

**Affordable Care Act FAQ’s**

June 2015

The Affordable Care Act (ACA), or colloquially "ObamaCare", is a United States federal statute signed into law by President Barack Obama on March 23, 2010. It was enacted to increase the quality and affordability of health insurance, lower the uninsured rate by expanding public and private insurance coverage, and reduce the costs of healthcare for individuals and the government. It introduced mechanisms like mandates, subsidies, and insurance exchanges. The ACA requires *some*, but not all, employers to provide group health insurance coverages to their employees.

The Affordable Care Act (ACA) *may* affect your church. Here are some Q & A’s to help you determine if it does.

**Does ACA apply to every employer?**

No. Only applicable *“large employers”* must meet the employer requirements of ACA. *Small churches will be affected by ACA if they are reimbursing for health insurance. Please read below for more information.*

**Does the IRS consider our church a large employer?**

Maybe. Large employers are required to provide health coverage (called “minimum essential coverage”) to their full-time employees and their dependents or risk penalties. Whether your church is a large employer depends on how many full-time and full-time equivalent employees your church employed in the prior calendar year.

In 2015, a large employer is generally defined as an employer that employed 50 or more full-time and “full-time equivalent” employees in 2014. In 2016, the 50 threshold is increased to 100 (i.e., employed 100 or more full-time and full-time equivalent employees in 2015). A full-time employee is defined as someone who is employed an average of at least 30 hours per week. A “full-time equivalent” means a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least 30 hours per week, but who, in combination, are counted as the equivalent of a full-time employee. The full-time equivalent number is calculated by adding the total hours worked by part time employees in a month (but not more than 120 hours for any employee) divided by 120.

**What if our church operates a preschool, school or daycare; do those employees count toward the calculation of full-time and full-time equivalent employees?**

All employees from the church, preschool, school, daycare, etc. that are under the same Employer Identification Number (EIN) should be counted toward the calculation of full-time and full-time equivalent employees. If the church has an EIN separate from the EIN of the preschool, school or daycare, then the employees should be counted separately per EIN. Any ministry that has been separately incorporated should have its own EIN and should be treated as a stand-alone employer for ACA purposes, even if the church was the incorporator of the ministry corporation.

**If our local church is a ‘large employer’, what are the ACA requirements that must be met? And what are the penalties for failing to comply?**

If a local church had 50 employees (as calculated above) the prior year, it must offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan.

Applicable *large employers* are subject to an excise tax if either (1) the employer fails to offer its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan and any full-time employee is certified to the employer as having received an applicable premium tax credit or cost-sharing reduction or (2) the employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan and one or more full-time employees is certified to the employer as having received an applicable premium tax credit or cost-sharing reduction.

**Can our church reimburse our employees for individual medical insurance premiums?**

No, unless your church only has one active employee participating in the individual medical premium reimbursement plan, it must have stopped reimbursing individual premiums for plan years beginning on or after January 1, 2014. Effective for plan years beginning on or after January 1, 2014, employers, including churches, could no longer provide their employees with reimbursements for individual medical insurance premiums. However, the IRS has issued transition relief until June 30, 2015 for employers that are not applicable “large employers” subject to the employer mandate. Unfortunately, that “safe window” is almost shut.

**Can we reimburse for individual medical insurance premiums if the church only employs one active employee or only one of our employees participates in the plan?**

Yes. Churches can continue to provide tax-free reimbursement of individual health insurance premiums if the church has only one active employee. If the church has more than one active employee, but less than two active employees participate in the individual health insurance reimbursement plan (e.g., because the plan covers retirees), the church may continue to provide tax-free individual health insurance reimbursement to the plan participant(s) as long as the church does not violate the nondiscrimination requirements applicable to self-insured group health plans. (Contact the Foursquare Legal Department at (213) 989-4210 for more information about nondiscrimination requirements.)

**Can we provide group health insurance as a nontaxable benefit?**

Yes, the church generally can provide group health insurance for its employees on a nontaxable basis as long as it meets the ACA standards

**Our employees want to keep their individual policies, how can we assist financially without incurring penalties?**

If your church reimburses more than one active employee for their individual medical insurance premiums, and the employees want to continue coverage under their individual plans, your church can increase the employees’ taxable compensation in the amount of the reimbursements, but your church cannot require that the increased compensation be used to pay the insurance premiums. If the church council does decide to increase pay for church employees, it is important not to correlate the wage increase to the health insurance reimbursement in the church council meeting minutes. The increase would be treated as part of the employee’s taxable wages and not as health insurance reimbursement.

**Can we ask an employee to waive their right to be included in an employer group plan?**

No. If an employer suggests to an employee that the employee forego their right to be included in a legally required employer provided health plan, it is likely that the IRS would conclude that the employer failed to meet their employer requirement to offer an employer provided health insurance plan to the employee and the employee’s dependents. This would incur excises taxes upon the employer.

**What are the fines if we violate any of these rules?**

The penalties for violations are steep, $100 per day per employee who received reimbursement for individual health insurance premiums (generally up to a maximum of $500,000/year).

**What about Health Reimbursement Arrangements and Health Flexible Savings Accounts?**

The treatment of Health Reimbursement Arrangements (HRAs) is the same as discussed above – they are only allowed when used in conjunction with group health plans that meet the ACA standards(what the IRS calls “integrated” with a group health plan, which generally means that the HRA participants must also be enrolled in a group health plan). HRAs are allowed to reimburse individual health insurance premiums generally only when there are less than two participants who are active employees (as noted above, there are nondiscrimination requirements applicable to self-insured group health plans, such as HRAs). Under long-standing IRS rules, Health Flexible Savings Accounts (Health FSAs) cannot be offered unless they are offered with a group health plan (but the Health FSA participants are not required to enroll in the group health plan). Check with your insurance provider to make sure the church plan meets the requirements.

**What should we do now?**

If your church is a “large employer”, seek professional advice from your health insurance broker/provider for assistance in assuring compliance with the ACA.

If your church is *not* a “large employer”, you are not required to do anything now. Churches that are not large employers may opt not to provide health insurance to their employees. But, you may offer health insurance if you want. In 2015, churches with 50 or less (in some states, 100 or less) full-time and full-time equivalent employees can purchase a small group plan through the Small Business Health Options Program (SHOP) exchange (in 2016, all states must allow employers, including churches, with up to 100 employees purchase small group plans through the SHOP exchange).

**Are there any other benefits to providing health insurance to our employees?**

The small employer health insurance tax credit is available to employers who purchase coverage through the SHOP exchange and meet certain requirements. For tax-exempt employers like churches, the credit can be up to 35% of the employer’s share of the premium cost (it is capped by the amount of payroll taxes of the church during the calendar year). The employer’s contribution toward the premium cost must be a uniform percentage (not less than 50%) of the total premium cost for each employee enrolled in the SHOP coverage. To qualify, the employer generally must have less than 25 full-time equivalent employees (FTEs) with an average annual salary of $51,600 or less (for 2015). In some states, hours worked by pastors may be factored into the FTE calculation, but pastor’s wages are excluded for the average salary calculation. This means more churches may qualify for the credit. Ask your local SHOP sales representative about the particulars for your state. Even though churches do not pay some taxes, they are eligible to receive the credit. The credit is available for a maximum of two years.

**Where can we get more information?**

You can get more detailed information by contacting the Foursquare Legal Department at (213) 989-4210. Also, there are many informative articles available. Here’s an example:  [*http://www.churchlawandtax.com/blog/2015/february/breaking-new-irs-guidance-on-aca-taxes-and-fines.html*](http://www.churchlawandtax.com/blog/2015/february/breaking-new-irs-guidance-on-aca-taxes-and-fines.html)