Affordable Care Act - Implementation Guide for Kentucky School Districts

Kentucky Department of Education

Office of Finance and Operations

Division of District Support

District Financial Management Branch

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|  | Executive Summary The Affordable Care Act (ACA) was signed into law on March 23, 2010. Some provisions have already been implemented; however, the major component for mandated health care became effective January 1, 2015. This “play or pay” mandate requires large employers to offer full-time employees and their dependent children the opportunity to enroll in employer-sponsored health plans that have the minimum essential coverage. Failure to comply may result in substantial penalties for the school district.  The **Affordable Care Act - Implementation Guide for Kentucky School Districts** is posted on the Kentucky Department of Education (KDE) website at [**Health and Life Insurance Benefits and Flexible Spending Accounts**](http://education.ky.gov/districts/FinRept/Pages/Health-and-Life-Insurance-Benefits-and-Flexible-Spending-Accounts.aspx). Also posted on that page are links to outside resources to provide further assistance.  KEHP will bear the burden of ensuring that the coverage offered through KEHP is minimum essential coverage that meets the federal affordability and minimum value standards. This will allow school districts to focus on other issues such as determining who are full-time employees and their eligibility status.  **Action Steps for school districts:**   1. Determine which workers are employees – school districts are already performing this function; confirm employees are classified properly. 2. Determine if the district is a large employer – only large employers (at least 50 full-time or full-time equivalent employees) are subject to ACA; nearly all Kentucky school districts will be “large”. 3. Decide which hours count toward “hours of service” for part-time and variable hour employees – there are clear rules about which hours count and they are detailed in the Guide. 4. Determine which employees are full-time under the ACA - this is the most complicated action step; ensure district understands the rules and can perform the calculations accurately; this may or may not require tracking of actual time worked for employees who have not worked in the past – this is detailed in the Guide. 5. Make offers of coverage – the district must offer insurance to eligible employees but there is no requirement they accept; document the offers and refusals. 6. Repeat the process annually – staff will be constantly measuring hours of service for variable hour employees; offers of coverage must be made each year to those deemed eligible based on the annual calculations.   **Considerations for local boards:**   1. The local board should approve (or delegate authority to approve) the standard measurement, administrative, and stability periods to be used to determine eligibility for variable hour employees. The Guide includes recommended periods. 2. The local board should consider policies to improve the accuracy and efficiency of eligibility calculations:  * Determine a minimum number of days per year to determine a variable hour employee eligible (See Eligibility Break Point discussion below). * Determine a minimum number of hours per week to determine a variable hour employee eligible (hours per week may be more suitable than an annual amount for some classifications of employees). * Use an equivalency allowed by the ACA instead of documenting actual hours worked (See Eligibility Break Point discussion below).  1. The local board should consider a policy to terminate substitutes who refuse assignments for a period to prevent paying for health insurance for employees who are no longer working.   **Eligibility Break Point:**  It may not be necessary to track actual hours worked for variable hour employees. Calculate the break point at which the eligibility determination is the same whether actual hours or an 8-hour equivalency is used. The Guide contains an example.  Based on a summer break of 54 weekdays (and no other breaks of at least 4 consecutive weeks), the eligibility break point would be 154 days. That means the employee can work 154 separate days, using an equivalency of 8 hours per day, before the eligibility status would change. If the employee is expected to work fewer days than 154 or if the district enacts a policy to limit days worked to a number less than 154, there is no need to track actual hours worked for the employee relieving much of the administrative burden of the ACA.  Each district will arrive at different Eligibility Break Points depending on the number of days in employment breaks greater than 4 consecutive weeks.  **Nondiscrimination**  If the school district provides more benefits to the superintendent than other employees, the district is at risk to receive a nondiscrimination penalty. Paying part or all the employee premiums for the superintendent (and not other employees) without including those amounts in taxable wages is an additional benefit not allowed. The nondiscrimination penalty is $100 per day multiplied by the number of people discriminated against.  **Funding**  Even though the state funds health insurance premiums for non-federally funded district employees, SEEK may be reduced to fund health insurance costs exceeding the amount appropriated for that purpose. Therefore, KDE recommends that districts do not adopt blanket policies to offer health coverage to all employees to avoid the burden of calculating eligibility under the ACA.  **Training**   * Districts are encouraged to attend regional Co-op meetings or other training opportunities regarding ACA * Staff should familiarize themselves with the resources on the KDE website * KDE to provide continuous updates to the program as required * KDE encourages districts to review the [**MUNIS Guides**](http://education.ky.gov/districts/Pages/MUNIS-Guides.aspx) for IRS reporting assistance.   **Disclaimer**  The policies, regulations, procedures, and computations in the Implementation Guide are subject to change as deemed necessary by law under the Department of Treasury Affordable Care Act provisions. This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. |

# Affordable Care Act Implementation

## How should this implementation guide be used?

The Kentucky Department of Education (KDE), in cooperation with school districts and industry representatives, produced this implementation guide to provide an additional resource regarding the ACA as it relates specifically to Kentucky school districts. The information presented is intended for general guidance. Legal counsel should be consulted to ensure compliance with all aspects of the ACA.

## Where are additional resources located?

The Kentucky Employees’ Health Plan (KEHP) has issued an important resource: KEHP *Roles and Responsibility* [**KY Gov Personnel**](https://personnel.ky.gov/Pages/ICs,-HRGs-Roles-and-Responsibilities.aspx)**.** This section assists in defining the roles of an agency representative who participates in KEHP, and their responsibilities.

## What health insurance plans are available to Kentucky school districts?

The Kentucky Employees’ Health Plan (KEHP) is a non-profit, self-funded health plan, which means the Commonwealth assumes the risk of claims. KEHP pays an administrative fee to Anthem to be KEHP’s third party administrator and to CVS/Caremark, as the pharmacy benefits manager, to process claims and to access provider networks.

KEHP makes health insurance coverage available to qualified employees of school districts (as defined by each district’s policy) and to eligible dependents (spouse, children under age 26 and disabled children. A summary of the KEHP health insurance plans and associated costs can be viewed at: [**KY Gov Personnel Health Insurance**](https://personnel.ky.gov/Pages/healthinsurance.aspx)**.**

# Marketplace

The ACA requires each state to establish a “Marketplace” (sometimes referred to as the “Exchange”) for individuals to purchase health insurance coverage. The Kentucky marketplace plans are purchased through [**KY Gov Personnel Health Insurance**](https://personnel.ky.gov/Pages/healthinsurance.aspx)**.**

Employers are required to provide a notice to all employees about the Marketplace and the premium tax credit. Effective October 1, 2013, the notice must be provided to all existing employees, regardless of whether they are full-time and regardless of current participation in a health plan. There is no requirement to provide any notification directly to dependents of employees.

Part A contains general information regarding the marketplace and is required to be provided to every new employee at the time the employee is hired. Part B contains a request for information on the employer’s insurance offered and is required only when requested by an employee. Retain a copy of the names and addresses of employees to whom booklets are disseminated and notices are mailed, and the date of the action.  To ensure the district has made a good faith effort to notify all employees, consider the following additional ***(optional)*** procedures:  require some form of receipt documentation from the employees, follow the initial notice with an automated phone call or email to remind employees they have received an important notice about health coverage, and/or post the notice in the employee break area where other required notifications are posted.

The notice must be provided in writing and in a manner that can be understood by the average employee. The notice may be provided electronically if certain conditions are met. **Part A of the notice must be provided to all future employees at the time the employee is hired.**

# District Employees and Employers

## Who is an employee of the district?

The first step to ensure compliance with the ACA is properly identifying which workers are employees.  Individuals performing work for the school district are either 1) common law employees or 2) independent contractors.

The IRS guidance states that an employment relationship exists when the employer “has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished.”  Therefore, if the district has the authority to tell the person what to do and exactly how tasks are performed, the person is likely an employee even if the district does not exercise that authority.

The way an individual is paid has no bearing on whether they are an employee or independent contractor.  Individuals receiving a flat stipend may be acting as employees, such as coaches and ticket takers. The district must analyze individual employment relationships with independent contractors and employees from staffing agencies to ensure these individuals are properly classified.

## Is my district a large employer subject to ACA?

Beginning on January 1, 2015, large employers are required to offer full-time employees an opportunity to enroll in an employer sponsored health plan that provides ‘minimum essential coverage’ as defined by the IRS. The employer requirements are commonly referred to as “Play or Pay Mandate”, “Employer Shared Responsibility”, “Employer Mandate”, or “Free Rider Penalty”.

Most Kentucky school districts are considered “large” employers under ACA. In 2015, the IRS provided transition relief to assist employers in defining “large” employer status (100 or more full time employees). Effective January 1, 2016, the employer responsibility provision will apply only to districts with 50 or more full-time employees (FTEs). For further information regarding employer classification, please view the IRS archived video entitled “ACA: Employer Shared Responsibility”, aired April 6, 2016 at [**IRS Video Portal**](http://email.webcaster4.com/wf/click?upn=r1XKACQTVoNXnYzx4fljJCqJecYhilfExHGx7uPcP0scAW4Oyqwji-2Bf-2FBXQsz21uJUHs4KUQTdR-2BvECkKkXzLBTg2XYu4BkVXBSMrccCmJM-3D_KQPcDqjFS79iaBrzPS4wLyOdExH-2BKltIytYKgjk-2BG-2BrMfFLodJlaMKLDJmKV-2BgqRmwnaFI46rDeSpD2bx2TdInua913pDR0SqhBqVBb7yoc2fLFqe3grHaUyAlnai5xKwBPDGwHexc4J8oUcFgcofStvRHq3jG1-2FujrITwsTVURHLJjdRfL2Rz5H3WI9mJ4lPJ-2FAuYdB2AAV0AdpzzPsJxb-2BhEtn6BUSte4WjVEL0DxcnnavEW-2FMsyWDldtHcHwPaOVAhviiYLgYwokFwIKpKT4ZEtwU3EYum8OgPI6RU6PeDaWX27SiRCVFSVS6FPwEa7NGpxKjtNkfXvlBFtdbOiCjD0-2Fg9F-2BIsh7M-2FevCMrNhpuf1Yyg0Rq48X97VqLrfnxB5KOdLVrOmeFsl-2Bt5mWDT3zuveBrQtpwRM4eW9i39q25G6bCpKtz94feINar-2BquFtqmk98DRKEJwC8UCpiZzQTp-2BiY6tqhgxmhAiSj1rwjAxlSsiJATzd8p0VPbdzIHOknFMAyb8aIRyhdxyCgaP4-2F72r1Vue2F00QZ1WJzJuYkOfh5TmUZVV00n-2BhOi1Mu5Zanfx7xERTdNQVIEV2P8z4qbgeVGIiDV-2B-2FP841gUx4mW7fUoxcb3gtY5OaAFDk-2FD50ky2HHxZN3dKB-2FD-2F9uxoObKZxodQJkZCWLcM0xx1N-2BzBhojzqt2bl2BApXgZMb4FPNd-2BJ5qTeM-2BzY1PGcfgZy9AqfB6cXmZ0KQql80FcJHqe-2BBMH2iypUY4vn3ot8)**.**

“Full-time” employees, for purposes of determining “large” employer status, are those who average at least 30 hours of service per week. “Hours of service” is defined to include not only hours actually worked by the employee but also hours for which an employee is paid or entitled to be paid by the employer due to vacation, holiday, sick leave, incapacity (disability), jury duty, military leave, or other leave of absence. Additionally, employment breaks of at least four consecutive weeks (such as summer break from school) or special unpaid leave (such as FMLA) cannot be counted as zero hours worked. The break must be excluded from the calculation or the computed average hours must be applied over the employment break period.

Service hours for part-time and variable hour employees (VHEs) should also be considered when determining whether a district is a large employer. The number of FTE employees is determined by adding together all the hours worked **each calendar month** by employees who are not full-time, then dividing the total hours by 120.

Remember that to be considered a large employer the district must average at least 50 full-time or FTE employees throughout the calendar year, not just a month. It is also important to remember that the FTE calculation above is used ***only*** to determine large employer status. The calculations to determine which employees must be offered health coverage and large employer status must be performed **each year.**

**Example 1:**

District ABC has 65 employees: 43 full-time (average at least 30 hours of service per week) and 22 part-time &VHE. The part-time & VHE employees work a total of 1,800 hours in a month.

Step 1: Calculate the FTEs for the part-time and VHE 1,800 hours/120 = 15 FTEs

Step 2: Add full-time and FTE 43 full-time + 15 FTEs = 58

Step 3: Is the total 50 or more? YES

ABC is considered a large employer and must comply with the employer shared responsibility provisions.

## What hours are included when determining full-time status?

“Full-time” employees are those who average at least 30 hours of service per week or 130 hours of service per calendar month. “Hours of service” is defined to include not only hours actually worked by the employee but also hours for which an employee is paid or entitled to be paid by the employer due to vacation, holiday, sick leave, incapacity (disability), jury duty, military leave, or other leave of absence. Additionally, employment breaks of at least four consecutive weeks (such as summer break from school) or special unpaid leave (such as FMLA) cannot be counted as zero hours worked. The time must be excluded from the calculation or the computed average hours must be applied over the employment break period.

Kentucky school districts already offer health coverage to most employees. The district must determine whether part-time and variable hour employees (VHE) are considered full-time for purposes of ACA. These employees include, but are not limited to, the following:

* Substitutes (classified and certified)
* Day care workers
* Paraprofessional Coach
* Student workers
* Retirees who return to work on a part-time or substitute basis
* ESS – Extended School Services workers
* Part-time employees

## Coaches

School coaches are considered employees under the common law because a coach:

* Performs his services on school property;
* Must adhere to a schedule established by the school;
* Must function under policies and regulations established for the school;
* Has no investment in facilities and has no opportunity for profit or loss;
* Is an integral part of the school's trade or business; and
* Must perform his services personally.

Schools are liable for negligent or tortious conduct of their faculty members.

Payments to school coaches are wages subject to applicable employment taxes. School districts are responsible for reporting all payments, fees, or stipends for the coach’s services on Form W-2. For more information on common law employees, see [**Independent Contractor (Self-Employed) or Employee?**](https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee)

**School board members**

Consult the statutes or ordinances establishing a position to determine whether the position is a [**public office**](https://www.irs.gov/government-entities/federal-state-local-governments/tax-withholding-for-government-workers)**,** but in most cases, school board members are considered public officials who hold a public office because:

* School boards are created by state or local statute;
* Members’ tenure, duration, pay and duties are fixed by law;
* The member is subject to a degree of control in terms of when and how they fulfill their obligations; and
* The member is subject to a chain of command that includes provisions for the member’s removal.

Therefore, school board members are considered employees and their compensation is subject to employment taxes and reporting on Form W-2. It does not matter what an official's compensation is called or how often it is paid. For more information on the definitions of public office and public officials, see [**Tax Withholding for Government Workers**](https://www.irs.gov/government-entities/federal-state-local-governments/tax-withholding-for-government-workers)**.**

# Section 218 Agreement Exceptions

State and local government employees may be covered for social security and Medicare under a Section 218 Agreement between the state and the Social Security Administration. Under some circumstances, an employee may be excluded from social security or Medicare, or both. If a school district has a Section 218 Agreement, which also applies to school board members, the fees received for serving as a school board member are still subject to income tax withholding under Internal Revenue Code section 3401(c). For more information, see [**Section 218 Agreements and Social Security Coverage**](https://www.irs.gov/government-entities/federal-state-local-governments/section-218-agreements-and-social-security-coverage)**.**

Some of these employees may meet the definition of “exempt” under the Fair Labor Standards Act and are not currently required to maintain timesheets of hours worked. There are three methods for crediting hours of service for employees:

1. document actual hours worked
2. assume 8 hours of service for each day worked
3. assume 40 hours of service for each week worked

The district must implement a method to document hours worked by part-time and variable hour employees or credit 8 hours of service per day for the purposes of determining ACA classification of employees, provided they are applied consistently. An equivalency method (method 2 or 3 above) cannot be used if it would result in ***fewer*** hours of service than actual hours worked.

# Eligibility Break Point

Before making a decision regarding the method to credit service hours, consider the number of days worked by the employee. If the total number of days expected to be worked averages less than 30 hours of service per week or 130 hours of service per month, the eligibility determination would be the same under any of the three methods, resulting in no need to document actual hours worked. Calculate the eligibility break point using 8 hours of service per day to determine the maximum number of days that can be worked during the measurement period without requiring an offer of insurance coverage.

**Example 2:**

To calculate the eligibility break point using 8 hours of service per day:

130 hours per month = 1560 hours per year

1560 hours per year / 261 days = 5.997 hours per day

Multiply 5.997 by the number of days excluding break(s)

***Step 1*** **-** Determine the number of days excluding breaks greater than four consecutive weeks

Number of weekdays per year 261

Number of >4-week break days ***(see note below)*** - 54

Number of days without break(s) 207

***Step 2 -*** Determine the maximum number of days an employee can work as part-time

Multiply 5.997 by the number of days excluding break(s)

5.977\*207 = 1238 maximum number of hours

1238 hours / 8 hours per day = 154 days

Therefore, an employee could work up to 154 days, crediting 8 hours of service per day, before an offer of insurance must be made. If an employee is not expected or permitted to work more than this number of days, the eligibility determination will not change regardless of whether actual hours worked are documented.

**NOTE**: Each district must count the number of days in all breaks of more than four consecutive weeks occurring during the measurement period. The 54 days used above is merely an example. Each district’s actual number of break days will be different.

Actual time worked could be documented with sign in/sign out sheets, timesheets, time clock, or any other method which will accurately document the start and end times. The availability of data will impact the difficulty in tracking hours worked and the denominator (30 service hours per week or 130 service hours per month) to be used in the calculation. If some type of timekeeping software package is not used by the district, an Excel spreadsheet is available on the KDE website that could be used to document the minimum amount of information necessary.

When determining full-time status for any employee, including substitutes, consider ***only*** those hours worked in your district. Do not include any time an employee works in another school district.

The ACA guidelines do not permit an employer to use an equivalency for hours worked other than eight service hours per day. For example, if an employee is contracted to work 3.5 hours per day, the employee must document actual hours worked as 3.5 hours or the employee will be credited for eight service hours each day to determine eligibility under ACA.

**Example 3**:

ABC School District employs a part-time Instructional Assistant. The contract states the employee will work 3.5 hours per day for 175 days, therefore this employee does not maintain a timesheet.

Hours worked per week according to the contract 17.5

**Hours of service used to determine ACA eligibility 40**

Since the actual hours worked are not documented, the employee must be credited with 8 hours of service for each day worked, or 40 hours of service per week. This employee must be offered health coverage.

**Example 4**:

ABC School District employs a paraprofessional head football coach at the high school who works 185 days throughout the year. One day during the week, the coach reviews game film for 2 hours and conducts a 2-hour practice. The coach completes a timesheet (or sign in/sign out sheet).

Hours worked as documented by timesheet 4

**Hours of service used to determine ACA eligibility 4**

If actual hours worked are not properly documented the coach must be credited with eight service hours for this day worked.

**Example 5:**

ABC School District employs an individual to work 3 hours per day in the ABC Elementary after-school daycare for 175 days. This employee also works 1.5 hours per day as the lunch monitor in the same school.

This employee completes a timesheet (or a sign-in/sign-out sheet).

Hours worked per week as documented by timesheet 22.5

**Hours of service used to determine ACA eligibility 22.5**

If the actual hours worked are not properly documented the employee must be credited with 8 hours of service credit each day, or 40 service hours for the week.

# Which part-time and Variable Hour Employees (VHEs) will be considered Full-Time.

The ACA eligibility determination is one of the most complex implementation issues facing school districts. “Full-time” employees for purposes of determining who is eligible for health coverage are those employees who average at least 30 hours of service per week or 130 hours of service in a calendar month. The method of measurement to determine “full-time” status must be used consistently within each class or group of employees. For example, based on the district’s payroll cycle and policy regarding timesheet and/or pay calendar submission, it may be most efficient to determine the full-time status for substitute teachers by calculating average service hours each month. However, determining eligibility for part-time instructional assistants may be most efficient to calculate using average service hours per week.

*(Please note, when determining if an employee is full-time the IRS guidance uses 130 hours of service per month, however 120 hours of service per month is used to calculate FTEs for purposes of determining large employer status.)*

The district is required to offer health coverage only to employees determined to be “full-time” and their dependents. An offer of coverage to an employee’s spouse is not required for the purposes of ACA compliance. The school district reasonably knows an employee will work at least 30 service hours per week or 130 service hours per month, health coverage must be offered without a measurement period. However, if the district does not know at the time of hiring whether a new employee will average at least 30 service hours per week or 130 hours per month, a determination may be made using a measurement period. This must be done for all current employees so that health coverage may begin for those eligible employees on January 1, 2017.

The IRS allows employers to use a **measurement period** between 3 and 12 months in length. A longer measurement period will result in fewer VHE’s considered to be full-time. KDE recommends a 12-month measurement period beginning on October 3, 2013 in order to facilitate an administrative period consistent with open enrollment and a stability period consistent with the KEHP plan year. If the employee averages 30 hours of service per week or 130 hours of service per month during the measurement period (remember that employment breaks greater than 4 consecutive weeks must be excluded from the calculation) the district must offer that employee health coverage. Please note, the district is not required to credit service hours for breaks that are shorter than four consecutive weeks where the employee is not paid or entitled to be paid. Examples include fall break, spring break, and winter break. For employment breaks longer than four consecutive weeks in duration, the break must be excluded from the calculation or the computed average hours must be applied over the employment break period.

If the employee accepts coverage, it must be provided for a **stability period** of at least 6 months or the same length of time as the measurement period, whichever is longer. Therefore, if the district uses the recommended 12-month measurement period, the stability period must also be 12 months.

Employers may separate the measurement period and stability period with an **administrative period** that may last up to 90 days. To avoid gaps in coverage, the administrative period must overlap with the prior stability period.

KDE recommends that the local board adopt either the measurement, administrative, or stability periods or take action to delegate the authority to set those periods to a member of the administrative staff.

**Example 6:**

District ABC’s board has adopted the following periods for VHE’s:

Standard Measurement: 10/3/YX – 10/2/YY

Standard Administrative: 10/3/YY – 12/31/YY

Standard Stability: 1/1/YZ– 12/31/YZ

The determination for eligibility for health coverage is made during the measurement period. If the employee averages at least 30 service hours per week or 130 service hours per month, health coverage must be offered to that employee for the duration of the following stability period subject to continued employment. If the same employee does not average 30 service hours per week or 130 service hours per month during the next measurement period, the district is not required to offer the employee health coverage for the next stability period. The employee may continue coverage by paying his or her own total premium under COBRA provisions if the employee either terminates or experiences a loss of hours.

If an employee is full-time based on the measurement period, they must be treated as full-time for the entire stability period regardless of the number of hours worked during the stability period. Conversely, if an employee is not full-time based on the measurement period the employer is not required to provide health coverage for any part of the stability period regardless of the number of hours worked during that period.

# New hires: initial Measurement and Transition Periods

As new employees are hired, the same consideration will apply: if the school district reasonably knows an employee will work at least 30 service hours per week or 130 service hours per month, health coverage must be offered without a measurement period. However, if the district does not know at the time of hiring whether a new employee will average at least 30 service hours per week or 130 service hours per month, a determination may be made using a measurement period. Since new VHE’s are hired throughout the year, different measurement, administrative, and stability periods apply to these employees for the ***initial*** eligibility determination.

The initial measurement period for new VHE’s must begin on the employee’s start date, or the first day of the month immediately following the start date and last a minimum of 3 months to a maximum of 12 months. The initial measurement period must be the same for every new hire. KDE recommends an initial measurement period of 12 months beginning the first day of the month immediately following the hire date. An initial administrative period may separate the measurement and stability periods and last no longer than 90 days. The initial stability period may be up to one month longer than the initial measurement period but no more than 12 months. Note that the initial measurement period and the initial administrative period combined cannot extend past the last day of the first calendar month beginning on or after the one-year anniversary of the employee’s start date (13 months plus a fraction of a month). If the district uses the recommended initial measurement period of 12 months, *the initial administrative period is limited to* ***one*** *month* instead of 90 days.

Because of the administrative burden that would be caused for each VHE to have his own measurement period, the ACA allows employers to transition new VHE’s into the standard measurement, administrative, and stability periods after the initial determination is made. The second measurement period (the standard measurement period) for a newly hired VHE will overlap the initial measurement period.

**Example 7:**

District ABC hires a new substitute whose first day of work will be March 15, 2017.

For ongoing VHEs, District ABC utilizes the following standard periods:

Standard measurement: 10/3/YX – 10/2/YY

Standard administrative: 10/3/YY – 12/31/YY

Standard stability: 1/1/YZ – 12/31/YZ

For this new employee, the initial measurement period will be 12 months in duration and begin on the 1st day of the month immediately following the start date. For this example, the initial measurement period will begin on 4/1/17 and end on 3/31/18. Because the 1-year anniversary for this employee will be 3/15/18, the initial administrative period cannot run longer than 4/30/18. Below illustrates how this new VHE will transition from the initial periods into the standard periods with the other ongoing VHE employees in the District.

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| | **PERIOD** | **DATE** | | --- | --- | | **INITIAL** Measurement | 4/1/17 – 3/31/18 | | **INITIAL** Admin | 4/1/17 – 4/30/18 | | **INITIAL** Stability | 5/1/18 – 4/30/19 | | Standard Admin | 10/3/18 – 12/31/18 | | Standard Stability | 1/1/19 – 12/31/19 | |  |  | |

During this same period, the ongoing VHE’s within the district were following the standard periods running concurrently. The new employee receives health coverage through 4/30/18. During the standard measurement period, the district will determine the eligibility status of the new employee along with the other district VHEs. If the new employee averages 30 or more service hours per week or 130 service hours per month during the standard measurement period of 10/3/17-10/2/18, then the district will offer the new employee coverage for the standard stability period through 12/31/19, transitioning the new employee to the same schedule as other district employees.

If the new employee does not average 30 or more service hours per week or 130 service hours per month during the standard measurement period of 10/3/17-10/2/18, then the coverage will stop at 4/30/19 unless the employee chooses to continue coverage under COBRA.

**Example 8:**

Paraprofessional coach – High School boys head football coach turns in timesheet (or sign-in/sign-out sheet) to Athletic Director each month that documents time spent conditioning players both outside and during the season, practice time, game time preparation with assistant coaches, maintenance on the fields, and game day activities. This employee does not experience a break in service greater than four consecutive weeks. Time worked:

| Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 163 | 116 | 88 | 40 | 40 | 40 | 40 | 60 | 95 | 120 | 152 | 167 |

Total service hours during measurement period: 1,121

Divided by 12 months 12

Average service hours worked per month: 93.42

This employee is not considered full-time and is therefore not eligible for health benefits under ACA.

**Example 9:**

Substitute teacher – works in mid-size district with over 15 schools. This employee does not work on holidays, spring break, fall break, winter break, or during the summer months. This employee experiences a break in employment during the summer of more than four consecutive weeks, which must be excluded from the calculation. Time worked:

| Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | June | July | Aug | Sept |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 130 | 143 | 90 | 110 | 135 | 132 | 112 | 142 | 0 | 0 | 40 | 112 |

Total service hours during measurement period: 1,146

Number of weekdays per year 261

Number of summer break days - 54

Number of days without summer break 207

Average service hours per day (1,146/207) = 5.54 average service hours per day

Average service hours per month: 5.54 \* 261 weekdays / 12 months = 120.5 service hours per month

This employee averages less than 130 service hours per month and is therefore not eligible under ACA.

OR

Average service hours per week: 5.54 \* 5 = 27.7 service hours per month

This employee averages less than 30 service hours per week and is therefore not eligible under ACA.

# Break-in-Service Rules for Continuing Employees

Breaks in Service – Educational Organization: With respect to educational organizations, an Employee whose employment is terminated with an applicable large employer, who resumes employment with the same large employer, may be treated as a new Employee (with a waiting period) upon the resumption of services, only if the Employee’s break in service was for a period of at least 26 consecutive weeks immediately preceding the resumption of services. If the Employee’s break in service was less than 26 consecutive weeks, the Employee is a continuing Employee and will resume the same Health Insurance coverage as the Employee had immediately prior to the Employee’s break in service, without a waiting period.

**Break in service: Less than 13 weeks**

*Under the look-back measurement rules, where an employee has a break with no hours of service and that break in service is less than 13 weeks, the employee must be treated as an ongoing employee when they resume work. The employee does not have to be credited with any hours of service during the break, but they are placed back into the applicable measurement and stability period as though they never left.*

*If that rule causes the employee to return as ACA-FT and they had health coverage before the break in service (or would have had an opportunity to elect coverage during the break in service, e.g. due to open enrollment), then the employee must be given the opportunity to enroll in coverage effective no later than the first day of the calendar month following their resumption of service if the employer wants to ensure it avoids a “play or pay” penalty.*

Example from article

***September:*** *Because Kate is returning as an ACA-FT employee, she must be offered coverage by the first day of the next calendar month (September) in order to avoid a penalty,* ***not*** *the normal first of the month following 60 days waiting period (November). Whether your health plan will allow you to offer coverage sooner than the normal waiting period like this is a different question; ideally your health plan should contain a rehire clause waiving the waiting period for anyone who is rehired within 13 weeks (or longer).*

***2017:*** *Because Kate is treated as an ongoing employee she is measured at the end of the November 1, 2015 to October 31, 2016 SMP (stability measurement period) along with all the other ongoing employees. Because of her break in service there are going to be 12 weeks in that SMP where Kate has zero hours of service, which will reduce her average weekly hours of service. Depending on how many hours she works during the rest of the SMP, it’s possible Kate will average less than 30 hours per week and be ACA-PT for the 2017 SSP. If that is the case, then Kate would not receive a 1095C in 2017 (because she was not eligible for coverage and no offer of coverage was made).*

*If you are an educational organization the new hire break in service rule is at 26 weeks, rather than 13 weeks. The reporting outcomes are the same, other than the break in service must be at least 26 weeks before you can treat Kate as a new hire.*

Source: [**Associated BRC Resource Library**](https://www.associatedbrc.com/Resource-Library/Resource-Library-Article/ArtMID/666/ArticleID/274/ACA-reporting-tip-9-Break-in-servicetermination-and-rehire)

**Rehired Employees and Measurement Methods**

*In addition to creating the Employer Shared Responsibility (ESR) mandate on Applicable Large Employers (ALEs), the Patient Protection and Affordable Care Act (ACA) also limited an employer’s discretion to classify a returning employee as a rehire or as a new hire. Now, an individual hired after a break in service* ***of less than 13 weeks is a rehire.*** *An individual rehired after a break in service of* ***at least 13 weeks is a new hire****. (Note: the allowed break in service increases to 26 weeks for educational organizations to account for scheduled academic breaks.) The determination of whether an individual is a new hire or a rehire impacts how an employer must evaluate the returning employee’s benefits eligibility, and ultimately determines when the employer must offer healthcare coverage to avoid penalties under the ESR mandate.  A returning employee with a break in service of less than 13 weeks will be considered as continuing his or her employment.*

*As far as healthcare benefits go, a rehired employee will step back in where he or she left off as follows:*

*Monthly Measurement Method: If the rehired employee satisfied a waiting period during his or her previous period of employment, the employer cannot require the returning employee to undergo an additional waiting period. Coverage must be offered the first day the employee is credited with an hour of service or the first day of the calendar month following resumption of services (if immediate coverage is not administratively practicable).*

*Look-Back Measurement Method: A rehired employee must be credited for hours worked during the most recent measurement/look-back period and offered immediate healthcare enrollment if the employee’s average hours worked or paid meet the full-time threshold.*

Source: [**Associated BRC Resource Library**](https://www.associatedbrc.com/Resource-Library/Resource-Library-Article/ArtMID/666/ArticleID/274/ACA-reporting-tip-9-Break-in-servicetermination-and-rehire)

Continuing employees will not be classified as a “new hire” unless there is a 26-week break in employment. An example is an employee whose break in service is shorter than a rehired employee, such as a full-time teacher who resigns, then begins working as a part time/substitute teacher. When there is no 26-week break between dates of employment, the teacher will retain the same stability period before the resignation and the district can credit the teacher with hours of service for any periods of special unpaid leave and hours in the employment break period. If the new position falls below 30 hours a week, the employee would not be eligible under ACA. This final IRS regulation allows a large employer to begin to apply the monthly measurement method in lieu of the applicable stability period for the continuing employee beginning on the first day of the **fourth full calendar month** following the change in employment status. *This rule applies only with respect to an employee to whom the applicable large employer member offered minimum value (MV) coverage from at least the first day of the month following employee’s initial three full calendar months of employment through the month in which the change in employment status occurs, and this rule applies only if during each of the three full calendar months following the change in employment status the employee has on average less than 30 hours of service per week.* For further information regarding break-in-service and full-time classification rules, please visit [**IRS ACA Tax Act Provisions**](https://www.irs.gov/Affordable-Care-Act), Bulletin 2014-9, paragraphs E-2 and G, and [**Internal Revenue Bulletin**](https://www.irs.gov/irb/2015-52_IRB/ar11.html)**.**

**Action Steps**

* Determine which workers are employees
* Determine if the district is a “large” employer (50 full time and FTE employees)
* If district **does not have 50 full time and FTE employees, ACA does not apply**
* Decide which hours count toward “hours of service”
* Determine which employees are full-time
* Make offers of coverage
* Repeat annually

## What if an employee does not pay their portion of the premiums?

If an employee fails to pay his or her share of the premium, the employer does **not** have to provide coverage for the period not paid. However, the ACA requires an employer to utilize a 30-day grace period for collection of premium payments and consideration of partial payments that are not significantly less than the amount due, like COBRA regulations. KEHP mandates that if health insurance premiums are 30 days in arrears, the employee is given 30 days from the date of the 30-day arrears letter (notice of arrears) to pay the arrears and avoid termination for nonpayment. If payment is not received at the end of the 30 days, the employee’s coverage is terminated for nonpayment of premium. The KEHP will send a (60-day) letter advising of the termination. The employee will only be eligible to reinstate coverage during the next open enrollment for the next plan year*.* Further information pertaining to the arrears process can be located in Chapter 12, paragraph C-4 of the KEHP Administration Manual at [**Administration Manual**](https://personnel.ky.gov/Pages/ICs-and-HRGs.aspx)**.**

# How can the District Mitigate Costs under the ACA?

KDE has identified some ways that districts can revise existing policies, or implement new ones, as options to save resources:

1. Districts should consider terminating substitutes that stop taking assignments. For example, a substitute stops taking assignments shortly after the 1-year stability period begins, resulting in the payment of state-sponsored premiums for an employee that is not actually working. Note, coverage must be offered to full-time active employees, therefore if the termination occurs during the stability period then the employee has the right to continue coverage via COBRA insurance.
2. Hiring several full-time substitutes with health coverage may save resources over periodically offering health benefits to a varying group of substitutes.
3. Districts can adopt a policy that limits the number of days per year an employee can work. By adopting some number of days less than the calculated eligibility break point (see Example 2) the district would eliminate the need to track actual hours worked.
4. A policy could be adopted to limit the number of hours variable hour employees are permitted to work to a maximum of 29 per week.

Even though the state funds the health insurance premiums for non-federally funded district employees, SEEK may be reduced to fund health insurance costs exceeding the amount appropriated for that purpose. Therefore, KDE strongly recommends that districts do not adopt blanket policies to offer all part-time and variable hour employees health coverage in order to avoid the time-consuming task of determining eligibility for part-time and VHEs and to avoid the potential risk of penalty assessment. Before implementing or revising policies, districts are encouraged to review the ACA anti-retaliation regulations in order to assure that resource saving measures are not contrary to law. Information pertaining to these measures can be found in Section 1558 of the ACA at [**Whistleblowers**](http://www.whistleblowers.gov/)**.**

# Noncompliance with ACA

## What are the penalties for noncompliance with ACA?

Large employers who do not offer insurance coverage to full-time employees in compliance with the requirements of the ACA may be subject to two different penalties:

1. Failure to offer coverage to an eligible employee
2. Coverage offered is not the minimum, essential coverage.

**KEHP provides assurance to all participating employers that the requirements regarding adequacy and affordability are met by the plan.** Kentucky school districts are not responsible for ensuring the health coverage offered by KEHP meets the ACA definitions of affordable and adequate. School districts are responsible, however, for identifying eligible employees and making the offer of coverage. Documentation should be retained by the district to detail which employees were offered coverage and the applicable dates. Also, maintain documentation showing whether the employee accepted coverage.

The IRS will assess a penalty ***to the employer*** if at least one part-time or VHE employee works a full-time schedule for at least one month during the year and receives a federal premium tax credit or cost-sharing reduction to purchase health coverage through the Marketplace. For example, if an employee is eligible for health coverage (works an average of 30 service hours per week or 130 service hours per month) but is not offered health coverage by the district, the employee can purchase a health plan through the Marketplace and claim a premium tax credit on their 2015 individual tax return. When the IRS processes the tax returns, sometime after April 15, 2018, a penalty notice will be generated for the district based on the premium tax credit claimed by the employee.

The IRS requires substantial compliance with the provisions of the ACA. The IRS requires large employers to offer coverage to 95% of eligible full-time employees before the district will be subject to an assessment.

If the employer has not met the substantial compliance test, a penalty will be imposed. The penalty is based on the total number of full-time employees; regardless of how many were or were not offered coverage. The penalty is assessed for each month in which any full-time employee receives a tax credit or cost-sharing reduction, and the IRS will adjust the penalty amount for inflation in future years. For further clarification, visit [**ACA Employer Shared Responsibility Provisions**](https://www.irs.gov/affordable-care-act/employers/employer-shared-responsibility-provisions)**.**

There are two fees required under the ACA:

* The ***Transitional Reinsurance Fee*** is no longer being assessed.
* The ACA requires plan sponsors of self-insured plans, such as KEHP, to pay the ***Patient-Centered Outcomes Research Institute (PCORI) fee*** to fund PCORI’s research initiatives. The amount changes annually. For policy and plan years ending after Sept. 30, 2012, and before Oct. 1, 2013, the applicable dollar amount is $1. For policy and plan years ending after Sept. 30, 2013, and before Oct.1, 2014, the applicable dollar amount is $2. For policy and plan years ending after Sept. 30, 2014, and before Oct. 1, 2015, the applicable dollar amount is $2.08. For policy and plan years ending after Sept. 30, 2015, and before Oct. 1, 2019, the applicable dollar amount is further adjusted to reflect inflation in National Health Expenditures, as determined by the Secretary of Health and Human Services. Employer Reporting Requirements

## What are the employer reporting requirements?

Please note the IRS deadlines for current year filings and visit [**Notice 2020-76 (irs.gov)**](https://www.irs.gov/pub/irs-drop/n-20-76.pdf)

| **2020 Reporting** | Deadline |
| --- | --- |
| **Deadline to Distribute 1095-C Forms to Employees and Covered Individuals** | March 2, 2021 |
| **Deadline to File with the IRS (paper)** | February 28, 2021 |
| **Deadline to File with the IRS (electronic)** | March 31, 2021 |

For answers to frequently asked questions regarding reporting requirements for the 1094C, 1095B, and 1095C, please visit [**Reporting FAQs**](https://personnel.ky.gov/DHRA/ACA-FAQEmployer.pdf)and [**IRS ACA Employers Reporting Q&As**](https://www.irs.gov/Affordable-Care-Act/Employers/Questions-and-Answers-about-Information-Reporting-by-Employers-on-Form-1094-C-and-Form-1095-C)**.** For updated reporting deadlines and questions, please visit [**KDE Munis Guides**](http://education.ky.gov/districts/Pages/MUNIS-Guides.aspx)**.**

In addition, employers must continue to include the aggregate cost of applicable employer-sponsored coverage on the employee W-2s. Please see the attached link for the required and optional items the ACA W-2 reporting must consider [**IRS ACA W-2 Reporting**](https://www.irs.gov/Affordable-Care-Act/Form-W-2-Reporting-of-Employer-Sponsored-Health-Coverage)**.**

## What are the nondiscrimination rules and penalties?

Treating health insurance premiums for superintendents as nontaxable income may violate new nondiscrimination rules. In the health benefits context, nondiscrimination prohibits advantages in favor of highly compensated employees. The penalties for violation of the nondiscrimination rules are harsh. If a self-funded plan violates the nondiscrimination rules, the *employee* is subject to an excise tax on the value of the benefits received. The *employer is penalized by the IRS in the amount of $100 per employee discriminated against* (i.e., everyone other than the superintendent) *per day* until the plan complies.

# Conclusion

The ACA is complicated and can be overwhelming. For Kentucky school districts, KEHP will bear the burden of making available minimum essential coverage that is affordable according to IRS standards, allowing the districts to focus on other issues such as determining who are full-time employees and their eligibility status.

The IRS has published extensive proposed regulations relating to the Play or Pay Mandate; however, employers still have many unanswered questions. Additional regulations continue to be issued by the IRS. Districts should look for updates and further guidance as rules are revised.

# Appendix

## Questions regarding this guide?

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Questions about importing or other ACA MUNIS processes should be directed to munis@education.ky.gov.

## Additional Resources :

[**U.S. Dept of Health & Human Services**](http://www.hhs.gov/healthcare/)

[**26 CFR 54.4980H-3**](https://www.law.cornell.edu/cfr/text/26/54.4980H-3)

[**KY Gov KEHP Admin Manual**](https://personnel.ky.gov/KEHP/Admin%20Manual.pdf)

[**KY Teachers Retirement System (TRS)**](https://trs.ky.gov/)

[**2020 IRS Shared Responsibility**](https://www.irs.gov/pub/irs-drop/rp-19-29.pdf)

[**2020 Q&A Shared Responsibility**](https://www.irs.gov/affordable-care-act/employers/questions-and-answers-on-employer-shared-responsibility-provisions-under-the-affordable-care-act)