



# Employer Guide to ACA Play or Pay Rules

Employer Shared Responsibility Provision 2023–2024

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

# Table of Contents

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Introduction	3
Key Definitions	4
Play or Pay Basics	6
Determining Applicable Large Employer Status	7
Defining Full-Time Employees for Coverage	10
Using Measurement Methods	12
Defining Minimum Essential, Minimum Value, and Affordable Coverage	16
Affordable Minimum Value Coverage: Quick Check	17
Estimating Penalties	18
Reviewing Limited Non-Assessment Periods	19
Quick Check	20
Resources	21

**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 commonlaw 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

**Full-time employee** generally means an employee who averages 30 or more hours of service per week. One definition of full-time 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

**Full-time equivalent** (FTE) 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 bona fide 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 (continued)



### 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 9.12% in 2023, or 8.39% in 2024, 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.

See [Defining Minimum Essential, Minimum Value, and Affordable Coverage](#) for details.

### Penalty A

On a monthly basis, penalty A is equal to  $\frac{1}{12}$  of \$2,880 times the number of full-time employees (minus the first 30 such employees) in 2023 (\$2,970 in 2024).

### Penalty B

On a monthly basis, penalty B is equal to  $\frac{1}{12}$  of \$4,320 times the number of full-time employees that receive subsidies due to an employer's failure to offer affordable minimum value coverage in 2023 (\$4,460 in 2024). However, penalty B is limited to the amount that would be calculated under penalty A (if A had applied).

See [Estimating Penalties](#) for examples of calculating penalties.

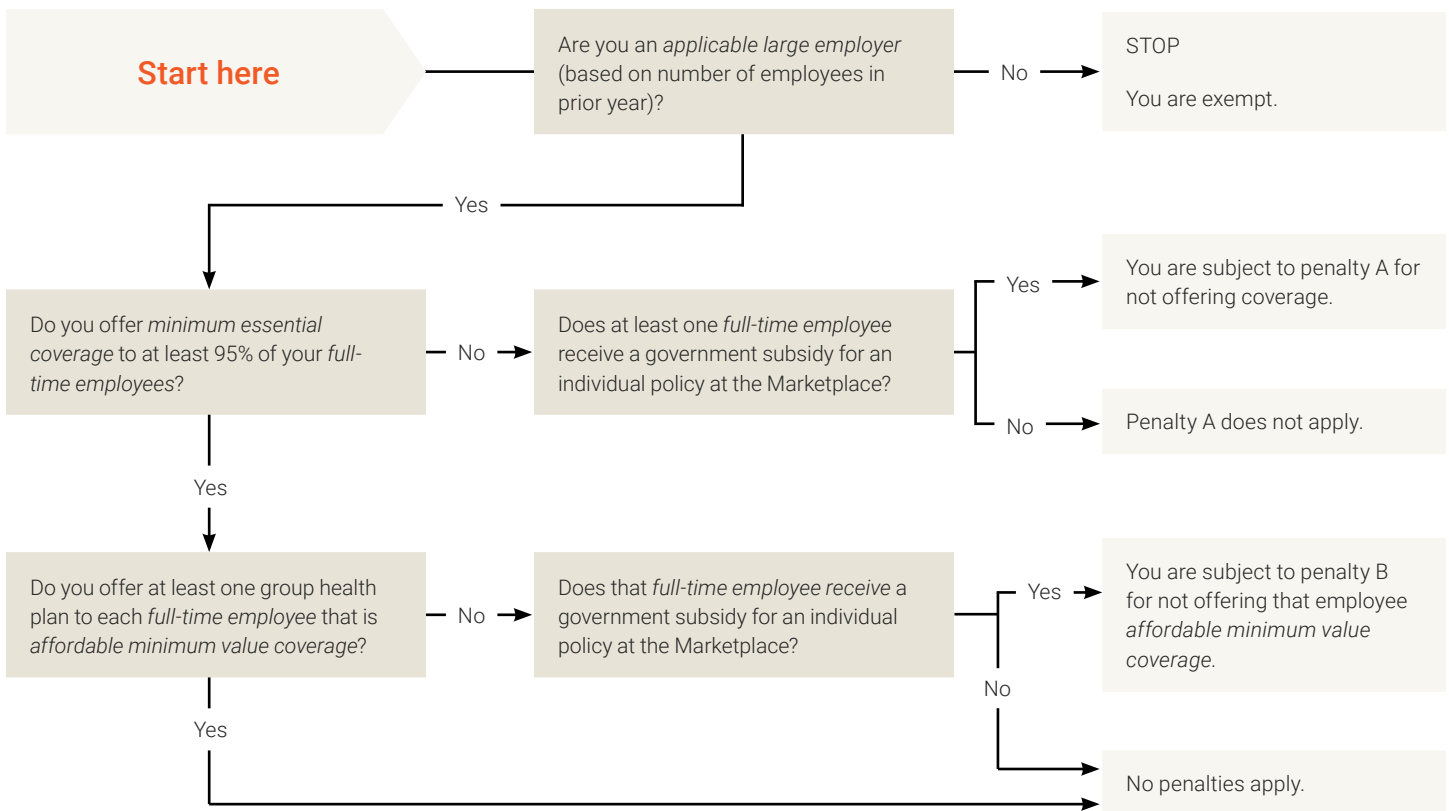
# Play or Pay Basics

Play or pay is a two-prong test that applies to applicable large employers (ALEs) with 50 or more full-time employees (including FTEs).

The two penalty types—called A and B for the sections in the law—are designed in tandem so that employers deciding not to offer comprehensive coverage to all their full-time workers are still incentivized to offer at least some coverage to most workers. Penalties are triggered when full-time employees receive government subsidies to buy individual insurance through a Marketplace based on their income and lack of access to employer-sponsored coverage.

- 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.

## Play or Pay



# Determining Applicable Large Employer Status

Play or pay applies only to applicable large employers (ALEs). An employer is an ALE if it employed an average of 50 or more full-time employees (including FTEs) in the prior calendar year.

Each employee with 120 or more hours of service in a month counts as one full-time employee. The number of FTEs is calculated by totaling the hours of service of all non-full-time employees in a month and dividing by 120.

Follow the steps below for each month of the prior calendar year (e.g., for 2024 status, use 2023 workforce data).

## Step One: Identify All Employees

Identify all employees, including full-time, part-time, temporary and seasonal workers, based on the common-law employee standard. For details, refer to the definition of employee on [page 4](#) of this guide.

## Step Two: Identify Seasonal Workers (if any)

**Seasonal worker** means an employee hired to do work that is performed exclusively at certain seasons of the year, such as agricultural workers and retail workers that are employed only for holiday seasons.

Seasonal workers are included with all other employees (Step One). In some cases, seasonal workers can be subtracted from the final count in determining the average number of employees (Step Five).

## Step Three: Total Each Employee's Hours of Service

**Hour of service** generally means each hour for which the employee was paid or entitled to payment (e.g., work, vacation, holidays, layoff, sick leave, leaves of absence).

For details about defining an hour of service for hourly workers, salaried employees, and non-standard work arrangements, see [page 4](#) of this guide.

## Related Employers

Related employers in a controlled group must be counted together to determine ALE status. Parent-subsidiary groups, brother-sister groups, nonprofit organizations under common control, trades and businesses under common control, and affiliated service groups usually fall under this definition.

The group's financial officer or general counsel can confirm whether the employer is part of a controlled group or affiliated service group as defined under Internal Revenue Code § 414.

**Note:** Although related employers are combined to determine ALE status, each entity is separately responsible for the play or pay coverage requirements. Penalties assessed on one entity do not apply to other entities in the controlled group.

## Determining Applicable Large Employer Status (continued)

### Step Four: Calculate the Average Number of Employees

For each month of the prior calendar year:

1. Count the number of employees (including seasonal workers) whose hours of service were 120 or more that month. Each such employee counts as one full-time employee.
2. Count the total number of hours of service for all non-full-time employees (including part-time seasonal workers). Do not count more than 120 hours/month for any one employee. Divide the sum by 120; round fractions to the nearest hundredth. The result is the number of FTEs.
3. Add the numbers of full-time employees and FTEs for each month, then total for the year. Divide the sum by 12 (rounded down to a whole number) to determine the employer's average number of employees.

**Note regarding veterans:** Employees can be omitted from counting for any months in which they received medical coverage through TriCare or the Veterans Administration.



### Example

ABC Co. employed 80 workers in January: 10 full-time employees, and 70 non-full-time employees that accumulated a total of 4,600 hours of service (10 full-time and 4,600 hours/120=38.33 FTEs). The data was similar for other months that year, except during the summer when ABC Co. also employed seasonal workers. At the end of the year, ABC Co. calculated its average number of employees as follows:

ABC Co.	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Full time (excl seasonal)	10.00	10.00	11.00	10.00	10.00	21.00	22.00	22.00	11.00	9.00	9.00	9.00	154.00
FTE (incl seasonal)	38.33	38.33	38.33	38.33	42.33	62.33	60.00	60.00	38.33	38.33	38.33	38.33	531.30
Total	48.33	48.33	49.33	48.33	52.33	83.33	82.00	82.00	49.33	47.33	47.33	47.33	685.30

**Result:** 685.30/12 months = 57. ABC Co. is an applicable large employer . . . but go on to Step Five.

## Determining Applicable Large Employer Status (continued)

### Step Five: Adjust for Seasonal Workers

In the example, ABC Co. is defined as an ALE because its average number of employees in the prior year was 57. A special provision regarding seasonal workers may help ABC Co. reduce its size. Specifically, if the average number of employees is 50 or more for no more than 120 days, or no more than four months (whether or not consecutive) due to seasonal workers, the employer may subtract the seasonal workers. ABC Co. recalculates its average number of employees excluding seasonal workers:

ABC Co.	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Full time (excl seasonal)	10.00	10.00	11.00	10.00	10.00	11.00	11.00	11.00	11.00	9.00	9.00	9.00	122.00
FTE (excl seasonal)	38.33	38.33	38.33	38.33	42.33	42.33	40.00	40.00	38.33	38.33	38.33	38.33	471.30
Total	48.33	48.33	49.33	48.33	52.33	53.33	51.00	51.00	49.33	47.33	47.33	47.33	593.30

**Result:** 593.30/12 months = 49.

By subtracting the seasonal workers, ABC Co.'s average number of employees for the prior year was 49. ABC Co. is not an ALE for the current calendar year.

### Quick Check

- Use prior year workforce data to determine your status for current year. For example, use 2023 calendar year data to determine your status for 2024.
- Count the number of full-time employees and FTEs for each month in the prior year. Add all months and divide by 12. The result is your average number of employees, as follows:
  - If the result is under 50, you are not an ALE for the current year.
  - If the result is 50 or more:
    - Can you use the seasonal worker adjustment to reduce your count below 50?
    - If not, you are an ALE for the current year.

## Defining Full-Time Employees for Coverage

Play or pay requires ALEs to offer health coverage to full-time employees or face a potential penalty. To avoid the risk of penalties, the employer must determine whether each employee meets the definition of full-time employee and, if so, ensure that coverage is offered to that employee by the date required under the play or pay rules.

For purposes of the coverage offer requirement, **full-time employee** means an employee who averages at least 30 hours of service per week (or 130 hours per month) as measured under one of two specific measurement methods. *Every employee must be measured.*

The two measurement methods are:

- **Monthly measurement method:** Hours of service are counted each month to determine whether the employee was a full-time employee that month. If so, offer coverage to begin no later than the first day of the month following the initial three calendar months.
- **Look-back measurement method:** Hours of service are tracked over a period of time from three to 12 months (called the measurement period) to determine whether the employee will be considered a full-time employee for the subsequent period (called the stability period). If so, offer coverage to begin by the first day of the stability period.

See [page 12](#) for more details on measurement methods.

The monthly measurement method may be used for all employees. Many employers consider it fairly easy to administer. In any case, this method must be used for all new non-seasonal employees in positions that are reasonably expected to average at least 30 hours/week (or 130 hours/month). For all other employees, the employer has the option of using either the monthly measurement method or the look-back measurement method, but must apply the same method to all employees in the same category.

**Hour of Service** generally means each hour for which the employee is paid or entitled to payment (e.g., work, vacation, holidays). See [page 4](#) for details. [Hours of service](#) are combined if the employee works for related employers that belong to the same controlled group or affiliated service group.



## Defining Full-Time Employees for Coverage (continued)

For ALEs that choose the look-back measurement method for one or more categories of employees (when permitted), the definitions shown below apply (these definitions are not relevant to employers that use only the monthly measurement method for all employees):

- **Category:** Permissible categories are limited to salaried or hourly, bargained or non-bargained, employees covered by separate bargaining agreements, and employees working in different states.
- **New employee:** An employee who has been employed for less than one standard measurement period.
- **Ongoing employee:** An employee who has been employed for one standard measurement period or longer.

- **Seasonal employee:** The customary annual employment for the employee's position is six months or less and generally begins the same time (season) each year, regardless of the expected number of hours per week. (Caution! This is not the same as the seasonal worker definition used in determining applicable large employer status.)

Note that employers are not prevented from offering coverage to employees who are not full-time employees as defined under play or pay. Many group health plans offer eligibility provisions that are broader than the provisions discussed here. The play or pay rules merely set minimum requirements for offering coverage in order to avoid the risk of penalties.



# Using Measurement Methods

The play or pay rules provide the following two methods to determine whether an employee is a full-time employee for purposes of offering health coverage:

- Monthly measurement method
- Look-back measurement method

The first method must be used for some employees. For others, the employer may use either method but must apply the chosen method to all employees in the same category. To review the guidelines, see [Defining Full-Time Employees for Coverage](#).

## Monthly Measurement Method

The monthly measurement method is a month-to-month method for determining full-time employee status. It is generally easy to administer if the employer knows in advance that the employee will (or will not) average at least 30 hours of service per week (or 130 hours/month). However, administration may be challenging if employees have fluctuating work hours or unpredictable schedules (unless the employer wants to offer coverage to all employees, including employees that do not consistently maintain a full-time average). To administer the monthly measurement method:

- Determine the employee's hours of service at the end of each month.
- If at least 30 hours/week (or 130 hours/month), ensure that coverage was offered for the month.
- For new employees, play or pay penalties do not apply during first three full calendar months provided that the employee is offered minimum value coverage to start the first day of the immediately following month. (This three-month, no-penalty gap is allowed only once during their employment.)

## Look-Back Measurement Method

The look-back measurement method gives employers a useful way to avoid play or pay penalties while only having to offer health coverage to employees that have worked full time over a period of time. Once the employee meets the full-time average (30 hours/week or 130 hours/month) over the measurement period, however, they are eligible for coverage throughout the following stability period—even if the employee's hours reduce. To administer the look-back method:

- Track the employee's hours of service over the employer-established measurement period.
- At the end of the measurement period, determine if the employee's hours of service averaged at least 30 hours/week (or 130 hours/month).
- If so, the employee is defined as a full-time employee for a fixed period (called the stability period) following the measurement period.
- Play or pay penalties do not apply provided that the full-time employee is offered coverage to start no later than the first day of the stability period.

**Reminder:** The look-back measurement method is optional. Employers may use this method for some, but not all, employees, as explained in [Defining Full-Time Employees for Coverage](#).

Employers that adopt the look-back measurement method must follow a complicated set of rules, as summarized on the next page.

## Using Measurement Methods (continued)

### Measurement Period

The employer selects a period between 3 and 12 consecutive months. The same period must apply uniformly, except the employer may establish different periods for the following categories of employees:

- Salaried versus hourly
- Bargained versus non-bargained
- Employees under different bargaining agreements
- Employees in different states

For **new employees**, the initial measurement period begins on date of hire (or on a date between hire date and the first of the month immediately following the hire date). Thus, the initial measurement period starts on individualized dates depending on each employee's hire date.

For **ongoing employees**, the standard measurement period begins on a fixed date each year.

### Stability Period

The period is between 6 and 12 consecutive months (and not shorter than the measurement period).

For **new employees**, the initial stability period begins after the initial measurement period so coverage will start on different dates depending on each employee's hire date.

For **ongoing employees**, the standard stability period begins on a fixed date each year.

### Administrative Period

A brief period (up to 90 days) after the measurement period ends and before the corresponding stability period begins.

This gap period gives the employer time to determine whether the employee's hours of service over the measurement period averaged at least 30 hours/week (or 130 hours/month) and, if so, offer the employee an opportunity to enroll for coverage.

The administrative period must overlap with the previous stability period so ongoing employees who earn full-time status repeatedly do not experience a gap in coverage offers.

For new employees who become eligible for coverage, the administrative period cannot extend past the end of the 13<sup>th</sup> month following the hire date.



## Using Measurement Methods (continued)

### Examples

Most employers choosing to use the look-back measurement method, when permitted, want to use the longest durations possible. The intent of that strategy is to avoid having to offer coverage to employees who may terminate employment in the first year, or employees who usually work less than 30 hours/week.

The following examples illustrate measurement periods and stability periods using the maximum allowable duration of 12 months. (Employers may choose to establish periods using shorter durations).

#### Example 1: Ongoing employee (hired on or before December 1, 2022)

Standard Measurement Period	Administrative Period	Standard Stability Period
Dec. 1, 2022 – Nov. 30, 2023	Dec. 1, 2023 – Dec. 31, 2023	Jan. 1, 2024 – Dec. 31, 2024

Example 1 complies with the rules because:

- Standard measurement period is between 3 and 12 months.
- Standard stability period is at least six months and not shorter than standard measurement period.
- Administrative period (i.e., gap between standard measurement period and standard stability period) does not exceed 90 days.

#### Example 2: New employee (hired September 15, 2023)

Initial Measurement Period	Administrative Period	Initial Stability Period
Oct. 1, 2023 – Sept. 30, 2024	Oct. 1, 2024 – Oct. 31, 2024	Nov. 1, 2024 – Oct. 31, 2025

Example 2 complies with the rules because:

Initial measurement period is between 3 and 12 months (and same duration as the standard measurement period).

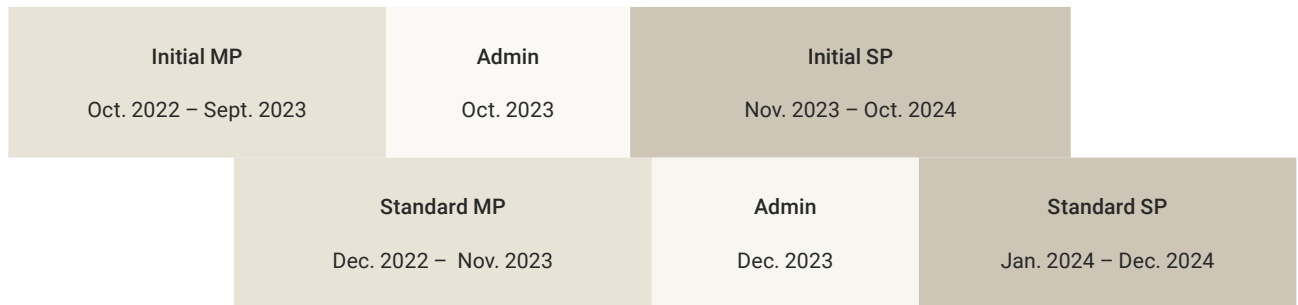
- Initial stability period is at least six months and not shorter than the initial measurement period.
- Administrative period (i.e., the gap between hire date and start of initial measurement period plus the gap between the initial measurement period and the initial stability period) does not exceed 90 days.
- Employee's coverage (if eligible) will begin by no more than 13 months (and a fraction of a month) after the employee's hire date.

## Using Measurement Methods (continued)

### Example 3: Illustration of how the periods continue for ongoing employee



### Example 4: Illustration of how initial and standard periods overlap for new employee



MP = measurement period  
SP = stability period

As shown in Example 4, the standard stability period will begin during the initial stability period. If the standard measurement period results in the employee achieving full-time status, the initial stability period will end early (January 1, 2024) because the standard stability period will take over. If, on the other hand, the employee achieves full-time status as a result of the initial measurement period but fails to maintain the status through the standard measurement period, the initial stability period will run through October 2024.

### Breaks in Service

The employee's full-time status, if applicable, continues for the entire stability period unless the employee terminates employment. If the employee terminates and is rehired after a break in service that lasts at least 13 consecutive weeks, the employer can treat them as a new employee. If the employee is rehired after a break of less than 13 consecutive weeks, however, the employer must treat them as a continuing employee and resume the stability period.

For breaks in service that last between 4 and 13 consecutive weeks, the employer may choose to apply the rule of parity.

**Note:** For purposes of calculating breaks in service, if the employer is an educational institution, such as a public or private school or college, the break in service may be up to 26 consecutive weeks instead of 13. That means the rehired employee can be treated as a new employee if the break in service lasted longer than the period of employment before the break.

### Special Unpaid Leaves

For purposes of the look-back measurement method, unpaid leaves under the Family and Medical Leave Act (FMLA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), and jury duty must be disregarded in tracking hours of service during a measurement period. This provision prevents these special leaves from adversely affecting the employee's average hours of service.

A similar provision also applies to educational institutions so that an employment break of four weeks or more (e.g., summer break) does not affect the employee's average hours of service.

# Defining Minimum Essential, Minimum Value, and Affordable Coverage

Play or pay's two-prong test first looks to whether the employer offers **minimum essential coverage** to most full-time employees and their children. The second test is whether the employer offers full-time employees and their children coverage that provides **minimum value** and is **affordable**.

## Minimum Essential Coverage

**Minimum essential coverage** means an employer-sponsored group health plan other than "excepted benefits."

Examples of excepted benefits that do not count as adequate coverage include:

- § 125 health flexible spending accounts if the maximum annual benefit does not exceed two times the employee's salary reduction amount (or, if greater, the salary reduction amount plus \$500) and the participant is also eligible for non-excepted benefits coverage;
- Limited-scope, stand-alone dental and vision plans (e.g., unbundled from medical plan or election); or
- Certain fixed-indemnity policies or specific-disease or illness policies.

## Minimum Value Coverage

**Minimum value coverage** means the plan's share of total allowed costs is at least 60% of such costs. For insured plans, the carrier determines whether the plan provides minimum value coverage. For self-funded plans, use one of these methods:

- [Minimum Value Excel Workbook](#): Downloadable calculator developed by federal regulators.
- [Minimum Value Calculator Methodology](#): This document describes and explains how to use the downloadable calculator above.

Plans that cannot use the calculator due to non-standard plan features may seek certification of minimum value by a member of the American Academy of Actuaries.

**Caution:** Plans that fail to provide substantial coverage of physician services and inpatient hospital services do not meet the standard for minimum value coverage.

## Affordable Coverage

Affordable coverage means that the employee's required contribution for self-only coverage, if elected, does not exceed 9.12% in 2023 and 8.39% in 2024 of the employee's income.

IRS regulations offer three optional safe harbor methods for employers to define income to determine affordability. Employers may use any of the safe harbor methods or use different methods for different classes (e.g., salaried, hourly) as long as the chosen safe harbor method is applied uniformly to the class of employees.

The three IRS safe harbor methods are:

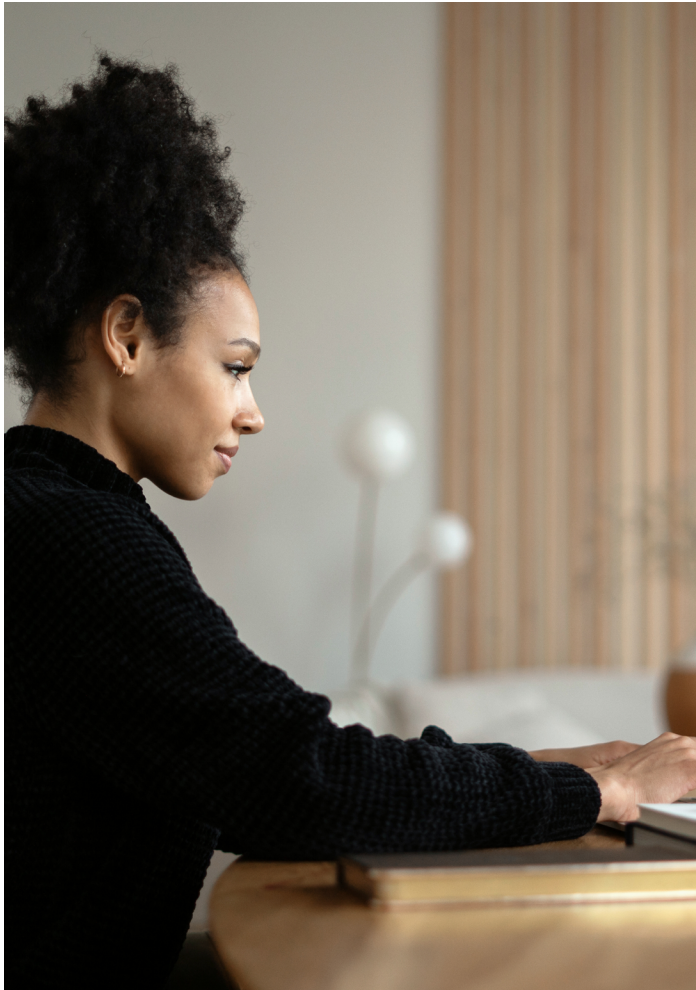
- **W-2 wages:** W-2 wages means the amount reported in Box 1 of the employee's Form W-2 for the current year. Note that § 125 contributions and § 401(k) or § 403(b) deferrals are not included in the Box 1 amount, so this method may understate the employee's actual income.
- **Rate of pay:**
  - For salaried employees, rate of pay means the employee's monthly salary amount. (This method cannot be used if the monthly salary reduces, e.g., due to reduced work hours.)
  - For hourly employees, rate of pay means the employee's hourly rate times 130 hours per month. Many employers will find this method to be the most convenient way to determine income in order to calculate whether the coverage is affordable.
- **Federal poverty level (FPL):** Annual income is defined as the mainland FPL amount for a single-member household; i.e., \$14,580 (if 2024 calendar-year plan; or the FPL amount for plan year starting on or after February 1, 2024). This method is very simple, but it will generate the lowest income amount, which may make the affordability test hard to pass.

## Special Cases

Wellness program rewards that reduce the employee's contribution are disregarded in the affordability test, unless the wellness program is related to tobacco use. In that case, assume all employees qualify for the reward before determining affordability.

Flex credits or cash-in-lieu benefits may affect the determination of affordability. Employers with cafeteria plans that offer these types of options are advised to review the specific provisions with legal counsel.

## Affordable Minimum Value Coverage: Quick Check



Confirm that your group medical plans meet the definition of minimum value coverage:

- If plans are insured, your carrier/HMO can provide confirmation.
- For self-funded plans, consult with plan actuary or advisor.

**Note:** The majority of group medical plans easily qualify as minimum value coverage.

Determine whether your minimum value plan meets the affordability test:

- If you offer multiple health plan options, you only need to test the lowest-cost option that is offered to the full-time employee.
- In most cases for 2024, if the employee contribution is under \$101.94/month (for self-only coverage), you automatically pass the affordability test under the simple FPL method (based on the [FPL chart](#) in effect on January 1, 2024).
- If employee contribution is too high to use the FPL method, consider using either the W-2 method or rate of pay method for each category of full-time employees (e.g., hourly, salaried).
- If using the FPL safe harbor method, use the FPL chart in effect within six months before the date your health plan year begins. The chart is updated each year in late January.

# Estimating Penalties

The play or pay rules include two potential penalties:

- A** Applicable large employers that *do not* offer coverage, or do not offer minimum essential coverage to at least 95% of full-time employees and their children, may be assessed penalty A.
- B** Applicable large employers that *do* offer minimum essential coverage to at least 95% of full-time employees and their children avoid penalty A, but still may be assessed penalty B (the smaller penalty) if they fail to offer affordable minimum value coverage to a full-time employee.

Penalties are triggered when a full-time employee receives a government subsidy to buy individual insurance through a Marketplace based on their income and the employer's failure to offer that employee affordable minimum value coverage.

If triggered, penalty A is potentially very large since it is multiplied by the number of all full-time employees (including those with coverage). On the other hand, penalty B is designed to be much smaller since it is multiplied only by the number of full-time employees who actually receive Marketplace subsidies due to the employer's failure to offer affordable minimum value coverage.

Note that individuals **enrolled** in an employer's minimum essential coverage plan (even if not affordable minimum value) are not eligible for subsidies. Those eligible for governmental programs (e.g., Medicare, Medicaid) also are ineligible for subsidies since they cannot use the Marketplace.

## Example

ABC Co. has 500 full-time employees. The company offers health coverage to some but not all of its employees, and some employees go to the Marketplace to shop for individual policies. Twenty full-time employees receive Marketplace subsidies, which triggers play or pay penalties on the company.

The amount of the penalty assessed on ABC Co. will depend on three factors:

1. Did the employer offer coverage to most full-time employees and children?
2. Did the coverage offered meet the low standard of minimum essential coverage?
3. Did the coverage offered meet the higher standard of affordable minimum value coverage?

Example	Scenario	Penalty (per month)
A	ABC Co. <i>did not</i> offer minimum essential coverage to most of their 500 full-time employees (fewer than 95% were offered coverage).	Penalty A is equal to $\frac{1}{12}$ of \$2,880 times the number of full-time employees (minus the first 30 such employees). $(\$2,880/12) \times (500-30) = \$112,800$ monthly. <sup>(1)</sup>
B	ABC Co. <i>did</i> offer minimum essential coverage to at least 95% of its full-time employees, but failed to offer affordable minimum value coverage to 100 full-time employees and 20 of them received subsidies at the Marketplace.	Penalty B is equal to $\frac{1}{12}$ of \$4,320 times the number of full-time employees who actually receive subsidies due to ABC Co.'s failure to offer affordable minimum value coverage. $(\$4,320/12) \times 20 = \$7,200$ monthly. <sup>(2)(3)</sup>

(1) For 2023. For 2024, replace \$2,880 with \$2,970.

(2) For 2023. For 2024, replace \$4,320 with \$4,460.

(3) Penalty B is limited to the amount that would be calculated under penalty A (if A had applied).

# Reviewing Limited Non-Assessment Periods

**Limited non-assessment period** (LNP) generally means a period of one or more months during which an applicable large employer may avoid the play or pay penalty that would otherwise apply with respect to a specific full-time employee. The employer avoids the penalty, regardless of whether health coverage was offered to the employee during the LNP, provided that coverage is offered to start no later than the day immediately following the end of the LNP. The most common types of LNP are summarized below. For complete details, refer to the IRS regulations.

## First Year as an Applicable Large Employer

During its first year as an ALE, the employer may avoid potential play or pay penalties with respect to a full-time employee for January–March if the following conditions are met:

- The employee was not offered coverage at any point during the prior calendar year; and
- The employer offers coverage to start by April 1 of the current calendar year.

## New Hires Under the Monthly Measurement Method

The employer may avoid potential play or pay penalties with respect to a full-time employee under the monthly measurement method who was not offered coverage for up to three full calendar months provided the employer offers minimum value coverage to start by the first of the following month (i.e., the fourth month). This LNP is available only once per period of employment.

## Employees Under the Look-Back Measurement Method

The employer may avoid potential play or pay penalties with respect to a full-time employee under the look-back measurement method who was not offered coverage during the employee's initial measurement period or administrative period, provided the employer offers coverage to start by the first day of the stability period.

## First Month of Employment

Penalties do not apply with respect to a full-time employee during the first calendar month of employment if the employee's first day of employment is other than the first day of the month. For example, if the employee's date of hire is January 5, potential penalties are waived for the month of January.

## Multi-Employer Plans (Union Plans)

Penalties do not apply with respect to a full-time employee if the employer contributes to a multi-employer plan (e.g., union trust) that offers affordable minimum value coverage to that employee.

## Quick Check

Consider the following items using information about your workforce and your group health plan. This gives you a starting point to evaluate the potential impact of the play or pay rules on your organization.

**Average number of employees in the prior calendar year (full time and FTE):**

*Did you consider using the seasonal worker adjustment, if eligible, to get the lowest possible result? If the result is 50 or fewer, stop here. You are not an ALE for the current calendar year.*

**Measurement methods used to define full-time employees for coverage:**

**Monthly measurement method:** This method must be used for all non-seasonal new employees in positions reasonably expected to average at least 30 hours of service/week. Additionally, this method may be used either for all employees or for all employees in the same category.

**Look-back measurement method:** This method is not required but it may be used for various employee categories unless using the monthly measurement method is required.

*If you choose to subject any categories of employees to the look-back measurement method, establishing a look-back period (e.g., 12 months) may prevent some workers from averaging 30 hours/week and becoming eligible for coverage during the stability period.*

**Minimum essential coverage is offered to:**

**At least 95% of all full-time employees and children**  
*You are not subject to penalty A. Go to the next item.*

**Fewer than 95% of all full-time employees and children**  
*You are at risk of penalty A for each month that any full-time employee receives a Marketplace subsidy.  
Review limited non-assessment penalties for possible options to avoid penalties.*

**Affordable minimum value coverage is offered to:**

**100% of all full-time employees** (including those defined as full-time based on the look-back measurement method, if any)  
*You are not subject to penalty B if above statement remains true each month.*

**Fewer than 100% of full-time employees** (including those defined as full time based on the look-back measurement method)  
*You are at risk of penalty B (monthly) but only if a full-time employee receives a Marketplace subsidy because you failed to offer them affordable minimum value coverage.  
Review limited non-assessment penalties for possible options to avoid penalties.*

**Estimated Penalty** (see [Estimating Penalties](#) for formulas)

*Compare estimated penalty, if any, with the estimated cost of improving your coverage offering to avoid risk of penalty.*

## Resources

The play or pay rules are complex as they are designed to protect an employee's eligibility for health coverage while also offering employers different methods for avoiding potential penalties. Employers are encouraged to review this guide, and the official guidance provided by the IRS, with their legal and tax advisors.

For official guidance, see:

IRS Final Rule, [\*Shared Responsibility for Employers Regarding Health Coverage\*](#)

IRS Notice 2014-49, [\*Changes in Measurement Periods or Methods Applicable to an Employee\*](#)

IRS Notice 2015-87, [\*Further Guidance on . . . Affordable Care Provisions\*](#)

IRS [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act](#)

IRS tool: [Employer Shared Responsibility Provision Estimator](#)

See our [Affordable Care Act Toolkit](#) for more resources on the ACA.