



Washington Council

Defining Large Employer Status Under the ACA

Beginning in 2014, large employers may be subject to an excise tax if at least one full-time employee whose household income is between 100% and 400% of the federal poverty level receives a premium tax credit for Exchange coverage and an employer either :

- Fails to offer coverage to full-time employees and their dependents or
- Offers coverage to full-time employees that does not meet the law's affordability or minimum value standards.

Who is a large employer under the ACA?

- Any employer with 50+ full-time equivalents is considered a large employer.
- IRC §4980H applies to all common law employers, including governmental entities, churches, tax-exempt organizations with at least 50 full-time equivalent employees.
- Foreign companies with at least 50 full-time equivalent employees performing work in the US with US-source compensation also are subject to the law.

How does an employer determine if they are a large employer under the ACA?

- For each calendar month of the preceding calendar year, employers must:
 - Count the number of full-time employees (including seasonal employees) who work on average 30 hours per week per month.
 - Calculate the number of full-time equivalent employees by aggregating the number of hours worked by non-full-time employees (including seasonal employees) and dividing by 120.
 - Add the number of full-time employees and full-time equivalents calculated in steps (1) and (2) for each of the 12 months in the preceding calendar year.
 - Add the monthly totals and divide by 12. If the average exceeds 50 full-time equivalents, determine whether the seasonal employee exception applies.
- *Seasonal employee exception:* IRC §4980H does not apply to employers whose workforce exceeds 50 full-time employees for no more than 120 days or four calendar months during a calendar year if the employees in excess of 50 who were employed during that period were seasonal employees. The 120 days or four calendar months are not required to be consecutive.
- For purposes of determining large employer status until further guidance is issued, employers may apply a reasonable, good-faith interpretation of the statutory definition of seasonal worker, including a reasonable, good-faith interpretation of the standard set forth under the DOL regulations at 29 CFR 500.20(s)(1).

Transition Relief for Smaller Employers

Employers can determine whether they are large employers based on a period of six consecutive calendar months as chosen by the employer in the 2013 calendar year, rather than based on the entire 2013 calendar year. The January 1, 2014, compliance deadline is not delayed for smaller employers determined to be large employers based on the six-month calculation.

Determining Large Employer Status Based on Controlled Group Rules

- Definition: The determination of large employer status is made based on the Internal Revenue Code's controlled group rules under IRC §§414(b), (c), (m) or (o).
 - Example: A large employer composed of a parent corporation and 10 wholly owned subsidiary corporations that, on a controlled group basis, have 50 or more full-time equivalent employees and, therefore, each corporation, regardless of the number of its employees, is treated as a large employer.
- Penalty: For purposes of assessing liability, the IRC §4980H tax penalties are applied separately to each member of the controlled group. Each member of the controlled group is liable for its own tax penalties under IRC §4980H and is not liable for the IRC §4980H tax penalties of any member of the controlled group that makes up the large employer.