



State of Delaware
Department of Human Resources

AFFORDABLE CARE ACT COMPLIANCE	
DHR-STW-Policy: To be assigned	Authority: Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 (2010).
Effective Date: 1/1/2020	Supersedes: N/A
Application: State Agencies, School Districts, Charter Schools, Delaware Technical Community College and Delaware State University	Signature: 

1. Policy Purpose Statement –

The Patient Protection and Affordable Care Act (“ACA”) was enacted into law on March 23, 2010 with the intention of increasing access to health insurance coverage. The ACA sets forth a number of employer and health plan mandates that have been implemented by the State of Delaware. This policy is intended to incorporate these provisions and provide guidance to State organizations on their obligations and the associated consequences and penalties for failure to comply.

The State of Delaware is defined by the ACA as a large employer with 50 or more full-time employee equivalents. Full-time is defined as on average 30 or more hours of service per week, however the State defines full-time as 120 hours or more in a four-week reporting month, or 150 hours or more in a five-week reporting month.

The ACA Employer Shared Responsibility Provision consists of two penalties applicable to the State of Delaware on a calendar year basis. The State is required to offer minimum value affordable coverage to at least 95% of our full-time employees. Coverage is affordable if the employee premium for self-only coverage is less than a defined percentage of the employee’s W-2 wages. Failure to comply with this requirement known as the “A” penalty, would result in an assessment of \$2,500 for each full-time employee for Calendar Year 2019. The penalty increases to \$2,570 per full-time employee for Calendar Year 2020. The second penalty known as the “B” penalty would occur if one or more of our full-time employees enrolls in coverage in the State Healthcare Exchange/Marketplace and qualifies for a PTC. The “B” penalty totals \$3,750 per year for Calendar Year 2019 and is assessed on a monthly basis. The penalty increases to \$3,860 per year for Calendar Year 2020. The “A” and “B” penalty amount increase each year. Assessment of Part “B” penalties will be the financial responsibility of the organization where the employee works.

In an effort to reduce the possibility of noncompliance and penalties, State organizations are required to comply with a number of ACA provisions and State Group Health Plan procedures. The Department of Human Resources (“DHR”) will continue to monitor additional ACA compliance mandates and as appropriate, will notify State organizations of their responsibilities.

2. Scope –

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This Policy applies to all State organizations, including State agencies, school districts, charter schools, Delaware Technical Community College and Delaware State University.

3. **Definitions and Acronyms –**

- a. *ACA*: Affordable Care Act
- b. *ESRP*: Employer Shared responsibility Penalty
- c. *PTC*: Premium Tax Credit
- d. *SBO*: Statewide Benefits Office
- e. *IRS*: Internal Revenue Service
- f. *DHR*: Department of Human Resources

4. **Policy**

This policy is to advise State organizations of their obligations to comply with the following Employer responsibility provisions of the ACA and the State of Delaware:

- a) Accurate Classification of Employees Upon Hire;
- b) Health Insurance Marketplace Notice Requirement for New Hires; and
- c) ACA Reporting and Employer Shared Responsibility Penalties.

The policy also outlines the consequences for State organizations for failure to comply with the ACA and State provisions. Associated procedures outlining required action by State organizations to ensure compliance with the provisions are referenced in this policy.

a) Accurate Classification of Employees Upon Hire – Casual/Seasonal, Independent Contractor or Substitute Teacher

It is essential that organizations correctly classify employees and contractors upon hire. Refer to [Section 6.7 of the State’s Budget and Accounting Manual](#). If an employee is not classified as regular permanent full-time or permanent part-time, then the individual must fall into one of the following three categories:

- 1) Casual/Seasonal – Employees hired per 29 Del C. Section 5903 (17)(a) as a casual/seasonal employee must not work 30 or more hours per week on average during the fiscal year. Circumstances that require the use of casual/seasonal employees not defined in 29 Del C. Section 5903 (17)(a) require the State agencies request this exception through the Department of Human Resources and State organizations to monitor compliance with the “A” and “B” penalties. Assessment of Part “B” penalties will be the financial responsibility of the organization where the employee works. Refer to SBO Procedure ACA-001 and Division of Accounting Payroll Compliance Group Worker Classification Bulletin.
- 2) Contractor – Temporary staffing and contracted services must be procured in accordance with 29 Del. Chapter 69 Subchapters III & VI dependent upon their classification. For a statewide

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listing of currently contracted and awarded contracts, please review the Awarded Contracts on MyMarketplace.Delaware.Gov. Contractors are not considered State employees and are not subject to the reporting requirements.

- 3) Substitute Teacher – 14 Del C. Section 1326 provides for the salary schedule for substitute teachers specified at a daily rate. However, time-keeping records must reflect the number of hours these employees work per week to determine if they should be considered full-time employees for the purposes of ACA calculations. To maintain compliance with the “A” and “B” penalties, schools must collectively manage the hours worked by the substitute employee populations. Assessment of the “B” penalties will be the financial responsibility of the organization where the employee works.

b). Health Insurance Marketplace Notice Requirement for New Hires

Within 14 days of hire, new employees must receive notice of the following: 1) the existence of the State-based Exchange/Marketplace, 2) services offered by the Exchange, 3) how to enroll/request information, and 4) if the employer's coverage does not provide minimum value, the fact that a Premium Tax Credit (“PTC”) may be available to purchase Exchange coverage.

Notices must be in writing, delivered by first-class mail or electronically, if DOL Electronic Disclosure Safe Harbor requirements are met. Notices may also be hand delivered. Refer to [SBO Procedure ACA-007](#). Template Notices for full-time, part-time and casual seasonal employees can be found on [SBO’s website](#).

c). ACA Reporting and Employer Shared Responsibility Penalties

The ACA ESRP consists of two penalties assessed each calendar year and pertains to employees defined as working 120 hours or more in a four-week reporting month or 150 hours or more in a five-week reporting month. This specifically applies to casual seasonal employees and substitutes as these employees are not offered health care coverage through the State Group Health Insurance Program.

- a. The “A” penalty occurs if the State does not offer minimum value affordable coverage to at least 95% of our full-time employees during the calendar year. Coverage is affordable if the employee premium for self-only coverage is less than 9.86% of the employee’s W-2 wages for Calendar Year 2019. This percentage is increased each year by the Internal Revenue Service (“IRS”). It is essential that the State maintain compliance as the penalty is \$2,500 times the total number of full-time employees reported for the calendar year. The annual penalty amount is increased to \$2,570 for Calendar Year 2020. The IRS increases the penalty amount each year.
- b. The State must maintain an acceptable level of compliance with respect to the 95% coverage level. To maintain this acceptable coverage level and avoid all penalties, State agencies and schools must collectively manage their casual seasonal and substitute populations. It is imperative to keep casual seasonal/substitute employees under 30 hours per week on average during the fiscal year.

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- c. The “B” penalty occurs if one or more of the State’s full-time employees goes to the Marketplace to obtain coverage and receives a PTC. The “B” penalty totals \$3,750 per year for Calendar Year 2019 and is assessed on a monthly basis. The annual penalty amount is increased to \$3,860 for Calendar Year 2020. The IRS increases the penalty amount each year. The organization where the employee works will be responsible for payment of this penalty.

Organizations must consider these penalties when making staffing decisions related to the use of casual seasonal employees and the hours these employees work. Ensure that your organization’s fiscal office is aware of this penalty as it relates to your casual seasonal employees who work full-time hours, regardless of funding type. To date, the State has been assessed penalties for both Calendar Year 2015 and 2016. Refer to [SBO Procedure ACA-001](#).

5. Procedures

- a. [SBO Procedure ACA-001](#)
- b. [SBO Procedure ACA-007](#)
- c. [State’s Budget and Accounting Manual](#)
- d. [Division of Accounting Payroll Compliance Group Worker Classification Bulletin](#)

This policy is not intended to create any individual right or cause of action not already existing and recognized under State and Federal law.