalties vary based on the cost or quality of the coverage offered and whether you offered coverage to enough of your Full-Time Employees. Note that you only have to offer one option that complies. More specifically:

- **The "A" Penalty:** If you don't offer Minimum Essential Coverage to at least 95% of your Full-Time Employees and their dependents, you could pay a penalty of $2,700 per year, or $225/month, (for 2021) for each Full-Time Employee in your workforce, minus the first 30. This penalty applies even if only one Full-Time Employee receives subsidized individual coverage.
- **The "B" Penalty:** Even if you offer MEC to at least 95% of your Full-Time Employees and their dependents, you could still be subject to a penalty. This could happen if your plan is not Affordable or does not provide Minimum Value. You could also be subject to a penalty for those Full-Time Employees in the less than 5% who did not receive an offer of coverage even if the "A" penalty doesn't apply. In any of those cases, the penalty is $4,060 per year, or $338.33/month, (for 2021), but only for each Full-Time Employee who gets subsidized individual coverage through an ACA Marketplace/Exchange. Therefore, while per-employee penalty amount is larger under the "B" Penalty, the multiplier (the number of Full-Time Employees on which the penalty is based) is smaller.

How does someone get subsidized individual coverage?

Only individuals who have household income at 400% of the Federal Poverty Level or below are eligible to receive subsidized individual coverage. However, for example, 400% of the mainland individual Federal Poverty Level for 2021 is $51,520 (the mainland Federal Poverty Level is $12,880). Therefore, it is not just minimum wage employees who are eligible for subsidies. However, even if an employee obtains subsidized coverage through the exchange, if you offer at least on ACA-compliant coverage option, you will not owe a penalty

Didn't the penalty get repealed?

No. In the 2017 tax reform bill, Congress reduced the individual mandate penalty to $0 starting January 1, 2019. The individual mandate requires U.S. taxpayers to obtain medical coverage or pay a penalty. For 2018, and prior years, this still applied. However, despite these changes, the employer mandate remains in force and is unchanged.

What do I have to report?

The IRS requires that ALEs file and distribute certain tax forms. These forms are intended to tell the IRS if the ALE complied with the employer mandate. The tax forms are completed by the employer each year and reflect the employer's offer of coverage. Please keep in mind that these ACA filings are federal tax forms regulated and enforced by the IRS like all other required tax filings. Failure to file accurate ACA tax forms can carry heavy federal penalties separate and apart from the shared responsibility penalties.

In the first quarter of the year after you become an ALE, you must report to your employees and the IRS on Forms 1094-C and 1095-C. This reporting is required even if you choose not to offer coverage (or offer non-compliant coverage).

What is the reporting deadline?

Reporting to employees is required by the end of January following the reporting year using the Form 1095-C, unless the IRS gives an extension as they have done for multiple years. For example, by statue, 1095-C forms must be distributed to employees on or by January 31, 2021 for tax year 2020. However, the IRS granted an extension until March 2, 2021 for 2020 reporting. The filing deadline with the IRS is the end of February (if you're filing on paper) or March (if filing electronically). If the deadline for filing with the IRS falls on a Saturday, Sunday, or federal holiday, it is moved to the next business day. Electronic filing is required if you have to file 250 or more Forms 1095-C.

Why is reporting required?

The purpose of the reporting is to let your employees and the government know whether you offered ACA compliant coverage (i.e. was it Affordable? Minimum Value? etc.). This reporting is used to determine: (1) if you owe an employer mandate penalty, (2) whether your employees owe an individual mandate penalty (before 2019), and (3) whether your employees were eligible for subsidized individual coverage. An employee offered MEC, that is Affordable, and provides Minimum Value by his or her employer is generally not eligible for subsidized individual coverage.

What forms must I complete if I'm fully-insured?

Fully insured employers must complete two different documents:

- **1094-C:** This document must be completed by the employer and filed with the IRS. This document reflects the employer's information including the number of full-time employees and the corporate entity composition of the company
- **1095-C:** This document tells the IRS and the employee about the offer of coverage made to the employee. The document should both be filed with the IRS and distributed to the employee. The employer should provide the Form 1095-C to each employee who was a full-time employee for any month of the calendar year. The employer (or its vendor on behalf of the employer) must complete both Parts I and II regardless of whether the employer offers coverage, the employee enrolls, or the employee waived coverage.

The insurance carrier has a separate reporting obligation on Forms 1094-B and 1095-B. The carrier's reporting **does not** satisfy the employer reporting obligations.

What forms must I complete if I'm self-insured (including level-funded programs)?

- **1094-C:** This document must be completed by the employer and filed with the IRS. This document reflects the employer's information including the number of full-time employees and the corporate entity composition of the company. Each separate legal entity has to file its own Form 1094-C.
- **1095-C:** ALE members that sponsor a self-insured health plan must use Form 1095-C, Part III, to report on individuals who took coverage (A non-ALE with self-insured coverage will use the B Forms to report on individuals who took coverage since the C Forms are only intended to be used by ALEs).

Should I report on an individual who was not an employee on any day of the calendar year, such as someone on COBRA?

The employer mandate under the ACA does not extend to offers of COBRA. An offer of COBRA continuation coverage that is made to a former employee upon termination of employment should be reported as not making an offer of coverage. Similarly, offers of coverage to former spouses or dependents who are eligible for COBRA should not be reported.

However, if your plan is self-funded, you do have an obligation to report if the former employee, spouse, or dependent enrolls in COBRA coverage. This reporting can be done on the Form 1095-C. You would still show that the employee was not offered coverage (even though they were offered COBRA, that does not count as an offer for purposes of the form). However, in Part III of the Form 1095-C, you would show which individual elected coverage. In the case of a divorce, the former spouse would receive a separate Form 1095-C for the period he or she was covered under COBRA.

Are there notices that I must provide?

There are two notices that are required by the ACA of all employers:

1. **The Marketplace Exchange Notice:** This notice is available on the Department of Labor website and provides employees with information about the existence of the exchange, and the employer's offer of coverage. This notice must be provided to each employee whether full- or part-time within 14 days of hire.

2. **The Summary of Benefits Coverage (SBC):** This document is generally completed by the carrier for each plan offered by the employer. The SBC for each plan must be provided to the employee at initial enrollment and then again an open enrollment.

There are also notices that may be required depending on the type of plan or employer. First, if a plan permits, or requires, covered persons to designate a primary care provider, then the employer has to provide a notice stating that. There is special language for plans that allow the designation of pediatric care providers and OB/GYN.

The ACA also requires a notice if a plan is "grandfathered" under the ACA. These are plans that pre-existed the ACA and have not substantially changed in certain specific ways since then. If you are offering coverage for the first time, your plan is not grandfathered. If you are unsure if your plan is grandfathered, please contact your HUB account manager.

These are just the notices required by the ACA. Other federal laws will require additional notices HUB Chief Compliance Officers are also available to help clients better understand these notice obligations. HUB also has an annual notice kit that can help you satisfy some of these obligations.

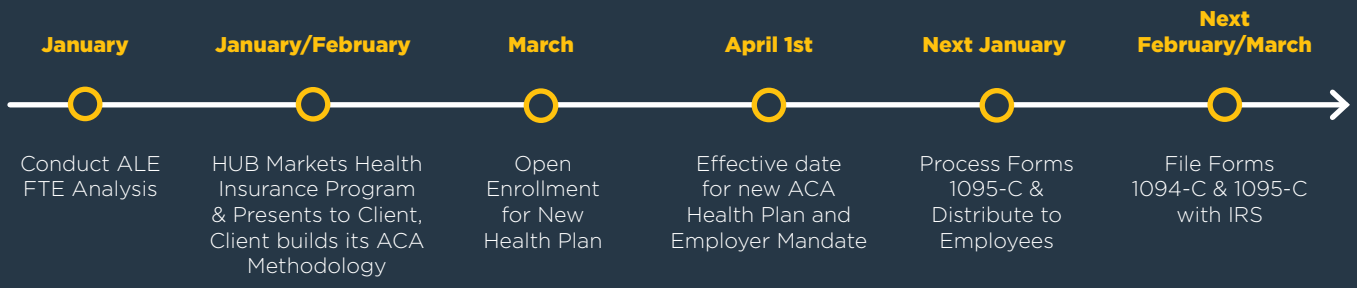
What should I do next?

HUB understands that these new responsibilities can seem daunting. There are some practical steps you can take to get yourself into compliance:

1. Ensure you have a compliant ACA health plan in place by April 1. HUB can help!
2. Determine your contribution structure. Remember to keep it Affordable.
3. Consider a Cafeteria Plan. This is the plan that allows employees to pay their premiums on a pre-tax basis. A plan document is required.
4. Assess your employee population. Identify all your Full-Time Employees. Identify any variable hour or seasonal employees.
5. Establish your measurement period. If you have variable hour, seasonal employees, or part-time employees you need a measurement period.
6. Get a vendor to help. Some payroll and other vendors can help with measuring employee hours. Vendors can also help with ACA reporting. The HUB technology consulting team can help you from RFP through implementation.
7. Offer the health plan to Full-Time Employees. Make sure to keep proof that you offered coverage. Waivers of coverage can become very important!
8. Get your reporting system set up. Save yourself headaches down the road by working on your ACA reporting with your vendor early on. Implementation can take a little while and you don't want to find out early next year that you don't have time to get it all together.

See our "First-Time ALE Timeline" (next page) to help you navigate through your first year.

First-Time ALE Timeline



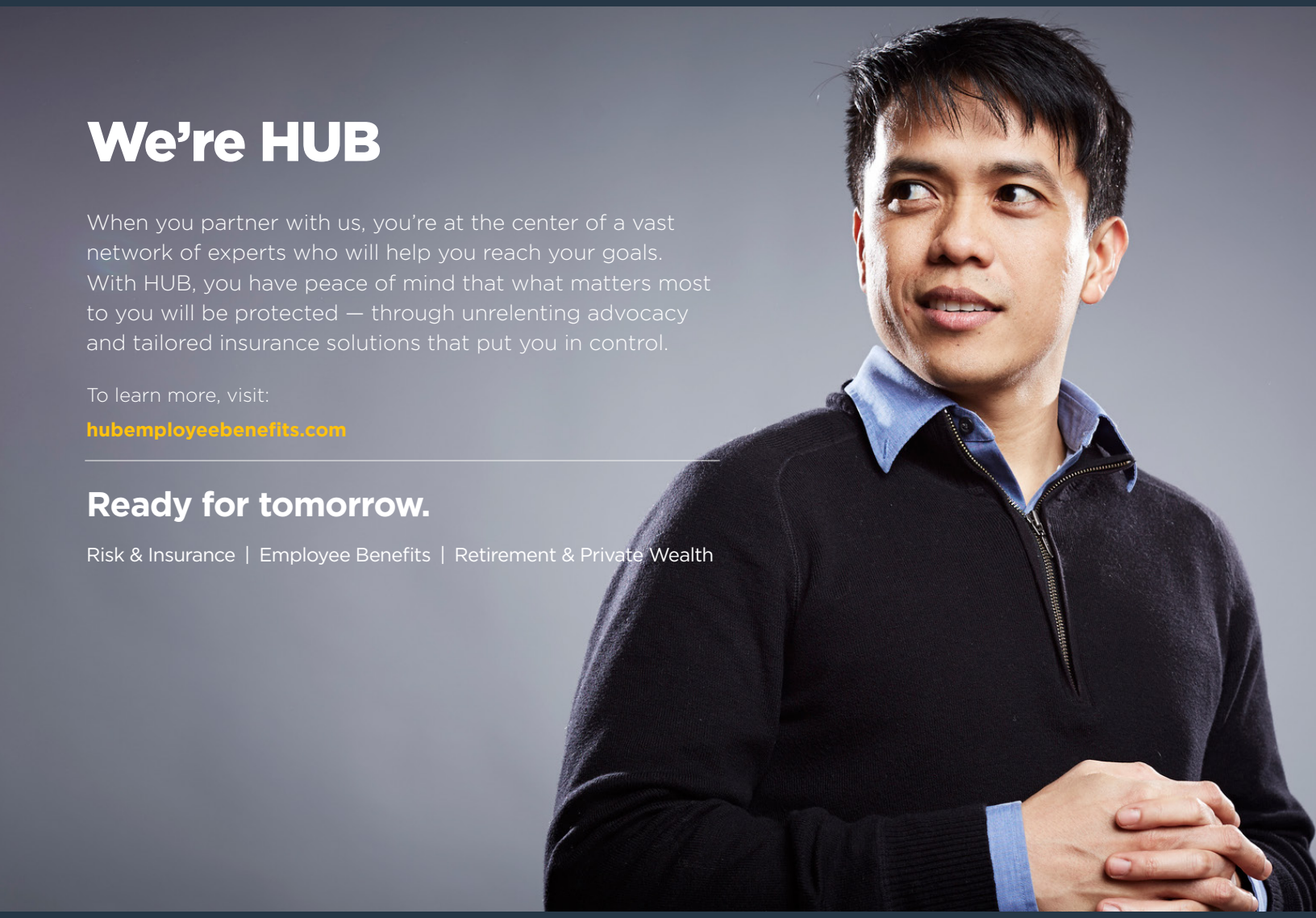
HUB International has several additional resources to help you navigate the ACA employer mandate and other provisions of the ACA. Just reach out to your Account Manager for additional resources. Additional updates on the ACA and other benefits items are included in our compliance bulletins. They are available on hubinternational.com and in our monthly *In Compliance* newsletter. If you're not subscribed, ask your Account Manager.

It may also be helpful to review the HUB IRS Employer Mandate FAQs, which is available from your HUB Account Manager, to better understand the enforcement process. This may help you get ahead of enforcement and compliance and give you a view into the IRS' expectations.

You can also visit the IRS website at www.irs.gov and search for "Employer Shared Responsibility" in the search box at the top right. You will find helpful resources such as:

Employer Shared Responsibility Provisions

Questions & Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act



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