

ALEs FAQ

Applicable Large Employers (ALEs)

Summary

Two provisions of the Affordable Care Act only apply to applicable large employers (ALEs): the employer shared responsibility provision and the employer information reporting provision. Employers must determine their ALE status each calendar year.

Basic Information

ALE status must be determined each calendar year. It generally depends on the average size of an employer's workforce during the prior year. If an employer has an average of fewer than 50 full-time employees, including full-time equivalent employees, the employer is not an ALE for the current calendar year. Therefore, the employer is not subject to the employer shared responsibility provisions or the employer information reporting provisions for the current year.

If an employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior year, the employer is an ALE for the current calendar year, and is therefore subject to the employer shared responsibility provisions and the employer information reporting provisions.

Determining ALE Status

1. Determine the number of full-time employees (including seasonal employees) who were employed to work on average at least 30 hours/week or 130 hours/month for each calendar month of the prior year.
2. Determine the number of full-time equivalent employees for each calendar month of the prior year. Add the total number of monthly hours for all other employees not counted in step one (no more than 120 hours per employee). Divide each monthly sum by 120; the result is the number of full-time equivalent employees for each month.
3. Add the monthly full-time employee count and the monthly full-time equivalent count from steps one and two to obtain 12 sums—one for each month of the prior year.
4. Determine the average of the sums obtained in step three by adding the monthly sums together and dividing by twelve (do not round up). If the result is less than 50, you are not an ALE.
5. If the result is 50 or more, review if the seasonal exception applies: you still might not be an ALE if you had more than 50 employees for no more than four months during the prior year and you exceeded 50 in those months because you had seasonal employees.

The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 provides that an employee will not be counted toward the 50-employee threshold for a month in which the employee has medical care through the military, including Tricare or Veterans' coverage. This is solely for the purpose of determining whether an employer is an "applicable large employer" subject to the employer shared responsibility rules of § 4980H. For more information, see IRC § 4980H(c)(2) subparagraph (F) "Exemption for Health Coverage Under Tricare or the Veterans Administration."

Shared Responsibility Provision

Under the Affordable Care Act's employer shared responsibility provisions, ALEs must either offer minimum essential coverage that is "affordable" and that provides "minimum value" to their full-time employees (and their dependents), or potentially make an employer shared responsibility payment to the IRS.

Information Reporting Provision

ACA Information Reporting (1094/1095s)

Applicable large employers (ALE) must report to the IRS information about the health care coverage, if any, they offered to full-time employees (1094 Form). The IRS will use this information to administer the employer shared responsibility provisions and the premium tax credit.

ALEs also must furnish to employees a statement (1095 Form) that includes the same information provided to the IRS. Employees may use this information to determine whether, for each month of the calendar year, they may claim the premium tax credit on their individual income tax returns.

ALEs that are fully-insured must file Form 1094-C to the IRS and must provide Form 1095-C to all full-time employees. Form 1095-B will be sent to those employees of the fully insured ALE from the insurance carrier providing coverage.

ALEs that are self-insured must file Form 1094-C to the IRS and must provide Form 1095-C to all full-time employees. Employees working for a self-insured ALE will not receive Form 1095-B from the insurance carrier.

Additional Medicare Tax

An employer must withhold Additional Medicare Tax on wages it pays to an employee in excess of \$200,000 in a calendar year. An employer has this withholding obligation even though an employee may not be liable for Additional Medicare Tax because, for example, the employee's wages together with that of his or her spouse do not exceed the \$250,000 threshold for joint return filers. Any withheld Additional Medicare Tax will be credited against the total tax liability shown on the individual's income tax return (Form 1040 or 1040-SR). You may be required to report the value of the health insurance coverage you provided to each employee on his or her Form W-2.

Penalties:

ACA Reporting Penalties

- **Employer Shared Responsibility Payment for failure to offer Coverage:** An ALE subject to this penalty will pay \$2,700 for each full-time employee (regardless of if they took a tax credit) after excluding the first 30 Full-Time employees from the calculation.
- **Employer Shared Responsibility Payment for failure to offer Affordable or Minimum Essential Coverage:** An ALE subject to this penalty will pay \$4,060 for each Full-Time employee receiving premium tax credit or cost-sharing reductions.
- **Late and Not Filing Penalties:** The penalty rates and maximums for not filing correct information returns and/or not furnishing correct payee statements, including inflationary adjustments if applicable, are reflected in the following table (*-as adjusted for inflation):

Large Businesses with Gross Receipts of More Than \$5 Million (Average annual gross receipts for recent most 3 taxable years) & Government Entities (Other than Federal entities)				
Time returns filed/furnished	Not more than 30 days late	31 days late – August 1	After August 1 or Not at All	Intentional Disregard
1-1-20 – 12-31-20	\$50 per return or statement; \$556,500 max	\$110 per return or statement; \$1,669,500 max	\$270 per return or statement; \$3,339,000 max	\$550 per return or statement; No limitation
Small Businesses with Gross Receipts \$5 Million or Less (Average annual gross receipts for the most recent 3 taxable years)				
Time returns filed/furnished	Not more than 30 days late	31 days late – August 1	After August 1 or Not at All	Intentional Disregard
1-1-20 – 12-31-20	\$50 per return or statement; \$194,500 max	\$110 per return or statement; \$556,500 max	\$270 per return or statement; \$1,113,000 max	\$550 per return or statement; No limitation

- **Other Penalties:** Penalties for not filing correct information returns (Code Section 6721) may apply if you:
 - Don't file a correct information return by the due date and a reasonable cause is not shown;
 - File on paper when you were required to file electronically;
 - Don't report a Taxpayer Identification Number (TIN);
 - Report an incorrect TIN; or
 - Don't file paper forms that are machine readable
- **Other Penalties:** Penalties for not providing correct payee statements (Code Section 6722) may apply if:
 - Not providing a correct payee statement by the applicable date & a reasonable cause isn't shown;
 - All required information isn't shown on the statement; or
 - Incorrect information is included on the statement.

Information Reporting Penalties

An ALE Member that fails to comply with the information reporting requirements may be subject to the general reporting penalty provisions under section 6721 (failure to file correct information returns) and section 6722 (failure to furnish correct payee statement).

- The penalty for failure to file an information return generally is \$270 for each return for which such failure occurs. The total penalty imposed for all failures during a calendar year cannot exceed \$3,275,500.
- The penalty for failure to provide a correct payee statement is \$270 for each statement for which the failure occurs, with the total penalty for a calendar year not to exceed \$3,275,500
- Special rules apply that increase the per-statement and total penalties if there is intentional disregard of the requirement to furnish a payee statement.

The waiver of penalty and special rules under section 6724 and the applicable regulations, including abatement of information return penalties for reasonable cause, may apply to certain failures under section 6721 or 6722.

For More Information

www.irs.gov/affordable-care-act/employers/determining-if-an-employer-is-an-applicable-large-employer.