ACA FACT SHEET- APPLICABLE LARGE EMPLOYER

EMPLOYER SHARED RESPONSIBILITY "PAY OR PLAY" PROVISION

The Affordable Care Act (ACA) enacted the ***Employer Shared Responsibility*** provision under §4980H of the Internal Revenue Code (Code) which assesses a tax penalty to Applicable Large Employers (ALEs) who either (1) fail to offer coverage to a certain number of its full-time employees or (2) fail to offer coverage that is affordable or provides minimum value. An ALE is an employer who employed an average of at least 50 full-time employees[1] (including full-time equivalents[2] (FTEs)) on business days during the preceding calendar year.

This provision is commonly referred to as "Pay or Play" because ALEs potentially "Pay" a penalty if they do not "Play" by the rules of offering Minimum Essential Coverage (MEC) as required by the ACA. **However, Hawaii's Prepaid Healthcare Act is already in effect, and more beneficial to employees, causing Pay or Play mandate to have minimal impact in Hawaii.** Penalties are assessed if it is identified that one or more employees obtain coverage through an Exchange and receive a subsidy. In order to avoid these penalties an ALE must:

(1) Offer MEC to 95% of full-time employees and eligible dependents[3], and offer:

(2) The opportunity to enroll in a medical plan, that:

a. Meets minimum actuarial value requirements equal to the value of a bronze plan offered on the Exchange; meaning the plan pays for at least 60% of the cost of covered benefits (including substantial coverage of inpatient services and physician services), and

b. Is "affordable," meaning the employee's portion of the employee-only premium is no greater than **9.5%** (of total household income) based on one of the three (3) IRS safe harbors:

- W-2 wages from prior calendar year
- Rate of Pay (not permitted for tipped or commissioned employees)
- The Federal Poverty Level

	Play	**Selective Play MEC Only**	**Selective Play Carve-Out**	**Pay**
Health Care plan Offered	Offer MEC to at least 95% of full-time employees • Meets minimum value, and • Employee pays no more than 9.5% of employee only coverage level	Offer MEC to at least 95% of full-time employees Plans do not meet minimum value and affordability requirements	Offer MEC to less than 95% of full-time employees (e.g. "carve out" by class) (Regardless of whether plans meet minimum value and affordability requirements)	Do not offer employer-sponsored coverage, or Pay additional compensation to "assist" with purchasing plans on the Exchange (part of taxable wages)
Penalty if at least ONE full-time employee obtains subsidized (premium tax credit or cost sharing reductions) Exchange coverage	**None**	$3,390 annually per full-time employee that obtains subsidized Exchange coverage[4]	$2,260 annually per full-time employee, minus 30 full-time employees	$2,260 annually per full-time employee, minus 30 full-time employees

This information reflects our interpretation of the regulations and is not intended as, and should not be taken as, legal advice.

[2] FTEs are calculated by adding up all part-time employee total hours per month divided by 120. This total will equal the number of FTEs for **that** month. Repeat the calculation for every calendar month; add all calendar months together and divide number by 12 to determine average monthly full-time employee count.
[3] Eligible dependents are dependents up to age 26, coverage does not have to be offered to spouses.
[4] The ALE's total penalty for full-time employees that obtain a subsidy will not exceed the penalty amount for not offering MEC ($2,260 times the number of full-time employees, minus the first 30 employees).