

Correct Worker Classification Critical to Avoid Penalties under the ACA

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Final regulations recently issued by the U.S. Department of the Treasury (the **Final Regulations**) reaffirmed that the definition of **employee** for purposes of the employer shared responsibility provisions of the Affordable Care Act (the **ACA**), also known as the **play-or-pay** rules, is determined by reference to the common law standard for determining employee status. In general, a **common law employee** is subject to the will and control of the employer - not only as to what should be done but how it should be done. The Final Regulations declined to adopt suggestions by some commenters under the previously proposed regulations that relief from the play-or-pay penalties should be provided for employers that misclassify workers who are later determined to be common law employees. To avoid what could be substantial penalties under the ACA, employers should carefully assess their workforces to ensure that all common law employees have been properly identified and classified on the employer's payroll and other records, including workers who may currently be improperly classified as independent contractors. The Final Regulations can be found [here](#).