



---

## The Affordable Care Act (ACA) - Step One

The first important decision that smaller employers must make before the "meat" of the Patient Protection and Affordable Care Act takes effect January 1, 2014 sounds easy - but it isn't. Do you have 50 or more full-time employees including full-time equivalents from your part-time workforce? Employers must make this determination in 2013 for the following reasons:

- **If an employer has less than 50 full-time equivalent employees during 2013, they need NOT be concerned about the ACA provisions dealing with required health insurance coverage, possible penalties for non-compliance, etc.** Many of these "below 50" employee organizations will still design and offer employee benefits for retention and attraction of talented employees, but the regulatory "heat" is off. These smaller employers are free to make employee benefit decisions just as they always have - based on product quality and costs relative to the talent of their existing and prospective future employees;
- **However, if an employer counts their full-time and full-time equivalent employees in 2013 and the total count is 50 or more, the PPACA classifies them as a "large" employer for 2014. If the employer is "large," they are required to offer their "full-time" employees (those who average 30 or more hours per week) "affordable" health insurance in 2014, which meets Federal government standards of quality as to included medical benefits.** If a "large" employer does not offer affordable health insurance in 2014 which meets government standards of quality, the employer will generally be required to pay rather substantial monetary penalties to the IRS. These penalties will help fund the cost of federally- subsidized health insurance which the non-covered employees will procure directly from government health insurance "exchanges".

### PURPOSE OF THIS AND FUTURE PAYDAY'S FROM ACCUPAY

Future PayDay's will cover various insurance and penalty requirements which will apply to "large" employers. The purpose of this PayDay is to help employers determine if they are a "large" employer OR are below 50 employees and can "breathe a big sigh of relief" for 2014. **If your employee count is below 50 employees this year, you are not required to offer health insurance in 2014, nor can you be penalized. You can make employee benefit decisions without regard to ACA regulations.**

### WHICH EMPLOYERS ARE AFFECTED BY ACA?

**Virtually all types of employers must pay attention to ACA laws/regulations - including non-profits, churches, and government agencies.** A few rather obscure employer-types are exempt, such as Native Indian Tribes, religious organizations which pool member funds together to cover medical expenses, etc.

### **VERY IMPORTANT - WHICH EMPLOYEES DO YOU COUNT?**

An employer should "count" their "common-law employees" - those which the IRS would consider employees based on the degree of control the employer has over their workers and the overall relationships between the employer and its workers. **Very important considerations include:**

- Make sure workers who you "1099" as contractors can not be reclassified by the IRS as your "common-law employees." **If you pay a worker as an independent contractor "off the payroll," and that worker is later reclassified as an employee, you may have violated your ACA requirements.** If your organization pays several people as contractors and "1099's them", you must be certain that the "1099 workers" are not "common-law employees." You can find previous PayDay's we have written about "worker classification" at our [website](#), including the following: "[Part-Time Workers](#)," "[1099 Rules for People You Pay](#)," "[Employee or 1099 - Be Careful!](#)", "[Drafting an Independent Contractor Agreement](#)," and "[Employee or Contractor - Be Sure](#)." Correct classification of your workers as "employees" or "independent contractors" has always been important, but with ACA provisions applying to "common-law employees" it is drastically more important.
- You need not "count" 2% or more "S" corporation employee-owners or business partners in your total number of employees;
- **Businesses/organizations which are "common control" or "affiliated service groups" are treated as a single employer in determination of "large" employer status.** As a general rule, if 5 or fewer "common" owners own a combined 80% or more of separate businesses, they will be treated as a single employer for "counting". These "controlled/affiliated service group" definitions are very similar to qualified retirement plan "control groups". As a general rule, dividing a business into multiple employer-organizations but with common ownership will be combined for counting purposes;
- **Big exception for employers of "seasonal workers" - if the employer has 50 or more employees for less than 120 days each year (days need not be consecutive) AND the only reason the employer exceeded 50 employees was due to "seasonal workers," those workers need not be "counted" in determining if you are a "large" employer;** and,
- **PEO agreements - If your workforce is below 50 employees BUT you "co-employ" your workers in a "PEO" (leasing) arrangement, your workers may be "counted" as "common-law employees" by the PEO, not you.** As such, ACA health insurance coverage and penalty provisions will apply to your workforce since the PEO is a "large" employer. If you are already in a PEO relationship, ask them how the ACA will affect your business/organization in 2014. Stay tuned on this one!

### **HOW DO YOU "COUNT" YOUR EMPLOYEES IN 2013**

If an employer has 50 or more "full-time equivalent" employees during 2013, they will be a "large" employer subject to ACA for 2014, and will need to provide affordable, "government standard" health

insurance to "full-time" employees in 2014 or be subject to IRS penalties. **Here are the basic "counting rules" to determine an employer's "large" or "small" status for 2014:**

- Count all hours which are "paid." Include paid time off for vacations, sickness, etc.;
- Make separate employee "counts" for each month during 2013;
- Your total full-time equivalent employees for each month during 2013 is calculated by adding 2 components each month:
  - Count all your "full-time" employees for the month. A "full-time" employee is an employee who averages at least 30 hours of work per week. Add up all those "full-time" employees; PLUS
  - Add up all the total hours worked/paid for all of your "part-time" employees each month and divide the total part-time hours by 120. The calculated amount is your "full-time equivalent" employees for the month.
- The total of your full-time employees plus your full-time equivalent employees equals your "total employees" for the month.

#### **ARE YOU A LARGE EMPLOYER FOR 2014?**

Add up your monthly "total" employees per month for all 12 months during 2013 and divide the 12 month total by 12. If your monthly/average total employees for 2013 is 50 or more, you are a "large" employer for year 2014. (For year 2013 only, an employer can "count" employees for any consecutive 6-month period in 2013 to determine "large" or "small" status. After this year, the determination of "large" employer status is always based on the preceding year's complete 12 month "employee counts.")

#### **LARGE OR SMALL EMPLOYER - WHAT'S THE BIG DEAL?**

If your 2013 employee count determines that you are a "large" employer for 2014, you will be subject to the healthcare coverage and employer penalty obligations imposed by the Affordable Care Act and rapidly building pile of regulations. **If you know you will be a "large" employer for 2014, you should consult now with your benefits consultant so you can make smart decisions about your benefits design, coverage, and costs with regard to the new healthcare landscape.**

**If you know you will NOT be a "large" employer for 2014 (you have less than 50 FTE's), you will have complete freedom to offer or not offer health insurance to your employees, and can not be penalized for not offering affordable healthcare to your employees.** You can likely benefit from the many new healthcare design products and government exchange options which will occur in 2014.

"Large" employers need to carefully review their ACA strategy, and soon. Employers with less than 50 employees (remember to count full-time equivalents!) can take more time in reviewing their benefits options, without the constraints imposed by federal government standards and penalties.

#### **ACCUPAY AND THE AFFORDABLE CARE ACT**

AccuPay currently processes payroll and manages taxes for over 900 employer-clients, some of whom will be deemed "large" employers, and others small. We serve both large and small employers in

virtually every sector - churches, non-profits, government agencies, and for-profit businesses. **We will be assisting our employer-clients in the following areas as they pertain to the Affordable Care Act:**

- Continued daily reading and learning about ACA law and regulations. **We want to be a "trusted advisor" and consultant to our clients;** and
- We are working with our payroll and integrated timekeeping software developers as well as various "IT" groups to create reports which will track hours for various ACA reasons. One of the "hardest hit" employers will be restaurants and retailers who have a large number of lower-paid, full-time and part-time employee groups. **We are working on a report which will help managers schedule workforce hours each month by each employee, to minimize the restaurant's/retailer's costs for insurance and/or penalties/taxes.**

**Please contact AccuPay at 317-885-7600** with your questions or concerns about whether you are a "large" or "small" employer for 2014 - and what that status means for your organization. You can also **direct specific questions about the Affordable Care Act to AccuPay's Tax Director, Larry Shaub, CPA to [larry@accupay.com](mailto:larry@accupay.com).**

## **IN CONCLUSION**

The Affordable Care Act will dramatically affect healthcare designs, requirements, and costs for every American. Every employer needs to be aware of how the Affordable Care Act will impact their employee benefits decisions.

*PayDay is an email communication of payroll news, legal updates and tax considerations intended to inform clients and colleagues of AccuPay about current payroll issues and planning techniques. You should consult with your CPA or tax advisor before implementing any ideas, comments or planning techniques.*