

LEGAL UPDATE

AFFORDABLE CARE ACT UPDATES FOR 2023

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ACA UPDATES FOR 2023

On Aug. 16, 2022, the IRS updated its frequently asked questions (FAQs) on the employer shared responsibility (“ESRP” or “pay or play”) rules under the Affordable Care Act (ACA) to include updated penalty amounts for 2023. For calendar year 2023, the “sledgehammer” adjusted penalty amount is \$2,880 and the “tack hammer” adjusted penalty amount is \$4,320.



For the calendar year 2023, the adjusted sledgehammer penalty amount is \$2,880 and the adjusted track hammer penalty amount is \$4,320.

An Applicable Large Employer (ALE) is one that in the prior calendar year had 50 or more full-time employees working an average of 30 hours per week or more or the equivalent.

Pay or Play Penalty Calculations

Under the pay or play rules, an applicable large employer (ALE) is only liable for a penalty if at least one full-time employee receives a subsidy for Exchange coverage. Employees who are offered affordable, minimum value (MV) coverage generally are not eligible for these Exchange subsidies.

Depending on the circumstances, one of two penalties may apply under the pay or play rules—the 4980H(a) penalty (the “sledgehammer”) or the 4980H(b) penalty (the “tack hammer”).



- ALEs are expected to offer qualifying health care coverage to substantially all (generally, at least 95%) of its full-time employees and dependents. If any of the ALEs full-time employees receive a subsidy toward their Exchange plan, the ALE may be penalized under section 4980H(a). The monthly penalty assessed on ALEs that do not meet the threshold is equal to the ALE’s number of full-time employees (minus the first 30) multiplied by 1/12 of \$2,880 (as adjusted in 2023), for each month it applies.
- Under Section 4980H(b), ALEs that offer qualifying coverage to substantially all full-time employees and dependents may still be subject to a penalty. If at least one full-time employee obtains a subsidy through an Exchange, and coverage is unaffordable or does not provide MV, the ALE may still be subject to a penalty. The monthly penalty assessed on an ALE for each full-time employee who receives a subsidy is 1/12 of \$4,320 (as adjusted in 2023) for any month it applies. The total penalty for an ALE is limited to the 4980H(a) penalty amount.





Some commentators use the terms “sledgehammer” and “tack hammer” to describe the potential penalty impact on employer plans to demonstrate the differences in the potential impact. Also, they seem ironic. The sledgehammer penalty is a larger individual amount than the tack hammer penalty. However, the sledgehammer penalty has more potential impact on the employer as it can be applied to all full-time employees (minus the first 30) if one full-time employee who is not offered qualifying employer coverage obtains a subsidy for coverage on an ACA exchange. The penalty is even assessed using those full-time employees who have employer coverage. The tack hammer penalty, by contrast, even though it is larger for an individual, only applies to the specific individual who obtains subsidized coverage on an ACA exchange. That difference is just one of many details that adds to the continuing confusion surrounding the pay or play provisions.