

## **Fundamentals of the Affordable Care Act: A Focus on Small Agricultural Employers**

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The passage of 'The Patient Protection and Affordable Care Act' ([PPACA; H.R. 3590](#)) and its implementation on January 1, 2014 will effect employers and employees of large and small agricultural operations growing both agronomic and specialty crops. This publication provides a summary of the basic facts and figures of the PPACA which employers and employees should be aware of before implementation. Many of the regulations associated with healthcare reform are assigned based on business size, measured by the number of full-time equivalent (FTE) employees. Conversely, the inclusion of an employee in a businesses' health care plan will be based on the employee's work status; either as a seasonal, part-time or full-time employee. This publication uses these metrics to describe employer or employee responsibilities and provides answers to questions frequently asked by both. Please note, this document does not cover health care exchanges, as state and federal health care exchange programs have thus far not been defined (as of March 2013) or address employers defined as a "controlled group" in which multiple businesses owned by the same individual or immediate family members are aggregated in the calculation of FTEs.

### **What is a "Full-time Employee", "Full-time Equivalent" (FTE) and "Seasonal Worker"**

An employee is defined under the law as including citizens and those lawfully in the United States (US). A full-time employee is any employee who consistently or on average works 30 hours per week (130 hours per month) or greater based on a month-to-month analysis using a "look-back" method. An hour of service or work is defined as an employee who is paid or entitled to pay including vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. A full-time equivalent (FTE) is comprised of a composite of employees, including seasonal workers, who work equal to 30 employee hours per week. Seasonal workers are defined as those persons working either full-time or part-time for 120 or fewer days per calendar year (4-months). The definition of seasonal worker may be modified to 90 days per calendar year. The term seasonal employee has yet to be defined by the US Internal Revenue Service and US Department of Treasury. There will be greater clarity regarding seasonal workers and employees after the May 2013 review and hearings of the proposed regulations provided in the "Shared Responsibility for Employers Regarding Health Coverage" distributed by the Internal Revenue Service and US Department of Treasury ([REG-138006-12](#)). Employers are encouraged to confirm the definition of a seasonal worker and seasonal employee annually.

### **How to Determine the Number of FTE for Your Business**

To calculate the total number of FTEs within a business, each full-time employee is equal to one FTE. The hours for each worker employed less than (<) 30 hours a week are added together and then divided

by 30 (hours per week) [(120) hours per month] to calculate the quantity of FTEs. The sum of full time employees and the calculated FTE of those working < 30 hours week yield the business total FTE. For example, if an employer hires two part-time employees and each work 15 hours/week, this is the equivalent of one FTE (15 hrs. + 15 hrs. = 30 hrs. = 1 FTE). Three employees working 10 hours/week each will also equal one FTE (10 hrs. + 10 hrs. + 10 hrs. = 30 hrs. = 1 FTE). Three employees working 40 hours/week will equal three FTEs where 1 FTE is equal to  $\geq 30$  hours a week (1 FTE + 1 FTE + 1 FTE = 3 FTEs). Business's classification in the current year FTE will be based on the previous calendar year's FTE's (e.g. 2014 classification will be based on FTEs calculated in 2013). The PPACA classification system based on the FTE outline above was constructed to minimize the impact on current employee work schedules, taking into account the business as a whole. Although part-time employee hours factor into FTEs, the PPACA does not mandate that employers provide health care to part-time workers.

To calculate the annual number of FTEs (for employees working no less than 3-months or no more than 12-months), businesses will be required to track the hours worked by full-time and part-time employees throughout the calendar year and calculate FTE numbers on a weekly basis. In high-activity periods, for example harvesting or shipping seasons, the number of FTEs may increase at a business to well over a given numerical FTE classification (size of business, discussed below) limit. However, when averaged over 52 weeks or 12 months, the number of FTEs can be low enough (e.g. at or under 50 FTEs) to avoid any penalties associated with PPACA.

### **Businesses with 25 FTEs or Fewer**

*Regulations and Penalties.* Businesses with fewer than 25 FTEs are **NOT required to provide health insurance** to their full-time employees, yet encouraged to do so via tax credits (see below). There are NO penalties associated with not providing health insurance to full-time employees. In this size business, the ultimate responsibility of health insurance falls upon the employee. If the employer does not provide insurance, the employee is to provide insurance for themselves and their dependents (children under the age of 26) via private insurance or government health exchange or possibly face an associated tax (penalty) for not purchasing health care.

*Tax Credits.* Businesses with 25 or fewer FTEs and an average employee wage of \$50,000 or less (based on employee [W-2s](#)) will be eligible to claim a **federal tax credit of up to 50% of employer-paid insurance premiums** beginning in 2014. The primary qualification is that the employer must cover 50% or more of the cost of single (not family) health care premiums for *all* of the businesses' full-time employees. More information on this subject can be found by on [IRS Form 8941](#). Current tax credits on Form 8941 will be lower than those taking effect in 2014. Tax credits do currently exist for employer-paid insurance premiums and should be utilized when filing your 2012 and 2013 tax returns. "*Always check with your tax professional for details*".

### **Businesses with 26 – 49 FTEs**

*Regulations and penalties.* Businesses with between 26 – 49 FTEs are also **NOT required to provide health insurance** to their full-time employees. Additionally, these businesses will receive **NO Tax Credit** for paying 50% or greater of full-time employee health insurance premiums. There are NO penalties

associated with not providing health insurance to full-time employees. In this size business, the ultimate responsibility of health insurance falls upon the employee. If the employer does not provide insurance, the employee is to provide insurance for themselves and dependents via private insurance or the government health exchange program. Failure to obtain health insurance could lead to a tax penalty.

### **Businesses with 50 or More FTEs**

Those businesses employing 50 or more FTEs are to **provide health insurance to full-time employees**, defined as averaging greater than 30 hours per week over a calendar year, OR pay a penalty for failing to do so. Please note that employers are NOT mandated to provide health insurance to part-time workers that average less than 30 hours per week over a calendar year or seasonal workers as defined above. For businesses employing more than 50 FTEs, the regulations become more complex and include the following employer options.

*EMPLOYER PROVIDES INSURANCE DEEMED "AFFORDABLE":* the employer will pay no penalties, but must track annual FTE's to determine the following year's classification.

*EMPLOYER CANNOT PROVIDE INSURANCE:* the full-time employee is responsible for obtaining personal and/or family insurance through private insurance or a government health care exchange. If the employee receives health care through a government health care exchange, the employer will be charged a \$2,000 penalty per full-time employee. As an example, if an employer has 1 full-time worker who works 30 hours per week, their penalty would be \$2,000 per year. If the employer has 3 part-time workers that each work 10 hours per week, their penalty would be \$0. Additionally, the penalty only applies to the total number of full-time employees minus 30. So, if a business employs 60 full-time employees and refuses to provide health insurance to its workers, it will only be penalized for 30 employees (60 total employees – 30 employees exempt = 30 employee penalty x \$2,000 penalty per employee = \$60,000 annual penalty).

*IF THE EMPLOYER PROVIDES INSURANCE DEEMED NOT "AFFORDABLE":* when the employer provides health insurance for full-time employees, that insurance must meet two affordability requirements. **FIRST**, the **insurance must cover a minimum of 60% of the actuarial value of the cost of benefits**: this means if a health care plan has an actuarial value of 60%, the health insurance would cover 60% of the cost of treatments in a calendar year and the employee would be responsible for 40% of the costs of covered benefits. If the employer's health insurance does not cover a minimum of 60% of health care costs for the employee, the employee could purchase separate/supplemental health insurance. This supplemental insurance can be claimed as a tax credit on the employee's tax return, triggering the IRS to penalize the employer for failure to provide "affordable" insurance. **SECOND**, an **individual employee's health care premium cannot exceed 9.5% of the employee's gross household income** (including dependent insurance). It is important to note a spouse is not recognized as a dependent; only those under the age of 26 can be claimed. If either of these situations occurs, the employer will be penalized the lesser of \$3,000 per full-time employee that does not receive "affordable" health care as noted above or \$2,000 for every one of the full-time employees that work for the employer minus 30 employees (see example in previous scenario).

As an example, an employer with a total of 60 full-time employees, 10 of which do not receive “affordable” care as described above, could pay the \$60,000 penalty associated with not providing health insurance to full-time employees or \$3,000 for each of the 10 full-time employees that do not receive the defined “affordable” care (\$3,000 per employee x 10 employees = \$30,000). In this example, the employer would benefit from paying the \$30,000 penalty associated with not providing “affordable” care as opposed to the \$60,000 fine associated with providing no health insurance to employees. This example does NOT factor in the cost of insurance premiums paid by the employer.

## Conclusions

Each agricultural employer must be aware beginning January 1, 2014, they will need to comply with ‘The Patient Protection and Affordable Care Act’. This will require employers to collect and analyze data in 2013 to determine full-time equivalents (FTEs) as well as full-time employee numbers. **It is vitally important for employers to collect and calculate these figures no later than the 4<sup>th</sup> quarter of 2013 so to determine what level (if any) health care best fits the financial capacity of the business while protecting/benefiting employees.** This publication focuses only on information available as of March 2013. Much information is still to be released on the PPACA, particularly relating to state and federal health care exchanges. Additional details of the PPACA will be released in the 4<sup>th</sup> quarter of 2013, and thereafter this publication will be updated. All rules associated with this legislation must be released by the beginning of the 4<sup>th</sup> quarter 2013. If you have questions, we encourage you to contact a business attorney, accountant trade associations and/or visit [www.healthcare.gov](http://www.healthcare.gov).

Note from the authors: This document was intended to be the “first steps” in understanding the **Affordable Care Act by providing a synopsis of the legislative bill and subsequent proposed regulations by the Treasury Department and Internal Revenue Service.** Please consult legal council and/or license certified accountant to ensure you have adequately determined and verified your business status with regard to PPACA regulations. Detailed IRS documentation of PPACA regulations can be found at [www.irs.gov/pub/newsroom/reg-138006-12.pdf](http://www.irs.gov/pub/newsroom/reg-138006-12.pdf)

This document was prepared on December 15, 2012. This document was revised on March 1, 2013. Information herein is subject to change and is not to replace or substitute information provided by legal council or a certified accountant.

Table 1. Abbreviated summary of needed insurance coverage, tax credit and/or associated penalty when employing 25 to 50+ full time employees as defined by the 'The Patient Protection and Affordable Care Act' (PPACA - H.R. 3590).

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Number of full time employees (FTE; working <u>≥30 HR/WK</u> )	Mandated insurance coverage for FTEs	Potential Tax Credit	<u>Penalty based on coverage provided</u>		
			<u>Affordable</u>	<u>Not Affordable</u>	<u>None</u>
≤ 25	None	≤ 50%		None	
26-49	None	None		None	
≥ 50	FTEs only	None	None	\$2,000-\$3,000	\$2,000

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