

Affordable Care Act: FAQs for Employers

By Michelle Cammayo

The past year and a half has been fraught with news articles and proposed legislation with regards to repealing or reforming the Affordable Care Act. With all the information out there, accurate information can be a moving target. It's no wonder that I've had employers ask if they still need to comply with the ACA. The answer is "yes". ACA REMAINS LAW OF THE LAND...except for the individual mandate being repealed starting in 2019. Now that readers are aware that ACA still applies to employers, I've created brief synopsis below to describe major provisions of the ACA employer "pay or play" law.

Which employers are subject to the ACA "pay or play" and penalties for non-compliance?

Any employer over 50 Full-Time Equivalent employees (considered an Applicable Large Employer) is subject to penalties for not offering coverage that is affordable and qualifying. This includes CONTROL GROUPS through common ownership described under the IRS 414 rules. This includes parent – subsidiary and brother-sister control groups.

Here's a basic example: ABC Company has 150 employees and is subject to the ACA employer mandate. ABC Company has 90% ownership in a subsidiary with only 20 employees. The subsidiary has its own FEIN and group health plan. The subsidiary is subject to the same ACA provisions that the ABC Company must comply with including the "pay or play" provision and penalties for not offering coverage.

If my employer is subject to ACA mandates, how do I treat temporary and/or seasonal employees?

Temporary employees must be made an offer of medical coverage if they are expected to work at least 30 hours or more a week, on average. The only exception is if the temporary employee meets the strict definition of seasonal employee. If so, the employer does not have to make an offer of coverage if the employment does not extend beyond 6 months.

The *Seasonal employee* definition under ACA states: 1) by the nature of the position an employee typically works for a period of six months or less AND 2) the period of employment should begin each calendar year in approximately the same part of the year, such as summer or winter.



What if my temporary employee is not expected to work 30 hours a week, but their hours might fluctuate so I'm unsure?

This is considered a variable-hour employee. Variable-hour employees are placed in an initial measurement period to determine if an offer of medical coverage needs to be made. If you have variable-hour employees, it is important that you've established your initial and ongoing measurement/administration/stability periods. If you have not done so, contact your benefits broker.

In what instances will my employer be penalized under ACA?

An ALE (applicable large employer) must offer qualifying and affordable coverage to at least 95% of its full-time employees. The employer's 1094 and 1095C annual reporting to the IRS is a report that the government uses to ascertain whether the employer is subject to any penalties.

Qualifying coverage – 60% actuarial value coverage which is most relevant in self-insured arrangements that can customize their own plan design. For fully insured plans, most carriers only offer qualifying coverage.

Affordable coverage – this means the employer must not charge the employee more than 9.56% (for 2018) of their monthly income for employee only coverage. If your employer offers more than one medical plan, the lowest cost, qualifying plan can be used for the basis of the calculation EVEN if the employee buys up to the more expensive option. Here's an example:

Jane's employer offers 3 medical plans: HMO, PPO and HSA. The HMO plan cost no more than 9.56% of Jane's monthly income for employee only coverage. However, the PPO and HSA do not meet this threshold. Jane enrolls in the PPO, the most expensive plan. Jane's employer is not subject to a penalty because the HMO offered affordable coverage under the employee only tier. If Jane did not have access to the HMO due to geographic restrictions, this would present an issue.

How does the government know whether my employer owes a penalty?

The 1094C and 1095C reporting that your employer completes annually gives the IRS the information they need to assess any penalties. The first round of penalties the IRS issued are going to those employers that indicated they do not offer coverage to at least 70% of their full-time employees (back in 2015 when this was permissible). The penalty is triggered when an employee goes to the exchange and receives a subsidy aka PTC aka Premium Tax Credit. Some employers have already received their penalty letters for 2015. These letters are formally referred to as IRS Letter 226J.

What are the penalties for 2018?

For employers that offer coverage that is not affordable or qualifying, the penalty is \$290/month for employees that received a subsidy. The penalty is triggered when an employee receives a subsidy to purchase coverage on the exchange. The penalty applies only to those specific individuals assuming coverage was offered to 95% or more of full-time (working 30 hours or more) employees. *For employers that do not offer coverage at all*, the penalty is \$193.33 per full-time (working 30 hours or more) employee per month minus the first 30 employees. The penalty is triggered when at least one full-time employee receives a subsidy to purchase coverage on the exchange.



Michelle Cammayo has more than a decade of Employee Benefits experience specializing in all lines of health and welfare benefits, including Medical, Dental, Vision, Basic and Voluntary Life, Short and Long-Term Disability and Employee Assistance Programs. Her primary roles and responsibilities include carrier negotiations, strategic oversight, and educating HR staff and employees with regards to employee benefit packages and/or solutions.

With an established track record of providing solutions to clients' unique challenges, Michelle leads with a forward-thinking philosophy and proactive approach to all areas of benefit program management. She has driven the process on Wellness Initiatives, Health Fairs, Employee Benefit Communication Campaigns and Technology Solutions for several clients, and has implemented and serviced alternative funding contracts, including level funding, graded preferred funding, self-funding with stop loss, minimum premium contracts and participating contracts. She also has extensive, hands-on experience with several HRIS systems. For questions, contact Michelle [here](#).