



FOR **SMALL  
BUSINESS**

**2016 Covered California for Small Business  
Applicable Large Employer (ALE)  
Agents Frequently Asked Questions**

Question	Answer
<p><b>What determines if an employer is an Applicable Large Employer (ALE)?</b></p>	<p>If, on average during the prior year, an employer has more than 50 full-time employees (including full-time equivalent employees), the employer is considered an ALE for the current calendar year.</p> <p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer">https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer</a></p>
<p><b>What are the Affordable Care Act (ACA) requirements for Applicable Large Employers (ALEs)?</b></p>	<p>There are two provisions of the Affordable Care Act (ACA) that applies to Applicable Large Employers (ALEs).</p> <ol style="list-style-type: none"> <li>1. The Employer Shared Responsibility Provisions</li> <li>2. The employer information reporting provisions for offers of minimum essential coverage</li> </ol> <p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer">https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer</a></p>
<p><b>What is the Employer Shared Responsibility Provisions (ESRP)?</b></p>	<p>Under the Affordable Care Act’s employer shared responsibility provisions, ALEs must either offer minimum essential coverage that is “affordable” and that provides “minimum value” to their full-time employees (and their dependents), or they may potentially make an Employer Shared Responsibility payment to the IRS. The Employer Shared Responsibility Provisions are sometimes referred to as “the employer mandate” or “the pay or play provisions.”</p>

	<p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Employer-Shared-Responsibility-Provisions">https://www.irs.gov/Affordable-Care-Act/Employers/Employer-Shared-Responsibility-Provisions</a></p>
<p><b>What are the Employer Shared Responsibility Provisions (ESRP) and employer shared responsibility payments?</b></p>	<p>Under the Employer Shared Responsibility provisions, an Applicable Large Employer (ALE) may be subject to only one (and not both) of the two potential employer shared responsibility payments depending on its decisions about offering minimum essential coverage to its full-time employees (and their dependents) below:</p> <ol style="list-style-type: none"> <li>1. Employer Shared Responsibility Payment for Failure to Offer Minimum Essential Coverage (MEC) <p>The employer does not offer health coverage or offers coverage to fewer than 95% of its full-time employees and the dependents of those employees, and at least one of the full-time employees receives a premium tax credit to help pay for coverage on a Marketplace, including Covered California;</p> </li> </ol> <p>OR</p> <ol style="list-style-type: none"> <li>2. Employer Shared Responsibility Payment for Failure to Offer Affordable Minimum Essential Coverage that Provides Minimum Value. <p>The employer offers health coverage to all or at least 95% of its full-time employees, but at least one full-time employee receives a premium tax credit to help pay for coverage on a Marketplace, which may occur because the employer did not offer coverage to that employee or because the coverage the employer offered that employee was either unaffordable to the employee.</p> </li> </ol> <p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act">https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act</a></p>
<p><b>How are employers to determine whether they are subject to the Employer Shared Responsibility Provisions?</b></p>	<p>For a calendar year, employers who employ fewer than 50 full-time employees (including full-time equivalents) in the prior calendar year are <b>not</b> subject to the Employer Shared Responsibility provisions. An employer that meets the 50 full-time employee threshold is referred to as an applicable large employer (ALE), and will be subject to the ESR provisions, including employer shared responsibility payments</p>

	depending on its decisions about offering MEC to its full-time employees (and their dependents).
<b>Who are considered as dependents?</b>	<p>For purposes of the employer shared responsibility provisions, a dependent is an employee's child (including a child who has been legally adopted or placed for adoption) who has not reached the age of 26. Spouses, stepchildren, and foster children are <b>not</b> considered as dependents.</p> <p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Employer-Shared-Responsibility-Provisions">https://www.irs.gov/Affordable-Care-Act/Employers/Employer-Shared-Responsibility-Provisions</a></p>
<b>Do ALEs have to offer dependent coverage? If so, would employers have to pay all or a portion of the dependent's premium?</b>	Yes, ALEs must offer dependent coverage effective April 1, 2016 to avoid the Employer Shared Responsibility penalties; however, the ACA law does not mandate ALEs to subsidize dependent coverage.
<b>Last year (2015) an employer did not offer dependent coverage, and now as of 2016 the employer is considered as an ALE and will now need to offer dependent coverage to avoid penalties. Can the employer change their contract mid-year to include dependent coverage?</b>	<p>If the employer is considered as an ALE, the employer will need to offer dependent coverage to their employees in order to avoid a penalty.</p> <p>For ALEs that currently do not offer dependent coverage, Covered California for Small Business will allow the employer to make changes to their contract to include dependent coverage.</p> <ul style="list-style-type: none"> <li>• Changes to the contract that are submitted on or before the 8<sup>th</sup> of the month, the changes will be effective the following month. Covered California will not retro change the employer's contract. For example, the employer sent a request to Covered California on February 8<sup>th</sup> to offer dependent coverage. The dependent coverage will be effective March 1<sup>st</sup>.</li> <li>• Changes to the contract that are submitted on or after the 9<sup>th</sup> of the month, the changes will be effective two months following. For example, the employer sent a request to Covered California on February 9<sup>th</sup> to offer dependent coverage. The dependent coverage will be effective April 1<sup>st</sup>.</li> </ul> <p><b>Note:</b> New ALEs for the 2016 calendar year must have dependent coverage in effect by April 1, 2016 to avoid associated penalties.</p>

<p><b>For ALEs that offers coverage for employees and their dependents, will the spouse be eligible to enroll through the Individual Marketplace and receive Advanced Premium Tax Credit (APTC)?</b></p>	<p>If an ALE does not offer coverage for spouse, the spouse is eligible to enroll through the Individual Marketplace and, if eligible, receive APTC. However, if ALE offers coverage for the employee’s spouse, the spouse will not be eligible for the premium tax credit.</p>
<p><b>Who are considered Full-Time Employees?</b></p>	<p>A full-time employee for any calendar month is an employee who has 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.</p> <p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Identifying-Full-time-Employees">https://www.irs.gov/Affordable-Care-Act/Employers/Identifying-Full-time-Employees</a></p>
<p><b>An employer expanded its workforce from 35 FTEs to 50 FTEs and now as an ALE offers Dependent Coverage. If Employee Dependents were enrolled through a Marketplace such as Covered California, and were receiving an Advanced Premium Tax Credit (APTC) prior to company expansion, can they continue to Receive the APTC after the company enters a plan year as an ALE?</b></p>	<p>No, the dependent cannot continue to receive APTC if the ALE offers dependent coverage.</p> <p>To obtain more information as to who can claim a premium tax credit, please refer to page 10 of <a href="https://www.irs.gov/pub/irs-pdf/p5187.pdf">https://www.irs.gov/pub/irs-pdf/p5187.pdf</a>.</p>
<p><b>How is the number of Full-Time Equivalent Employees (FTEs) determined? And can the calculations also be used to determine if an employer can apply for Covered California for Small Business?</b></p>	<p>Yes, the FTE calculation can be used to determine whether an employer is eligible for Covered California for Small Business.</p> <p><b>Note:</b> Employers that have 1 to 100 full-time and full-time equivalent employees are eligible to apply for Covered California for Small Business.</p> <p><b>Determining Full-Time Equivalent Employees</b> An employer determines its number of full-time-equivalent employees for a month in the steps that follow:</p> <ol style="list-style-type: none"> <li>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.</li> <li>2. Divide the total by 120.</li> <li>3. Add up the total number of full-time employees for each calendar month.</li> </ol> <p>Note: A full-time employee generally works an average of at least 30 hours</p>

per week during the calendar month, or at least 130 hours of service during the calendar month. Click [here](#) for more information regarding full-time employees.

4. Take the product of Steps 1 and 2 and combine with the product of 3. Divide that figure by 12. The final figure represents the total employee count for determining CCSB eligibility.

**Example:**

Company X has 40 full-time employees for each calendar month during 2016.

Company X also has 15 part-time employees for each calendar month during 2016 each of whom have 60 hours of service per month.

When combined, the hours of service of the part-time employees for a month totals 900 [ $15 \times 60 = 900$ ].

Dividing the combined hours of service of the part-time employees by 120 equals 7.5 ( $900/120 = 7.5$ ). The number, 7.5, represents the number of Company X's full-time equivalent employees for each month during 2016.

Company X adds up the total number of full-time employees for each calendar month of 2016 which is 480 [ $40 \times 12 = 480$ ].

Company X adds up the total number of full-time equivalent employees for each calendar month of 2016, which is 90 [ $7.5 \times 12 = 90$ ].

Company X adds those two numbers together and divides the total by 12, which equals 47.5 [ $(480 + 90) / 12 = 47.5$ ].

Because the result is not a whole number, it is rounded to the next lowest whole number, so 47. The total FTE number for Company X is 47. In this case, Company X is eligible for Covered California for Small Business.

	<p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer">https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer</a></p>
<p><b>Who are considered as Seasonal Workers? How do Seasonal Workers affect the employer’s ALE status?</b></p>	<p>Workers who perform labor or services on a seasonal basis as defined by the Secretary of Labor, and retail workers employed exclusively during holiday seasons. For this purpose, employers may apply a reasonable, good faith interpretation of the term “seasonal worker.”</p> <p>When determining if an employer is an ALE, the employer must measure its workforce by counting all its employees. However, there is an exception for seasonal workers.</p> <p>An employer is not considered an ALE if both of the following apply:</p> <ol style="list-style-type: none"> <li>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</li> <li>2. The employees in excess of 50 employed during such 120-day period are seasonal workers.</li> </ol> <p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer">https://www.irs.gov/Affordable-Care-Act/Employers/Determining-if-an-Employer-is-an-Applicable-Large-Employer</a> &amp; <a href="https://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage">https://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage</a></p>
<p><b>Are the terms “seasonal workers” and “seasonal employees” the same for purposes of the ESRP?</b></p>	<p>The terms “seasonal worker” and “seasonal employee” are both used in the Employer Shared Responsibility provisions, but the terms have two different contexts. The term “seasonal worker” is relevant for determining whether an employer is an ALE. The term “seasonal employee” is used to determine an employee’s status as a full-time employee under the look-back measurement method.</p> <p>The term “seasonal employee” is relevant for determining an employee’s status as a full-time employee under the look-back measurement method. For the purpose of the look-back measurement, the term seasonal employee means an employee who is hired into a position for which the customary annual employment is six months or less and for which the period of employment begins each calendar year in approximately the same part of the year. For example, a seasonal employee that is hired during the summer or winter.</p>

	<p>Note: The look-back measurement method <b>cannot</b> be used to determine if the employer is an ALE.</p> <p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act#Additional">https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act#Additional</a> &amp; <a href="https://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage">https://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage</a></p>
<p><b>What is Minimum Essential Coverage (MEC)?</b></p>	<p>Coverage that under the regulations provides affordable minimum coverage and provides minimum value to its full-time employees (and their dependents).</p> <p>Minimum essential coverage designated by statute or regulations includes the following:</p> <ul style="list-style-type: none"> <li>• Employer-sponsored coverage (including Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage and retiree coverage)</li> <li>• Coverage purchased in the individual market, including a qualified health plan offered by the Health Insurance Marketplace (such as Covered California)</li> <li>• Medicare Part A coverage and Medicare Advantage (MA) plans</li> <li>• Most Medicaid coverage</li> <li>• Children's Health Insurance Program (CHIP) coverage</li> <li>• Certain types of veterans health coverage administered by the Veterans Administration</li> <li>• TRICARE</li> <li>• Coverage provided to Peace Corps volunteers</li> <li>• Coverage under the Nonappropriated Fund Health Benefit Program</li> <li>• Refugee Medical Assistance supported by the Administration for Children and Families</li> <li>• Self-funded health coverage offered to students by universities for plan or policy years that begin on or before Dec. 31, 2014 (for later plan or policy years, sponsors of these programs may apply to HHS to be recognized as minimum essential coverage)</li> </ul>

	<ul style="list-style-type: none"> <li>State high risk pool coverage established on or before November 26, 2014 in any State</li> </ul> <p>For more information: <a href="https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/minimum-essential-coverage.html">https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/minimum-essential-coverage.html</a></p>
<p><b>If an employer started their business and does not have any employees the prior calendar year, how would the employer determine if they're an ALE for the current year?</b></p>	<p>If an employer was not in existence on any business day in the prior calendar year, they are considered an ALE in the current year if:</p> <ol style="list-style-type: none"> <li>the employer are <b>expected</b> to employ an average of at least 50 full-time employees (including full-time equivalents) during the current calendar year.</li> <li>the employer <b>currently</b> employs an average of at least 50 full-time employees (including full-time equivalents) during the current calendar year.</li> </ol> <p>The next year (the year after the first year the employer was in existence), the employer will determine if they're an ALE by using the rules that generally apply. The general rule to determine an ALE is based on the number of full-time employees and full-time equivalents that the employer employed the previous year.</p>
<p><b>Where are the Latest Resources for ALEs?</b></p>	<p>The IRS has designed a new web page to help employers quickly access the information they need to meet the new Affordable Care Act information reporting requirements. Employers can check out questions and answers, examples and other resources for employers by visiting the <a href="https://www.irs.gov/aca">ACA Information Center for Applicable Large Employers</a> on IRS.gov/aca: <a href="https://www.irs.gov/Affordable-Care-Act/Employers/ACA-Information-Center-for-Applicable-Large-Employers-ALEs">https://www.irs.gov/Affordable-Care-Act/Employers/ACA-Information-Center-for-Applicable-Large-Employers-ALEs</a></p> <p>The 2015 version of Form 1095-C, <i>Employer-Provided Health Insurance Offer and Coverage</i>, and instructions used by employers with 50 or more full-time employees (ALE member) are now available on IRS.gov. Form 1095-B, <i>Health Coverage</i>, and instructions primarily used by insurers and health coverage providers, including employers that sponsor self-insured plans, have been released as well. The related document transmittal Forms 1094-B and 1094-C are also available on IRS.gov.</p> <p>The health care law requires certain employers and providers to submit the 2015 forms to the IRS and individuals in early 2016. Though the forms were available for voluntary</p>

	<p>use in tax-year 2014, the upcoming tax season will be the first time that reporting is mandatory.</p> <p>Form 1095-C: <a href="https://www.irs.gov/pub/irs-prior/f1095c--2015.pdf">https://www.irs.gov/pub/irs-prior/f1095c--2015.pdf</a></p> <p>Instructions: <a href="https://www.irs.gov/pub/irs-prior/i109495c--2015.pdf">https://www.irs.gov/pub/irs-prior/i109495c--2015.pdf</a></p>
<p><b>Can an employer use the Look-Back measurement method to determine if they are an ALE?</b></p>	<p>No, the look-back measurement method <b>cannot</b> be used to determine if the employer is an ALE.</p> <p>The look-back measurement method is for the employer to determine the <i>status</i> of an employee as a full-time employee during a future period (referred to as the stability period), based upon the hours of service of the employee in a prior period (referred to as the measurement period).</p> <p>For more information:  <a href="https://www.irs.gov/Affordable-Care-Act/Employers/Identifying-Full-time-Employees">https://www.irs.gov/Affordable-Care-Act/Employers/Identifying-Full-time-Employees</a>  or  <a href="https://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage#h-43">https://www.federalregister.gov/articles/2014/02/12/2014-03082/shared-responsibility-for-employers-regarding-health-coverage#h-43</a></p>
<p><b>What if the employee’s dependents or spouse is enrolled in Medi-Cal or Medicare, does the employer have to make an Employer Shared Responsibility Payment?</b></p>	<p>An employer may owe an Employer Shared Responsibility payment only if one or more full-time employees receive a premium tax credit. Individuals (including employees) who are eligible for Medicare or Medicaid are generally not eligible for a premium tax credit. Thus, if all of an employer’s full-time employees are eligible for Medicare or Medicaid, the employer will not be subject to an Employer Shared Responsibility payment. However, if even one full-time employee receives a premium tax credit, the employer may be subject to an Employer Shared Responsibility payment.</p> <p>For more information: <a href="https://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision">https://www.irs.gov/Affordable-Care-Act/Individuals-and-Families/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision</a></p>