

# Health Care Reform "Pay or Play" Toolkit for Employers



# "Pay or Play" Toolkit for Employers

## INTRODUCTION

The [employer shared responsibility provisions](#) under Health Care Reform (also known as "pay or play") apply to [applicable large employers](#) (ALEs)—generally those with **at least 50 full-time employees**, including full-time equivalent employees (FTEs). Employers subject to "pay or play" that do not offer affordable health insurance providing a minimum level of coverage to full-time employees (and their dependents) may be liable for a penalty if at least one full-time employee receives a premium tax credit for purchasing coverage on the Health Insurance Exchange (Marketplace).

This toolkit provides step-by-step guidance on the key areas of "pay or play" for employers, including:

- How to determine if a company is subject to the penalty;
- How to determine ALE status (calculating the number of full-time employees);
- How to determine the full-time status of employees;
- How to determine if a "pay or play" penalty applies; and
- How to calculate the amount of a penalty.

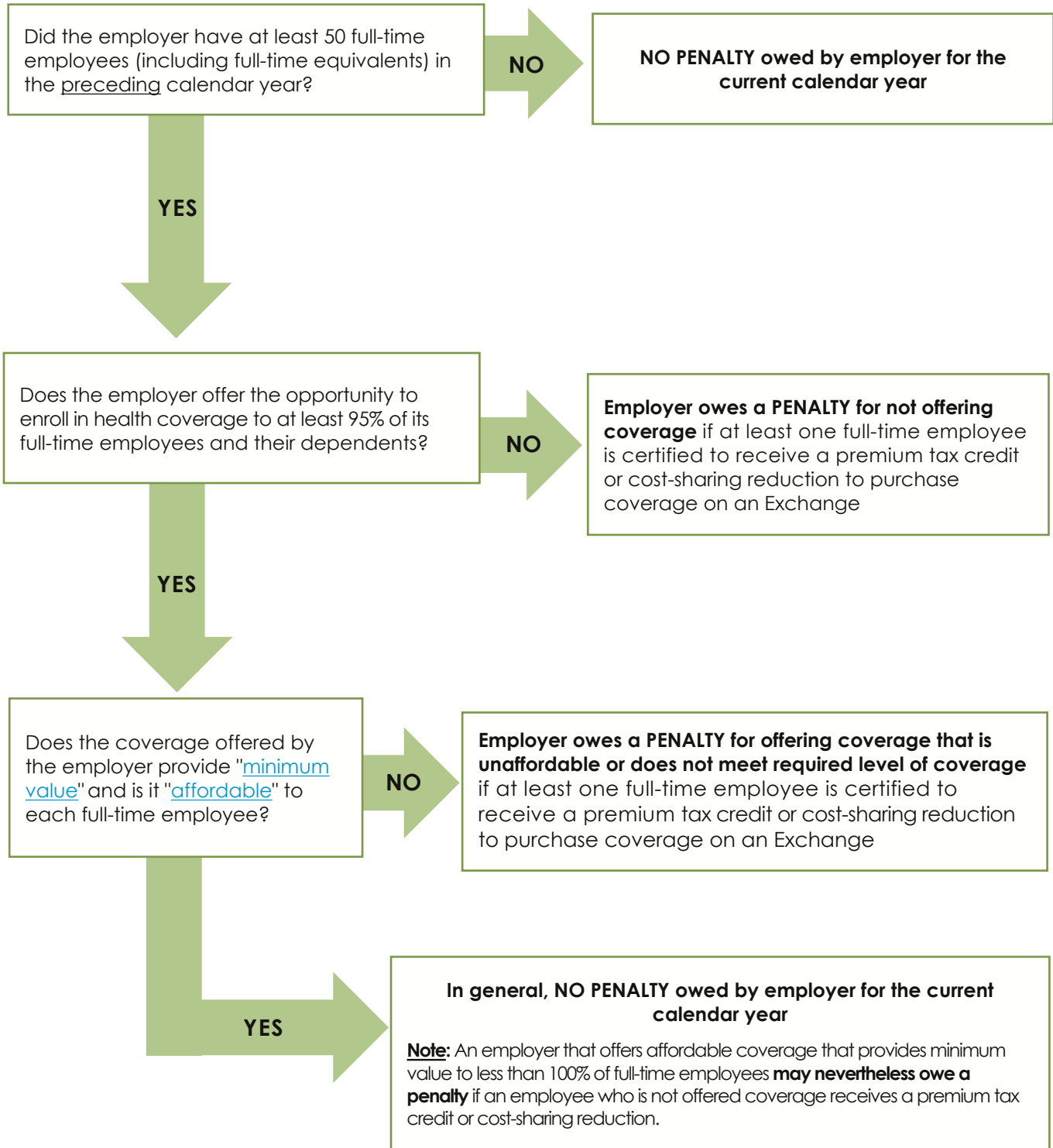
## WHERE TO GO FOR ADDITIONAL INFORMATION AND HELP

The information and summaries provided in this toolkit are based on [final rules](#) issued by the Internal Revenue Service (IRS) and are subject to change. **Compliance with the "pay or play" rules is complex.** This toolkit provides a general overview of key steps and does not address every potential factor that may be relevant for a particular employer, nor is the information intended to constitute legal or tax advice or opinions.

More detailed information about the "pay or play" requirements is available in the [final rules](#) and related [Q&As](#) from the IRS. **Employers are strongly advised to consult with employment law counsel, a professional tax advisor, or the IRS (1-800-829-4933) for individualized guidance regarding compliance.**

# "Pay or Play" Toolkit for Employers

## IS YOUR COMPANY SUBJECT TO A PAY OR PLAY PENALTY?



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## HOW TO DETERMINE APPLICABLE LARGE EMPLOYER STATUS

1. Calculate the number of full-time employees (including seasonal workers<sup>1</sup>) for each calendar month in the preceding calendar year.

A full-time employee for any month is an employee who is employed, on average, at least **30 hours of service per week** (or 130 hours per month).

Hours of service include **hours for which an employee is paid or entitled to payment** even when no work is performed (e.g., vacation or sick leave).<sup>2</sup>

Month 1: \_\_\_\_ Month 2: \_\_\_\_ Month 3: \_\_\_\_ Month 4: \_\_\_\_ Month 5: \_\_\_\_ Month 6: \_\_\_\_  
Month 7: \_\_\_\_ Month 8: \_\_\_\_ Month 9: \_\_\_\_ Month 10: \_\_\_\_ Month 11: \_\_\_\_ Month 12: \_\_\_\_

2. Calculate the number of full-time equivalents (FTEs), including seasonal workers,<sup>1</sup> for each calendar month in the preceding calendar year.

To determine the number of FTEs for a calendar month:

Calculate the **total hours of service** (but not more than 120 hours of service for any employee) for all employees who were not full-time for that month.

**Divide the total hours of service by 120** and record this number, including fractions (which may be rounded to the nearest hundredth), as the number of FTEs for the calendar month.

Month 1: \_\_\_\_ Month 2: \_\_\_\_ Month 3: \_\_\_\_ Month 4: \_\_\_\_ Month 5: \_\_\_\_ Month 6: \_\_\_\_  
Month 7: \_\_\_\_ Month 8: \_\_\_\_ Month 9: \_\_\_\_ Month 10: \_\_\_\_ Month 11: \_\_\_\_ Month 12: \_\_\_\_

\_\_\_\_  
3. Add the number of full-time employees and FTEs from (1) and (2) for each of the 12 months in the preceding calendar year and record the total.

\_\_\_\_  
4. Divide the total sum from step (3) by 12 and record the result, disregarding fractions.

5. If the number in step (4) is less than 50, the employer is not subject to the "pay or play" rules for the current calendar year.

6. If the number is 50 or more, the employer is subject to "pay or play" unless the seasonal worker exception applies.

**Seasonal Worker Exception:** An employer that exceeds 50 full-time employees, including FTEs, for **120 days or fewer** (or 4 calendar months) during the preceding calendar year is not subject to the requirements for the current year if the employees in excess of 50 during that period were **seasonal workers**.

**Note:** Companies that have a common owner or are otherwise related generally are combined to count employees. If the combined total meets the threshold, each company is subject to "pay or play," even those that individually do not employ enough employees to meet the threshold. (Whether a penalty is owed and the amount of any penalty is determined separately for each related company.)

<sup>1</sup> A seasonal worker performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by [29 C.F.R. § 500.20\(s\)\(1\)](#) and retail workers employed exclusively during holiday seasons. Employers may apply a reasonable, good faith interpretation of the term "seasonal worker" and the regulation, including as applied by analogy to positions not otherwise covered.

<sup>2</sup> Employers of employees whose hours of service are particularly challenging to identify or track, or for whom the general rules for determining hours of service may present special difficulties (e.g., adjunct faculty and commissioned salespeople), must use a reasonable method of crediting hours of service that is consistent with the [law's requirements](#). In addition, hours of service performed in certain capacities (e.g., "bona fide volunteers") are not counted.

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## HOW TO DETERMINE FULL-TIME EMPLOYEES: ONGOING EMPLOYEES

To calculate potential liability for a penalty, ALEs must determine each employee's full-time status. An employee is considered full-time if he or she averages at least 30 hours of service per week (or 130 hours per month). As an alternative to a month-by-month calculation, employers may use a look-back method (outlined below) for determining in advance if an **ongoing employee**<sup>3</sup> is to be treated as full-time, based on the employee's hours of service during a previous period.

1. Choose the period of time that will be used to look back and measure an employee's hours of service—this is the STANDARD MEASUREMENT PERIOD.

- The standard measurement period is a defined period of **between 3 and 12 consecutive months** selected by the employer. An employer is permitted to base this period on one week, two week, or semi-monthly payroll periods that include the beginning and end dates of the measurement period.
- An employer may apply different measurement periods for the following categories of employees only:
  - Salaried vs. hourly employees
  - Collectively bargained vs. non-collectively bargained employees
  - Employees in different states
  - Collectively bargained employees covered by separate contracts

2. Determine whether the employee averaged at least 30 hours of service per week (130 hours per month) during the standard measurement period.

- Hours of service include **hours for which an employee is paid or entitled to payment** even when no work is performed (e.g., vacation or sick leave). Hours must be combined for employees performing services for two or more employers that are under common ownership or are otherwise related.<sup>4</sup>
- For non-hourly employees, employers may generally use a days- or weeks-worked equivalency, whereby an employee is credited with 8 hours of service per day (or 40 hours per week) for each day (or week) the employee is credited with at least one hour of service. An employer may use different methods for different categories of non-hourly employees, if the categories are reasonable and consistently applied.
- Special rules apply for teachers and other employees of educational institutions, as well as employees who are rehired or resume services after special periods of unpaid leave (e.g., FMLA).

**Optional:** Utilize additional time (up to 90 days), between the measurement period and the stability period (explained below), to determine which employees are eligible for coverage and to notify and enroll employees—this is the ADMINISTRATIVE PERIOD.

The administrative period **must overlap with the prior stability period** so ongoing employees enrolled in coverage (determined to be full-time based on a prior period) continue to be covered.

3. Treat the employee as full-time (or not) for a certain amount of time after the standard measurement period and any administrative period, based on the hours of service during the measurement period—this is the STABILITY PERIOD.

- Employees determined to be full-time based on the measurement period are treated as full-time during a stability period of **at least 6 consecutive calendar months, no shorter than the standard measurement period**, regardless of the number of hours of service during the stability period (a limited exception may apply in the event of a change in employment status, if certain conditions are met).
- Employees who did not work full-time during the measurement period may be treated as not full-time for a stability period that is no longer than the associated standard measurement period.

<sup>3</sup> An **ongoing employee** is an employee who has been employed for at least one complete standard measurement period.

<sup>4</sup> In such case, the employer for whom the employee has the greatest number of hours for that calendar month treats the employee as a full-time employee for purposes of penalty determinations.

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## HOW TO DETERMINE FULL-TIME EMPLOYEES: NEW EMPLOYEES

In general, before becoming an ongoing employee, full-time employee status for a new employee who is reasonably expected at his or her start date to be a **full-time employee**<sup>5</sup> is based on that employee's hours of service each calendar month. Employers that use the look-back method for ongoing employees may also use a look-back method (outlined below) to determine the full-time status of new **variable hour employees**<sup>6</sup>, **seasonal employees**<sup>7</sup>, and **part-time employees**<sup>8</sup>.

1. Choose an INITIAL MEASUREMENT PERIOD to measure the new employee's hours and determine if the employee averaged at least 30 hours of service per week.

- The initial measurement period, **between 3 and 12 consecutive months**, may begin on any date up to and including the first day of the first calendar month following the employee's start date (or, if later, on the first day of the first payroll period starting on or after the employee's start date, if the employer is using a one week, two week, or semi-monthly payroll period for purposes of determining the initial measurement period).
- Calculate a new employee's hours of service using the same general rules that apply for ongoing employees.

**Optional:** Utilize an ADMINISTRATIVE PERIOD before the start of the STABILITY PERIOD.

- The administrative period may not exceed **90 days total**, including all time between the employee's start date and the date coverage is first offered (other than the initial measurement period).
- The initial measurement and administrative periods combined cannot extend beyond the last day of the first calendar month beginning on or after the first anniversary of the employee's start date.

2. Depending on the employee's hours of service during the initial measurement period, treat the employee as full-time (or not) during the STABILITY PERIOD that follows.

- Treat employees determined to be employed on average **at least 30 hours of service per week as full-time** during a stability period **equal in length** to the stability period established for ongoing employees.
- Employees that do not average at least 30 hours per week may be treated as **not full-time for a stability period not more than one month longer than the initial measurement period**. The stability period may not exceed the remainder of the first entire standard measurement period (plus any associated administrative period) for which a variable hour, seasonal, or part-time employee has been employed.\*

3. Once a new variable hour, seasonal, or part-time employee has been employed for an entire standard measurement period, test the employee again for full-time status.

- Test the employee for full-time status beginning with the employer's standard measurement period, at the same time and under the same conditions as apply to other ongoing employees.

\* An employee determined not to be full-time during the initial measurement period, but full-time during the overlapping or immediately following standard measurement period, must be treated as full-time for the entire stability period corresponding to that standard measurement period (even if that stability period begins before the end of the stability period associated with the initial measurement period).

If there is a period between the end of the stability period associated with the initial measurement period and the beginning of the stability period associated with the first full standard measurement period during which a new employee is employed, the treatment as a full-time employee (or not) continues to apply during such period.

<sup>5</sup> Factors to consider include, but are not limited to, whether the employee is replacing a full-time employee, the extent to which employees in the same or comparable positions are (or are not) full-time, and whether the job was communicated to the new hire or otherwise documented as requiring an average of 30 or more hours of service per week.

<sup>6</sup> A new employee is a **variable hour employee** if, based on the facts and circumstances at the employee's start date, it cannot be determined whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period because the employee's hours are variable or otherwise uncertain.

<sup>7</sup> A new **seasonal employee** is an employee hired into a position for which the customary annual employment is 6 months or less.

<sup>8</sup> A new **part-time employee** is one who is reasonably expected to be employed on average less than 30 hours of service per week during the initial measurement period, based on the facts and circumstances at the employee's start date.

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## HOW TO DETERMINE IF A PAY OR PLAY PENALTY APPLIES

### General Rules

An employer that is subject to the pay or play requirements may be liable for a penalty if:

The employer does not offer health coverage or offers coverage to fewer than 95% of its full-time employees and their dependents, and at least one full-time employee receives a premium tax credit to purchase coverage on an Exchange (Marketplace)

OR

The employer offers coverage to at least 95% of its full-time employees and their dependents, but at least one full-time employee receives a premium tax credit, because that employee was not offered coverage or because the coverage was unaffordable to the employee or did not provide minimum value

### Limited Non-Penalty Periods for Certain Employees

The pay or play rules also provide for limited periods during which an employer generally will not be subject to a penalty. The periods described below are limited non-penalty periods only if the employee is offered health coverage by the first day of the first month following the end of the period, and only if the health coverage that is offered at the end of the period provides minimum value.

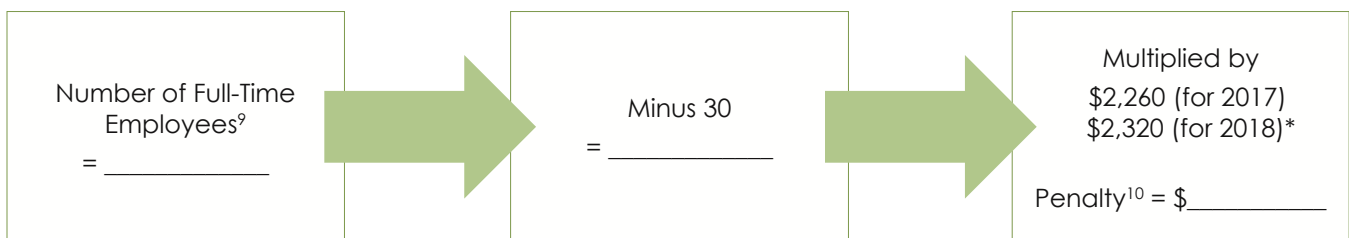
<b>First Year as ALE Period.</b>	January through March of the first calendar year in which an employer is an ALE, but only for an employee who was not offered health coverage by the employer at any point during the prior calendar year.
<b>Waiting Period under the Monthly Measurement Method.</b>	If an ALE is using the monthly measurement method, the period beginning with the first full calendar month in which the employee is first otherwise (but for completion of the waiting period) eligible for an offer of health coverage and ending no later than two full calendar months after the end of that first calendar month.
<b>Waiting Period under the Look-Back Measurement Method.</b>	If an ALE is using the look-back measurement method and the employee is reasonably expected to be a full-time employee at his or her start date, the period beginning on the employee's start date and ending not later than the end of the employee's third full calendar month of employment.
<b>Initial Measurement Period for New Variable, Seasonal &amp; Part-Time Employees.</b>	If an ALE is using the look-back measurement method, and the employee is a variable hour employee, seasonal employee, or part-time employee, the initial measurement period for that employee and the administrative period immediately following the end of that initial measurement period.
<b>Period Following Change in Employment Status that Occurs During Initial Measurement Period.</b>	If an ALE is using the look-back measurement method, and, as of the employee's start date, the employee is a variable hour employee, seasonal employee, or part-time employee that experiences a change to full-time employee status during the initial measurement period, the period beginning on the date of the employee's change in employment status and ending not later than the end of the third full calendar month following the change in employment status. (Note: This period may end sooner under certain conditions.)
<b>First Partial Month of Employment.</b>	If an employee's first day of employment is a day other than the first day of the calendar month, then the employee's first calendar month of employment is a limited non-penalty period.

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## HOW TO CALCULATE THE PAY OR PLAY PENALTY

### Employers Not Offering Coverage

The penalty for an Applicable Large Employer (ALE) that does not offer coverage during the calendar year to at least 95% of its full-time employees and their dependents, where at least one full-time employee is certified to receive a premium tax credit, is calculated as follows:



<sup>9</sup> Do not count full-time equivalent employees (FTEs) or employees in a limited non-penalty period (see page 7).

<sup>10</sup> For an employer offering coverage for some months but not others during the year, the payment is computed separately for each month for which coverage was not offered. The penalty for the month equals the number of full-time employees for the month (minus the allowable reduction) multiplied by 1/12 of \$2,260 (for 2017) or \$2,320 (for 2018).

*\*Note:* Penalty amounts are subject to adjustment for inflation; however, the IRS has not formally released the specific penalty amounts that will apply for 2018. The 2018 amount used above is derived from statutory formulas using the premium adjustment percentage announced by the federal government.

### Example

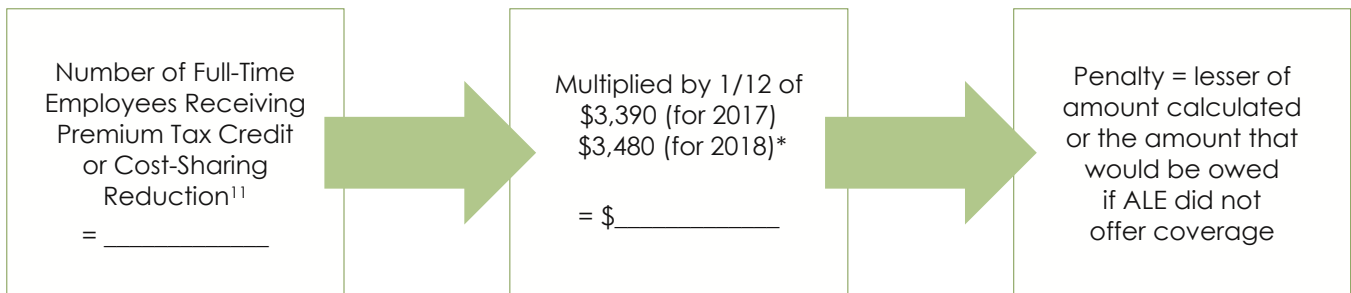
Applicable Large Employer (ALE) employs 100 full-time employees in each calendar month of 2017 and does not provide an employer-sponsored health plan (no limited non-penalty periods apply). At least one of ALE's full-time employees is certified to receive a premium tax credit. ALE is subject to a penalty equal to **70 x \$2,260** (100 full-time employees minus 30, and then multiplied by \$2,260) = **\$158,200** for 2017.



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## Employers Offering Coverage That is Not Affordable or Does Not Provide Minimum Value

For an Applicable Large Employer (ALE) that offers coverage to at least 95% of its full-time employees and their dependents, but has one or more full-time employees who are certified to receive a premium tax credit, the penalty is computed separately for each month as follows:



<sup>11</sup> Do not count full-time equivalent employees, employees in a limited non-penalty period (see page 7), or employees who were offered the opportunity to enroll in coverage under an eligible employer-sponsored plan that satisfied minimum value and met one or more of the affordability safe harbors.

*\*Note:* Penalty amounts are subject to adjustment for inflation; however, the IRS has not formally released the specific penalty amounts that will apply for 2018. The 2018 amount used above is derived from statutory formulas using the premium adjustment percentage announced by the federal government.

### Example

Applicable Large Employer (ALE) employs 100 full-time employees in each calendar month of 2017 and provides an employer-sponsored health plan to these employees (no limited non-penalty periods apply). Five full-time employees of ALE are certified to receive a premium tax credit during each month in 2017 because the coverage offered was unaffordable (the ALE did not meet the requirements for any affordability safe harbor). ALE is subject to a penalty equal to **5 x 1/12 of \$3,390 = (\$1,412.50) x 12 months = \$16,950** (the lesser of \$16,950 and \$158,200) for 2017.

# "Pay or Play" Toolkit for Employers

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