

OVERVIEW OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT:

Am I a “Large Employer” under Obamacare?

Am I a “Large Employer” under Obamacare?

What is a “large” employer?

Under Obamacare, a “large” employer (for purposes of the employer mandate) is an employer with at least 50 “full-time employees,” or a combination of full-time and part-time employees that is equivalent to at least 50 full-time employees. Note that on July 2, 2013, the Obama Administration announced that it would delay enforcement of the employer mandate provisions until January 1, 2015 because of concerns “about the complexity of the [law’s] requirements and the need for more time to implement effectively.” On February 10, 2014, the Obama Administration announced that for businesses with between 50 and 99 full time employees, the effective date of the employer mandate is further delayed until January 1, 2016. For businesses with 100 full time employees or more, the January 1, 2015 effective date still applies.

Determining whether you are a large employer

Whether an employer is a “large” employer can differ from month-to-month. Thus, for each calendar month of the preceding calendar year, employers concerned they might be a “large” employer must:

1. Calculate full-time employees (including seasonal): (≥ 30 hrs/wk/month, or 130 hrs/month/year).
2. Calculate “full-time equivalents” (FTEs): aggregate number of hours worked by non-full-time employees (including seasonal) \div 120.
3. Add the number of full-time employees and FTEs calculated in steps (1) and (2) for each of the 12 months in the preceding calendar year.
4. Add the monthly totals and divide by 12. If the result exceeds 50 FTEs, you are a large employer unless the so-called “seasonal exception” applies.

Seasonal employee exception

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 are employed during that time period of no more than 120 days (four calendar months, for this purpose) are “seasonal workers,” the employer would not be considered a “large” employer. While the Obama Administration has not provided a specific, clear-cut definition of “seasonal worker,” the final employer mandate regulations define “seasonal worker” as a worker who performs labor or services on a seasonal basis according to Department of Labor guidelines, including (but not limited to) seasonal agricultural workers and retail workers employed exclusively during holiday seasons. The final regulations further stipulate that an employer may apply a “reasonable, good faith interpretation of the term ‘seasonal worker’” and the Department of Labor guidelines.

Two-year “transition” to determine whether you are a “large” employer

In January 2013, the Administration originally proposed providing some transition relief for the determination of large employer status in 2014. It was aimed primarily at employers near the 50

FTE employee threshold. The transition relief allowed employers to determine whether they are large employers based on a period of six consecutive calendar months in 2013 (as chosen by the employer) rather than based on the entire 2013 calendar year. Final rules released after the Administration delayed enforcement of the employer mandate permit plans, on a one-time basis, in 2014 preparing for 2015, to use a measurement period of six months even with respect to a stability period of up to 12 months. (Thus, employers with 100 or more FTEs may need to begin tracking employee hours beginning on July 1, 2014.)

Final rules also attempt to accommodate borderline-large employers by providing that, with respect to an employee who was not offered coverage at any point in the prior calendar year, employers will not face a mandate penalty for January through March in their first year being subject to the mandate, provided the employers offer coverage to full-time employees by April 1st of that year. The employer *could* face a penalty for January through March, however, if the employer on April 1st offers coverage that does not meet the law's minimum value standard.



1600 Duke Street . Alexandria, VA 22314
www.nacsonline.com