

## 4.2.1: READ- Open Enrollment Requirements



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### Open Enrollment: Employer Requirements

Prior to implementation of the Patient Protection and Affordable Care Act (PPACA), open enrollment periods were not required under the Employee Retirement Income Security Act (ERISA) but may have been required by:

- Health insurance contracts.
- Collective bargaining agreements.
- Section 125 cafeteria plans under which participants must be given a reasonable period of time to make elections each year.

Now, under the PPACA, an "applicable large employer," that does not offer an annual open enrollment may be subject to penalties under the health care reform's employer shared responsibility requirements. According to the Internal Revenue Service (IRS), an ALE will not be treated as having "offered" coverage unless employees and dependents are given at least an annual opportunity to accept or decline coverage. For this purpose, "dependent" means an employee's children as defined who are under 26 years of age. This includes sons, daughters, stepsons, stepdaughters, adopted children or eligible foster children. Notably, the dependent definition does not include individuals other than the employee's children, such as the employee's spouse, so a plan may continue to not make an annual offer of coverage to spouses (and, in fact, may entirely exclude non-employee spouses from coverage) without incurring employer penalties.

See [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act](#).

The PPACA regulations clarify that an employee's election of coverage from a prior year that continues for every succeeding plan year unless the employee affirmatively elects to opt out of the plan constitutes an offer of coverage. "Rolling" or "evergreen" elections would be permissible for purposes of complying with the requirement to make an offer of coverage. Plans with these types of elections would still have an annual open enrollment period and employees wishing to make changes to their elections would do so at that time. Otherwise, their previous elections will rollover to the next plan year. To implement this design, the employer should explain the election process in all the plan materials. Additionally, the employer should disclose any premium increases and whether the participant elections will automatically be changed to reflect the increase. Best practice is for the employer to distribute a copy of the participants' current elections during open enrollment so that they are aware of what elections would carry forward if no action is taken.

Some employers allow employees only one chance to join their employer-sponsored health plan, or only give them what is called "one bite of the apple." Failure to enroll when first eligible results in permanent loss of eligibility under the plan. This approach offers coverage to the employee and dependents only once, which violates the PPACA and could result in penalties for large employers. However, because the PPACA excludes spouses as dependents, the one-bite-of-the-apple approach could still be used for spousal coverage.

Employers that do not employ an average of at least 50 full-time employees are not subject to the PPACA's shared responsibilities requirements and do not have to offer an open enrollment period unless required to do so under one or more of the three circumstances stated above.

Source: Q&A "Is an annual open enrollment period for employee health insurance benefits required?" Society for Human Resource Management (SHRM), 2024.

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