

APPENDIX A

Applicable Large Employer 'ALE' Worksheet Instructions

The ALE Worksheet provides a tool with which to determine and document your ACA reporting status. It is easy to use and requires you to perform some basic calculations as described below. If you determine per the Worksheet that your business is on the cusp, be sure to monitor your status and reporting requirements. To do so, simply update this Worksheet every calendar year.

It is important that you become familiar with the following terms that apply to your workforce.

Full-Time Employees (FTEs): The statute defines a full-time employee as one whom, with respect to any month, works at least 30 hours per week. (Note: 130 hours of service in a calendar month is considered the monthly equivalent of at least 30 hours of service per week).

An "employee" is defined under the common-law standard, the same standard used to determine whether someone is a consultant.

The employer-employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also regarding the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only regarding what services shall be performed, but also how it shall be performed. In this connection, the employer need not actually direct or control the manner in which the services are performed; it is sufficient if s/he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, individuals are not employees if they are subject to the control or direction of another merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result.

Some examples of persons not considered employees: leased employee, a sole proprietor, a partner in a partnership, and a 2% S corporation shareholder. Employees who work outside the U.S. are excluded. Typically, all persons who receive a W-2 are employees.

Full-time Employees: Per the statute, an FTE is one whom, with respect to any month, works at least 30 hours per week. (Note: 130 hours of service in a calendar month is treated as the monthly equivalent of at least 30 hours of service per week.)

Full-Time Equivalent Employees: FTE-equivalents are included. Include and count part-time employees as a fraction of an FTE with the number of hours regularly scheduled to work over 30, or if monthly the number of hours over 120 scheduled in a month. These part-time employees are added together and become your FTE-equivalents. (Seasonal and Variable Hour employees, if applicable to your workforce, are counted as part-time employees for this calculation.)

Example: This employer is an ALE with 50 FTEs: 40 employees are regularly scheduled to work 30 or more hours per week and 20 employees are regularly scheduled to work 15 hours per week or 60 hours per calendar month. Each of the 40 employees is counted once and each of the 20 part-time employees is counted as a one-half employee, $15/30$ or $1/2$. This calculation adds 10 FTE-equivalents. $40 \text{ FTEs} + 10 \text{ FTE-equivalents} = 50 \text{ total FTEs}$.

Example: This employer is **NOT** an ALE with 50 FTEs: 40 employees are regularly scheduled to work 130 or more hours per calendar month and 15 employees are regularly scheduled to work 60 hours per calendar month. Each of the 40 employees is counted once and each of the 15 part-time employees is counted as a one-half employee, $60/120$ or $1/2$. This calculation adds 7.5 FTE-equivalents. $40 \text{ FTEs} + 7.5 \text{ FTE-equivalents} = 47.5$ total FTEs. (Note: Because the result is not a whole number, it is rounded to the next lowest whole number, so 47 is the result.)

Hour of Service: The term hour of service means each hour for which an employee is paid, or entitled to payment, for the performance of duties for the employer; and each hour for which an employee is paid, or entitled to payment by the employer for a period of time during which no duties are performed due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence.

Special Unpaid Leave. The time your FTE is on special unpaid leave is counted towards hours worked. Special Unpaid Leave means the following:

- 1) Unpaid leave that is subject to the Family & Medical Leave Act of 1993 (FMLA), Public Law 103-3, 29 U.S.C. 2601 et seq.;
- 2) Unpaid leave that is subject to the Uniformed Services Employment & Reemployment Rights Act of 1994 (USERRA), Public Law 103-353, 38 U.S.C. 4301 et seq.; or
- 3) Unpaid leave on account of jury duty.

During Special Unpaid Leave the hours of service are added at the rate equal to the average of the prior months during the same calendar year. There is no limit to the number of Hours of Service that can be credited with respect to Special Unpaid Leave.

Educational Organizations Break In Service: For an FTE's Break in Service that is not a part of a Special Unpaid Leave, count the months on leave as months worked. For instance, count staff as FTEs during the summer break with the average hour credited. No more than 501 hours of service are required to be credited.

For both Special Unpaid Leave and Educational Organizations Break in Service purposes, you may use any reasonable method to credit hours if applied consistently. If an employee's average rate is being computed for a measurement period that is shorter than six months, use the six-month period ending with the close of the measurement period to compute the average hours of service.

Seasonal Workers: The term Seasonal Worker is more technical than Seasonal Employee in regards to tracking ACA hours. A Seasonal Worker is one who performs labor or services on a seasonal basis. Seasonal Employees can be full-time or part-time employees.

Use the following factors to determine whether an employee is a Seasonal Worker:

- 1) The employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. Workers who move from one seasonal activity to another, while employed in agriculture or performing agricultural labor, are employed on a seasonal basis even though they may continue to be employed during a major portion of the year.
- 2) A worker is employed for a limited time only, or his performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely, is not seasonal.

Seasonal Worker does not include the following:

- 1) The employment of any foreman or other supervisory employee who is employed by a specific agricultural employer or agricultural association essentially on a year round basis.
- 2) The employment of any worker who lives at his/her permanent place of residence on the employer's land, when that worker is employed by a specific agricultural employer or agricultural association on essentially a year round basis to perform a variety of tasks for the employer and is not primarily employed to do field work.

This includes workers employed exclusively during holiday seasons. Employers may apply a reasonable, good faith interpretation of the term Seasonal Worker.

Seasonal Workers Relief: If your FTE count remains under 50 except for a 120-day period (can be counted as four calendar months) in which you employ over 50 individuals as Seasonal Workers, then you are not an ALE. This rule allows you to avoid ALE status when your non-seasonal workforce (including FTEs) is 50 or fewer employees. This exception does not apply if you employ more than 50 individuals for more than four calendar months. The 120 day period (4 month period) does not have to be consecutive.

Volunteers and Work Study: Do not count a "Bona fide volunteer" or someone participating in a "Work Study Program."

Bona Fide Volunteer: An employee of a government entity or an organization described in Section 501(c) who is exempt from taxation under Section 501(a) whose only compensation from that entity or organization is in the form of—(i) Reimbursement for (or reasonable allowance for) reasonable expenses incurred in the performance of services by volunteers, or (ii) Reasonable benefits (including length of service awards), and nominal fees, customarily paid by similar entities in connection with the performance of services by volunteers.

Work Study Program: Do not count any hours for services performed as part of a program that provides part-time employment to students at institutions of higher education.

ALE Worksheet Calculations

To complete the Worksheet, some basic calculations and sorting functions are necessary. You will need to sort the page for FTEs, part-timers, and seasonal employees, and must add fractions for any part-time employees to determine FTEs.

As mentioned earlier, if you determine per the Worksheet that your business is on the cusp, be sure to monitor your status and reporting requirements. To do so, simply update this Worksheet every calendar year. No matter your determination, we recommend that you complete the Worksheet every calendar year.

Entering Data

- Columns A and B: Enter a line for each employee. Include all classes of employees defined above. The ID field is optional for your use in sorting or locating data.
- Column C: Enter the hours regularly scheduled to work during the month. Do not enter reductions for Special Unpaid Leaves defined above, approved leaves, vacations, or overtime.
- Column D: Enter the status – FTE, Part-Time.
- Column E: Enter Yes or No for Seasonal Employee status.

Calculations

- 1) Sort each monthly spreadsheet by the status.
- 2) Count each FTE once. Seasonal employees who are considered FTEs are counted here. Enter the number of FTEs for each month on the first tab, Line 6, "Count."
- 3) Add Part-Time Employee hours together for each month; enter total PTE hours for each month on the first tab, Line 12, "Hours." Line 13 will automatically divide the number of PTS hours by 120 to give you the number of FTE-equivalent employees.
- 4) Line 18, first tab: automatically adds Line 6, your count of FTEs, and Line 13, your FTE-equivalent employees.
- 5) Line 18, Column O, under "Average" will provide you with your average FTE count for ACA reporting purposes.

Seasonal Relief Rule – if applicable.

- 1) Sort each month by Column E, "Seasonal Employees."
- 2) Remove the Seasonal Employees from the FTE count and enter the number of remaining Non-Seasonal FTEs on Line 26 on the first tab.
- 3) Recalculate the part-time hours by removing seasonal employees. Add non-seasonal part-time hours for each month, and enter them on the first tab for each month, line 32.
- 4) You are not an ALE if your average on line 38, column O is under 50.
- 5) You are not an ALE if there are four months in which the FTE count on Line 38 is under 50. The four month period does not have to be consecutive.

ACA Veterans

Specifically, an employee is not taken into account for the ALE determination for any month that he or she has medical coverage provided by any of the uniformed services (including TRICARE) or under certain Veterans' Affairs (VA) health care programs. The exemption applies for months beginning after December 31, 2013.

Exemption for Health Coverage Under Tricare or the Veterans Administration: Solely for purposes of determining whether an employer is an applicable large employer under this paragraph for any month, an individual shall not be taken into account as an employee for such month if such individual has medical coverage for such month under:

- (i) chapter 55 of title 10, United States Code, including coverage under the TRICARE program, or
- (ii) under a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary.