



Make sense of business size under the Affordable Care Act

Details for determining number of employees and rules that apply to your business

Business size is one of several important factors that determine which parts of the Affordable Care Act (ACA) apply to your business. Though it may seem like a straightforward topic, business size is defined and applied in multiple ways, so it's not a cut and dry issue. Here are the general details to help you determine the number of employees your business has, and which parts of the law apply to your business.

Business size definition

How business size is calculated will vary based on one of two factors, the number of full-time employees that an employer has and the number of full-time equivalent (FTE) employees that an employer has.

This is because some of the regulations are based on the Affordable Care Act's (ACA) definition of business size, and others are aligned with how the Internal Revenue Service (IRS) defines business size.

ACA	IRS
<ul style="list-style-type: none"> Counts the average of the total number of all employees employed on business days during preceding calendar year. Small employer definition is 1-100. States have the option to use 1-50 until 2016. Each employee W-2 is considered one employee including part-time employees. ACA provisions including MLR, SHOP, ACA benefits mandates and rating restrictions, etc. uses this definition. 	<ul style="list-style-type: none"> Counts the sum of total full-time employees (30+ hours per week) and full-time equivalents (FTEs). Small employer definition is 1-50. Provisions such as the small-employer tax credit, and play or pay penalties use this definition.

How to calculate business size

To help you calculate business size, see the examples below.

Full-time employee

A full-time employee is any employee with an average of at least 30 hours of service per week. Hours of service include hours worked, and hours that an employee is paid, but does not work,

such as vacation, holiday, illness or disability, jury duty and military duty. Any employee who works 130 hours in a month is considered full-time, provided the employer applies this equivalency rule on a reasonable and consistent basis. To make this calculation the law allows employers to choose a prior period of time of three to 12 months.

Full-time employee calculation details

Calculation: Hours of service an employee works in a previous three to 12 month time period divided by the number of weeks in the same time period equals average hours worked per week.

Measuring and re-assessment: Employers can use this calculation to establish an employees' full-time status for a future period (called a stability period under the law). For employees who are determined to be full time, the stability period must be at least six months, and no shorter than the measurement period. For employees determined not to be full-time, the stability period cannot be more than one month longer than the initial measurement period and must not exceed the remainder of the standard measurement period in which the initial measurement period ends. So, employers must re-evaluate employees who are considered not full-time after that amount of time. The employer has flexibility to choose the measurement period, but must be consistent.

New employees: Once a new employee has been employed for a measurement period, the employer must assess whether they are a full-time employee.

Records: Employers must keep accurate records to show they are in compliance with the law's standards.

Example: A firm analyzes a three month period and determines it has 30 employees who are paid for 30 or more hours per week and 30 employees who are paid for an average of 20 hours per week. The firm has 30 full-time employees, and must reassess the remaining 30 who are not considered full-time, again, after three months. The employees that were determined to be full-time could not be reassessed until after six months.

Full-time equivalent (FTE) employee

For some portions of the law, full-time equivalent employees (FTEs) must be counted. In these cases, employers calculate the number of FTE employees they have, in addition to all full-time employees. This calculation is determined by dividing the total number of hours of service for

FTE employee calculation details

Calculation: Divide the number of hours in a month for employees who are not full-time by 120. Then, add the number of full-time (average of 30 hour per week employees) employees. To get a yearly number, the FTEs for 12 calendar months are averaged.

Records: Employers must keep accurate records to show they are in compliance with the law's standards.

Example: The same firm determines it has 30 full-time employees (paid for 30 or more hours per week), and 30 employees who are not full-time (paid for an average of 20 hours per week). In the month of November, the employer adds up the hours of the 30 employees who are not full-time (working 20 hours per week for four weeks) and gets 2,400 hours. The calculation is: $2,400 \text{ hours} / 120 + 30 \text{ full-time employees} = 50 \text{ FTEs}$ for the month of November.

Some employers are exempt to this rule: Employers that exceed 50 full-time employees for 120 days or fewer during the calendar year, in which the employees perform labor on a seasonal basis or they are retail workers employed exclusively during holiday seasons.

What is an Applicable Large Employer?

Applicable Large Employers (ALEs) are subject to certain penalties and reporting requirements outlined in the law, such as the shared responsibility requirement.

For purposes of determining whether an employer is an ALE, “full-time” includes full-time equivalent employees. The employer must take part-time employees into account to determine whether it is an Applicable Large Employer. However, even if an employer is an ALE, it will not necessarily be liable for the penalty tax. The penalty is calculated based only on true full-time employees (those who work 30 or more hours per week). Full-time equivalent employees are not used to calculate the amount of the penalty tax.

the month of the employees who are not full-time by 120. This is the calculation associated with the term “applicable large employer,” and such employers are subject to the employer shared-responsibility mandate.

Which portions of the law apply?

Some parts of the Affordable Care Act apply to employers with up to 100 full-time employees, others apply to employers with 50 or more full-time employees, and still others apply to employers with less than 50 full-time employees. In addition, full-time employees may also include full-time equivalent employees. Though not an exhaustive list, this chart will help you identify key regulations that apply to each definition.

Business size	Applicable regulations
1-50*	<ul style="list-style-type: none"> Employers with 25 or fewer FTEs may be eligible for the Small Business Health Care Tax Credit. The calculation for eligibility is slightly different: Count all hours worked for each employee (up to 2,080 hours per employee) and divide by 2,080. When employer-sponsored health coverage is offered in the small-group market, these plans are required to offer essential health benefits and meet actuarial value requirements. Beginning Oct. 1, 2013, employers with 50 or fewer FTEs became eligible to purchase health insurance for employees through the government marketplace, the Small Business Health Options Program (SHOP). Employers with 100 or fewer full-time (30 hours per week) employees may be eligible for SIMPLE cafeteria plans. Employers with 50 or fewer employees (the actual number of full-time and part-time employees) are considered small employers.
50*-100	<ul style="list-style-type: none"> Employers with 50 or more FTEs may be subject to shared responsibility penalties if they do not offer coverage to all full-time (30 hours per week) employees and their dependents that meet affordability and minimum value requirements. <p><i>Update: On Feb. 10, 2014, the federal government announced a delay to the employer shared-responsibility penalty, giving employers time to transition into the new rules. Given this delay, starting in 2015 businesses with 100 or more full-time equivalent employees need to provide affordable, minimum value health care coverage to 70 percent of all full-time employees and their dependents, unless the employer qualifies for 2015 dependent coverage transition relief, or face a penalty.</i></p> <p><i>In 2016, the 70 percent threshold is increased to 95 percent, and the shared responsibility penalties will also apply to employers with 50 or more full-time equivalent employees.</i></p> Employers with 100 or fewer full-time (30 hours per week) employees may be eligible for SIMPLE cafeteria plans Starting January 1, 2016, employers with 51 to 100 employees (the actual number of full and part-time) will be considered a small employer. This means these employers may be eligible to purchase health insurance for employees through the government marketplace, the Small Business Health Options Program (SHOP).

*Please note that some portions overlap for employers with 50 full-time equivalent employees, and therefore they fall into two separate categories.

Business size	Applicable regulations
<p>100+ FTEs</p>	<ul style="list-style-type: none"> Employers with 50 or more FTEs may be subject to shared responsibility penalties if they do not offer coverage to all full-time (30 hours per week) employees and their dependents that meet affordability and minimum value requirements. <p><i>Given employer mandate delay, starting in 2015 businesses with 100 or more full-time equivalent employees need to provide affordable, minimum value health care coverage to 70 percent of all full-time employees and their dependents, unless the employer qualifies for 2015 dependent coverage transition relief, or face a penalty.</i></p> <p><i>In 2016, the 70 percent threshold is increased to 95 percent, and the shared responsibility penalties will also apply to employers with 50 or more full-time equivalent employees.</i></p> Employers with who file 250 or more W-2s in the previous year must report the total aggregate cost of major medical health benefits and certain pre-tax funded supplemental health coverage provided to each employee starting with their 2012 W-2 Forms. Reporting is optional for employers who file fewer than 250 W-2s until further guidance is issued by the IRS. Employers with 100 or more FTEs may be eligible to participate in the government marketplace, the Small Business Health Options Program (SHOP), after Jan. 1, 2017 at the option of each state.

All employers regardless of size
<ul style="list-style-type: none"> Notice of the Health Insurance Marketplace Medicare tax changes

All employers regardless of size that offer employee benefits
<ul style="list-style-type: none"> IRS reporting requirements Patient-centered outcome research institute fee (\$1 per enrollee in 2013, \$2 per enrollee until 2019) Reinsurance fee (\$63 per enrollee, per year) Waiting period limit of 90 days Summary of Benefits and Coverage Cadillac tax



For additional insights by employer size, see health care reform checklists for employers with [≤ 25 employees](#), [26-50 employees](#) and [50+ employees](#), or visit aflac.com/healthcare_reform.

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