



## **The Affordable Care Act: What Does It Mean for Agricultural and Small Business Employers?**

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The Patient Protection and Affordable Care Act (ACA) includes provisions that will have significant implications for individuals, families and employers in 2014. These provisions include:

- The creation of Health Insurance Marketplaces (or Exchanges) for each State
- New requirements for all health insurance coverage that is offered for sale to individuals, families, and employers
- Tax credits or cost-sharing subsidies for individuals and families based on income level and family size
- Requirements for individuals to maintain health insurance coverage
- Requirements for some employers to offer health insurance coverage to their employees
- Tax credits for small business employers that offer health insurance coverage to their employees.

This publication is one of a series of four publications designed to provide information for individuals (including self-employed individuals), families, employers, and employees. Because the ACA is a large and complex piece of legislation, these publications are designed to meet the needs of a wide variety of users by providing only that information relevant to each group of users. These topics include the implications of the ACA for:

- Agricultural and Other Small Business Employers with one or more employees
- Self-Employed Individuals in Agricultural and Small Businesses
- Individuals and Families
- Health Insurance Marketplaces (Exchanges) available to individuals, families, employers and employees

Users are advised to consult all publications relevant to their circumstances. For example, an employer is advised to consult (1) the publication for employers (to determine the business decisions that will be necessary under the ACA) and (2) the publication about individuals and families (to determine the family decisions that will be necessary under the ACA).

### **Analysis of Employer Provisions**

The ACA includes the following specific provisions for employers:

- Employers of all types (profit, non-profit and government), including agricultural and small business employers, are included in the provisions of the ACA.
- Employers with 50 or more full-time employees (or full-time and full-time equivalents) are required to offer health insurance coverage to their full time employees or be subject to an additional payment administered by the IRS (commonly referred to as the “Play or Pay” provision).

- Employers with full-time or part-time seasonal employees are permitted to adjust for these seasonal employees when calculating their number of employees.
- Employers with fewer than 25 employees who offer health insurance coverage for their employees (and meet other requirements) will be eligible for a tax credit administered by the IRS.

Employer compliance with the ACA involves a 3-step process for employers. These steps are:

- Step 1: Determination of the number of employees employed by an employer.
- Step 2: Determination of the health insurance alternatives for employers with at least 50 employees.
- Step 3: Determination of the health insurance tax credits for employers with less than 25 employees.

This publication provides detailed definitions and rules for analyzing each of these steps.

### **Users' Guide to this Publication**

This publication is designed to provide (a) an overview of the decisions employers must make under the ACA and (b) the detailed information necessary to make such decisions. As such, it is organized to permit each user to understand only those parts of the ACA that are relevant to the management and planning decisions faced by the employer's individual business. The publication is organized as follows:

- **Figure 1 and the Overview Snapshot Analysis** are designed to help users quickly assess the general rules of ACA for employers and the implications of these rules an individual employer.
- **Snapshot Analyses 1, 2, and 3** are designed to provide an introduction to each of the three major issues for employers under the ACA
- **Each Snapshot Analysis** includes **Key Questions** that provide an overview roadmap of the issues that employers will need to consider in assessing their alternatives under each part of the ACA.
- **Tables 1, 2, and 3** provide detailed definitions and calculations for each of the three major issues for employers under the ACA.
- **Information Sources** that include all IRS and other government regulations are provided at the end of the publication for users seeking more detail on the provisions of the ACA and its regulations.

Two aspects of Tables 1 to 3 should be noted. First, the answers to the questions in Table 1 to 3 were obtained from Internal Revenue Service (IRS) and Department of Health and Human Services (HHS) information sources. Whenever possible, these answers are direct quotations from those sources. Unless otherwise noted, all ACA regulations will be applicable beginning January 1, 2014. Second, the "Comments" in these tables are provided as a general discussion of the ACA and its implications for individuals and families. These comments are the product of the publication's authors and are not official IRS or HHS regulations.

This series of publications is designed to provide information for individuals, families, self-employed individuals, employers and employees. These publications are not intended to be the sole source of information used to make decisions about compliance with the ACA. These publications are consistent

with IRS and HHS regulations at the time of their production and the sources of the regulations are provided at the end of each publication. These publications are intended to provide information for planning and management purposes and is not intended to provide legal, insurance or tax accounting advice. Users should consult their legal, insurance or accounting advisers to analyze the consequences of specific decisions and circumstances.

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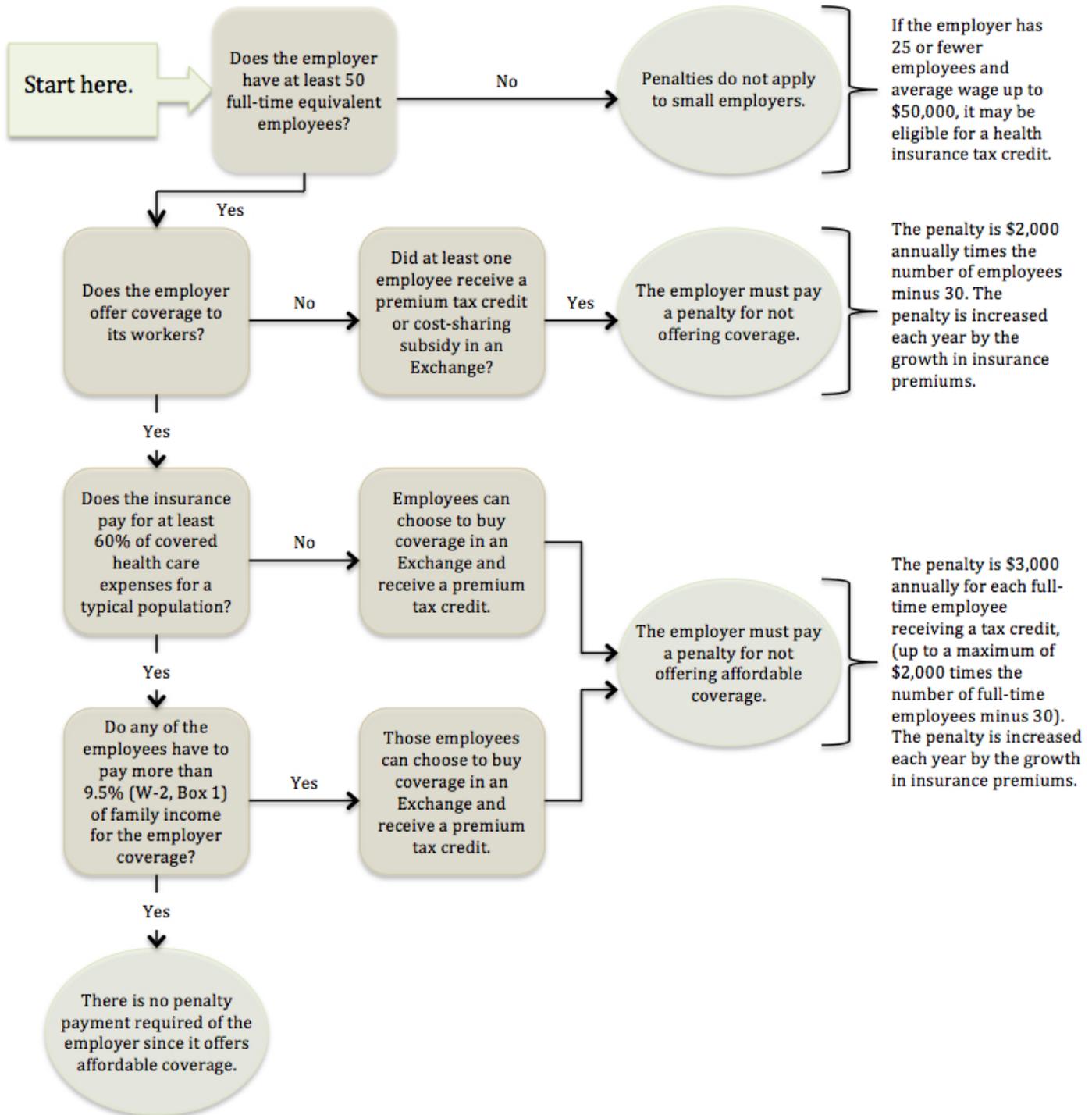
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**Figure 1. Penalties for Employers Not Offering Affordable Coverage Under the Affordable Care Act Beginning in 2015/2016\***



\*2015 for those businesses with FTE's of 100 or more. 2016 for those businesses with 50 – 99 FTE's that receive transition relief.

Figure adapted from the Kaiser Family Foundation, <http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>

## **Overview Snapshot Analysis of the Affordable Care Act for Agricultural and Small Business Employers**

The Affordable Care Act (ACA) is a major piece of legislation that includes a large number of new concepts and new terminology. This Snapshot Analysis, along with Figure 1, is designed to begin the process of analyzing the ACA's implications for agricultural and small business employers. There are three major questions that an agricultural or small business employer needs to consider in analyzing the management alternatives available under the ACA. These three questions provide a roadmap through the analytical process contained in the remainder of this publication.

**Step 1, Key Question:** Is your monthly average number of paid full-time employees and part-time FTEs (for example, 2 half-time employees equal 1 full-time equivalent employee) *approximately 50 per month*?

- **No.** My monthly average number of employees is well above 50.
  - Go to **Step 2**.
- **No.** My monthly average number of employees is well below 50.
  - Go to **Step 3**.
- **Yes.** My monthly average number of employees is approximately 50 or I employ **seasonal workers** for part of the year.
  - Review **Snapshot Analysis 1 and Table 1** to determine your exact number of employees, then go to **Step 2** (above 50) or **Step 3** (below 50)

**Step 2, Key Question:** Do you offer health insurance to full-time employees?

- **Yes.**
  - Review **Snapshot Analysis 2 and Table 2** to determine whether your insurance coverage will be **adequate** after 2014.
- **No.**
  - Review **Snapshot Analysis 2 and Table 2** to determine the **penalties** under ACA.

**Step 3, Key Question:** Do you offer health insurance to your full-time or part-time or seasonal employees?

- **Yes.**
  - Review **Snapshot Analysis 3 and Table 3** to determine the effect of the Small Business Health Care tax credit on your business.
- **No.**
  - Review **Snapshot Analysis 3 and Table 3** to determine whether the Small Business Health Care tax credit would make it more affordable to provide health insurance for your employees.

**Snapshot Analysis of Step 1: Determination of Employer's Number of Employees under ACA**

Step 1 of the ACA requires an employer to determine the number of employees. This snapshot is designed to provide an approximation for management and planning purposes. Users should consult Tables 1 and 4 for complete details.

**Key Question 1:** What was your number of **full-time** paid employees (full-time = 30 hours or more per week) for each month during the preceding year (2013)?

**Row 1:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

**Key Question 2:** What was your total number of hours worked each month by **part-time** paid employees for each month during the preceding year (2013)?

**Row 2:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

**Row 3: Divide the number entered in Row 2 for each month by 120:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

**Key Question 3:** -- Do you hire **seasonal employees**?

**If No** – Go to **Key Question 4** (next page).

**If Yes** – What was your total number of hours worked each month by all **seasonal** paid employees (full-time and part-time) for each month during the preceding year (2013)?

**Row 4:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

**Row 5: Divide the number entered in Row 4 for each month by 120:**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

**Snapshot Analysis of Step 1: Determination of Employer’s Number of Employees under ACA (Continued).**

**Key Question 4:** What was your **total number of employees** for each month?

If you **do not hire seasonal employees**, add Row 1 plus Row 3 for each month.

If you **do hire seasonal employees**, add Row 1 plus Row 3 plus Row 5 for each month.

**Row 6 = Row 1 + Row 3 OR Row 6 = Row 1+ Row 3 + Row 5.**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC

Your average monthly number of employees equals the average of the numbers in Row 6:  
 Sum of monthly numbers in Row 6/12 = \_\_\_\_\_.

**Conclusion:**

If the employer’s average monthly number of employees is **less than 50:**

Then the employer **is not required** to offer health insurance to full-time employees. Users in this category should **go to Snapshot Analysis 3 and Table 3** to determine their eligibility for the Small Business Health Care tax credit provisions of the ACA.

If the employer’s average monthly number of employees is **50 or more and the employer has no seasonal employees:**

Then the employer **is required** to offer health insurance to **full-time employees**. Users in this category should **go to Snapshot Analysis 2 and Table 2** to determine their alternatives under the Employee Shared Responsibility provisions of the ACA.

If the employer’s average monthly number of employees is **50 or more, and**

- (1) The employer’s workforce exceeded 50 full-time employees for 120 days (or four calendar months) or less and
- (2) The employees in excess of 50 were employed during that period as seasonal employees.

Then the employer **is not required** to offer health insurance to full-time employees. Users in this category should **go to Snapshot Analysis 3 and Table 3** to determine their eligibility for the Small Business Health Care tax credit provisions of the ACA.

**Table 1: The Affordable Care Act – General Rules and Rules for Determining an Employer’s Number of Employees.**

<p><b>INTRODUCTION: General Rules for Employers Under the Affordable Care Act (ACA)</b></p>	
<p><b>Question G-1:</b> Are employers required to offer health insurance for their employees after January 1, 2014?</p>	<p>The Affordable Care Act originally included the Employer Shared Responsibility (or ESR) provisions that will take effect on January 1, 2014 for <b>all</b> employers.</p> <p>Under the ESR provisions, all employers employing a total of <b>at least 50 full-time employees or full-time equivalent employees</b> (or FTEs: for example, 40 full-time employees employed 30 or more hours per week on average plus 20 half-time employees employed 15 hours per week on average are equal to 50 full-time employees) must <b>offer</b> affordable health coverage that provides a minimum level of coverage <b>to their full-time employees</b>, or they may be subject to an ESR payment.</p> <p><i>Comment: The ESR provision is commonly called the “employer mandate.” The ESR payment is commonly called the “Play or Pay penalty”).</i></p>
<p><b>Question G-2:</b> Is the ESR provision in effect for calendar year 2014?</p>	<p><b>No.</b> The ESR provisions will not be implemented or enforced in 2014. Both the ESR provisions and the ESR information reporting requirements will be fully effective for 2015. This delay in implementing provisions of the ESR and its information reporting requirement has no effect on the effective date or application of other ACA provisions, such as the premium tax credit or the Individual Shared Responsibility provisions.</p> <p><i>Comment: This delay in implementing the ESR provisions provides an opportunity for employers to determine and implement the recordkeeping systems needed for compliance in 2015. Users seeking additional information on the delay of the ESR provisions should see <a href="http://www.irs.gov/pub/irs-drop/n-13-45.PDF">http://www.irs.gov/pub/irs-drop/n-13-45.PDF</a></i></p>

	<p><i>On February 10, 2014 the Department of Treasury provided additional guidance that provided transition relief to employers for the 2015 year. The transition relief for employers varies based on the size of the employer and the employer must meet certain criteria to receive transition relief. Employers with an annual monthly average of 50 to 99 FTE's may receive transition relief from having to offer health insurance for the 2015 year. Employers with 100 or more FTE's will still be required to offer health insurance or pay a penalty, but will receive relief by only having to offer health insurance to 70 percent (instead of 90 percent) of eligible employees for the 2015 year and may not have to offer health insurance that allows an employee to purchase health care insurance for their dependent children until 2016. Users seeking additional information on transition relief in 2015 should see <a href="http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf">http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf</a></i></p>
<p><b>Question G-3:</b> Are agricultural employers included in the provisions of ACA?</p>	<p><b>Yes.</b> The ACA applies to <b>all</b> for-profit, non-profit and government entity employers. Agricultural employers are included in the provisions of the ACA.</p>
<p><b>Question G-4:</b> Are there any special rules in the ACA for agricultural employers?</p>	<p><b>No.</b> There are rules for seasonal workers that apply to the agricultural industry and to all other industries.</p>
<p><b>Question G-5:</b> Can an employer obtain group plan health insurance coverage for his/her employees on the Health Insurance Marketplace?</p>	<p><b>Yes.</b> The Small Business Options Program (SHOP) will be operated by the Health Insurance Marketplace in each State and will offer group coverage to qualified employers providing QHPs for their employees and dependents.</p> <p><i><b>Comment:</b> A Health Insurance Marketplace is also known in the ACA legislative language as an “Exchange.”</i></p>
<p><b>Question G-6:</b> Which employers will be eligible to purchase employee health coverage on the SHOP?</p>	<p>In <b>2014 and 2015</b>, each State’s SHOP Marketplace <b>will be available</b> for qualified employers with <b>no more</b> than <b>50 employees</b>. During 2014 and 2015, States will have <b>the option</b> of making the SHOP Marketplace available to employers with <b>no more</b> than <b>100 employees</b>.</p> <p>In <b>2016 and thereafter</b>, each State’s SHOP Marketplace will be</p>

	<p>available for qualified employers with <b>no more than 100 employees</b>.</p> <p>In <b>2017 and thereafter</b>, States will have <b>the option</b> of permitting <b>large employers</b> (with over 100 employees) to obtain health coverage for employees and their dependents on the SHOP.</p> <p><i><b>Comment:</b> For a discussion of Health Insurance Marketplaces and the SHOP for employers, see the companion publication FIRM Fact Sheet 13-05.</i></p>
<b>STEP 1: Rules for Determining An Employer’s Number of Employees Under the ACA</b>	
<p><b>Question 1a:</b> What is the definition of an “employee” under the ACA?</p>	<p>Under the ACA, employee and employer are defined by the common law standard. At least 3 types of workers should be considered when determining the number of employees and it should be noted that <b><u>only common law employees are considered employees under the ACA.</u></b></p> <p><b>Common law employee:</b> An <b>employment relationship exists</b> when the person for whom the services are performed <b>has the right to control and direct the individual who performs the services</b>. Under the common law standard, anyone who performs services for the employer is an employee if the employer has the right to control what will be done and how it will be done.</p> <p><b>Independent contractor:</b> In general, a worker is an independent contractor if the person for whom the services are performed has <b>the right to control or direct only the result of the work and not the means and methods</b> of accomplishing the result. Several factors can be considered in determining the status of a worker as an independent contractor. These factors include (a) behavioral control factors such as the instructions that the business gives to the worker (e.g., when, where and how to do tasks, tools or equipment used, etc.), (b) financial control (e.g., extent to which the worker has unreimbursed business expenses, extent of the worker’s investment, extent to which worker can make a</p>

	<p>profit or less, etc.), and (c) the type of relationship between the business and a worker (written contracts, whether business provides the worker with employment type benefits, the permanency of the relationship, etc.)</p> <p><b>Leased employee:</b> A firm supplying workers to other firms is the employer of those workers. For example, a temporary staffing service may provide the services of workers to its clients on a temporary basis. The staffing service enters into a contract with a client under which the client specifies the services to be provided and a fee is paid to the staffing service for each worker furnished. The staffing service has the right to control and direct the worker's services for the client, including the right to discharge or reassign the worker. The staffing service hires the workers, controls the payment of their wages, provides them with unemployment insurance and other benefits, and is the employer for employment purposes.</p> <p><i><b>Comment:</b> Users with questions about the employment status of individuals should consult legal counsel and consult IRS Publication 15A available at <a href="http://www.irs.gov/pub/irs-pdf/p15a.pdf">http://www.irs.gov/pub/irs-pdf/p15a.pdf</a></i></p>
<p><b>Question 1b:</b> How does an employer determine its number of employees?</p>	<p>Employers will use information about the employees they employed <b>during 2013</b> to determine whether they employ 50 employees in 2014. After 2014, employers will determine their number of employees for each year <b>based on the preceding calendar year</b> (for example, an employer's number of employees for 2015 will be calculated based on the actual number of employees in 2014).</p>
<p><b>Question 1c:</b> What is a "full-time employee" under the ACA?</p>	<p>A full-time employee with respect to any month is <b>an employee</b> (including seasonal employees) who is <b>employed on average at least 30 hours of service per week during that month</b> (or 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week; <math>52 \text{ weeks} \times 30/12 = 130</math>).</p>

<p><b>Question 1d:</b> What is a “full-time equivalent employee” (FTE)?</p>	<p><b>All employees</b> (including seasonal employees) who were <b>not *full-time employees</b> for any month in the preceding calendar year are included in calculating the employer’s FTEs for that month.</p>
<p><b>Question 1e:</b> What are “hours of service”?</p>	<p>As under existing Department of Labor regulations, an employee's <b>hours of service would include</b> each hour for which:</p> <p>(a) An <b>employee is paid</b> or entitled to payment <b>for the performance of duties</b> for the employer <b>and</b></p> <p>(b) An <b>employee is paid or entitled to payment</b> by the employer on account of a period of time <b>during which no duties are performed</b> due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.</p>
<p><b>Question 1f:</b> How does an employer calculate the total number of employees?</p>	<p>The number of employees is calculated as follows <b>for each month of the preceding calendar year:</b></p> <p>(a) Count the employer’s number of <b>full time</b> employees (including seasonal employees) for the calendar month.</p> <p>(b) Calculate the employer’s number of <b>full-time equivalent</b> employees as the total number of <b>hours of service for all employees who were not full-time</b> employees for that month <b>divided by 120</b>. This is the number of FTEs for the calendar month.</p> <p>(c) Calculate the employer’s <b>total number</b> of employees as the employer’s number of <b>full-time</b> employees <b>plus</b> the employer’s number of <b>full-time equivalent</b> employees (<b>item (a)</b> above plus <b>item (b)</b> above <b>equal item (c)</b> for each month of the preceding calendar year).</p> <p>(d) <b>Add the 12 monthly numbers</b> obtained in item (c) and <b>divide the sum by 12</b>. This equals the employer’s <b>average monthly number of full-time employees</b> for the preceding calendar year.</p> <p>(e) If the <b>average monthly number</b> of full-time employees (calculated</p>

	<p>in item (d) above) <b>is at least 50</b>, the employer <b><i>is required to offer health insurance to its full-time employees.</i></b></p> <p><b><i>Comment: Tables 4 and 5 provide examples of this calculation.</i></b></p>
<p><b>Question 1g:</b> What if an employer obtains workers leased from an employment service/agency?</p>	<p>Leased employees <b>are not included</b> in the employer's number of employees. Such employees are included in the number of employees of the leasing service/agency.</p>
<p><b>Question 1h:</b> What if an employer employs seasonal workers on a full-time or a less than full-time basis?</p>	<p>The ACA includes a provision for seasonal employees. Seasonal employees are defined as employees who perform labor or services on a seasonal basis as defined by the Department of Labor under 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons. Final guidance provided by the IRS further defines a seasonal employee as one in a position “for which the customary annual employment is six months or less. The reference to customary means that by the nature of the position an employee typically works for a period of six months or less, and that period should begin each calendar year in the same part of the year, such as summer or winter. In certain unusual instances the employee can still be considered a seasonal employee even if the seasonal employment is extended in a particular year beyond its customary duration (regardless of whether the customary duration is six months or is less than six months)”.  QUESTION: Should we add citation to a specific source/website?  <b>Seasonal workers are exempted</b> from an employer's total number of employees <b>if</b>:</p> <p>(a) The employer's workforce exceeds 50 full-time employees <b>for 120 days (four calendar months) or fewer</b> during a calendar year, <b>and</b></p> <p>(b) The <b>employees in excess of 50</b> who were employed during that period of no more than 6-months <b>were seasonal employees.</b></p> <p>Under Department of Labor Regulations, labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and</p>

	<p>which, from its nature, may not be continuous or carried on throughout the year. A worker moving from one seasonal activity to another, while employed in agriculture or performing agricultural labor, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year.</p> <p><b><i>Comment:</i></b> <i>Table 6 provides an example of this calculation. Users with additional questions about the status of employees as seasonal employees should consult Department of Labor regulations available at: <a href="http://www.dol.gov/dol/cfr/Title%2029/Chapter%20V.htm">http://www.dol.gov/dol/cfr/Title 29/Chapter V.htm</a></i></p>
<p><b>Question 1i:</b> What if an employer’s business organization includes more than one entity?</p>	<p>The ACA provides that <b>all entities treated as a single employer under section 414</b> of the IRS Code are treated as a single employer for purposes of the ACA. Thus, all employees of a “controlled group” under section 414 are included in determining the employers’ number of employees.</p> <p><b><i>Comment:</i></b> <i>Users for whom this question applies should seek additional legal or accounting advice about this issue.</i></p>
<p><b>Question 1j</b> What if an existing employer does not have the appropriate records to calculate the number of employees for the entire preceding calendar year, or needs time to make adjustments in its employer-sponsored health care plan before 2014?</p>	<p>The IRS has issued transition regulations for the 2014 calendar year. An employer is permitted to determine its number of employees by reference to a period of <b>at least six consecutive calendar months</b>, as chosen by the employer, in the 2013 calendar year (rather than the entire 2013 calendar year). Thus, an employer may determine its number of employees for 2014 by determining whether it employed an average of at least 50 full-time employees on business days during any consecutive six-month period in 2013.</p> <p><b><i>Comment:</i></b> <i>Though enforcement of the ESR provision has been delayed until 2015, the IRS has not yet released regulations related to whether a similar provision will be available in 2015. The guidance issued in February of 2014 intimates that the entire previous year will be used should be used to determine employer status. Users are advised to consider the implementation of a recordkeeping system for the entire 2014 calendar year in preparation for 2015.</i></p>

<p><b>Question 1k:</b> If an employer is a new business in 2014, and the number of employees is determined by the preceding calendar year (when the business did not exist), then how is the number of employees to be determined?</p>	<p>Regulations provide that <b>an employer not in existence during an entire preceding calendar year</b> is assumed to have more than 50 full-time employees for the current calendar year if it is <b>“reasonably expected”</b> to employ an average of at least 50 full-time employees.</p> <p><i>Comment: Users should note that the IRS has requested additional comments on final regulations regarding “safe harbors or other presumptions” that would assist new employers in determining the number of expected employees. Users for whom this question applies should consult legal or tax accounting advisers for the most recent IRS regulations for new employers.</i></p>
<p><i>Comment: At this point, some important management decisions can be made. Given the rules explained above, many employers can probably observe rather quickly that they are in one of three groups:</i></p> <p><i>(a) Employers whose average monthly number of employees is “CLEARLY BELOW” the 50 employee threshold (for example, 40 employees or less): Further analysis or calculation of the number of employees is probably not required. Employers with fewer than 50 employees are not required to offer health insurance to their full-time employees. However, if these employers do offer health insurance to their employees, they might be eligible for the Small Business Health Care Tax Credit. Users in this category should proceed to <u>Snapshot Analysis 3 and Table 3</u>.</i></p> <p><i>(b) Employers whose average monthly number of employees is “CLEARLY ABOVE” the 50 employee threshold (for example, 60 employees or more): Further analysis or calculation of the number of employees is probably not required. Employers with more than 50 employees are required to offer health insurance to their full-time employees. Users in this category should proceed to <u>Snapshot Analysis 2 and Table 2</u></i></p> <p><i>(c) Employers whose average monthly number of employees is “CLEARLY CLOSE TO” the 50 employee threshold (for example, employers in the range of 40 to 60 employees): Further analysis and actual calculation of the number of employees is likely to be required. Table 2 provides a worksheet for completing these calculations. Users in this category should determine their exact number of employees and return to (a) or (b) above.</i></p>	

**Snapshot Analysis of Step 2: Determination of Employer's Alternatives  
For Provision of Health Insurance Under ACA**

Step 2 of the ACA requires employers with more than 50 full-time or FTE employees to provide health insurance to all full-time employees (users should see Snapshot 1 and Table 1 to determine the number of employees). This snapshot is designed to provide an approximation for management and planning purposes. Users should consult Table 2 for more details.

**Key Question 1:** Assuming that you have 50 or more full-time or FTE employees, do you provide health insurance to your **full-time employees**?

**Yes.** Go to **Key Question 2**.

**No.** Go to **Key Question 3**

**Key Question 2:** Does the health insurance you offer meet both requirements for affordability and minimum value?

Affordability: Employee's share of health care premium must not exceed 9.5 percent of the employee's household income (household income can be measured as the employee's Box 1 of W-2 reported wages).

Minimum value: Employer's share of coverage must equal at least 60 percent of actuarial value.

Yes on Both: Go to **Conclusion C1**.

No on Either: Go to **Key Question 3**

**Key Question 3:** Is any employee certified to you as having received a premium credit or cost sharing reduction on a health care exchange?

**Yes.** Go to **Conclusion C2** if you answered **No to Key Question 1**.

**Yes.** Go to **Conclusion C3** if you answered **Yes to Key Question 1**.

**No.** Go to **Conclusion C1**.

**Conclusions:**

**C1:** No ESR penalty assessed

**C2:** Employer will be assessed ESR penalty. First 30 employees omitted from penalty. Monthly penalty will equal  $(N-30) \times \$2,000/12$  (where N = Number of employees certified as receiving premium credit).

**C3:** Employer will be assessed ESR penalty. Monthly penalty will equal  $\$3,000/12$  (where N = Number of employees certified as receiving premium credit).

**Table 2: The Affordable Care Act – Rules for Determining an Employer’s Health Care Provision Alternatives.**

STEP 2: Rules for Determining an Employer’s Health Care Provision Alternatives Under the Affordable Care Act	
<p><b>Question 2a:</b> If an employer’s calculated number of employees is at least 50, what are the employer’s alternatives under ACA?</p>	<p>Under the ACA, all employers employing a total of <b>at least</b> 50 full-time employees and full-time equivalent employees must either:</p> <p>(a) Offer <b>“affordable health coverage that provides a minimum level of coverage”</b> to their <b>full-time employees</b>, or</p> <p>(b) Be subject to an Employer Shared Responsibility (ESR) payment</p> <p><i>Comment: The ESR payment is commonly called the “Play or Pay” penalty.</i></p>
<p><b>Question 2b:</b> Is an employer required to offer health insurance to all the employees that were included in the Step 1 calculation of the number of employees above?</p>	<p><b>No.</b> As noted above, the determination an employer’s number of employees includes both the number of full-time employees and the number of full-time equivalent employees. However, the employer is <b>only required to offer</b> health care insurance coverage to <b>full-time employees</b>.</p> <p><i>Comment: See Table 5 for discussion of the use of each type of employee in Steps 2 and 3 of this process.</i></p>
<p><b>Question 2c:</b> What is “affordable health coverage that provides a minimum level of coverage” under the ACA?</p>	<p>Under the ACA, health insurance coverage for an employee under an employer-sponsored plan is defined as being:</p> <p>(a) <b>Affordable</b> if the <b>employee's required contribution</b> for self-only coverage <b>does not exceed 9.5 percent of the employee's household income</b> for the taxable year.</p> <p>(b) <b>Minimum level of coverage</b> (or “minimum value”) if the <b>plan’s share</b> of the total allowed <b>costs of benefits</b> provided under the plan <b>is greater than 60 percent of those costs</b>.</p>

<p><b>Question 2d:</b> How does an employer calculate 9.5 percent of an employee's household income when determining the affordability of health care coverage offered by the employer?</p>	<p>Under the ACA, household income is defined as the modified adjusted gross income of the employee and any members of the employee's family (including any spouse and dependents) who are required to file an income tax return.</p> <p>Because employers may encounter practical difficulties in assessing the affordability of the coverage offered to their employees (i.e., affordability is determined by reference to the employee's household income and the employee's household income is generally unknown to the employer), IRS regulations provide that <b>affordability</b> can be <b>measured by using one of three "Safe Harbors" that will be accepted by the IRS. These safe harbors will be (1) the Federal Poverty Line, (2) The Rate of Pay, or (3) the W-2 Wages</b> (i.e., by <b>the total amount of wages reported in Box 1 of Form W-2</b>).</p>
<p><b>Question 2e:</b> How does an employer determine whether a health care plan offered by the employer provides minimum value to employees?</p>	<p>In general, an employer-sponsored plan provides the minimum level of coverage (or "minimum value") if the plan's <b>share of the total allowed costs of benefits</b> provided under the plan is <b>greater than 60 percent</b> of those costs.</p> <p>A <b>minimum value calculator</b> is provided by the Department of Health and Human Services and IRS at:  <a href="http://www.cms.gov/cciiio/resources/regulations-and-guidance/index.html">http://www.cms.gov/cciiio/resources/regulations-and-guidance/index.html</a></p> <p>In addition, IRS has proposed the following as possible <b>"safe harbor" plan designs</b> as providing minimum value (i.e., these plans would provide minimum value if sponsored by an employer):</p> <p>(a) A plan with a \$3,500 integrated medical and drug deductible, 80% plan cost-sharing, and a \$6,000 maximum out-of-pocket limit for employee cost-sharing.</p> <p>(b) A plan with a \$4,500 integrated medical and drug deductible, 70% plan cost-sharing, a \$6,400 maximum out-of-pocket limit, and a \$500</p>

	<p>employer contribution to an HSA</p> <p>(d) A plan with a \$3,500 medical deductible, \$0 drug deductible, 60% plan medical expense cost-sharing, 75% plan drug cost-sharing, a \$6,400 maximum out-of-pocket limit, and drug co-pays of \$10/\$20/\$50 for the first, second and third prescription drug tiers, with 75% coinsurance for specialty drugs.</p> <p><b><i>Comment: Users with large group plan employers should consult with your legal and human resource advisors for additional information on regulations..</i></b></p>
<p><b>Question 2f:</b> When does an employer become subject to the ESR payment (the “Play or Pay” penalty)?</p>	<p>An employer may be liable for an ESR payment only if <b><u>one or more full-time employees are certified</u></b> to the employer <b>as having received</b> a “premium tax credit or cost-sharing reduction” at a Health Insurance Marketplace</p> <p><b><i>Comment: A Health Insurance Marketplace is also known in the ACA as an “Exchange.” Users should see companion publication FIRM Fact Sheet 13-05 for details on Health Insurance Marketplaces.</i></b></p>
<p><b>Question 2g:</b> What is a “premium tax credit or cost-sharing reduction” used by an employee?</p>	<p>The “premium tax credit or cost-sharing reduction” is a tax credit for an individual or family with (a) household income of at least 100% but not more than 400% of the federal poverty level and (b) who are not otherwise eligible for a qualifying health care plan other than through an Health Insurance Marketplace or the individual market for a given month.</p> <p><b><i>Comment: Users should see companion publication FIRM Fact Sheet 13-03 for details on premium tax credits.</i></b></p>

<p><b>Question 2h:</b> If an employer receives notice that one or more full-time employees are certified as having received a premium tax credit or cost sharing reduction, is the employer subject to the ESR payment?</p>	<p>If <b><u>one or more full-time employee is certified</u></b> to the employer as <b><u>having received a premium tax credit or cost-sharing reduction</u></b>, the employer <b><u>could be subject</u></b> to an assessable ERS payment <b><u>if either</u></b>:</p> <p>(a) The <b><u>employer fails to offer to its full-time employees</u></b> (and their non-spousal dependents) the opportunity to enroll in affordable health coverage that provides a minimum level of coverage under an eligible employer-sponsored plan <b><u>or</u></b></p> <p>(b) <b><u>The employer offers its full-time employees</u></b> (and their dependents) the opportunity to enroll in employer-sponsored plan <b><u>but</u></b> the employer's coverage <b><u>is unaffordable or does not provide minimum value</u></b> as defined in the provisions of the ACA.</p>
<p><b>Question 2i:</b> If an employer is subject to an ESR payment, how is the ERS payment calculated?</p>	<p>If <b><u>one or more full-time employee is certified</u></b> to the employer as <b><u>having received a premium tax credit or cost reduction</u></b>, the employer generally will be liable for an monthly ESR payment based on:</p> <p>(a) The <b><u>number of full-time employees certified</u></b> as receiving a premium tax credit or cost-sharing reduction by a Health Insurance Marketplace <b><u>minus 30</u></b> (i.e., the first 30 certified full-time employees are exempted from the ESR payment for the 4980H(a) penalty. The first 30 employees are <b><u>NOT</u></b> subtracted when calculating the 4980H(b) penalty).</p> <p>(b) <b><u>Multiplied by</u></b> a penalty of <b><u>\$2,000 per year</u></b> for each full-time employee included in part (a)</p> <p>(d) <b><u>Divided by</u></b> 12</p> <p>Thus, the <b><u>monthly ESR payment</u></b> for an employer would be:  <math>(N - 30) \times \\$2,000 \times 1/12 = \text{Monthly ESR Payment}</math>,  where N = Number of employees certified as having received a premium tax credit or cost reduction for the month</p>

<p><b>Question 2j:</b> Does the ESR payment provision have any special provisions for determining the number of employees, for counting new employees, or for counting employees with variable hours?</p>	<p><b>Yes.</b> IRS regulations provide “<b>safe harbor</b>” methods that employers may use (but are not required to use) to determine which employees are treated as full-time employees for purposes of the ERS payments under the ACA. These include safe harbor methods that employers may apply to newly-hired employees and employees with variable hours</p> <p><i><b>Comment:</b> Users for whom this question applies should consult the IRS regulations and examples available in IRS Notice 2012-58 at: <a href="http://www.irs.gov/pub/irs-drop/n-12-58.pdf">http://www.irs.gov/pub/irs-drop/n-12-58.pdf</a></i></p>
<p><b>Question 2k:</b> Will the ESR payment of \$2,000 per year per full-time employee be increased in the future?</p>	<p><b>Yes.</b> After 2014, the ESR payment per full-time employee will increase based on the rate of increase in health care premium costs.</p>
<p><b>Question 2l:</b> Is an employer required to share the cost of health insurance for the dependents of full-time employees under the ESR provisions?</p>	<p><b>No.</b> Under the ESR provision, the employer is required to <b>offer</b> health insurance coverage for the dependents of full-time employees. The employer <b>is not required to share the cost</b> of health insurance for an employee’s dependents.</p>
<p><b>Question 2m:</b> If an employer offers an employer-sponsored plan that meets the requirements of ACA (i.e., it is affordable and provides minimum value) and employee declines the plan offered or seeks to acquire a premium tax credit or cost reduction, will the employer be liable for an ESR payment?</p>	<p><b>No.</b> If (a) the employer-sponsored plan <b>meets the ACA requirements for affordability and minimum value</b> and (b) the <b>employee does not enroll in the plan</b>, then the employer is <b>not liable</b> under the ESR provisions, even if the employee seeks a premium tax credit or cost-sharing reduction at Health Insurance Marketplace.</p>

**Snapshot Analysis of Step 3: Determination of Employer's Eligibility  
For the Small Business Health Care Tax Credit**

Step 3 of the ACA offers the Small Business Health Care (SBHC) tax credit to qualified agricultural and small business employers. This snapshot is designed to provide an approximation for management and planning purposes. Users should consult Table 3 for more details.

**Key Question 1:** Do you employ fewer than 25 employees for the taxable year?

**Yes.** Go to **Key Question 2.**

**No.** Go to **Conclusion C2**

**Key Question 2:** Do your employees average wages less than \$50,000 per person for the taxable year?

**Yes.** Go to **Conclusion C1**

**No.** Go to **Conclusion C2**

**Conclusions:**

**C1:** Employer is eligible for the Small Business Health Care Tax Credit.

**C2:** Employer is not eligible for the Small Business Health Care Tax Credit.

**Table 3: The Affordable Care Act – Rules for Determining an Employer’s Eligibility for the Small Business Health Insurance Tax Credit.**

Step 3: Rules for Determining an Employer’s Eligibility for the Small Business Health Insurance Tax Credit Under the ACA	
<p><b>Question 3a:</b> Which employers are eligible for the Small Business Health Care Tax Credit (SBHC credit)?</p> <p><i>Comment: The provisions discussed in Step 3 apply to the 2014 and 2015 tax years. Tax credits were also available for the 2010-13 tax years. Users should consult their legal or tax accounting advisers regarding the rules for those years.</i></p>	<p>To be an eligible for the SBHC credit, the employer <b>must</b>:</p> <p>(a) Have <b>fewer than 25 full-time equivalent employees</b> (FTEs) for the taxable year, and;</p> <p>(b) Have <b>average annual wages</b> of its employees of <b>less than \$50,000</b> per FTE per year; <b>and</b></p> <p>(c) Maintain a <b>“qualifying arrangement”</b> for its employees.</p>
<p><b>Question 3b:</b> What is a “qualifying arrangement” that must be maintained by an employer?</p>	<p>A <b>“qualifying arrangement”</b> is an arrangement under which <b>the employer pays premiums for each employee</b> enrolled in health insurance coverage offered by the employer in an amount equal to a uniform percentage of <b>not less than 50 percent of the premium cost</b> of the coverage.</p>
<p><b>Question 3c:</b> How does an employer determine whether it is eligible for the SBHC credit?</p>	<p>The following steps must be followed to determine whether an employer is eligible for the SBHC credit:</p> <p>(a) Determine the <b>number of employees</b> who are taken into account for purposes of the SBHC credit.</p> <p>(b) Determine the <b>number of hours of service</b> performed by those employees.</p> <p>(c) Calculate the employer’s <b>number of full time equivalent employees</b>.</p> <p>(d) Determine the <b>average annual wages paid per FTE</b>.</p> <p>(e) Determine <b>the premiums paid by the employer</b>. The premiums must be paid by an employer under a qualifying arrangement and must be paid for health insurance that meets the requirements of the SBHC credit.</p>

<p><b>Question 3d:</b> Are the rules for determining the number of employees and number of full-time employee equivalents for the SBHC credit the same as the rules for determining those numbers in Steps 1 and 2 above?</p>	<p><b>No.</b> The rules for determining the number of employees are different for the SBHC credit.</p> <p><i>Comment: See Table 7 for comparison of employees included in determination of number of employees versus determination of eligibility for the SBHC tax credit.</i></p>
<p><b>Question 3e:</b> Who is considered to be an employee of the employer (or who is “taken into account”) under the SBHC credit?</p>	<p>In general, <b>employees who perform services for the employer</b> during the taxable year <b>are taken into account</b> in determining the employer’s FTEs, average wages, and premiums paid, with certain individuals excluded and with employees of certain related employers included.</p> <p>The general rules of the SBHC credit are:</p> <p>(a) <b>Partners in a business and certain owners are not taken into account as employees.</b> Specifically, sole proprietors, partners in a partnership, shareholders owning more than two percent of an S corporation, and any owners of more than five percent of other businesses are not taken into account as employees.</p> <p>(b) <b>Family members of these owners and partners are not taken into account as employees.</b> For purposes the SBHC credit, a family member is defined as a child (or descendant of a child); a sibling or step-sibling; a parent (or ancestor of a parent); a step-parent; a niece or nephew; an aunt or uncle; or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law.</p> <p>(c) <b>Any other member of the household of these owners and partners who qualifies as a dependent</b> is not taken into account as an employee for purposes of the SBHC credit.</p> <p>Thus, <b>the wages and hours of these business owners and partners, and of their family members and dependent members of their household, are disregarded</b> in determining FTEs and average annual wages, and the premiums paid on their behalf are not counted in determining the amount of the SBHC credit.</p>

<p><b>Question 3f:</b> Are seasonal workers included in determining the number of full-time equivalent employees?</p>	<p><b>No.</b> Seasonal workers are disregarded in determining FTEs and average annual wages <b><u>unless the seasonal worker works for the employer on more than 120 days</u></b> during the taxable year.</p> <p>However, <b><u>premiums paid on behalf of seasonal workers may be counted</u></b> in determining the amount of the SBHC credit.</p>
<p><b>Question 3g:</b> What if an employer’s business organization includes more than one entity?</p>	<p>The ACA provides that all entities treated as a single employer under section 414 of the IRS Code are treated as a single employer for purposes of the ACA. Thus, all employees of a “controlled group” under section 414 are included in determining the employers’ number of employees (except employees not taken into account as described in Question 3e), and all wages paid to, and premiums paid for, employees by the members of the controlled group are taken into account in determining whether any member of the controlled group is eligible for the SBHC credit.</p> <p><b><i>Comment: Users for whom this question applies should seek additional legal or accounting advice about this issue.</i></b></p>
<p><b>Question 3h:</b> What are an employee’s “hours of service” for an employer?</p>	<p>As under existing Department of Labor regulations, an employee's <b><u>hours of service would include</u></b> each hour for which:</p> <p>(a) An <b><u>employee is paid</u></b> or entitled to payment <b><u>for the performance of duties</u></b> for the employer during the employer’s taxable year <b><u>and</u></b></p> <p>(b) An <b><u>employee is paid or entitled to payment</u></b> by the employer on account of a period of time <b><u>during which no duties are performed</u></b> due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.</p>

<p><b>Question 3i:</b> How does an employer determine the total number of hours of service worked by employees for the taxable year?</p>	<p>The employer's <b>total number</b> of hours of service <b>for the taxable year</b> would be the <b>number of hours of service worked by each employee</b> taken into account by the employer (all employees as defined in Question 3e above).</p> <p>In calculating the total number of hours of service which must be taken into account for an employee for the year, the employer may use any of the following methods:</p> <p>(a) Determine <b>actual hours of service from records of hours worked</b> and hours for which payment is made or due (payment is made or due for vacation, holiday, illness, incapacity, etc., as described above), <b>or</b></p> <p>(b) Use a <b>days-worked equivalency</b> whereby the employee is credited with 8 hours of service for each day for which the employee would be required to be credited with at least one hour of service as defined above; <b>or</b></p> <p>(c) Use a <b>weeks-worked equivalency</b> whereby the employee is credited with 40 hours of service for each week for which the employee would be required to be credited with at least one hour of service as defined above.</p>
<p><b>Question 3j:</b> How does an employer determine the number of FTEs?</p>	<p>An <b>employer's number of FTEs</b> is determined as the <b>total hours of service</b> during the taxable year <b>for all employees taken into account</b> by the employer (but not more than 2,080 hours for any employee) <b>divided by</b> 2,080. The result of this calculation, if not a whole number, is then <b>rounded to the next lowest whole number</b>.</p> <p>In some circumstances, an employer with 25 or more employees may qualify for the SBHC tax credit if some of its employees work part-time. For example, an employer with 46 half-time employees (meaning they are paid wages for 1,040 hours) has 23 FTEs and, therefore, may qualify for the credit.</p>

<p><b>Question 3k:</b> How does an employer determine the annual average wages for the taxable year?</p>	<p>For purposes of determining an employer’s average annual wages for the taxable year, only wages that are paid for hours of service are taken into account. Wages for this purpose means wages as defined under the Federal Insurance Contributions Act (FICA).</p> <p>The average annual wages paid by an employer for a taxable year is determined as:</p> <p>(a) The <b>total wages paid by the employer</b> during the employer’s taxable year to employees taken into account by employer, <b>divided by</b></p> <p>(b) The <b>employer’s number of FTEs</b> for the year.</p> <p>The result of this calculation is then <b>rounded down to the nearest \$1,000 (if not otherwise a multiple of \$1,000)</b>.</p>
<p><b>Question 3l:</b> What health care insurance premiums paid by the employer are eligible for the SBHC credit?</p>	<p>An employer’s premium payments are taken into account for purposes of the SBHC credit if they are paid for health insurance coverage under a qualifying arrangement (see Question 3b for definition of “qualifying arrangement”). <b>Health insurance coverage</b> for purposes of the SBHC credit is defined as <b>benefits consisting of medical care</b> (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.</p> <p><b>Health insurance coverage</b> for purposes of the SBHC credit <b>also includes the following plans:</b> limited scope dental or vision; long-term care, nursing home care, home health care, community-based care, or any combination thereof; coverage only for a specified disease or illness; hospital indemnity or other fixed indemnity insurance; and Medicare supplemental health insurance; certain other supplemental coverage, and similar supplemental coverage provided to coverage under a group health plan.</p>

	<p><b>Health insurance coverage</b> for the purposes of the SBHC credit <b>does not include the following plans</b>: coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; worker’s compensation or similar insurance; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; and other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.</p>
<p><b>Question 3m:</b> Is there a limit on the amount of employer premium payments that can be taken account of in the employer’s SBHC credit?</p>	<p><b>Yes.</b> The amount of an employer’s premium payments that are taken into account in calculating the SBHC credit is limited to:</p> <p>(a) The <b>total actual premiums paid</b> by the employer, <b>or</b></p> <p>(b) The <b>total premium payments that would have paid</b> by the employer <b>under the small group market</b> in the State (or an area within the State) in which the employer offers coverage.</p>
<p><b>Question 3n:</b> How is the employer’s SBHC credit calculated?</p>	<p>The employer’s SBHC is calculated as:</p> <p>(a) The employer’s maximum amount of the credit, <b>multiplied by</b></p> <p>(b) A phase-out factor for the employer’s number of employees <b>multiplied by</b></p> <p>(c) A phase out factor for the employer’s average wage.</p> <p>If the employer’s <b>number of FTE’s is less than 10</b>, then the employer’s phase out factor in (b) above equals 1.0 (i.e., there is no phase-out).</p> <p>If the employer’s <b>number of FTE’s is greater than 10</b>, then the employer’s phase out factor in (b) above is the fraction equal to:        (The number of FTEs - 10)/15.</p>

	<p>If the employer's <b>average annual wage is \$25,000 or less</b>, then the employer's phase-out factor in (c) above is 1.0 (i.e., there is no phase-out).</p> <p>If the employer's <b>average annual wage is greater than \$25,000</b>, then the employer's phase-out factor in (c) above is the fraction equal to:  (Average annual wage - 25,000)/25,000.</p> <p>The IRS provides an SBHC calculator for employers at  <a href="http://www.taxpayeradvocate.irs.gov/calculator/SBHCTC.htm">http://www.taxpayeradvocate.irs.gov/calculator/SBHCTC.htm</a></p>
<p><b>Question 3o:</b> What if an employer receives a state tax credit or other state subsidy for employer-provided health care insurance?</p>	<p>Some States offer to small employers that provide health care insurance to their employees either (a) <b>tax credits</b> (refundable or nonrefundable) or (2) <b>premium subsidy programs</b> (under which the State makes a payment equal to a portion of the employees' health insurance premiums under the employer-provided health insurance plan).</p> <p>The general rules for employers receiving state tax credits or premium subsidies are:</p> <p>(a) If the employer is entitled to a <b>State tax credit or a premium subsidy that is paid directly to the employer</b>, the premium payment made by the employer <b>is not reduced by the credit or subsidy</b> for purposes of determining whether the employer has satisfied the "qualifying arrangement" requirement (see Question 3b for definition of "qualifying arrangement").</p> <p>(b) The maximum amount of the SBHC credit is not reduced by reason of a State tax credit or by reason of payments by a State directly to an employer.</p> <p>(c) If a <b>State makes payments directly to an insurance company</b> (or another entity licensed by the State) to pay a portion of the premium for coverage of an employee under employer-provided health insurance, then the State is treated as making these payments on behalf of the employer for purposes of determining whether the employer has</p>

	<p>satisfied the “qualifying arrangement” requirement.</p> <p>(d) <b><u>In no event may the amount of the SBHS credit exceed the amount of the employer’s net premium payments.</u></b> In the case of a State tax credit for an employer or a State subsidy paid directly to an employer, the employer’s net premium payments are calculated by subtracting the State tax credit or subsidy from the employer’s actual premium payments. In the case of a State payment directly to an insurance company (or another entity licensed under State law), the employer’s net premium payments are the employer’s actual premium payments.</p> <p>(e) If a <b><u>State-administered program</u></b> (such as Medicaid or another program that makes payments directly to a health care provider or insurance company on behalf of individuals and their families who meet certain eligibility guidelines) makes <b><u>payments that are not contingent on the maintenance of an employer-provided plan</u></b>, those payments <b><u>are not taken into account</u></b> in determining the employer’s SBHC credit.</p> <p><i><b><u>Comment: Users for whom this question applies should seek additional legal or accounting advice about this issue.</u></b></i></p>
<p><b><u>Question 3p:</u></b> How does an employer file for the SBHC credit?</p>	<p>Employers must file IRS Form 8941. Instructions and the 8941 form are available at:  <a href="http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers">http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers</a></p>

**Table 4: Calculation of Employer’s Number of Employees under the ACA.**

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>Row 1</b> Number of <u>full-time employees</u> employed during the month: <sup>(a)</sup>												
<b>Row 2</b> Number of <u>hours of service</u> by all <u>non-full-time employees</u> employed during the month: <sup>(b)</sup>												
<b>Row 3</b> Row 2/120 equals the number of <u>full-time equivalents</u> employed during the month:												
<b>Row 4</b> Row 1 + Row 3 equals the number of <u>employees</u> employed during the month:												
								<b>Sum of JAN to DEC Across Row 4 =</b>				
								<b>ANNUAL TOTAL:</b>				
								<b>Annual Total/12 =</b>				
								<b>NUMBER OF EMPLOYEES:</b>		<sup>(c)</sup>		

(a) A full-time employee with respect to any month is **an employee** (including seasonal employees) who is **employed on average at least 30 hours of service per week during that month** during the preceding calendar year (or 130 hours of service in a calendar month would be treated as the monthly equivalent of at least 30 hours of service per week; 52 weeks X 30/12 = 130).

(b) All employees (including seasonal employees) who were **not full-time employees** for any month in the preceding calendar year are included for that month. An employee's **hours of service would include** the following: (1) each hour for which an **employee is paid, or entitled to payment**, for the performance of duties for the employer; and (2) each hour for which an **employee is paid, or entitled to payment** by the employer on account of a period of time **during which no duties are performed** due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

(c) If the number of employees is **at least 50**, the employer must offer “affordable health coverage that provides a minimum level of coverage” to their **full-time employees**, or they may be subject to an ESR payment.

**Table 5: Sample Case One – Baseline Calculation of Employer’s Number of Employees under the ACA.**

John Doe operates Greenacre Farms with the following employees:

1. Two paid employees each of whom works 40 hours per week each week and receive 2 weeks of paid vacation per year
2. Six paid employees each of whom works 15 hours per week each week for the entire year

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>Row 1</b> Number of full-time employees employed during the month: <sup>(a)</sup>	2	2	2	2	2	2	2	2	2	2	2	2
<b>Row 2</b> Number of hours of service by all non-full-time employees employed during the month: <sup>(b)</sup>	360	360	360	360	360	360	360	360	360	360	360	360
<b>Row 3</b> Row 2/120 equals the number of full-time equivalents employed during the month:	3	3	3	3	3	3	3	3	3	3	3	3
<b>Row 4</b> Row 1 + Row 3 equals the number of employees employed during the month:	5	5	5	5	5	5	5	5	5	5	5	5
										<b>Sum of JAN to DEC Across Row 4 = ANNUAL TOTAL:</b>		60
										<b>Annual Total/12 = NUMBER OF EMPLOYEES:</b>		5 (c)

See Table 4 for definitions of footnotes (a), (b) and (c).

**Table 6: Sample Case Two – Calculation of Employer’s Number of Employees, Including Seasonal Employees, under the ACA.**

John Doe operates Greenacre Farms with the following employees:

1. Items 1 and 2 same as in Table 3
2. Four hundred and fifty paid seasonal employees each of whom works 40 hours per week each week from July 1 to October 31

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>Row 1</b> Number of full-time employees employed during the month: <sup>(a)</sup>	2	2	2	2	2	2	2	2	2	2	2	2
<b>Row 2</b> Number of hours of service by all non-full-time employees employed during the month: <sup>(b)</sup>	<b>Continual</b>											
	360	360	360	360	360	360	360	360	360	360	360	360
	<b>Seasonal</b>											
	0	0	0	0	0	0	18,000	18,000	18,000	18,000	0	0
<b>Row 3</b> Row 2/120 equals the number of full-time equivalents employed during the month:	<b>Continual</b>											
	3	3	3	3	3	3	3	3	3	3	3	3
	<b>Seasonal</b>											
	0	0	0	0	0	0	150	150	150	150	0	0
<b>Row 4</b> Row 1 + Row 3 equals the number of employees employed during the month:	5	5	5	5	5	5	155	155	155	155	5	5
							<b>Sum of JAN to DEC Across Row 4 = ANNUAL TOTAL:</b>				660	
							<b>Annual Total/12 = NUMBER OF EMPLOYEES:</b>				<b>55</b> <sup>(c)</sup>	
<b>SEASONAL EXEMPTION:</b>	(1) Did employer’s workforce exceed 50 full-time employees for 120 days (or four calendar months) or less? (2) Were employees in excess of 50 employed during that period as seasonal employees?										If Yes to BOTH, then N = 5	

See Table 4 for definitions of footnotes (a), (b) and (c).

**Table 7. Use of Categories of Employees in Determination of Employer’s Number of Employees and Potential Application of Employer Shared Responsibility (ESR) Penalties under the ACA.**

<b>Employee Category</b>	<b>Step 1: Is this category of employees included in calculation the employer’s monthly average number of employees?</b>	<b>Step 2: Is this category of employees used to calculate the employer’s ESR payment penalty?</b>
<b>Full-time employees</b>	Yes	Yes
<b>Less than full-time employees</b>	Yes	No
<b>Seasonal employees</b>	No, for those working 120 days or less in a year	No
<b>Employees of multiple entities</b>	Yes, if entities included in a “controlled group”	Yes, for those employees counted as working full-time for an entity within the “controlled group”
<b>Employees leased from temporary employment agency</b>	No	No

Source: Adapted from Congressional Budget Office analysis of IRS regulations under Affordable Care Act

## **References**

Information contained in this publication was obtained from the following sources. Users are encouraged to consult qualified legal or tax accounting advisers to obtain updated information on all issues.

### Glossary of ACA terminology

Available at: <https://www.healthcare.gov/glossary/>

### Calculators and Decision Tools for Employers

Calculator for employer's number of employees:

Calculator for Small Business Health Care tax credit:

<http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers>

Calculator for minimum value of employer health insurance coverage:

<http://www.cms.gov/ccio/resources/regulations-and-guidance/index.html>

### Regulations related to determination of employer's number of employees (Step 1) and employer's health care provision alternatives (Step 2)

Department of Treasury, Internal Revenue Service. *26 Code of Federal Regulations, Parts 1, 54 and 301, Shared Responsibility for Employers Regarding Health Coverage; Final Rule*. Available at: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-12/pdf/2014-03082.pdf>

Department of Treasury, Internal Revenue Service. *Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act*. Available at:

<http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>

Department of Treasury, Internal Revenue Service. *26 Code of Federal Regulations, Parts 1, 54 and 301, Shared Responsibility for Employers Regarding Health Coverage*. Available at:

<http://www.irs.gov/pub/newsroom/reg-138006-12.pdf>

Department of Treasury, Internal Revenue Service. *26 Code of Federal Regulations, Chapter 7, Controlled and Affiliated Service Groups*. Available at: <http://www.irs.gov/pub/irs-tege/epchd704.pdf>

Department of Treasury, Internal Revenue Service. *IRS Notice 2011-36, Part III – Administrative, Procedural, and Miscellaneous: Request for Comments on Shared Responsibility for Employers Regarding Health Coverage (Section 4980H)*. Available at: <http://www.irs.gov/pub/irs-drop/n-11-36.pdf>

Department of Treasury, Internal Revenue Service. *IRS Notice 2012-58. Determining Full-Time Employees for Purposes of Shared Responsibility for Employers Regarding Health Coverage (§ 4980H)*. Available at: <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>

### Regulations related to employer's eligibility for the Small Business Health Insurance Tax Credit (Step 3)

Internal Revenue Service. *Small Business Health Care Tax Credit for Small Employers*. Available at: <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers>