

# Legal Update

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## ACA Pay or Play Penalties Will Increase for 2023

On Aug. 16, 2022, the IRS updated its [frequently asked questions \(FAQs\)](#) on the employer shared responsibility (pay or play) rules under the Affordable Care Act (ACA) to include updated penalty amounts for 2023. For calendar year 2023, the adjusted \$2,000 penalty amount is **\$2,880** and the adjusted \$3,000 penalty amount is **\$4,320**.

### 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 are generally 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** or the **4980H(b) penalty**.

- Under Section 4980H(a), an ALE will be subject to a penalty if it does not offer coverage to “substantially all” (generally, at least 95%) of its full-time employees (and dependents) and any one of its full-time employees receives a subsidy toward his or her Exchange plan. The monthly penalty assessed on ALEs that do not offer coverage to substantially all full-time employees and their dependents is equal to **the ALE’s number of full-time employees (minus 30) multiplied by 1/12 of \$2,000 (as adjusted), for any applicable month**.
- Under Section 4980H(b), ALEs that offer 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 because the ALE did not offer coverage to all full-time employees, or the ALE’s coverage is unaffordable or does not provide MV. The monthly penalty assessed on an ALE for each full-time employee who receives a subsidy is **1/12 of \$3,000 (as adjusted) for any applicable month**. However, the total penalty for an ALE is limited to the 4980H(a) penalty amount.

### Important Dates

#### Aug. 16, 2022

The IRS released updated pay or play penalty amounts for 2023.

#### Aug. 1, 2022

The IRS previously updated the 2023 affordability percentage under the pay or play rules to **9.12%**.

### 2023 Calendar Year

These updated figures apply for coverage offered (or not offered) during the 2023 calendar year.

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