

The Affordable Care Act: Next Steps for Restaurateurs

ARE YOU CONSIDERED A LARGE EMPLOYER UNDER THE ACA? IF SO, GET READY. BIG CHANGES ARE HEADED YOUR WAY.



The Affordable Care Act has been in the national spotlight since the law was enacted in 2010. But many of the ACA's biggest changes for employers are just starting to unfold.

The law's employer mandate begins to phase in for "applicable large employers" starting Jan. 1, 2015. The mandate will require covered businesses to offer health benefits to full-time employees and their dependents or face possible penalties.

The ACA will have a particularly profound impact on restaurants because of the nature of the industry. Restaurants are highly labor-intensive, with low profits per employee, significant numbers of part-time employees, and a young and mobile workforce.

Understanding the ACA and "operationalizing" it in a restaurant business will be challenging. The Treasury Department and Internal Revenue Service published final regulations in February and March that provide the rules by which employers will comply with the employer-mandate and employer-reporting requirements.

But even with these employer regulations in place, deciphering the ACA will be difficult. The rules are complex and new IRS reporting requirements in particular are likely to be onerous.

Deadlines are looming. Starting Jan. 1, 2015, many employers will face potential penalties for failing to offer health plans to full-time employees, and millions of businesses will have to start tracking data on their employees and health-care coverage offers, in preparation for filing ACA-required reports with the IRS and employees in early 2016.

The National Restaurant Association offers its members information, resources and tools at the NRA Health Care HQ at Restaurant.org/Healthcare. Visit to:

- stay up to date on the ACA and how it applies to restaurants.
- join the NRA in advocating for change.
- get tools to notify your employees about the law.
- find health insurance products for your restaurant and your employees.

THE AFFORDABLE CARE ACT AT A GLANCE

The Treasury Department and IRS released regulations in February and March to explain the ACA's employer mandate and employer-reporting requirements. Employers should consult these rules as they take steps to comply with the law. The regulations are available as a link from Restaurant.org/Healthcare or in the *Federal Register*, "Shared Responsibility for Employers Regarding Health Care Coverage" (Feb. 12, 2014), and "Information Reporting of Minimum Essential Coverage" and "Information Reporting by Applicable Large Employers" (March 10, 2014).

WHO'S COVERED BY THE EMPLOYER MANDATE?

The employer mandate will require certain employers to offer health care coverage to full-time employees and their dependents or face possible penalties. The mandate will eventually apply to businesses with 50 or more full-time-equivalent (FTE) employees, but in 2015 transition relief is available to qualified employers with 50 to 99 FTE employees.

- **Penalties start in 2015 for employers with 100 or more FTE employees** who fail to offer coverage to "substantially all" full-time employees and their dependents. ("Substantially all" means the employer offers coverage to at least 70 percent of full-time employees in 2015. This ramps up to 95 percent of full-time employees in 2016.)

- **Penalties start in 2016 for employers with 50 to 99 FTE employees.** Some caveats apply (see box on page 3 for transition rules).

- **More information on how to calculate** whether your business is covered by the employer mandate is available at Restaurant.org/Healthcare. Keep in mind that you may need to combine employees for businesses under "common control" and that you'll need to know both the number of full-time employees and hours of service for part-time employees to come up the "full-time-equivalent" figure. Seasonal workers are included in the large-employer calculation, whether full- or part-time. Some employers may qualify for a "seasonal worker exception" in cases where seasonal workers push the business over the FTE threshold for four calendar months or less.

TO WHOM MUST COVERAGE BE OFFERED?

To avoid penalties, applicable large employers must offer health care coverage to full-time employees and

their dependents starting in 2015. The ACA defines full-time as an average of at least 30 hours of service in any given month. For administrative simplicity, 130 hours of service in a calendar month will be considered the monthly equivalent of 30 hours of service a week. Dependents are children who have not yet reached the age of 26. Dependents do not include spouses.

- **New employees** are considered to be full-time if on their start date they are reasonably expected to average 30 hours of service a week or 130 hours of service per calendar month. Whether an employer's determination of the employee's full- or part-time status is reasonable is based on the "facts and circumstances." Factors to be considered include, but are not limited to, whether the employee is replacing an employee who was or was not a full-time employee, the extent to which employees in the same or comparable positions are or are not full-time employees, and whether the job was advertised, or otherwise communicated to the new hire or otherwise documented (for example, through a contract or job description), as requiring hours of service that would average 30 (or more) hours of service per week or less than 30 hours of service per week.

- **Assessing the status of variable-hour and seasonal employees.** While many restaurant employees clearly work either full- or part-time hours, the distinction may be less



WHAT YOU NEED TO KNOW.
WHAT YOU NEED TO DO.

LEARN

Find out how the law affects your restaurant company. Join the NRA in advocating for change.

NOTIFY

Get tools to notify your employees about the law.

MARKETPLACE

Find health insurance products for your restaurant and your employees.

Restaurant.org/Healthcare



Read the rules: Transition relief for 2015

The Treasury Department and Internal Revenue Service offer some employers targeted “transition relief” for 2015 (and part of 2016, for non-calendar-year plans). Employers should consult the employer-mandate rules in the Feb. 12, 2014, *Federal Register*, for details.

Some topics addressed in the transition rules:

- **70 percent offer** — For 2015, businesses with 100+ FTE employees can avoid the ACA’s Penalty A (see page 4) by offering health plans to “substantially all” full-time employees, defined as 70 percent of full-time employees for 2015 and 95 percent after that.
- **Delayed mandate/penalties** — For 2015, businesses with 50 to 99 FTE employees can avoid the employer mandate and penalties if they meet certain conditions, including not cutting back employees’ hours or positions to keep the business under the 100-FTE threshold.
- **Look-back measurement method** — For 2015, employers who use the ACA’s optional “look-back measurement method” to measure the full- or part-time status of variable-hour and seasonal employees can pick a six-month measurement period that begins no later than July 1, 2014, to determine an employee’s status for purpose of coverage offers during a “stability period” of up to 12 months in 2015. (Note: For purposes of coverage offers, seasonal employees in positions working six months or less in a year generally aren’t considered full-time employees.)
- **Determining large-employer status** — Look at your business’s employment levels for any consecutive six-month period in 2014 to see if you’ll be considered an “applicable large employer” for 2015. Starting in 2016, large-employer status is based on employment levels for the full previous calendar year. Note: Employers can’t use an abbreviated period for 2014 to qualify for a “seasonal worker exception” to the employer mandate for 2015.
- **Dependent coverage** — For 2015, a large employer will generally not face penalties for failing to offer coverage to dependents of full-time employees if the employer can show he or she is taking steps toward providing such coverage. Employers who offered dependent coverage in 2013 and 2014 cannot drop coverage to take advantage of this transition relief.
- **Other** — Regulations also explain transition relief for employers with non-calendar-year plans, including ensuring that penalty relief extends into part of 2016 for non-calendar-year 2015 plans; and explaining the conditions under which penalties do not apply for months in 2015 before the 2015 plan year begins.

Caution: This list does not provide full information on each topic. The transition rules are extensive. Consult the *Federal Register* (Feb. 12, 2014) for the full set of regulations.

clear for variable-hour and seasonal employees, whose hours and schedules fluctuate. To help large employers know who is eligible for health care coverage offers under the ACA starting in 2015, and to avoid monthly determinations of employee status, Treasury/IRS regulations give large employers an alternative option for assessing the full- or part-time status of variable-hour or seasonal employees. This optional method — called the “look-back measurement method” — is complex but may be useful for restaurant operators. In brief, large employers

can pick a measurement period of three to 12 months to assess a variable-hour or seasonal employee’s status. Based on the employee’s hours of service during the measurement period, the employee is treated as either full- or part-time (for purposes of health-care coverage offers) for a corresponding stability period, regardless of the employee’s hours of service during the stability period. The stability period must be at least six consecutive months and no shorter than the length of the measurement period.

NOTE: For purposes of the

look-back measurement method, a seasonal employee is “an employee who is hired into a position for which the customary annual employment is six months” or less.

WHAT REPORTS WILL EMPLOYERS BE REQUIRED TO FILE?

To help enforce the employer and individual mandates, and to administer subsidies, the ACA sets massive new reporting requirements for many businesses. Employers must file their first information returns

with the IRS and statements with employees in early 2016, based on data tracked in 2015. The paperwork requirements are part of the new Sections 6056 and 6055 of the federal tax code.

- **Section 6056** requires businesses that employ 50 or more FTE employees to certify whether they offered minimum essential coverage to full-time employees. (See “Data Tracking” sidebar for some of the data points employers will be required to provide under Section 6056.)

- **Section 6055** requirements apply to any entity that offers a health plan, such as self-insured employers and health insurers. These reports will tell the IRS who was enrolled in coverage and for what months.

WHAT ARE THE PENALTIES?

Large businesses will face two types of penalties under the ACA’s employer mandate.

- **For failing to offer coverage.** Penalty A applies when a large employer fails to offer minimum essential coverage to “substantially all” of its full-time employees. Penalty A can run up to \$2,000 per year per full-time employee, minus the first 30 full-time employees. The penalty kicks in if any full-time employee gets a federal tax subsidy to buy a health plan through a government-run exchange.
- **For offering coverage that’s unaffordable or inadequate.** Penalty B applies when the minimum essential coverage a large employer offers is not affordable or fails to meet minimum-value standards. Penalty B is \$3,000 a year for any full-time employee who receives a federal tax subsidy to buy a health plan through a federal or state exchange because their employer’s plan is not affordable or adequate.

DATA TRACKING WILL BE EXTENSIVE

Under a new Section 6056 of the Internal Revenue Code, employers with 50 or more full-time-equivalent employees must file an annual report with the IRS and provide annual statements to employees starting in early 2016, based on data tracked in 2015. Employers with 50 to 99 FTE employees must report for 2015 even if they are not required to offer coverage or pay penalties.

Here’s a sampling of some of the data that employers with 50 or more FTE employees will be required to provide. Consult the *Federal Register* (March 10, 2014) for full details. The below data must be compiled by month and by tax ID/Social Security number of the employee and dependents:

- whether employee is eligible for offer of minimum essential coverage
- total number of employees
- number of full-time employees
- months when minimum essential coverage was available for each employee
- premium contribution by month, by employee
- whether employee is covered under one of the employer’s plans
- whether employer had no employees with no hours of services credited (e.g., seasonal employees)
- whether minimum essential coverage was offered to:
 - > employee only
 - > employee and employee’s dependents only
 - > employee and employee’s spouse only, or
 - > employee, employee’s spouse and employee’s dependents
- whether coverage was not offered for the month because
 - > employee in limited non-assessment period
 - > employee was not full-time
 - > employee was not employed by large employer for that month
- whether coverage was offered to the employee even if the employee is not full-time
- whether the large-employer member used an affordability safe harbor (W-2, rate of pay, federal poverty level) to determine whether coverage was affordable.

