

# COVID could impact your ACA Applicable Large Employer status for 2021



Impacts of the COVID-19 pandemic may change some businesses' status as an Applicable Large Employer (ALE) under the Affordable Care Act (ACA) for 2021. In addition, the pandemic has created other healthcare-related challenges for employers to navigate. However, before moving forward, we should be clear on how a business qualifies as an ALE.

## Determining if your business is an Applicable Large Employer

Under the Affordable Care Act, employers are not required to offer group health benefits. However, qualifying businesses that don't offer at least 95% of full-time employees group coverage may be liable for fees. In that case, if just one full-time employee buys insurance on the exchange and qualifies for a premium tax credit, you will be liable for a free-rider penalty.

Qualifying employers that offer insurance may not necessarily be off the hook, however. The group insurance you offer must also meet affordability criteria and the minimum value criteria. If it does not, and an employee receives a premium tax credit on the exchange, there's a different penalty.

## Do you have 50 full-time employees or equivalents?

An Applicable Large Employer is a business that employs 50 full-time employees or full-time equivalents on

business days during the preceding year.

### Criteria for a full-time employee

- Full-time seasonal employees who work less than 120 days a year don't count towards the 50 employee mark.
- A full-time employee is one that works at least 30 hours a week.

### Calculating full-time employee equivalents

Even if you don't have 50 full-time employees, you may still be an ALE. Employers must also review their part-time employees and convert them into full-time equivalents. This could bring your total up to 50. Full-time equivalents are determined by adding all the hours worked by part-time employees in a month. Next, divide that total by 120. The resulting number determines how many full-time equivalents you have.

For example, if 2 employees worked 60 hours a month, their total hours are 120. Divide that by 120, and you get 1. That counts as 1 full-time equivalent. If you have 6 part-time employees, each of whom works 40 hours a month, then the total hours worked comes to 240 hours. That counts as 2 full-time equivalents.

Full-time equivalents should be added to your total number of full-time employees to determine if your business is an applicable large employer. Still, even though part-time employees are a factor in determining your employer status, you do not need to offer benefits to part-time employees. Only full-time employees must be offered benefits.

**Additional Resource:** Learn more about [IRS enforcement of free-rider penalties](#).

### The pandemic may impact your status as an Applicable Large Employer for 2021

Many employers had to lay off employees, or reduce the hours employees worked in 2020. This may change your qualification as an Applicable Large Employer. For example, if part-time employees worked fewer hours during the pandemic, that could reduce your count towards 50 full-time employee equivalents. If this brings you below 50, you would no longer be considered an ALE. This means you would no longer be subject to the free-rider penalty in the ACA. Going into 2021, it is especially important to pay close attention to these calculations.

### Reduced 2020 hours may cause some employees to lose healthcare in 2021

If some full-time employees worked reduced hours over this year for an extended period of time, they kept their health benefits due to the stability period rules. However, they may be considered part-time for the 2021 year. If that's the case, you don't have to offer them benefits for 2021.

Still, just because you may not be required to offer these employees benefits in 2021 under the ACA does not mean that you necessarily would want to do so. For employees who are used to having benefits provided, this would likely be a significant hit to morale. Employees who now have to pay for healthcare out of pocket may start to look for employment elsewhere. In addition, if those employees work typical full-time hours in 2021, they would they requalify for healthcare in 2022. In the long run, the complicated dance likely isn't worth it from either a cost savings or employee welfare perspective.

Instead, you could modify your own eligibility rules by treating employees as if hours were not reduced and considering their normally planned work hours. You may also choose to waive eligibility rules for employees who were full-time before the pandemic and will return to full-time employment after the pandemic. However, before doing so, you should check with your healthcare provider. They may not like these changes to qualifications for employees and additional negotiations with your plan provider may be needed.

## **Returning employees may be subject to a waiting period**

If you had employees on unpaid furlough or who were laid off for more than 12 weeks, you may choose to treat them as a new hire when they return. This would subject them to any standard waiting period that your health insurance policy normally applies. You may have the option to simply re-enroll employees in the policy. However, before you do so, you should check with your plan provider as they may not permit you to skip the waiting period for these employees.