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A Guide to §4980H (Employer Mandate) Requirements & Penalties Updated September 2024

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§4980H (Employer Mandate) Requirements & Penalties

As the IRS continues to actively enforce the employer shared responsibility payments and associated employer reporting requirements, we are reminded that the employer mandate under §4980H of the ACA remains in effect and requires compliance to avoid potential penalties. All applicable large employers (ALEs) are subject to §4980H offer of coverage requirements and §6056 employer reporting requirements on Form 1094-C and Form 1095-Cs. ALEs who fail to comply with §4980H offer of coverage requirements may face penalties (i.e., employer shared responsibility payments) for full-time employees who enroll in subsidized coverage through a public Exchange. Following is a summary of the offer of coverage requirements under §4980H and the associated penalties for employers who fail to comply.

Determining ALE Status (50 or more full-time equivalents (FTEs))

Status as an ALE is determined based on data from the previous calendar year, regardless of the employer's group health plan year. It doesn't matter whether the employer exceeded 50 FTEs in any given month, but whether the employer averaged 50 or more FTEs over all 12 months of the previous calendar year. Here are the general calculation steps for determining ALE status:

Calculation Steps for Determining ALE Status:

Step 1: Calculate the number of employees with 120 or more hours of service for each calendar month.

Step 2: Aggregate hours of service for each month for any other employees and divide the total by 120.

Step 3: Add the numbers obtained in Steps 1 and 2 for each month.

Step 4: Add up the totals from each month from Step 3 and divide the sum by 12.

For each month, count all hours of service for any employee employed for at least one day during the month. Hours of service includes all hours paid or payable (including PTO, vacation, etc.) in U.S.-source income. NOTE: While seasonal employees must be included in the original counts, there is a seasonal worker exception that may apply for employers with 50 or more FTEs for less than 120 days due to a seasonal workforce. A [spreadsheet](#) to assist with this calculation can be found on our website.

When more than one entity is involved due to common ownership or shared services (e.g., a controlled group or affiliated service group under §414 rules), the entities must aggregate FTEs to determine the average for the previous calendar year. If combined the entities average 50 or more FTEs (an "aggregated ALE group"), then each entity is an ALE, subject to §4980H offer of coverage requirements and §6056 employer reporting requirements for the following calendar year.

Full-Time Employee Status

To understand which employees require an offer of coverage, the employer must determine which employees were full-time for each month. ALEs may count hours of service using one of two measurement methods, the monthly measurement method or the look-back measurement method. The chosen measurement method must be used consistently for all employees, or at least all hourly employees. The rules only permit differentiating the measurement method for the following categories: (i) hourly and salaried; (ii) union and non-union; (iii) different geographic locations; or (iv) different entities within the same aggregated ALE group.

Measurement Method Options for Determining Full-Time Status

1. **Monthly measurement method** - Employees who average 30 or more hours of service per week, or achieve 130 or more hours of service in a month, are full-time.
2. **Look-back measurement method** - Employees' hours are averaged over a measurement period of 3-12 months (at the employer's discretion). Employees who average 30 or more hours of service per week (or 130 or more hours of service per month) during the measurement period are generally full-time for a corresponding stability period of equal length or longer, even if there is a reduction in hours or leave of absence. There is a small exception beginning the 4th month following a change to part-time status for regular full-time employees who were not subject to an initial measurement period.

For aggregated ALE groups, where employees may have hours of service with multiple entities within the aggregated ALE group, any employees averaging 30 or more hours per week across the entities are considered full-time.

§4980H Offer of Coverage Requirements

The offer of coverage requirements for ALEs under §4980H are as follows:

- **§4980H(a)** – ALEs must offer minimum essential coverage (MEC) to at least 95% (or all but 5, if greater) of full-time employees and their dependent children each month. An offer of coverage is not required for spouses.
- **§4980H(b)** – ALEs must offer coverage that provides minimum value AND is affordable to all full-time employees each month. There is not a 5% “margin of error” for §4980H(b) requirements like there is under §4980H(a).

NOTE: Only an offer of group medical coverage is required to satisfy §4980H offer of coverage requirements. The employer could choose not to offer other benefits (e.g., dental, vision, life, disability).

Minimum Essential Coverage (MEC)

Most employer-sponsored group health plans will be considered minimum essential coverage (MEC) plans because very few specific requirements and little guidance are offered. Even plans referred to as “limited medical” or “preventive-only” will meet this requirement. The definition includes any coverage under an “eligible employer-sponsored plan”—a term that means a group health plan or group health insurance coverage offered by an employer to an employee that is: (a) a governmental plan, or (b) any other plan or coverage offered in a state's small or large group market. In addition, IRS regulations clarify that self-funded employer coverage, including HRAs, qualifies as an eligible employer-sponsored plan.

Minimum Value

The requirement to provide “minimum value” is a higher standard than the requirement to offer a MEC plan. A plan provides minimum value if the plan's share of the total allowed cost of benefits provided to an employee is at least 60% (actuarial value of 60% or better), similar to a bronze level plan available on a public Exchange. Whether a plan provides minimum value is required content in the summary of benefits and coverage (SBC).

Affordability

Affordability is generally determined by applying the applicable affordability percentage (see below) to an individual's household income. If the employee contribution for single coverage under the lowest-cost minimum value plan does not exceed the applicable affordability percentage of the employee's household income, the coverage is affordable.

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
Affordability Percentage	9.56%	9.66%	9.69%	9.56%	9.86%	9.78%	9.83%	9.61%	9.12%	8.39%	9.02%

However, because an employer will not typically know household income, the employer is protected from any potential penalties under §4980H(b) so long as the coverage is affordable under one of three safe harbors. Employers may use any of the affordability safe harbors for any reasonable category of employees, provided the safe harbor applies on a uniform and consistent basis for all employees in a category.

Affordability Safe Harbor Options

- **Federal poverty level (FPL) safe harbor** – Employee contribution for single, minimum value coverage does not exceed the applicable affordability percentage of FPL for a single individual.
- **Rate of pay safe harbor** – Employee contribution for single, minimum value coverage does not exceed the applicable affordability percentage of the employee's hourly rate x 130 (or monthly salary).
- **Form W-2 safe harbor** – Employee contribution for single, minimum value coverage does not exceed the applicable affordability percentage of the employee's Box 1 wages.

For more details about affordability requirements and use of an affordability safe harbor, see our [Brief on ACA Affordability Considerations](#).

§4980H Penalties (Employer Shared Responsibility Payments (ESRPs))

§4980H(a)

If the employer fails to offer MEC to at least 95% (or all but 5, if greater) of full-time employees and their dependent children in any given month, a penalty will apply if any full-time employee enrolls through a public Exchange and qualifies for a premium tax credit (or tax subsidy). The penalty is multiplied by the total full-time employee count minus the first 30, regardless of how many employees were offered coverage. However, if the employer is part of an aggregated ALE group, the 30 waiver applies on a pro rata basis.

$$\text{Penalty calculation} = (\text{full-time employee count} - 30) \times \text{§4980H(a) penalty}$$

§4980H(b)

If the employer satisfies §4980H(a) requirements, the employer may still owe a penalty for any full-time employee who is not offered minimum-value, affordable coverage if that employee enrolls through a

public Exchange and qualifies for a premium tax credit. This penalty applies on a per-employee basis rather than against the total full-time employee count.

Penalty calculation = §4980H(b) penalty for each full-time employee who is not offered minimum-value, affordable coverage who enrolls through a public Exchange and qualifies for a premium tax credit.

	§4980H(a)	§4980H(b)
2015	\$2,080 (\$173.33/mo.)	\$3,120 (\$260/mo.)
2016	\$2,160 (\$180/mo.)	\$3,240 (\$270/mo.)
2017	\$2,260 (\$188.33/mo.)	\$3,390 (\$282.50/mo.)
2018	\$2,320 (\$193.33/mo.)	\$3,480 (\$290/mo.)
2019	\$2,500 (\$208.33/mo.)	\$3,750 (\$312.50/mo.)
2020	\$2,570 (\$214.16/mo.)	\$3,860 (\$321.66/mo.)
2021	\$2,700 (\$225/mo.)	\$4,060 (\$338.33/mo.)
2022	\$2,750 (\$229.16/mo.)	\$4,120 (\$343.33/mo.)
2023	\$2,880 (\$240/mo.)	\$4,320 (\$360/mo.)
2024	\$2,970 (\$247.50/mo.)	\$4,460 (\$371.66/mo.)
2025	\$2,900 (\$241.66/mo.)	\$4,350 (\$362.50/mo.)

Penalties apply on a monthly basis, so 1/12 of the annual penalty will apply for each month that the employer fails to satisfy §4980H requirements and a full-time employee is enrolled through a public Exchange and qualifies for a premium tax credit. An employer will never be subject to both (a) and (b) penalties in any one month. If the (a) penalty applies, that is the maximum penalty that could be assessed. However, if the employer is in compliance with the (a) requirements and fails to satisfy the (b) requirements, there may be a penalty under (b).

Reporting & Reconciliation

ALEs are required to self-report to the IRS whether §4980H requirements were met for the calendar year. The reporting is done via a Form 1094-C with summary information about the employer and a Form 1095-C for each employee who was full time for at least one month. The ALE indicates whether MEC was offered to 95% or more of full-time employees on Form 1094-C (Part III, Column (a)). Specific offer of coverage information for each full-time employee, including information about whether the offer provided minimum value and was affordable, is reported in Part II, Lines 14 through 16, of the Form 1095-C. Employers who fail to report timely, correct information to the IRS and provide copies of Form 1095-Cs to employees may face penalties of up to \$310/form, in addition to any §4980H penalties that may apply.

The IRS then reconciles the employer reporting with personal tax returns and data from the public Exchanges to determine which ALEs may owe penalties. If it appears that an ALE owes penalties, the ALE will receive a Letter 226J from the IRS stating a proposed employer shared responsibility payment (ESRP). More information about the IRS' collection process via Letter 226J may be found at <https://www.irs.gov/individuals/understanding-your-letter-226-j>.