Determining Applicable Large Employer (ALE) Status

Whether an employer is considered an applicable large employer (ALE) that is subject to the pay or play rules is determined each calendar year, **and generally depends on the average size of an employer's workforce during the prior year**.

All employers that are ALEs are subject to the pay or play rules, including for-profit, nonprofit (whether or not a tax-exempt organization) and government entity employers.

General Rules

If an employer has, on average, **at least 50 full-time employees**, including full-time equivalent employees (FTEs), during the prior year, the employer is an ALE for the current calendar year.

If an employer has, on average, **fewer than 50 full-time employees**, including FTEs, during the prior year, the employer is **not** an ALE for the current calendar year and is therefore not subject to the pay or play rules for the current year.

ALE Calculation

To determine its workforce size for a year, an employer must:

1. **Calculate the number of full-time employees (including seasonal workers) for each calendar month in the prior 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 of service per month).
    - Hours of service include hours for which an employee is paid or entitled to payment even when no work is performed (for example, vacation or sick leave).
2. **Calculate the number of full-time equivalent employees or FTEs (including seasonal workers) for each calendar month in the prior 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, and divide the total hours of service by 120, including fractions (which may be rounded to the nearest hundredth). The total is the number of FTEs for that calendar month.
3. **Combine the totals from steps 1 and 2.**
4. **Divide the total sum from step 3 by 12 (disregarding fractions).**

Exceptions

For purposes of determining if an employer is an ALE, all employees are counted, regardless of whether the employees are eligible for coverage from other sources, subject to the following limited exceptions:

- **TRICARE/Veterans Administration Coverage.** An employee will not be counted toward the 50-employee threshold for a month in which the employee has medical care through the military, including Tricare or Veterans' coverage.
- **Seasonal Workers.** An employer that exceeds 50 full-time employees, including FTEs, for **120 days or fewer** (or four 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**. 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.
- **Employees Working Outside the U.S.** Employees (U.S. citizens or non-citizens) working only abroad generally are not taken into account for purposes of determining whether an employer is an ALE.

Basic ALE Determination Examples

Example 1 – Employer is Not an ALE

- Company X has 40 full-time employees for each calendar month during the prior year.
- Company X also has 15 part-time employees for each calendar month during the prior year, 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 x 60 = 900]. Dividing the combined hours of service of the part-time employees by 120 equals 7.5 [900 / 120 = 7.5]. **This number, 7.5, represents the number of Company X's FTEs for each month during the prior year.**
- **Company X adds up the total number of full-time employees for each calendar month of the prior year, which is 480 [40 x 12 = 480].**
- **Company X adds up the total number of FTEs for each calendar month of the prior year, which is 90 [7.5 x 12 = 90].**
- **Company X adds those two numbers together and divides the total by 12, which equals 47.5 [(480 + 90 = 570)/12 = 47.5].** Because the result is not a whole number, it is rounded to the next lowest whole number, so 47 is the result.
- **So, although Company X has 55 employees in total [40 full-time and 15 part-time] for each month in the prior year, it has 47 full-time employees (including FTEs) for purposes of ALE determination. Because 47 is less than 50, Company X is not an ALE for the current year.**

Example 2 – Employer is an ALE

- Company Y has 40 full-time employees for each calendar month during the prior year.
- Company Y also has 20 part-time employees for each calendar month during the prior year, each of whom has 60 hours of service per month. When combined, the hours of service of the part-time employees for a month totals 1,200 [20 x 60 = 1,200]. Dividing the combined hours of service of the part-time employees by 120 equals 10 [1,200 / 120 = 10]. **This number, 10, represents the number of Company Y's FTEs for each month during the prior year.**
- **Company Y adds up the total number of full-time employees for each calendar month of the prior year, which is 480 [40 x 12 = 480].**
- **Company Y adds up the total number of FTEs for each calendar month of the prior year, which is 120 [10 x 12 = 120].**
- **Company Y adds those two numbers together and divides the total by 12, which equals 50 [(480 + 120 = 600)/12 = 50].**
- **So, although Company Y only has 40 full-time employees, it is an ALE for the current year due to the hours of service of its FTEs.**

Additional examples can be found in §54.4980H-2 of the federal regulations.

Employer Aggregation Rules

Companies with a common owner or that are otherwise related under Section 414 of the Internal Revenue Code are generally **combined and treated as a single employer for determining ALE status**.

If the combined number of full-time employees and FTEs for the group is large enough to meet the definition of an ALE, **then each employer in the group (called an ALE member) is part of an aggregated ALE group and is subject to the pay or play rules, even if, separately, the employer would not be an ALE.**

Important Note: The rules for combining related employers **do not apply** for purposes of determining whether a particular company owes a pay or play penalty or the amount of any penalty. That is determined **separately** for each related company, taking into account that company's offer of coverage (or lack thereof) and based on that company's number of full-time employees. Thus, one ALE member may fail to offer coverage and may owe a pay or play penalty, while another ALE member may offer coverage and not owe a penalty.

Employer Aggregation Example

- Corporation X owns 100% of all classes of stock of Corporation Y and Corporation Z. Corporation X has no employees at any time during the prior year.
- For every calendar month in the prior year, Corporation Y has 40 full-time employees and Corporation Z has 60 full-time employees. Neither Corporation Y nor Corporation Z has any FTEs.
- Corporations X, Y, and Z are considered a controlled group of corporations. **Because Corporations X, Y and Z have a combined total of 100 full-time employees for each month during the prior year, Corporations X, Y, and Z, together, are an ALE for the current year.**

Application to New Employers

A new employer (that is, an employer that was not in existence on any business day in the prior calendar year) is an ALE for the current calendar year if it **reasonably expects** to employ, and **actually does** employ, an average of at least 50 full-time employees (including FTEs) on business days during the current calendar year. By contrast, for the next calendar year (the year after the first year the employer was in existence), the employer determines its ALE status under the general rules discussed above.

Special Transition Rule for an Employer's First Year as an ALE: If the ALE offers coverage to an employee on or before **April 1** of the first calendar year for which the ALE is subject to the pay or play rules, the employer will generally not owe a penalty for not offering coverage to the employee for January through March of that year, provided that the coverage offered by April 1 provides minimum value. (However, the ALE may still be subject to a penalty for not offering coverage to at least 95% of its full-time employees).

Additional Information

- ACA Information Center for Applicable Large Employers (ALEs)
- Resources and Outreach Materials for ALEs