Affordable Care Act 101: What The Health Care Law Means for Small Businesses

March 2014

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Small Business and Health Care

For years, small businesses have reported that their **NUMBER ONE** concern has been access to **AFFORDABLE HEALTH CARE.**

Affordable Care Act

Currently, small businesses pay on average 18% more than big businesses for health insurance. The Affordable Care Act (ACA) will help small businesses by lowering premium cost growth and increasing access to quality, affordable health insurance.

ACA Reduces Premium Cost Growth and Increases Access to Affordable Care

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Before ACA, Small Employers Faced Many Obstacles to Covering Workers

- Too few choices
- Higher premiums and unpredictable rate increases
- Higher rates for groups with women, older workers & those with chronic health concerns or high-cost illnesses, in most states
- Waiting periods or no coverage for individuals with Pre-Existing Conditions

Under the ACA, insurance companies:

- Face limits on administrative spending. Most insurers must now spend at least 80 percent of consumers' premium dollars on actual medical care
- Must disclose and justify proposed rate hikes of 10% or more, which states, or the federal government, may review
- Can't charge higher rates or deny coverage because of a chronic or pre-existing condition
- Can't charge higher rates for women, and face limits on charging additional premiums for older employees
- Must pool risks across small groups creating larger pools like large businesses
- Must not have annual dollar limits on coverage
- Must offer plans that provide a core package of "Essential Health Benefits" equal to typical employer plans in the state

ACA Reduces Premium Cost Growth and Increases Access to Affordable Care

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The Affordable Care Act increases access to affordable, quality health care for the self-employed and small businesses

- **For 2010 thru 2013,** worth up to **35 percent** of their premium contributions (25% for tax-exempt employers) for their employees' health insurance. **For 2014 and beyond**, eligible small businesses can get a tax credit worth up to **50 percent** (35% for tax-exempts) for health coverage offered to employees **through the SHOP.**
- **Better options through new Health Insurance Marketplaces**: As of January 1, 2014, the self-employed and small businesses around the country have access to a range of affordable health care options through either the Individual Marketplace or the SHOP.

Health Care Insurance Reforms Are Making a Difference for All Americans

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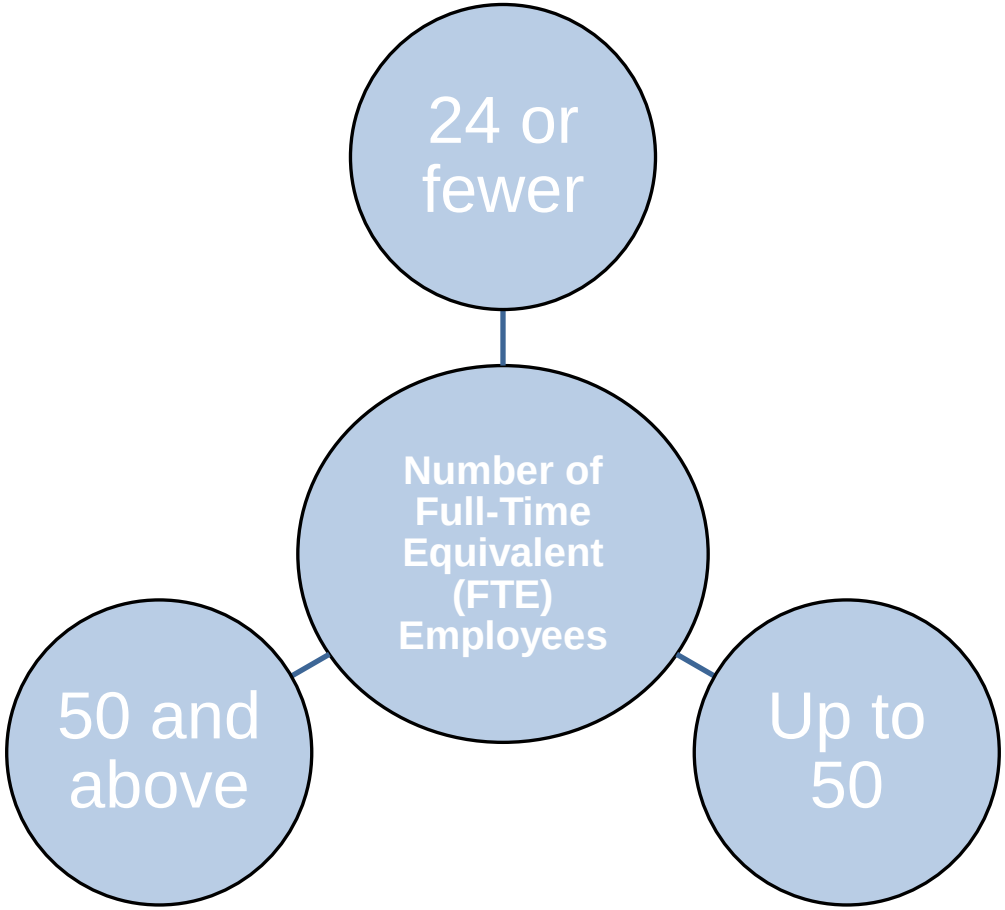
The Affordable Care Act is already making a difference for all Americans by offering strong consumer protections, improving quality and lowering costs, and increasing access to affordable care

- **6.6 Million Young Adults Have Coverage Through Parents' Plans**: 6.6 million young adults, including 3.1 million who were previously uninsured, now have health coverage through provision allowing young adults to stay on parent's plan until their 26th birthday
- **17 Million Children Cannot Be Denied Coverage Due to A Pre-existing Condition,** and in 2014, 129 million Americans with pre-existing conditions cannot be denied coverage or charged more
- **15 Million Americans Can No Longer Be Dropped by Their Insurance Companies**: Without ACA, the insurance industry could return to retroactively canceling coverage for a sick patient based on an unintentional mistake in their paperwork
- **6.1 million seniors saved over $5.7 billion for prescription drugs:** In 2012, more than 3.5 million seniors and people with disabilities who reached the Medicare Part D coverage gap received more than $2.5 billion in discounts, averaging $706 per beneficiary. Since the law was enacted, 6.1 million seniors saved over 5.7 billion for prescription drugs.
- **Electronic Records Reform**: According to The Centers for Disease Control and Prevention's National Center for Health Statistics (NCHS), the percentage of doctors adopting electronic health records increased from 48 percent in 2009 to 72 percent in 2012. Furthermore, at least two thirds of physicians have computerized capability to improve patient safety through various electronic tools (electronic medication lists, etc.) as of 2012.

How Will ACA Impact Small Businesses?

It often depends on the size of the business.

How many employees does the business have?



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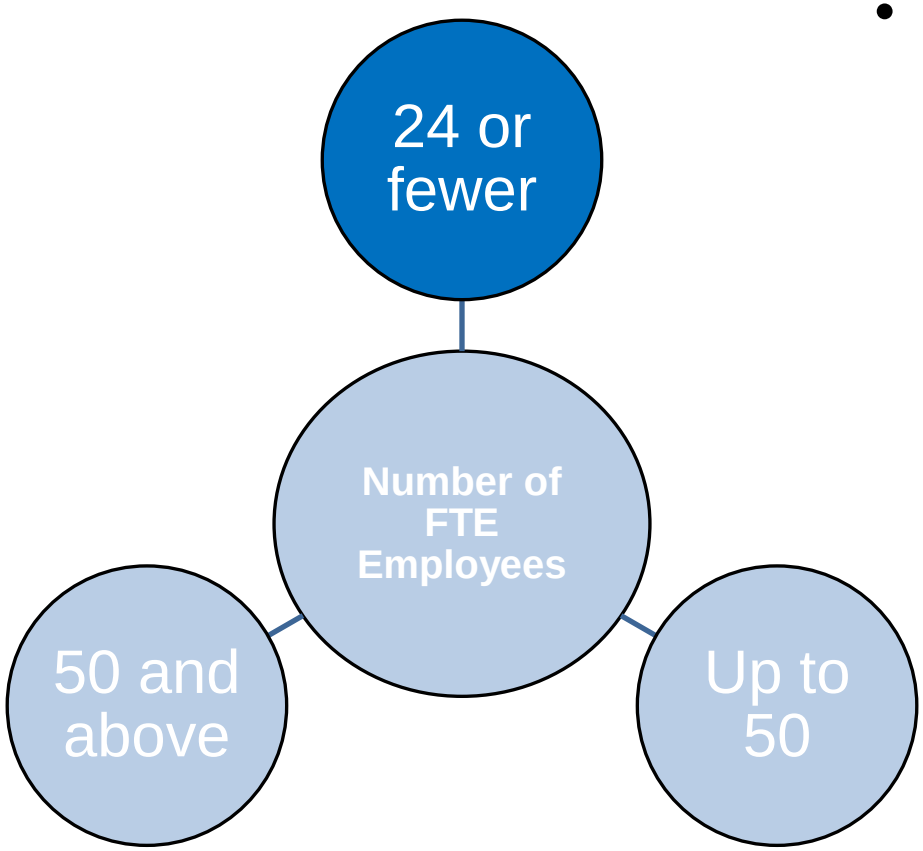
Small Business Health Care Tax Credit

Businesses with 24 or Fewer FTE Employees



- If these smaller businesses provide coverage, they may qualify for the **Small Business Health Care Tax Credit** to help offset costs:
  - Must have average annual wages below $50,000; and
  - Contribute a uniform 50% or more toward employees' self-only premium costs

Note: The **maximum tax credit** is available to employers with 10 or fewer full-time equivalent employees and average annual wages of less than $25,000

Small Business Health Care Tax Credit

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- In 2010 - 2013, **up to 35%** of a for-profit employer's premium contribution (25% for a tax-exempt employer)
  - Employers may still deduct remainder of contribution
  - Credit can be claimed through 2013

- Starting in 2014, the **credit goes up to 50%** (35% for tax-exempt employers)
  - To take advantage of the credit, employees of business must enroll in coverage offered by employer through one of the SHOP certified plans
  - Credit can be claimed for any 2 consecutive taxable years beginning in 2014 (or beginning in a later year) through the SHOP
- Transition relief for employers with plan years differing from their taxable years
- Note that this is a Federal credit, and that some states may also have additional tax credits available

Small Business Health Care Tax Credit

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Business employs 24 or fewer full-time equivalent employees

+

Employees' average annual wages are less than $50,000

+

Business pays a uniform amount of at least 50% of employees' self-only premium costs

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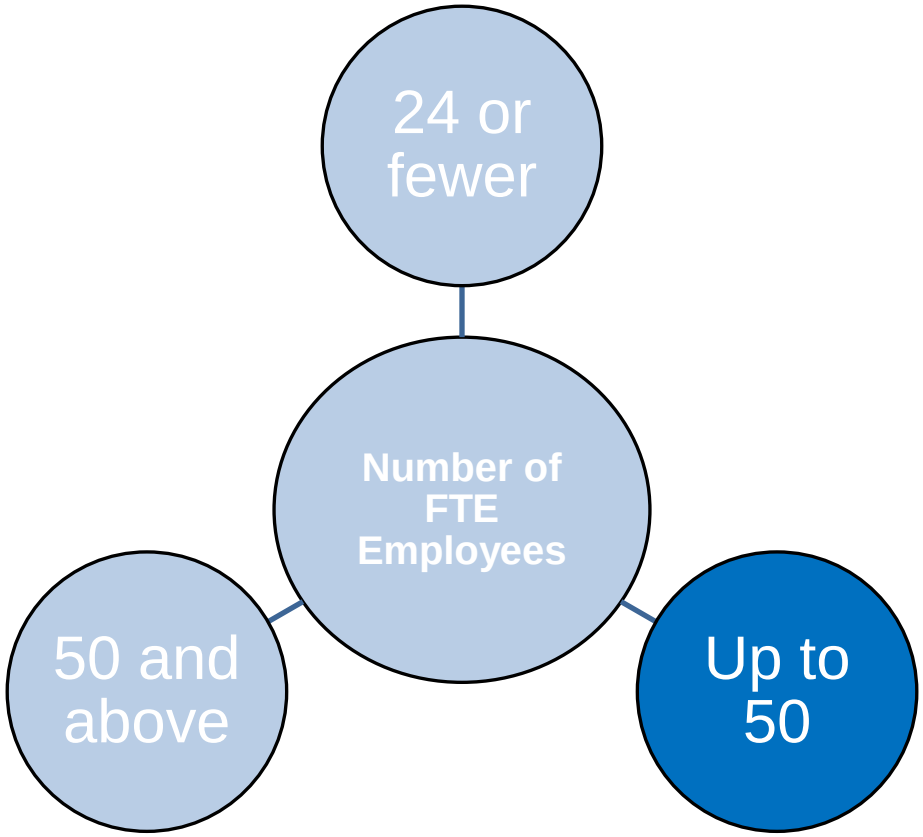
Up to 35% Federal Tax Credit in 2013 and *50% in 2014 if for-profit entity

**SHOP participants only*

Businesses with Up to 50 FTE Employees



- Starting January 2014, if a small business of this size chooses to offer coverage, there is a new way to do so: **Small Business Health Options Program** (SHOP) Marketplace
- Enhanced SB Health Care Tax Credits available for eligible employers with 24 or fewer employees participating in SHOP

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2014:
The SHOP Marketplace

What is the SHOP Marketplace?

SHOP = Small Business Health Options Program

- Part of the Health Insurance Marketplace created by the Affordable Care Act (ACA)
- Offers employers a choice of health insurance plans and dental plans and tools to make informed choices
- Offers access to health insurance plans that must include certain "Essential Health Benefits"
- Offers qualified small employers access to the enhanced Small Business Health Care Tax Credit—now worth up to 50% of employer's premium contributions
- Works with new insurance reforms to lower barriers to offering health insurance

Who Can Purchase SHOP Coverage?

Small employers who:

- Have 50 or fewer full-time employees in 2014
- Have at least one common law employee
- Offer coverage to all of their **full-time** employees
  - Employees working on average 30 or more hours per week
- Meet minimum participation rates
  - In states using Federally Facilitated SHOP Marketplace, at least 70% of full-time employees must accept your offer of insurance

Self–employed, owner-only companies use individual Marketplace

- Sole proprietors and shareholders > 2% S corp. with no employees
- Owners, co-owners and their spouses

Buying SHOP Coverage: When & How?

When can you offer a SHOP Qualified Health Plan?

- Get started now, or
- Offer anytime during the year
  - These timing options also apply to offering a SHOP Qualified Dental Plan

How do you buy a SHOP Qualified Health Plan?

- For Federally Facilitated SHOP, in 2014 only—must use Direct Enrollment
  - Work directly with an agent, broker or insurance company
  - Similar to how small businesses have gotten coverage in the past
  - Use the same process for buying a SHOP Qualified Dental Plan
- With Direct Enrollment you'll:
  - Select a SHOP Qualified Health Plan to offer employees (and a SHOP Qualified Dental Plan, if applicable.)
  - Have the agent, broker, or insurer help enroll those employees who accept
  - Pay the insurance company, directly or with the help of an agent or broker
- In states running their own SHOP Marketplace
  - Enrollment processes may differ
  - Many offer online enrollment

Federally Facilitated SHOP Eligibility: What You Need to Know

Employers using Direct Enrollment in 2014 may still qualify for the Small Business Health Care Tax Credit if they:

- Have employees enrolled in a SHOP Qualified Health Plan
- Meet other requirements for the credit, and
- Receive an "eligibility determination" from the SHOP Marketplace
  - Means the SHOP Marketplace finds you meet the requirements to buy SHOP coverage

An eligibility determination from the Federally Facilitated SHOP in 2014

- Is not required before buying SHOP coverage
  - Goal: to help you get benefits of coverage and tax credit sooner
  - Don't need to apply at all if not seeking the tax credit
- Is required for those who want to claim the Small Business Health Care Tax Credit
  - Must get determination before the end of 2014
  - Recommend sending in application within a week of enrollment; no later than December 1

If you're determined not to be eligible after buying SHOP coverage

- You can't claim the tax credit, but
- Your insurance company need not end your coverage

Federally Facilitated SHOP Eligibility: How to Apply

To apply for an eligibility determination from the Federally Facilitated SHOP Marketplace, you can:

- Ask an agent, broker or insurance company for help
- Get help from a Marketplace-approved Navigator or assister
- Get the paper application and instructions from HealthCare.gov
- Apply by phone through the SHOP Employer Call Center:
  1-800-706-7893 (1-800-706-7915 – TTY) M-F 9 am-7pm ET

The SHOP Marketplace will notify you:

- By phone and e-mail
- By regular mail, if you request this
- Within 3-5 days of receipt

Role of the SHOP Marketplace :

- Determines whether you're eligible to participate in the SHOP
  - This determination is a requirement for receiving the tax credit
- Does not determine whether you're eligible to receive the tax credit.
  - This is an IRS matter

How SHOP Works: Moving Toward Employee Choice

A key goal of the SHOP:

Options for small employers and their employees

- Such as offering employees a single plan or a choice of plans

In 2014:

- The Federally Facilitated SHOP Marketplace offers employer choice, but no employee choice option
- States running own SHOP can offer employee choice option -- many do

2015 and after:

- The SHOP in all states may offer small employers an employee choice option
- The SHOP can choose to make additional options available to employers

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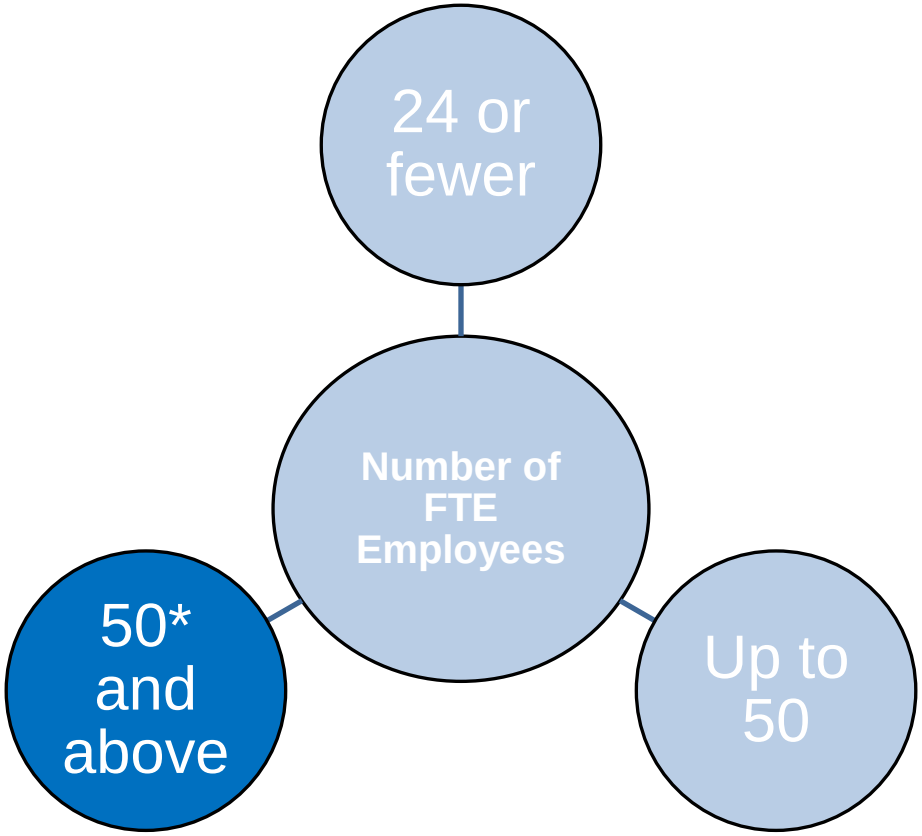
2015:
Employer Shared Responsibility for Employee Health Insurance Coverage

Businesses with 50 or More FTE Employees



Employer Shared Responsibility Provisions

*In 2015 there is transition relief: (1) for businesses with 50 to 99 full-time employees (including full-time equivalent); and (2) for businesses with 100 or more full-time employees (including full-time equivalent employees)

Nearly All Small Firms Are Exempt from Employer Shared Responsibility

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- ACA exempts all firms that have fewer than 50 full-time employees (including full-time equivalent employees) – nearly 96 percent of all firms in the United States or 5.8 million out of 6 million total firms – from any employer shared responsibility requirements. These 5.8 million firms employ nearly 34 million workers.

- Many firms that do not currently offer coverage will be better able to do so because of lower costs and wider choices in the SHOP Marketplaces.

Employer Shared Responsibility Provisions: Key Definitions

- **Full-Time Employee:** an employee who is employed on average 30 hours or more per week (or at least 130 hours of service in a given month).

- **Full-Time Equivalent (FTE) Employee:** a combination of employees, each of whom individually is not a full-time employee because they are not employed at least 30 hours per week, but who, in combination, are counted as the equivalent of a full-time employee.
  - *For example, two employees each of whom works 15 hours/week are added together to equal one full-time employee.*

- **Controlled Group Employers:** employers with common owners or who are otherwise related are aggregated together to determine whether they meet the threshold number of 50 (100 for 2015) or more full-time employees (including full-time equivalent employees).

Employer Shared Responsibility Provisions

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If employer meets 50 (100 for 2015) full-time/FTE employee threshold, two scenarios for potential shared responsibility payment

- **EITHER**

(1) An employer does not offer coverage to at least 95%* of its full-time employees (and their dependents), **OR**

(2) The coverage offered to employer's full-time employees is not "affordable" or does not provide "minimum value"

- **AND**

At least one full-time employee receives a premium tax credit in the individual Marketplace

*For 2015, replace 95% with 70%

Employer Shared Responsibility: Insurance Coverage Standards

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Coverage Provides Minimum Value

- Plan must cover, on average, at least 60% of the plan's total cost of incurred benefits
- HHS and IRS have an online calculator employers can use to input their plan details and determine if it meets the 60% value threshold.

Coverage is Affordable

- Coverage is unaffordable if the full-time employee's share of the lowest cost self-only coverage that provides minimum value costs more than 9.5% of his/her annual household income
- **Affordability safe harbor:** If the cost to the employee of a self-only plan is not more than 9.5% of his/her wages as reported on Box 1 of the W-2, it's deemed affordable for purposes of Employer Shared Responsibility

Employer Shared Responsibility Payments: Two Scenarios

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If Coverage Not Offered to at Least 95% (70% in 2015) of Full-Time Employees (and dependents), then

- Payment applies if any full-time employee receives a premium tax credit for coverage purchased in the individual Marketplace
- **Payment owed**: $2K/year times number of full-time employee (minus 30) (*minus 80 in 2015*)
- Payment calculated separately for each month for which coverage not offered ($166.67/month)
- Payment based on employer's number of full-time employees for that month

If Coverage Offered to Full-Time Employees, but Either Not Affordable or Does Not Meet Minimum Value, then

- **Payment owed**: $3K/year per full-time employee who receives a premium tax credit for coverage purchased in the individual Marketplace
- Payment calculated on monthly basis = $250/month
- This payment can't exceed payment described in Scenario # 1 (left hand column)

Employer Shared Responsibility Provisions

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Other Key Points

- No employer payment is owed for part-time employees even if they receive a premium tax credit
- If employer offers affordable coverage that provides minimum value to a full-time employee who declines it, no employer payment is owed for that employee
- No payment is owed if an employee obtains coverage through means other than the individual Marketplace (e.g., spouse's family coverage)
- To avoid an employer payment, employers that offer coverage to full-time employees must also offer coverage to the dependents* of those full-time employees who are children under age 26 (coverage for spouses is not required)

*There is transition relief for dependent coverage for 2015

Employer Shared Responsibility – Transition Relief in 2015

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- **100 or more** Full-time Employees (Including Full-time Equivalent Employees): Must offer coverage to 70% (instead of 95%) of its full-time employees and their dependents to avoid the ESR payment

- **50 – 99** Full-time Employees (Including Full-time Equivalent Employees): Not subject to the ESR rules (subject to certification below)

- **Certification Requirement**:
  - Maintain Full-time Employees (Including Full-time Equivalent Employees)throughout the year between 50 and 99
  - Did not reduce # of employees or employees' hours in order to qualify for the transition relief
  - Employer maintained previously offered health coverage to its employees

ACA Offers Strong Incentives for Employers to Continue to Offer Coverage

- The cost of providing coverage is tax deductible by the employer. By contrast, employer shared responsibility payments are non-deductible.

- Employers that offer coverage have greater flexibility to tailor the coverage to provide those benefits most valued by their workforce and will enjoy competitive advantage in recruiting and retaining employees.

Self-Employed Business Owners and Health Insurance Coverage

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- As of January 2014, the individual shared responsibility provision calls for each individual to have **minimum essential health coverage** for each month, qualify for an exemption, or make a payment when filing his or her federal income tax return.
- **Minimum essential coverage** includes employer-sponsored coverage (including COBRA; retiree coverage; employer coverage through spouse), coverage purchased in the individual market, Medicare, Medicaid coverage, Children's Health Insurance Program (CHIP) coverage, Veteran's health coverage, TRICARE, and others as identified by the Department of Health and Human Services.
- Sole proprietors (business owners without a common law employee), though not eligible for SHOP coverage, may purchase coverage through the new individual **Health Insurance Marketplaces** with coverage starting as early as January 2014
  - *Advantage*: Individuals may qualify for individual **premium tax credits and/or cost sharing reductions** on a sliding scale based on income through the Marketplaces.

Other ACA Provisions Impacting Small Businesses

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- Summary of Benefits and Coverage Disclosure Rules
- W-2 Reporting of Annual Health care costs (unless required to file fewer than 250 W-2s in year prior)
- Annual tax deductible cap for employee contributions to Flexible Spending Accounts is $2,500
- Employers covered by FLSA must have notified employees about the new Health Insurance Marketplace by October 1, 2013

Other ACA Provisions

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- Starting in 2014, plans can't impose waiting periods of more than 90 days for otherwise eligible new hires to begin coverage.

- Starting in 2014, employers may use additional incentives/rewards under workplace wellness programs (e.g. max reward increases to as much as 50% for smoking cessation programs).

- Starting in 2015, employers with 50 or more full-time or FTE employees will have new information reporting requirements detailing health insurance coverage offered. First reports due 2016.

- Also in 2015, there will be new information reporting requirements for issuers of health insurance coverage – applies to employers of any size that have self-insured health plans. First reports due 2016.

Small Business Resources

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- www.Business.USA.gov
- www.sba.gov/healthcare
- www.healthcare.gov
- www.irs.gov/aca