

## HOW DOES A COMPANY DETERMINE THE NUMBER OF EMPLOYEES IT HAS?

### Important FAQs surrounding how to determine number of employees & employer responsibilities

#### *How does a firm know whether it has enough employees to be subject to the provisions?*

An employer must have at least 50 full-time employees, or a combination of full-time *and part-time employees*, that equals at least 50 to be subject to the ACA provisions. This mandated number of employees is also referred to as full-time equivalent employees. Firms with at least 50 full-time and full-time equivalent employers are referred to as “large employers.”

A full-time employee is an **individual employed on average at least 30 hours per week**, as defined by the statute.

To calculate the total number of full-time and full-time equivalent employees for a particular month to determine if the employer is a “large employer,” the employer must add together (a) the total number of full-time employees for the month, plus (b) a number that is equal to the total number of hours worked in a month by part-time employees, divided by 120.

$$\left( \begin{array}{c} \text{TOTAL \# OF FULL} \\ \text{TIME EMPLOYEES} \\ \text{FOR THE MONTH} \end{array} \right) + \left( \frac{\begin{array}{c} \text{\# OF TOTAL HOURS} \\ \text{WORKED IN A MONTH BY} \\ \text{PART TIME EMPLOYEES} \end{array}}{120} \right) =$$

**# OF FULL TIME & FULL TIME EQUIVALENT  
EMPLOYEES TO DETERMINE IF THE EMPLOYER IS A  
“LARGE EMPLOYER”**

#### *Who is counted as a full-time employee and a full-time equivalent employee?*

A full-time employee is one who works an average of at least 30 hours per week. Part-time employees are employees working less than 30 hours per week, and their hours are used to calculate the number of full-time equivalent employees. Seasonal workers are excluded in these calculations unless they work for an employer for more than 120 days.

### *When should employers start documenting employees' hours?*

Now - The number of full-time and full-time equivalent employees a business has in 2013 will determine its status in 2014. Employers can average their number of employees across the full 12 months in 2013 to see whether they meet the threshold, or they can instead calculate the average number of full-time and full-time equivalent employees by using any six-month consecutive period in 2013.

### *If an employer offers health benefits to full-time employees but not to its part-time employees, is that employer subject to the mandate penalties?*

No. The FTE calculation for part-time employees (monthly hours worked divided by 120) is relevant only to determine whether the employer is larger than 50 employees. Beginning in 2014, large employers are not mandated to provide part-time employees (working less than 30 hours per week) health coverage. An employer will not pay a penalty for any part-time employee, even if that employee receives subsidized coverage through an Exchange.

### *How are seasonal workers handled?*

The ACA addresses the meaning of seasonal worker in the context of whether an employer meets the definition of an applicable "large employer" (employing 50 or more full-time equivalent employees).

- If an employer's workforce exceeds 50 full-time employees for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal employees, the employer would not be a large employer.
- For this purpose, seasonal worker means a worker who performs labor or services on a seasonal basis, as defined by the Secretary of Labor, including (but not limited to) migrant and agricultural workers covered by 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons.

### *What is a controlled group?*

Under §414(c) of the Internal Revenue Code, a controlled group exists when any two or more entities are connected through ownership in a parent-subsidary controlled group, a brother-sister controlled group, or a combination of the foregoing.

### *Are members of a controlled group considered individual employers for the purposes of determining the status of a "large employer?"*

Companies that are part of the same controlled group generally must be combined for the purpose of determining whether they collectively employ 50 or more full-time or full-time equivalent employees under the ACA. **Where the combined total of full-time or full-time equivalent employees in a controlled group is at least 50, each individual employer is subject to the employer mandate, even if such employer itself does not employ enough employees to meet the threshold.**

Legal Disclaimer: Content provided is for informational purposes only; it is not designed to and does not provide legal advice and does not create an attorney-client relationship. You must not rely on it as an alternative to legal advice from your attorney or other professional legal services provider.