

COVID-19 + ACA:

How Pandemic Response Mistakes Could Cost Employers Real Money

Legislation, workforce adjustments and benefits changes prompted by the rise of COVID-19 increase the complexity of administering the Patient Protection and Affordable Care Act and accurately reporting to the Internal Revenue Service (IRS).

Workforce Changes Matter.

Tracking hours to identify employee status under the ACA was difficult pre-pandemic. Understanding employee hours count for ACA purposes during the COVID-19 pandemic is even harder. To do this correctly, employers must understand the way the law applies to:

- Reductions in hours
- Paid time off
- Unpaid leaves of absence
- FMLA, USERRA, and jury duty
- Families First Coronavirus Response Act leaves
- Furloughs
- Layoffs
- Terminations
- Returning employees to work after a break in service
- Rehiring a terminated employee

Measurement Methods Matter.

For employers using the lookback measurement method, hours measured during the 2020 COVID-19 pandemic will have lasting effects well beyond 2020, because the hours employees work now are what determines their full- or part-time status for ACA purposes during your organization's next stability period. Employees already in a full-time stability period will retain their status as full-time until the current stability period ends. This means employers furloughing or otherwise placing employees on leave may have a continuing obligation to offer (and pay for) coverage in order to avoid ACA penalties.

For employers electing to measure employees monthly, COVID-19 creates an administrative nightmare. Under ACA rules, each month that an employee works at least 130 hours, that employee is considered full-time, and, unless an exception applies, must be offered affordable coverage to avoid penalty risk. With hours fluctuating dramatically, and employees moving in and out of full-time status on a month-to-month basis, employers may find it difficult to respond to ACA status changes in real time, creating compliance risk.

Benefits Changes Matter .

The COVID-19 pandemic is forcing employers to make tough choices, including dropping health insurance coverage, requiring employees to pay more towards the cost of coverage, and moving employees into positions which are no longer benefits eligible. These personnel moves could prove costly under the ACA. In particular, employers should examine whether shifting responsibility for premium amounts to employees will make their plans unaffordable under the ACA. See below for more details on the penalty for offering unaffordable coverage.

Accurate Reporting Matters.

Employers can remain at risk for reporting penalties even if they navigate these issues with care. Inaccurate, incomplete, and late reporting of their offers of coverage (either furnishing to their employees or filing with the IRS) can result in penalties of up to \$270 per return or statement with a maximum penalty is \$3,339,000 per employer. Intentionally neglecting to furnish forms to employees or file with the IRS can result in penalties of \$550 per instance. Employers should take extra care with their Form 1094 and Form 1095 reporting at the end of this year and the next few years.

Sample penalty amounts (capped at \$3,339,000)

| No. of Late, Inaccurate, or Incomplete Forms | Total (up to) |
|--|---------------|
| 55 | \$14,850 |
| 125 | \$33,750 |
| 55 (late furnishing to employees and late filing with IRS) | \$29,700 |
| 125 (late furnishing to employees and late filing with IRS) | \$67,500 |

Sample penalty amounts for intentionally neglecting to file (no cap)

| No. of Forms Not Filed or Furnished | Total |
|--|-------------|
| 250 | \$137,500 |
| 500 | \$275,000 |
| 1000 | \$550,000 |
| No. of Forms Neither Filed nor Furnished | |
| 250 | \$275,000 |
| 500 | \$550,000 |
| 1000 | \$1,100,000 |

What's Your Risk?

Failure to offer coverage to at least 95% of full-time employees puts employers at risk of a shared responsibility payment penalty under IRC 4980H(a). The penalty amount in 2020 is \$2,570 per full-time employee (minus the first 30 full-time employees).

Some example penalty amounts

| Full-time Employee Count | Penalty Amount |
|--------------------------|----------------|
| 250 | \$565,400 |
| 500 | \$1,207,900 |
| 1,000 | \$2,492,900 |

An employer could offer coverage to at least 95% of full-time employees, but still be at risk of a penalty under Internal Revenue Code 4980H(b), which applies when a full-time employee not offered affordable coverage, or not offered coverage at all, receives subsidized coverage in a state or federally operated Marketplace. For 2020, this penalty is \$3,860 annually, or \$321.67 per month that an affected employee receives a tax credit.

Sample penalty amounts

| No. of Employees Receiving Tax Credit | No. of Months of Marketplace Coverage | Total |
|---------------------------------------|---------------------------------------|------------|
| 4 | 5 | \$6,433.40 |
| 12 | 12 | \$46,320 |
| 25 | 8 | \$64,334 |

We're here to help.

American Fidelity Administrative Services is committed to providing you with up-to-date information on employee health and welfare benefits compliance. If you would like more information about navigating increasingly complex ACA compliance in the face of COVID-19, you can [register for one of our upcoming webinars](#), or visit our website.