



# Health Care Reform

## LEGISLATIVE BRIEF

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## “Pay or Play” Penalty – Common Ownership Aggregation Rules

Effective Jan. 1, 2014, the Affordable Care Act (ACA) imposes a penalty on large employers that do not offer minimum essential coverage to substantially all full-time employees and their dependents. Large employers that offer coverage may still be liable for a penalty if the coverage is unaffordable or does not provide minimum value. ACA's employer penalty is often referred to as a “pay or play” penalty or an employer shared responsibility payment.

On Jan. 2, 2013, the Internal Revenue Service (IRS) released long-awaited [proposed regulations](#) on ACA's employer shared responsibility provisions. Although the proposed regulations are not final, employers may rely on them until further guidance is issued.

The IRS' proposed regulations:

- Address how ACA's pay or play rules apply to companies that have a common owner or are otherwise related;
- Apply aggregation rules to determine if a company is a large employer subject to the pay or play rules; and
- Do not apply the aggregation rules to calculate a company's liability for a shared responsibility payment.

Please read below for more information on the relief provided for companies under common control.

### LARGE EMPLOYER STATUS

Only companies that meet the large employer threshold are subject to ACA's pay or play rules. To qualify as a large employer, a company must have at least 50 full-time employees, including full-time equivalents (FTEs).

To determine if a company is a large employer, aggregation rules apply for companies that are related or commonly owned. Specifically, all employees of a controlled group of businesses under Internal Revenue Code (Code) sections 414(b) or (c) or an affiliated service group under Code section 414(m) are taken into account to determine if an employer is subject to the pay or play rules.

If the combined total meets the large employer threshold, each separate member of the group is subject to the pay or play rules, even those companies that on their own do not have enough employees to meet the threshold. To avoid ACA's penalties, companies that are subject to the pay or play rules must provide health coverage to full-time employees and their dependent children that is affordable and provides minimum value.

### ACA PENALTY

In 2014, the monthly penalty assessed on employers that do not offer coverage to substantially all full-time employees and their dependents will be equal to the number of full-time employees (minus 30) multiplied by 1/12 of \$2,000.

In 2014, the monthly penalty assessed on employers that offer health coverage to at least 95 percent of their full-time employees will be 1/12 of \$3,000 for each full-time employee who receives a premium tax credit for any applicable month. However, the total penalty for the employer would be limited to the total number of the company's full-time employees (minus 30) multiplied by 1/12 of \$2,000 for any applicable month.



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A large employer is only liable for a shared responsibility payment under ACA if one or more of its full-time employees receive a premium tax credit or cost-sharing reduction for coverage under a state-based insurance exchange.

The aggregation rules for companies under common ownership or that are otherwise related do NOT apply for purposes of determining whether an employer owes a penalty under the pay or play rules or the amount of the penalty. ACA pay or play penalties are determined on an individual member basis.

Thus, a member of a controlled group of corporations will not be subject to penalty if it offers health coverage that satisfies ACA’s shared responsibility standards, even if other members in its controlled group do not offer health coverage to their full-time employees (or offer health coverage that is unaffordable or does not provide minimum value).

Also, if a controlled group member is liable for a shared responsibility payment under ACA, the penalty will be calculated based on the member’s full-time employees, and not based on the entire group’s full-time employees.

However, if companies are treated as a single employer under the Code’s aggregation rules, only one 30-employee reduction is allowed with respect to the entire group for purposes of calculating the penalty amount. The 30-employee reduction is allocated among the related companies on the basis of the number of full-time employees employed by each.

If an aggregated group of companies has more than 30 members, with some or all of the members receiving an allocation of more than zero but less than one full-time employee, the proposed regulations provide that a member’s share of the 30-employee reduction will be rounded up to one full-time employee. This may result in an overall reduction to the group of more than 30 employees. Also, the proposed regulations indicate that the 30-employee reduction must be spread across the entire group, even to those members who are not liable for an employer shared responsibility penalty.

## **MORE INFORMATION**

Please contact your Clarke & Company Benefits, LLC representative for more information on ACA’s pay or play penalty.