

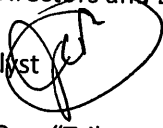
## MEMORANDUM

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**DATE:** July 29, 2013

**TO:** Tribal Leaders, Health Directors and Board Delegates

**FROM:** Jim Roberts, Policy Analyst 

**REF:** Affordable Care Act FAQs – “Tribes as Employers”

Over the last year, the Board has been conducting education trainings on the Affordable Care Act (ACA). These trainings have focused on how the ACA will impact IHS and Tribally-operated health programs. Our agenda items have included Medicaid expansion, cost-sharing exemptions and the monthly enrollment option for American Indian and Alaska Natives, qualifying for tax credits and advanced premium subsidies, and tribal sponsorship.

A set of issues that continues to come up during our trainings are the ACA employer requirements for Tribal governments and tribal enterprises. We have compiled a list of questions that have been asked during our trainings and developed them into a set of Frequently Asked Questions (FAQs). Please share the FAQs with others working in your tribe that deals with employee benefits, insurance, etc. I hope this information will be helpful.

Also, if there is a specific question that you or others may have, that is not included in the FAQs, please let me know so that we can get it included. We'll keep this document updated and send out as it is revised.

Please contact me if you should have any questions about the report or enclosed materials at (503) 228-4185 or email at [jroberts@npaihb.org](mailto:jroberts@npaihb.org).

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# Affordable Care Act Tribal Governments and Tribal Entities as Employers

## Frequently Asked Questions (FAQ)

Prepared by NW Portland Area Indian Health Board

Revised: 7/29/2013

The Patient Protection and Affordable Care Act (ACA) of 2010 began a new era of health reform that places new requirements on both individuals and employers. Many individuals will qualify for certain benefits to purchase insurance, including premium tax credits and cost sharing reductions. Smaller employers may be able to purchase insurance for their employees through the Small Business Health Options Program (SHOP) and may qualify for small business tax credits. However, larger employers could be subject to tax penalties for not offering their full-time employees and their dependents the opportunity to enroll in health insurance coverage that is affordable and that provides minimum value.

This FAQ focuses on ACA provisions applicable to Tribal governments and Tribal entities as employers. This FAQ is for informational purposes only and should not be considered or construed as legal advice.

If you have a question that is not included in this FAQ, please email [jroberts@npaihb.org](mailto:jroberts@npaihb.org) and we will try to include your question in future versions of this FAQ.

### General Questions

#### 1. What is the definition of full-time employee?

An employee who is employed on average at least 30 [hours of service](#) per week (or 130 hours of service monthly) is considered a full-time employee.

#### 2. I understand that the ACA employer provisions are based on number of employees. What are the thresholds for the employer provisions?

<i>ACA Employer Provision</i>	<i>Number of employees</i>
Small Business Tax Credit	24 or less full-time equivalent employees (a combination of full-time and part-time employees)
Small Business Health Options Program	100 or less employees (a State may limit the

(SHOP)

Shared Employer Responsibility (Tax Penalties)

SHOP to 50)

50 or more full-time employees (or a combination of full-time and part-time employees that are the equivalent of 50 full-time employees). Click here to find out more about [full-time employee calculation](#).

### Employer Shared Responsibility

**3. I have heard that employers may be subject to the Employer Shared Responsibility provisions. What are the Employer Shared Responsibility provisions?**

The Employer Shared Responsibility provisions subject a large employer to a tax penalty if the large employer does not offer its full-time employees and their dependents the opportunity to enroll in health insurance coverage that is affordable and that provides minimum value. An employer is considered a large employer if it employs 50 or more full-time employees (or a combination of full-time and part-time employees that are the equivalent of 50 full-time employees).

**4. When do the Employer Shared Responsibility provisions go into effect?**

The Employer Shared Responsibility provision was to go into effect on January 1, 2014. However the IRS has postponed the implementation of this provision for one year.

**5. Is there an exemption for governmental entities from the Employer Shared Responsibility provisions?**

No. The Employer Shared Responsibility provisions apply to all common law employers, including for profit, nonprofit and governmental entities. Governmental entities includes Federal, State, local and Indian tribal government entities.

**6. Our Tribal business employs seasonal workers that work only during summer months. Do these seasonal workers count towards determining whether our organization is considered a large employer?**

There is a seasonal worker exemption that applies to determination of whether an employer is considered a large employer. Click here to see the [seasonal worker exemption](#).

**7. What are the ACA requirements to provide health insurance to employees?**

< 50 full-time employees

An employer is not subject to the Employer Shared Responsibility provisions and does not have to offer health insurance to its full-

time employees.

≥ 50 full-time employees

An employer is subject to the Employer Shared Responsibility provisions and must provide [health insurance coverage](#) that is affordable and that provides minimum value.

**8. What is considered affordable coverage?**

The law requires that the portion of the premium paid by the employee for “self-only” coverage cannot exceed 9.5% of the employee’s household income. Since it would be difficult for an employer to determine an employee’s household income, an employer may rely on certain [affordability safe harbors](#) to avoid a tax penalty.

**9. What are the penalties for a Tribal government or Tribal entity that does not provide health insurance coverage?**

The penalty is \$2,000 multiplied by the number of full-time employees (less 30 full-time employees) divided by 12 (incurred on a monthly basis). However, the penalty is only triggered if a full-time employee receives a premium tax credit or cost sharing reduction in the Individual Marketplace.

For example, if a Tribal government or Tribal entity employs 70 full-time employees, the penalty would be calculated, as follows: 70 full-time employees – 30 full-time employees = 40 full-time employees x \$2,000 = \$80,000 ÷ 12 = \$6,666.66. The penalty is \$6,666.66 per month for each month at least one employee receives a premium tax credit or cost sharing reduction.

**10. If a Tribal government offers health insurance coverage to its employees, then it doesn’t have worry about incurring any tax penalties, right?**

The health insurance coverage offered to the employee has to be affordable and provide minimum value. If it is not affordable or does not provide minimum value, a full-time employee could be eligible to receive a premium tax credit or cost sharing reduction in the Individual Marketplace which would trigger the penalty. The penalty is \$3,000 per employee who receives a premium tax credit or cost sharing reduction divided by 12 (incurred on a monthly basis).

For example, if one full-time employee receives a premium tax credit, then the employer would be subject to a tax penalty of \$250.00 per month (i.e., \$3,000/12 = \$250); if ten full-time employees receive premium tax credits, then the employer would be subject to a tax penalty of \$2,500.00 per month (\$250.00 per employee).

**11. We have heard that employers have to offer health insurance coverage to dependents. Who is considered a dependent? Do we have to pay for dependent coverage?**

A dependent includes an employee's child, adopted child, stepchild or eligible foster child who is under 26 years of age. A spouse is not considered a dependent so an employer does not have to offer coverage to a spouse. Although an employer is required to offer dependent coverage, it is not required to pay for dependent coverage.

Transition Relief: An employer has to take steps during the plan year that begins in 2014 to offer coverage to dependents by 2015.

**12. Can the dependents of a full-time employee enroll in health insurance coverage through an Individual Marketplace in 2014?**

Dependents of a full-time employee who are not offered coverage by the full-time employee's employer in 2014 could be eligible to receive a premium tax credit or cost sharing reduction in an Individual Marketplace.

**13. If our Tribal government offers a self-funded sponsored health plan, may a full-time employee receive a premium tax credit in the Marketplace to purchase insurance? Or is the employee required to enroll in our plan?**

If Tribal self-funded sponsored health plan is considered health insurance coverage that is affordable and that provides minimum value, the employee would not qualify for a premium tax credit in the Marketplace.

An employee can decline enrollment in an employer's plan whether or not the employee qualifies for a premium tax credit. However, if an employee does not have minimum essential coverage by January 1, 2014, the employee could be subject to a tax penalty unless the employee qualifies for a tax exemption (e.g., members of federally recognized tribes are exempt from the penalty).

**14. If a Tribal government or Tribal entity discontinues its employer-sponsored insurance prior to January 1, 2014, may its employees go into the Marketplace to purchase insurance? If the employees qualify for a tax credit may it be used to purchase insurance on the Marketplace? And if so, is there a potential tax penalty on the Tribal government or Tribal entity?**

Yes. If a Tribal government or Tribal entity discontinues its employer-sponsored insurance prior to January 1, 2014, the Tribal government's or Tribal entity's employees could go the Marketplace to purchase insurance. Employees who are 400% below the federal poverty level could qualify for a premium tax credit to purchase insurance in the Marketplace.

The Tribal government or Tribal entity employer would be subject to a tax penalty for not offering health insurance coverage to its full-time employees. This penalty could be significant depending on the number of full-time employees of the Tribal government or Tribal entity. See Question No. 9.

### Small Business Health Options Program (SHOP)

#### **15. What is a SHOP?**

SHOP stands for the Small Business Health Insurance Program (SHOP). Each state will have a SHOP where small businesses with up to 100 employees (may be limited to 50 by a State) can purchase health insurance for employees. An employer will be able to compare health plans based on price, coverage and quality.

#### **16. Can a Tribal government or other Tribal entity purchase health insurance for its employees through a SHOP?**

A Tribal government or Tribal entity would be eligible to purchase health insurance for its employees through SHOP if it meets the following criteria:

1. It employed 1 to 100 employees (may be limited to 50 by a State) on business days during the prior calendar year and employs at least one employee on the first day of the plan year.
2. It elects to offer all full-time employees coverage in a qualified health plan (QHP) through a SHOP; and
3. Has its principal place of business in the Marketplace and offers coverage to all full-time employees through that SHOP; or offers coverage to each eligible employee through the SHOP serving that employee's primary worksite.

#### **17. How does a Tribal government or Tribal entity apply for health insurance through the SHOP?**

A Tribal government or Tribal entity will be able to apply for health insurance through the SHOP website, a Navigator, an insurance broker, or by phone. The application will be available online and in a paper application form. The employer and the eligible employees will be required to complete separate applications.

### Small Business Tax Credits

#### **18. I have heard that tax credits may be available to small businesses if an employer provides health insurance to its employees. Is a Tribal government eligible to apply for these tax credits?**

An employer that is an agency or instrumentality of an Indian tribal government is not eligible for the tax credits unless it is a 501(c)(3) organization.

**19. What are the eligibility criteria for the Small Business Tax Credits?**

The 501(c)(3) may be eligible for the tax credits if it:

1. Employs fewer than 25 full-time equivalent employees (FTEs);
2. Pays an average annual wage of less than \$50,000 per year per FTE; and
3. Pays for at least 50% of single coverage for employees.

Beginning in 2014, the tax credits will only be available for health insurance plans purchased on through the SHOP.

## Links

[Affordability Safe Harbors](#): An employer may only use a safe harbor if it offers its full-time employees and their dependents the opportunity to enroll in [health insurance coverage](#) that provides minimum value with respect to the self-only coverage offered to the employee. An employer's use of the safe harbors is optional; however, an employer's use of the safe harbors for any category of employees has to be on a uniform and consistent basis for all employees in such category.

The safe harbors are, as follows:

*Form W-2 Safe Harbor*                      If the employee only portion of the premium for the employer's lowest cost plan does not exceed 9.5% of the employee's W-2 wages then the coverage is deemed affordable. Application of this safe harbor is determined at the end of the calendar year.

*Rate of Pay Safe Harbor*                      For hourly employees, if the employee only portion of the premium does not exceed 9.5% of an amount equal to 130 hours multiplied by the employee's hourly rate of pay as of the first day of the coverage period it is deemed affordable. For salaried employees, the employer would use the employee's monthly salary rather than 130 hours. An employer may only use this safe harbor if an employee's wages are not reduced during the calendar year.

*Federal Poverty Line Safe Harbor*                      If the employee only portion of the premium does not exceed 9.5% of a monthly amount determined as the Federal poverty line (for the State in which the employee is employed) for a single individual for the applicable calendar year, divided by 12, it is deemed affordable.

These safe harbors do not affect an employee's eligibility for a premium tax credit if the employee only portion of the premium exceeds 9.5% of the employee's household income.

[Full-Time Employee Calculation](#): Follow these steps to steps to determine if you are a large employer subject to the Employer Shared Responsibility provisions:

Step 1: Calculate the total number of full-time employees (including any full-time seasonal workers defined as workers that work during certain seasons or periods of the year for no more than 120 days during the taxable year) for each calendar month in the prior calendar year.

Step 2: Calculate the total number of full-time equivalents (including non full-time seasonal workers) for each calendar month in the preceding calendar year.



To determine full-time equivalents, calculate the total number of hours of service (but not more than 120 hours of service for any employee) for all employees who were part-time employees (averaged less than 30 hours of service per week) for that month, and divide the total hours of service by 120. This is the number of full-time equivalent employees for the calendar month. Fractions are taken into account in determining the number of full-time employees for each calendar month. For example, if part-time employees worked a total of 1,890 hours in a calendar month, there would be 15.7 full-time equivalent employees for that month (i.e.,  $1,890 \div 120 = 15.7$ ).

Step 3: Add the number of full-time employees and full-time equivalents described in Steps 1 and 2 above for each month of the calendar year.

Step 4: Add up the 12 monthly numbers.

Step 5: Divide the sum by 12. (Note: Fractions are disregarded and the result is rounded down to next lowest whole number, e.g. a result of 55.8 would be rounded down to 55).

If the average is 50 or more, you are considered a large employer. If you employ seasonal workers, you could qualify for the [seasonal worker exemption](#).

[Health Insurance Coverage](#): An employer must provide minimum essential coverage under an eligible employer-sponsored plan. An eligible employer-sponsored plan means a group health plan or group health insurance coverage offered by an employer to the employee which is:

- A governmental plan (within the meaning of section 2791(d)(8) of the Public Health Service Act);
- Any other plan or coverage offered in the small or large group market; or
- A grandfathered plan offered in the group market.

[Hours of Service](#): Hours of Service includes each hour an employee is paid or entitled to payment:

- For performance of duties for the employer; and
- Any 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.

To calculate the hours of service of hourly employees:

<i>Actual Hours</i>	Count the actual hours of service.
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To calculate the hours of service of non-hourly employees, these are the employer's options:

<i>Actual Hours</i>	Count the actual hours of service.
<i>Days-worked equivalency</i>	Credit the employee with 8 hours of service for each day the employee would be credited with at least 1 hour of service.
<i>Weeks-worked equivalency</i>	Credit the employee with 40 hours of service for each week.

Different methods may be used for different classifications of non-hourly employees provided that the classifications are reasonable and consistently applied.

Minimum Value: Minimum value means that a plan has to cover at least 60% of the total allowed cost of benefits that are expected to be incurred under the plan. Four different methods for determining whether an eligible employer-sponsored plan are provided in recently proposed rules. An employer may use:

1. The minimum value calculator made available by HHS and the IRS provided at: <http://www.cciio.cms.gov/resources/regulations/index.html#pm>.
2. One of the safe harbors established by HHS and IRS.
3. Actuarial certification if an eligible employer-sponsored plan has nonstandard features that are not compatible with the minimum value calculator and may materially affect the minimum value percentage.
4. As to plans in the small group market, the plan must conform with the requirements for a level of metal coverage (bronze, silver, gold or platinum) defined at 45 CFR 156.140(b).

Seasonal Worker Exception: Follow the [full-time employee calculation](#) before applying this Exception.

An employer may not be considered a large employer if the employer's work force only exceeds 50 full-time employees for 120 days or less during the calendar year, and the employees in excess of 50 were employed during the 120 day period or less were seasonal workers.