ACA Fact Sheet – Applicable Large Employer
Employer Shared Responsibility ("Pay or Play") Provision for 2020 Coverage

HMAA
HAWAII MEDICAL ASSURANCE ASSOCIATION

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) that 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 remains in effect, and more beneficial to employees, causing Pay or Play to have a 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**	\$4,060 annually per full-time employee who obtains subsidized Exchange coverage[4]	\$2,700 annually per full-time employee, minus 30 full-time employees	\$2,700 annually per full-time employee, minus 30 full-time employees

This information is based on 2020 coverage information to be reported in the first quarter of 2021. It reflects our interpretation of the regulations and is not intended as, and should not be taken as, legal advice.

[1] A full-time employee is one who works at least 30 hours during a week.
[2] FTEs are calculated by adding 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 by 12 to determine the 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] An ALE's total penalty for full-time employees who obtain a subsidy will not exceed the penalty for not offering MEC (\$2,500 times the number of full-time employees, minus the first 30 employees).