Applicable Large Employer

ADP TotalSource® Status Determination

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Document Contents

ADP TotalSource® has developed this document to provide guidance only. It is not designed to take the place of consultation with a tax or other professional advisor including evaluating the details of any specific employer type or definition.

This guide is a resource for clients who may be subject to the Employer Shared Responsibility provisions of the Affordable Care Act (ACA).

Fast Facts and Talking Points

Employer Shared Responsibility Overview

ALE Determination Considerations

How "Employer" is defined for ALE Status

Frequently Asked Questions

Additional Information

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Fast Facts and Talking Points

The key points in this guide are summarized below. Review the complete guide for details.

- An employer with at least 50 full-time employees, including full-time equivalents, on average during the prior calendar year is considered an Applicable Large Employer (ALE) for the current year.
- ALEs are subject to the Employer Shared Responsibility provisions of the Affordable Care Act (ACA).
- A best practice for employers, particularly those who are near the 50 full-time employee threshold, is to track the monthly number of full-time employees, as well as tracking hours worked weekly and monthly for any part time or variable hour employees.
- An ALE can be a single business entity with 50 or more full-time employees. Under the IRS "Employer Aggregation Rules", an ALE can also be two or more business entities with shared ownership or control that are combined and treated as a single employer for purposes of determining ALE status. Clients should consult with qualified counsel or other professional advisors regarding how the IRS rules may impact their ALE status.
- New clients must advise ADP TotalSource of their ALE status and execute an "ACA Services Acknowledge and Election Form" and a "Control Group Set Up Form" if applicable during the Implementation process.

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Employer Shared Responsibility Overview

Employer Shared Responsibility requirements of the Affordable Care Act (ACA) require applicable large employers (ALEs) to offer "affordable" health coverage that provides "minimum essential coverage" with "minimum value," as described below, or be subject to potential Employer Shared Responsibility Assessments. An ALE is defined as an employer with at least 50 full-time employees, including full-time equivalent employees, on average during the prior calendar year.

Applicable Large Employer Requirements

Minimum Essential Coverage (MEC):

ALEs must offer full-time employees the opportunity to enroll in MEC under an employer plan (Internal Revenue Code Sec. 4980H(a)). MEC is a health plan that covers specific services at a minimum value of at least 60%, meaning that the plan covers at least 60% of the total allowed costs of benefits that are expected to be incurred under the plan. Note that all of the ADP TotalSource, Inc. Health and Welfare Plan (ADP TotalSource Health Plan) medical offerings meet minimum value.

Affordable coverage:

ALEs must offer health coverage that is "affordable" and that provides "minimum value" to their full-time employees and their dependents. The definition of a full-time employee under the Employer Shared Responsibility provisions is an employee who works 30 hours per week, or 130 hours per month. Coverage is considered "affordable" if the employee's required contribution is no more than 9.5% in 2014 (as adjusted for inflation in future years) of the employee's annual household income (HHI). ALEs may take advantage of three affordability safe harbors to determine affordability by calculating an employee's required contribution for coverage that provides minimum value for the lowest-cost employee-only coverage offered as compared to:

- The employee's Box 1 Form W-2 reportable wages (Form W-2 Safe Harbor), or
- The employee's lowest rate of pay for each calendar month (Rate of Pay Safe Harbor), or*
- The Federal Poverty Limit* (Federal Poverty Limit Safe Harbor).**

** If utilizing the Rate of Pay Safe Harbor, the applicable monthly rate of pay for an hourly employee is an amount equal to 130 hours multiplied by the lower of (i) the employee's hourly rate of pay as of the first day of the coverage period (typically the first day of the plan year), or (ii) the employee's lowest hourly rate of pay during the calendar month.*

*** Federal Poverty Limit Safe Harbor is not recommended for TotalSource clients*

Affordability Threshold Adjusted For Inflation

Coverage is considered "affordable" if the employee's required contribution is no more 9.5% in 2014 (as adjusted for inflation in future years) of the employee's annual household income (HHI). The 9.5% affordability threshold is adjusted for inflation after 2014 as follows.

For the First Day of the Plan Year In:	Affordability Threshold
2014	9.50%
2015	9.56%
2016	9.66%
2017	9.69%
2018	9.56%
2019	9.86%
2020	9.78%
2021	9.83%
2022	9.61%
2023	9.12%
2024	8.39%
2025	9.02%

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ALE Determination Considerations

Generally, if an employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior calendar year, the employer is an Applicable Large Employer (ALE) for the current calendar year.

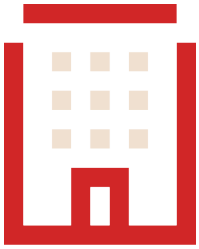
The total Full-Time Employee count is calculated each month and is based on the sum of:

• Full-Time Employees
The number of full-time employees for the calendar month (employees who have on average at least 30 hours of service per week during the calendar month, or at least 130 hours of service during the calendar month), and

• Full-Time Equivalent Employees
The number of full-time equivalent employees for the calendar month (combine the number of hours of service of all non-full-time employees for the month but do not include more than 120 hours of service per employee, and divide by 120). Full-time Equivalents Employees are treated as full-time employees only for purposes of determining the total full-time employee count.

• Controlled Group
Companies with a common owner or that are otherwise related under certain rules of Section 414 of the Internal Revenue Code are generally combined and treated as a single employer for determining ALE status. More information is available in the "How 'Employer' is defined for ALE Status" section of this guide.

• Seasonal Workers
An employer is not considered to have more than 50 full-time employees (including full-time equivalent employees) if both of the following apply: 1) The employer's workforce exceeds 50 full-time employees (including full-time equivalent employees) for 120 days or fewer during the calendar year, and 2) the employees in excess of 50 employed during such 120-day period are seasonal workers for 120 days or less during the preceding calendar year, and the employees in excess of 50 during that period are seasonal workers. A seasonal worker is generally defined for ALE count purposes as an employee who performs labor or services on a seasonal basis, as defined by the Secretary of Labor, including (but not limited to) workers covered by 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons.



Note: The IRS allows the annual total full-time employees count to be rounded down to the nearest whole number for determining ALE status in cases where the result is not a whole number.

ADP TotalSource attempts to calculate ALE Status for our clients; however, this determination is not a substitution for tax advice from a tax or other professional and the ultimate decision of ALE status rests with the client.

There are instances where ADP TotalSource applies additional assumptions to the hours worked.

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How "Employer" is defined for ALE Status

All employees of a controlled group under Section 414(b) or (c) of the Internal Revenue Code, or an affiliated service group under Section 414(m) of the Internal Revenue Code, must be taken into account to determine whether any member of the controlled group or affiliated service group is an applicable large employer (ALE).

Note: Because the determination of controlled group status is very complex and may depend upon particular facts and circumstances, ADP TotalSource encourages its Clients to consult with their tax and/or legal advisor in order to make this determination.

When does a parent-subsidiary controlled group exist?

When one or more chains of corporations are connected through stock ownership with a common parent corporation, and 80 percent of the stock of each corporation (except the common parent) is owned by one or more corporations in the group; and Parent Corporation owns 80 percent of at least one other corporation. See Sections 1563(a) and 414(b) and (c) of the Code.

What is a brother-sister controlled group?

It is a group of two or more corporations, in which five or fewer common owners (a common owner must be an individual, a trust, or an estate) own directly or indirectly a controlling interest of each group and have "effective control."

- Controlling interest generally means 80 percent or more of the stock of each corporation (but only if such common owner own stock in each corporation); and
- Effective control generally more than 50 percent of the stock of each corporation, but only to the extent such stock ownership is identical with respect to such corporation.

What is a combined group?

A combined group consists of three or more organizations that are organized as follows:

- Each organization is a member of either a parent-subsidiary or brother-sister group, and
- At least one corporation is the common parent of a parent-subsidiary; and is also a member of a brother-sister group.

What is an affiliated group?

An affiliated service group is one type of group of related employers and refers to two or more organizations that have a service relationship and, in some cases, an ownership relationship, described in Internal Revenue Code section 414(m). An affiliated service group can fall into one of three categories:

1. A-Organization groups (referred to as "A-Org"), consists of an organization designated as a First Service Organization (FSO) and at least one "A organization,"

2. B-Organization groups (referred to as "B-Org"), consists of a FSO and at least one "B organization," or

3. Management groups.

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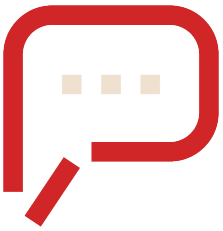
Frequently Asked Questions



What is an Applicable Large Employer (ALE)?

An employer is considered an ALE for the current year if the employer has at least 50 full-time employees, including full-time equivalent employees, on average during the prior calendar year.

What is a full-time employee under ACA rules?

A full-time employee means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week or 130 hours of service in a calendar month.

What is a full-time equivalent employee under ACA rules?

A full-time equivalent employee is a combination of employees, each of whom individually is not treated as a full-time employee, but who, in combination, are equivalent to a full-time employee. These employees, in combination, are counted as the equivalent of a full-time employee solely for the purpose of determining whether the employer is an ALE. An employer determines its number of full-time-equivalent employees for a month in the two steps that follow: 1) Combine the number of hours of service of all non-full-time employees for the month but do not include more than 120 hours of service per employee, and 2) Divide the total by 120.

Are bonus payrolls included as hours worked?

No. Bonus-only payrolls are excluded from hours worked when calculating ALE status.

How do employers count hours of service for salaried (non-hourly) employees?

For salaried employees, hours of service are calculated as:

- Actual hours worked, or
- "Days-worked" equivalency of eight hours for each day the employee would be credited with at least one hour, or
- "Weeks-worked" equivalency of 40 hours for each week the employee would be credited with at least one hour.

However, the regulations prohibit use of the days-worked or weeks-worked equivalency methods if the result would be to substantially understate an employee's hours of service in a manner that would cause the employee not to be treated as a full-time employee. For example, an employee who worked 12 hours per day for three days one week could be credited with 40 hours that week, but could not be credited with only 8 hours of service per day under an equivalency method. If an employer does not track actual hours worked for a salaried part-time employee, then the hours attributable to that salaried part-time employee would need to be based upon either the "days worked" or "weeks worked" equivalency methods. In many cases this will likely result in the individual being counted as a full-time employee. This demonstrates another reason why employers must track hours for any employee that is not considered to be a full-time employee upon hire. ADP TotalSource recommends tracking actual hours worked for all employees, not just for ACA, but for other compliance purposes as well.

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What hours are required to be included in the full-time employee calculation?

Hours of service include both paid hours of work and non-work hours (such as vacation, holiday, illness, jury duty, military duty or leave of absence) in order to determine the number of full-time employees.

Does an employer include international employees in their calculation of full-time employees?

For purposes of determining whether an employer meets the 50 full-time employee (including full-time employee equivalents) threshold, an employer generally will take into account only work performed in the United States.

Are union employees covered under a Collective Bargaining Agreement included in the count of full-time employees for the purpose of the Employer Shared Responsibility provision?

Yes. An employer is required to include union employees in their calculation in determining whether they are subject to the Employer Shared Responsibility provisions.

Is it possible that an employer with less than 50 full-time employees can be considered an ALE under the Employer Shared Responsibility provision?

Yes, if the employer employs a large number of part-time employees or seasonal employees. For example, an employer with 45 full-time employees and 14 part-time employees (assume seven full-time equivalents) could result in an average of 52 full-time employees for the year.

Are seasonal workers considered in the full-time employee calculation?

As a general rule, all seasonal workers are included when determining whether an employer is an ALE under the Employer Shared Responsibility provisions. However, the IRS provides a limited exception for certain employers.

The IRS regulations permit an employer to exclude seasonal workers from the full-time employee

calculation if:

- The employer's monthly full-time employee calculation exceeds 50 for 120 days (or four months) or fewer during the calendar year, and;
- The employees in excess of 50 are seasonal workers.

Note: If the employer exceeds 50 FTEs for five months or more, this "exception for seasonal workers" does not apply.

How do the Employer Shared Responsibility provisions apply to employers that employ "piece workers" or commission based employees?

If an employer does not consider production-based employees as full-time employees, then the employer must track the hours of service for these employees in order to determine the full-time equivalency of these employees. A piece rate or commission employee working on average of 30 hours or more per week, or 130 hours per month would be deemed a full-time employee.

How do employers count hours of service for hourly employees?

For hourly employees, the hours must be calculated based upon actual hours worked.

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How is a seasonal worker defined under the Employer Shared Responsibility provision?

The IRS regulations define a "seasonal worker" as a worker who performs labor or services on a seasonal basis. This includes:

- A worker whose employment is generally performed at certain seasons or during certain periods of the year, which employment, by its nature, may not be continuous or carried on throughout the year, and
- Retail workers employed exclusively during holiday seasons.

For the purpose of calculating ALE status, there isn't necessarily a limit on the number of months an employee may work and still be deemed a "seasonal worker".

For the purpose of calculating ALE status, there is no limit on the number of months an employee may work and still be deemed a "seasonal worker." However, IRS rules on Safe Harbor Measurement Periods also refer to a "seasonal employee" and provide that a seasonal employee "means an employee who is hired into a position for which the customary annual employment is six months or less." See the ADP TotalSource Employer Shared Response - Safe Harbor Guide for more information.

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Additional Information

IRS Applicable Large Employer Information Center

Employer Shared Responsibility for Employers Regarding Health Coverage Final Regulation

IRS Questions & Answers on Employer Shared Responsibility Provisions

IRS Video - Are You an Applicable Large Employer?

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