



# Health Care Reform

## LEGISLATIVE BRIEF

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### Definitions of “Large Employer” and “Small Employer”

The Affordable Care Act (ACA) imposes different requirements on employers based on whether they qualify as a "large employer" or a "small employer." However, the health care reform law doesn't use a consistent definition for these terms. As a result, an employer may be considered a small employer for one rule but a large employer for another.

This Legislative Brief outlines the definitions of "large employer" and "small employer" that apply to key provisions in the ACA affecting employers. It also contains a chart on ACA requirements that vary based on a group plan's size.

ACA PROVISION	APPLICABLE DEFINITIONS	
<p><b>Health Care Tax Credit</b></p> <p>Effective for tax years beginning in 2010, the ACA provides a tax credit to certain small employers that provide health care coverage to their employees.</p>	<p>Large employers with 25 or more full-time employees are ineligible for the health care tax credit.</p>	<p><b>Eligible Small Employer:</b></p> <ul style="list-style-type: none"> <li>• Must have fewer than 25 full-time employees or a combination of full-time and part-time staff (for example, two half-time employees equal one employee for purposes of the credit);</li> <li>• The average annual wages of employees must be less than \$50,000; and</li> <li>• The employer must pay at least half of the insurance premiums.</li> </ul>
<p><b>Form W-2 Reporting</b></p> <p>Beginning in the 2012 tax year, large employers are required to report the aggregate cost of employer-sponsored group health plan coverage on their employees' Forms W-2.</p> <p>Small employers may be subject to this reporting in the future. The IRS delayed the reporting requirement for small employers by making it optional for these employers until further guidance is issued.</p>	<p><b>Large Employer:</b></p> <p>Must have had to file 250 or more Forms W-2 in the prior calendar year.</p>	<p><b>Small Employer:</b></p> <p>Must have had to file fewer than 250 Forms W-2 for the prior calendar year.</p>

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<p><b>Employer Shared Responsibility Requirements</b></p> <p>Beginning in 2015, large employers may be subject to penalties if they do not offer health coverage to their employees, or if their health coverage does not meet certain standards. <b>On July 2, 2013, the Treasury announced a delay of the employer mandate penalties for one year, until 2015. Therefore, these payments will not apply for 2014.</b></p>	<p><b>Applicable Large Employer:</b></p> <p>Must employ at least 50 full-time employees, or a combination of full-time and part-time employees that equals at least 50 (for example, 40 full-time employees employed 30 or more hours per week on average plus 20 half-time employees employed 15 hours per week on average are equivalent to 50 full-time employees).</p>	<p>Small employers with fewer than 50 full-time employees (or full-time equivalent employees) will be exempt from the employer shared responsibility provisions.</p>
<p><b>Health Insurance Exchanges</b></p> <p>Effective Jan. 1, 2014, each state must have a health insurance exchange (Exchange) to provide a competitive marketplace where individuals and small businesses will be able to purchase affordable private health insurance coverage.</p> <p>Beginning in 2014, small employers can offer coverage to their employees through an Exchange.</p> <p>Beginning in 2017, states may allow large employers to obtain coverage through an Exchange.</p> <p><b>Special Rule for SHOP Exchanges</b></p> <p>By 2014, each state Exchange must establish insurance options for small businesses through a Small Business Health Options Program (SHOP).</p>	<p><b>Large Employer:</b></p> <ul style="list-style-type: none"> <li>• Must employ an average of at least 101 employees on business days during the preceding calendar year; and</li> <li>• Must employ at least one employee on the first day of the plan year.</li> </ul> <p>Large employers with at least 101 employees are ineligible to participate in the SHOP.</p>	<p><b>Small Employer:</b></p> <ul style="list-style-type: none"> <li>• Must employ an average of one to 100 employees on business days during the preceding calendar year; and</li> <li>• Must employ at least one employee on the first day of the plan year.</li> </ul> <p>However, states have the option to limit small employers’ participation in the Exchanges to businesses with up to 50 employees until 2016.</p> <p><b>Eligible Small Employer for SHOP Participation:</b></p> <ul style="list-style-type: none"> <li>• Must qualify as a “small employer” for purposes of Exchange participation (see above);</li> <li>• Must elect to offer, at a minimum, all full-time employees coverage in a qualified health plan through a SHOP; and</li> <li>• Must either have its primary office in the Exchange service area and offer all its employees coverage through that SHOP, or offer coverage to each eligible employee through the SHOP servicing the employee’s primary worksite.</li> </ul>

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<p><b>Automatic Enrollment</b></p> <p>Large employers that are subject to the FLSA will be required to automatically enroll new full-time employees in one of the employer’s health benefits plans (subject to any waiting period authorized by law), and to continue the enrollment of current employees in a health benefits plan offered through the employer.</p> <p>Before this requirement can take effect, the DOL must issue implementing regulations. The DOL has stated that the automatic enrollment guidance will not be ready to take effect by 2014 and employers are not required to comply with the rule until final regulations are issued and become applicable.</p>	<p><b>Large Employer:</b></p> <p>Must have more than 200 full-time employees.</p>	<p>Small employers with 200 or fewer employees will be exempt from the automatic enrollment requirements.</p>
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## REQUIREMENTS THAT VARY BASED ON GROUP SIZE

ACA also imposes certain plan-related requirements that are based on group size instead of employer size. These requirements vary based on whether the plan is in the large group market or the small group market.

The terms “large employer” and “small employer” are defined at the federal level in the ACA. In contrast, “small group market” size and “large group market” size are determined based on state law. This means that different states have different definitions of what qualifies as large group or small group.

The following chart provides an overview of the requirements that vary based on a group plan’s size. To determine the definitions of large group market or small group market that apply in your state, please consult state law.

ACA PROVISION	REQUIREMENTS FOR THE LARGE GROUP MARKET	REQUIREMENTS FOR THE SMALL GROUP MARKET
<p><b>Medical Loss Ratio</b></p> <p>Beginning on Jan. 1, 2011, health insurance issuers offering must annually report on the share of premium dollars spent on health care and provide consumer rebates for excessive medical loss ratios.</p>	<p>Must spend at least <b>85 percent</b> of premiums on medical care and health care quality improvement activities.</p>	<p>Must spend at least <b>80 percent</b> of premiums on medical care and health care quality improvement activities.</p>

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<p><b>Insurance Market Nondiscrimination Reforms</b></p> <p>Effective for 2014, ACA requires health plans and health insurance issuers to comply with a new set of market reforms related to nondiscrimination.</p>	<p>May not:</p> <ul style="list-style-type: none"> <li>• Discriminate against an individual with respect to plan eligibility or coverage based on a health status-related factor;</li> <li>• Impose preexisting condition exclusions on enrollees;</li> <li>• Refuse enrollment to an employer that applies for coverage; or</li> <li>• Refuse to renew coverage at the option of the plan sponsor.</li> </ul>	<p>May not:</p> <ul style="list-style-type: none"> <li>• Charge higher rates due to health status, gender or other factors;</li> <li>• Discriminate against an individual with respect to plan eligibility or coverage based on a health status-related factor;</li> <li>• Impose preexisting condition exclusions on enrollees;</li> <li>• Refuse enrollment to an employer or individual that applies for coverage; or</li> <li>• Refuse to renew coverage at the option of the plan sponsor.</li> </ul>
<p><b>Comprehensive Benefits Coverage</b></p> <p>Beginning in 2014, ACA requires non-grandfathered plans in the small group market to offer a comprehensive package of items and services, known as essential health benefits.</p>	<p>Requirement does not apply</p>	<p>Health insurance issuers in the individual and small group markets will be required to cover essential health benefits.</p>
<p><b>Limits on Cost-Sharing</b></p> <p>Effective for plan years beginning in 2014, non-grandfathered group health plans will be subject to limits on cost-sharing or out-of-pocket costs. These limits are indexed for subsequent years.</p>	<ul style="list-style-type: none"> <li>• Out-of-pocket expenses may not exceed the amount applicable to coverage related to HSAs.</li> <li>• No annual deductible limit.</li> </ul>	<ul style="list-style-type: none"> <li>• Out-of-pocket expenses may not exceed the amount applicable to coverage related to HSAs.</li> <li>• For 2014, deductibles may not exceed \$2,000 (single coverage) or \$4,000 (family coverage).</li> </ul>

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