



**IRS**



# ***Staying out of the ACA penalty box in 2022...***

**Presented by First Staff Benefits**



## *Cover both penalties with one plan in 2022*

Utilize the Individual Coverage Health Reimbursement Arrangement or ICHRA. **This program became law on January 1, 2020 and allows the ALE to offer one affordable plan that meets all requirements of the ACA. It exempts an ALE from any benefit based penalties.** The cost of administering an ICHRA is pennies on the dollar vs. not being in compliance.

The traditional way to comply was offering both MEC and an MV plan that was affordable. This has become complicated over the last few years as most carriers (fully-insured) or Third Party Administrators (TPA's) in the self-funded markets require high MEC enrollment in order to attach the MV plan. Usually this enrollment threshold is between 50% and 75% of your eligible employees enrolled in MEC. Some MV plans require the employee to complete an "underwriting questionnaire" which has become a questionable practice. Qualifying MV plans must allow anyone who is eligible to enroll without pre-existing conditions or policy limits on coverage. **You can learn more about the ICHRA on our website at [www.firststaffbenefits.com](http://www.firststaffbenefits.com) or call us at 865-773-7676**



## *A quick review*

Since the Affordable Care Act (ACA) became law on March 23, 2010, there have been some modifications requiring attention. First, the individual mandate requiring ACA eligible employees to purchase Minimum Essential Coverage (MEC) was repealed **in December of 2017. There are still six states who have retained the individual mandate.** Those are CA, District of Columbia, MA, RI, NJ and VT. Those current penalties mirror the federal legislation except Vermont.

The Employer Shared Responsibility Provisions (ESRP) remains unchanged except for penalty increases from year to year.

## *How do I know if my company is an Applicable Large Employer (ALE)?*

**The ACA defines a large employer as those with 50 or more full-time or full-time equivalent (FTE) employees.** For many employers, a calculation is not necessary to know that they meet ALE measurements. For those who feel they may be under the threshold the calculation is not difficult. This should be performed on an annual basis using a calendar year 12-month lookback. For each month, you are going to perform the following calculations:

- Count the number of full-time employees which is defined as an employee who has on average at least 30 hours of service per week during the calendar month, or at least 130 hours of service during the calendar month.
- Next add up all paid hours that month for employees not defined above. Divide those total hours by 120 then add that number to the group above.
- Once done you should have 12 numbers representing each month of the prior year. Add those together and divide that sum by 12. If that number is above 50, you are an ALE.

**It is important to note that if you become an ALE mid-year, your qualifying period under the ACA does not start until January 1 of the following year.**

## ***Don't confuse this calculation with employee eligibility!***

Any individual that works 30 hours per week, 130 hours per month and 1,560 hours per year is considered an ACA benefit eligible employee.

## ***OK, I am an ALE. What do I have to offer?***

You must offer qualifying health insurance coverage. This is defined as offering Minimum Essential Coverage or MEC to at least 95% of your full-time and full-time equivalent employees. **In addition, the employer must offer coverage that meets affordability and minimum value thresholds.** Minimum Value Plans (MVP) are defined as major medical coverage meeting the benefit requirements of the ACA and have an actuarial value of 60% or higher. Failure to do so, will result in the following IRS penalties.



## ***If I only offer MEC, where can I go to find out how many employees I have on the Exchange receiving a subsidy?***

**That information is not available. Without an MV plan, you have an unfunded and undefined liability which could lead to complications if you are considering selling your company.** In addition, the IRS is still issuing penalties for calendar year 2019, meaning it could be up to two years before you receive your penalty notification for 2022. These penalties are not subject to a statute of limitations.

## ***4980H(a) penalty***

**For the 2022 tax year the 4980H(a) penalty is \$229.17 a month or \$2,750 per year per employee. The IRS does allow you to reduce your FTE count by 30 employees.** This penalty is issued when:

- An ALE does not offer MEC to at least 95% of their full-time employees (and their dependents) for any month during the tax year and
- At least one full-time employee receives a premium tax credit for purchasing coverage through the Exchange or Marketplace (either state or federal)

This example illustrates why this is often referred to as the “sledgehammer” penalty. **A company of 400 full-time equivalent employees not meeting the benefit offering outlined above and has one employee receive a premium tax credit for 12 months would be penalized \$1,017,500 in 2022.**

## ***4980H(b) penalty***

This penalty is levied against employers who fail to offer coverage that meets ACA affordability guidelines and Minimum Value or MV. **The amount of this penalty in 2022 is \$343.33 per month or \$4,120 per year. This is assessed on a monthly basis for every full time employee that has purchased qualifying coverage from the Marketplace/Exchange and received a premium tax credit.** An important footnote here is that any ACA eligible employee that has MEC is not eligible to receive a premium tax credit.

NOTE: ALE's cannot be penalized under both 4980H(a) and 4980H(b)

## *How is affordability calculated under the ACA?*

There are three approved “safe harbors” to calculate if your plan offering is affordable. Remember that these only apply to Minimum Value plans. For 2022, those are

- **Federal poverty level:** As defined by Health and Human Services (HHS), the current federal poverty level is \$13,590 per year for an individual. You would take 9.61% of that amount on a monthly basis to set the employee contribution at \$108.83.
- **Rate of pay:** Using the measurement of 130 hours per month, a \$14 per hour employee would have a monthly income of \$1,820. Again using the 9.61% of earnings, the employee monthly maximum contribution would be \$174.90.
- **Form W-2, Box 1:** Even though the ACA says you can use household earnings, an employee is not legally obligated to disclose that amount. Many employers default to the Form W-2, Box 1 approach. This is the most commonly used safe harbor and will vary from employee to employee. The method is to take the W-2 Box 1 wages and multiply by 9.61%. This gives you the annual maximum employee contribution, which is then divided by 12 for the monthly amount.

You may choose different safe harbors for different employee populations. Please make sure if you do this that the guidelines are applied equally for all members of an employee class.

**It is imperative that an ALE currently offering major medical coverage confirm with their broker/agent that their plan meets both the MEC/MVP requirements and is considered affordable under the ACA guidelines above.**

## *IRS reporting*

Direct from the IRS guidelines: “ALE members must file Form 1095-C, Employer-Provided Health Insurance Offer and Coverage, and Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS annually, no later than February 28 (March 31 if filed electronically) of the year immediately following the calendar year to which the return relates. This is the same filing schedule applicable to other information returns commonly filed by employers, such as Forms W-2 and 1099.



ALE's are required to furnish a statement to each full-time employee including the same information provided to the IRS, by January 31 of the calendar year following the calendar year for which the information relates. See Notice 2018-94PDF for information about the extension to furnish statements to individuals.

ALEs who are self-insured are subject to the employer information reporting requirements as well as the reporting requirements for providers of minimum essential coverage.”

**Please ensure that your reporting is filed timely and correctly. The IRS has removed the latitude for incorrect filing. Make sure that your reporting vendor indemnifies you from any errors made on their part.**

## ***Failure to file/failure to furnish penalties***

**The IRS will levy penalties to ALE's that do not furnish 1094/1095 reporting on either a timely basis or not at all.** Currently, the penalty for not filing is \$280 per filing employee and doubles for employers that intentionally disregard filing.

***Remember that expenses incurred to comply with the ACA are deductible expenses....IRS PENALTIES ARE NOT!***

## ***PCORI fees***

The last and final fee that needs to be filed/paid annually is for the Patient-Centered Outcomes Research Institute or PCORI. This only applies to ALE's with self-funded plans. Fully insured MEC and MV plans file on behalf of the employer. **This fee is paid by the ALE on IRS Form 720 and is due on July 31st of the year following the last day of the plan year.** It is currently calculated at \$2.79 per enrolled employee and dependent. There are several ways to calculate the amount due and you should consult your tax advisor as to which method is most advantageous.



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