

# **Guide to the Health Care Fund Contribution Assessment**

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## Background

In 2006, the Vermont legislature began requiring employers who did not offer insurance to all their employees to pay a “Health Care Fund Contribution.” The contribution is a way for employers to share in the cost of providing health care coverage for their employees. Following passage of the original legislation, employers paid the contribution to the Vermont Department of Labor. In 2018, the Vermont Department of Taxes began administering the Health Care Fund Contribution Assessment (HCFCFA).

## Purpose

The purpose of the HCFCFA is to ensure that all employers contribute to the cost of providing health care coverage to their employees, even those who are uninsured or insured under publicly financed plans such as Medicaid or plans on the Vermont Health Benefit Exchange. Thus, employers that provide coverage to all employees will not owe any assessment, but they still must file a return each quarter. If an employer offers to cover an employee, but the employee does not accept coverage, the employer may be required to contribute to the Health Care Fund.

## How to Report and Pay

Employers report and pay the HCFCFA in Part III of Form WHT-436, Quarterly Withholding Reconciliation and Health Care Contribution.

**Note:** Parts I and II of Form WHT-436 are used to report wage and nonwage employer withholding. The requirements regarding the payment and reporting of employer withholding tax have not changed.

## Forms Needed to Report the Assessment

The employer will use three forms:

### 1. Form HC-1, Health Care Contributions Worksheet

This form is a worksheet to help the employer determine if any assessment is due for the quarter.

**Retention:** Employers must retain Form HC-1 for their records for three years. Employers are not required to submit this worksheet to the Department of Taxes.

### 2. Form HC-2, Declaration of Health Care Coverage

This form must be completed each year by uncovered employees. If an employee’s health coverage changes at any time during the year, the employee must complete and submit a new Form HC-2 to the employer.

**Retention:** Employers should retain Form HC-2 for their records for three years. Form HC-2 is not required to be submitted to the Department of Taxes.

- If an employee is not covered by the employer’s plan and the employer has no HC-2 on file for them, the law requires the employee be treated as “uncovered.”
- This means an employer could end up paying assessment for an employee that meets an exception simply because the employer failed to obtain an HC-2.

- On audit, the Department is required to assess for uncovered employees with no Form HC-2 on file.
- Employees not covered by the employer's plan must obtain a new HC-2 every year.
- A person who was under the age of 18 at any point during the calendar quarter is not an "employee" for the purposes of the HCFCA. This means this person is not required to complete and submit an HC-2. An employer, however, may request employees under age 18 to complete the form for their records.
- If an employee's health care coverage changes, the employee should complete a new Form HC-2 within a reasonable amount of time. Reporting is conducted using the last declaration on file and employers must obtain new forms annually.

### 3. WHT-436, Quarterly Withholding Reconciliation

The employer must complete this form each quarter and enter the Health Care Contribution Assessment (calculation made on Form HC-1) in Part III. The assessment is reported and paid electronically at the same time quarterly withholding reconciliation is filed using Form WHT- 436, Quarterly Withholding Reconciliation. The employer must submit Form WHT-436 with payment, if any, along with employer withholding to the Vermont Department of Taxes. Employers must mark zero if they have fewer than five full-time equivalent employees over the age of 18. See "First Four Uncovered FTEs Are Exempt."

#### Payment Due Dates

Employers subject to the assessment must pay it quarterly, on or before the 25th day of the calendar month succeeding the close of each quarter. This means it is due on or before:

- April 25 (for January-March)
- July 25 (for April-June)
- October 25 (for July-September)
- January 25 (for October-December)

#### How the Assessment Is Calculated

The assessment is paid for every uncovered full-time equivalent employee. To find out how many uncovered full-time equivalent employees an employer has, an employer must do the following:

- Divide the total hours worked by all uncovered employees during a quarter by 520. No matter how many hours are worked by an employee in a quarter, no more than 520 hours can be assessed for one individual employee.
- Round down to the nearest whole number and then subtract 4. The reason 4 is subtracted is because the first four uncovered employees are exempt for all employers.
- The resulting number is the number of uncovered employees for which the employer must pay the assessment.

- Multiply the number of uncovered employees by the rate. The resulting number is the contribution the employer must pay to the Health Care Fund.

The HC-1 worksheet will walk employers through this calculation, both on the online form and on the paper form.

**Note: It is illegal to deduct any HCFC assessment paid from an employee's pay.**

### **First Four Uncovered FTEs Are Exempt**

The first four uncovered employees are not subject to the assessment. This exception is incorporated into the calculation on the HC-1 so employers using that form do not need to do anything extra to make use of this exception.

- This means an employer with four or fewer full-time equivalent (FTE) employees will not have to pay any assessment, although the employer must still a zero return.
- Four FTEs equal 2,080 hours worked in the quarter. Note: it is possible that the 2,080 or fewer hours could be worked by more than four part-time individuals.
- Employers must enter zero if they have fewer than five employees (i.e., 2,080 or less hours worked). Leaving the line blank on the WHT-436 could result in an assessment liability.
- Record keeping is only required if an employer has more than four FTEs.

### **“Hours Worked” Tracks With When Wages are Paid**

“Hours worked” should track with when wages are paid whenever possible. This is so employers are not burdened with a new reporting requirement. Employers need only track when wages are paid to comply with the HCFCFA statute.

Employers should note, however, that they are never required to report non-work hours, such as sick leave or vacation, when determining hours worked.

### **The Rate for the Assessment**

The rate for the assessment for each uncovered employee changes annually. It is adjusted each year to equal any change in the premiums for the “second lowest-cost silver-level plan in the Vermont Health Benefit Exchange.”

- In other words, the assessment changes every year (almost certainly upward because it follows insurance costs), and its rate tracks the cost of one of the relatively inexpensive plans on the Exchange.
- Every year, the rate will be updated and made available on the Department’s website and on the HC-1.

## Uncovered Employees

### What Is an “Uncovered” Employee?

Employers must pay the assessment for “uncovered employees,” which has a specific meaning for the HCFCFA. An employee is considered “uncovered” if:

- The employer does not offer health care coverage to any employees; or
- The employer offers coverage to some employees but not this particular employee (put another way, the employee is uncovered if they are not “eligible” for the coverage offered to other employees); or
- The employee is offered coverage but chooses not to accept the coverage and that employee has no other coverage, uses Medicaid, or purchases coverage for themselves on the Vermont Health Benefit Exchange; or
- The employee is part-time or seasonal and does not have coverage or uses Medicaid or has no HC-2 on file; or
- The employee declines an employer’s offer of coverage and has no HC-2 on file.

An employee is **covered** for a calendar quarter if:

- The employer offers to pay part of coverage for the employee during any part of the quarter and the employee accepts the coverage or has some other coverage that is not Medicaid or a Vermont Health Benefit Exchange plan.
- The employee is enrolled in an employer’s plan but will not be covered for up to six months. However, the employee is uncovered if it will be longer than six months or the employee is not enrolled because they are in a probationary period.

### Uncovered Employee Who Stopped Working During the Quarter

Any hours worked by uncovered employees who stop working during the quarter must be included in the calculation of FTE hours.

### Uncovered Salaried Employees

Employers should use a reasonable estimate of the hours worked when determining the assessment liability for salaried employees with no set hours. The hours worked per quarter cannot exceed 520 hours for any individual employee.

### Uncovered Employees Paid on Commission or Paid a Flat Amount

When determining the assessment liability for employees paid on a commission, or paid a flat amount for a specific job, use 520 hours if the job is full time. Otherwise, use a reasonable estimate not exceeding 520 hours.

## Seasonal and Part-time Employees

### Seasonal and Part-Time Employees Treated as Covered

Do not use the seasonal or part-time exemption if: (1) a seasonal or part-time employee is covered

by a plan offered by the employer, or (2) a seasonal or part-time employee declines the employer's coverage but has his or her own coverage other than Medicaid or a Vermont Health Benefit Exchange plan. This is because there is no HCFCFA liability due for a covered employee. Using the exemption would require the employer to track hours, which they do not need to do for covered employees.

### **Retroactive Treatment for Seasonal Employees**

Employers should be aware that once an uncovered employee works too much to be considered "seasonal," all of the prior weeks worked should be included in the calculation for uncovered FTEs. This will likely cross into previous quarters, requiring an amendment to the hours reported and assessment paid for previous quarters. If the other requirements are met (insurance offered to all full-time employees and the seasonal employee has coverage from another source), there should not be any penalty for amendments made for this purpose because the employee was not supposed to be counted as uncovered until it became apparent that he or she would not meet the definition of a seasonal employee.

## **Special Situations**

### **Retirees and Employees With Multiple Job Titles**

If a retiree returns to work as a part-time employee and is "covered" by the employer as a retiree, but not as a part-time employee, the person is nevertheless considered "covered" and is not required to be counted in uncovered FTEs.

Likewise, if an employee has more than one job title and is covered for one job, but not others, the person is considered "covered" for all the jobs. For example, a teacher may have an additional job title as a coach. The person is covered as a teacher but not offered coverage as a coach. All the hours worked by the person are considered "covered."

### **Employees Working at More Than One Business With Common Ownership**

Each business with a unique Department of Labor account number is considered a separate employer (i.e., employing unit). Each business is required to track the hours worked by the employee separately. This does not mean hours should ever be double counted.

### **Probationary Periods**

If an employee is not offered coverage during a probationary period, the person is considered uncovered. If they become covered during the quarter, the employee will be considered covered for the entire quarter.

Having a subsequent effective date of coverage is different than a probationary period. If a person is enrolled but coverage does not start until a certain date, the person is considered "covered."

### **Out-of-State Employees**

The assessment is paid for hours worked in the State of Vermont. Accordingly, an employer may deduct any hours worked in another state by an uncovered employee when determining FTE hours. This is true even if the wages are reported as Vermont wages. It is not relevant to the calculation where the employee lives.

## Annual Statement

Although not required for tax purposes, employers should be aware that the law requires them to provide employees with an annual statement of the following:

- The total monthly premium cost paid for any employer-sponsored plan
- The employer's share of the monthly premium
- The employee's share of the monthly premium
- Any amount the employer contributes toward the employee's cost-sharing requirement or other out-of-pocket expense

## Definitions

### Employee

An individual who is 18 years or older during any part of a calendar quarter, employed full-time or part-time, and reported by the employer for purposes of unemployment compensation. If an employee is under the age of 18 during any part of a calendar quarter, he or she should not be included in the calculation for uncovered employees on the HC-1.

### Employee—Part-time

An employee who works for an employer for fewer than thirty hours a week or fewer than 390 hours in a calendar quarter.

- A "week" means a calendar week of Sunday through Saturday. A week of "work" is a calendar week in which the employee in-fact worked. This means a week in which an employee is on the payroll but does not actually work is not a week that counts as one of the 20 or fewer weeks allowed by seasonal employees. Likewise, the calendar week is used to determine whether an employee works for 30 weeks or fewer.
- A person is a part-time employee if they qualify using either of the definitions provided for part-time. Because "or" is used by the law, an employee is not required to meet both definitions to be considered part-time.

### Employee—Seasonal

An employee who (1) works for an employer for 20 weeks or fewer in a calendar year and (2) works in a job scheduled to last 20 weeks or fewer.

**Note:** Certain part-time and seasonal employees may be excluded from the calculation for the assessment. To exclude an employee from the assessment, both of following conditions must be met:

- The employer must offer health care coverage to all its regular full-time employees. If coverage is not offered to regular full-time employees, the hours worked by part-time and seasonal employees are subject to the assessment and must be included in the calculation on the HC-1.
- Any part-time or seasonal employee must be covered by some other insurance other than Medicaid. If the person lacks insurance coverage or uses Medicaid, his or her hours are subject to the assessment and must be included in the calculation on the HC-1.



## **Employer**

A person required to furnish unemployment insurance coverage under Vermont law at 21 V.S.A. Chapter 17.

**Note:** The definitions of “employer” and “employee” track with the law relating to unemployment insurance, not withholding requirements. This means some workers will have wages withheld but not be included in the HCFCA calculation and some workers will not be required to have wages withheld but nevertheless be considered an employee for the HCFCA. Most workers will be “employees” for both the withholding and HCFCA requirements.

## **Health Care Coverage**

Any private or public plan that includes both hospital and physician services.

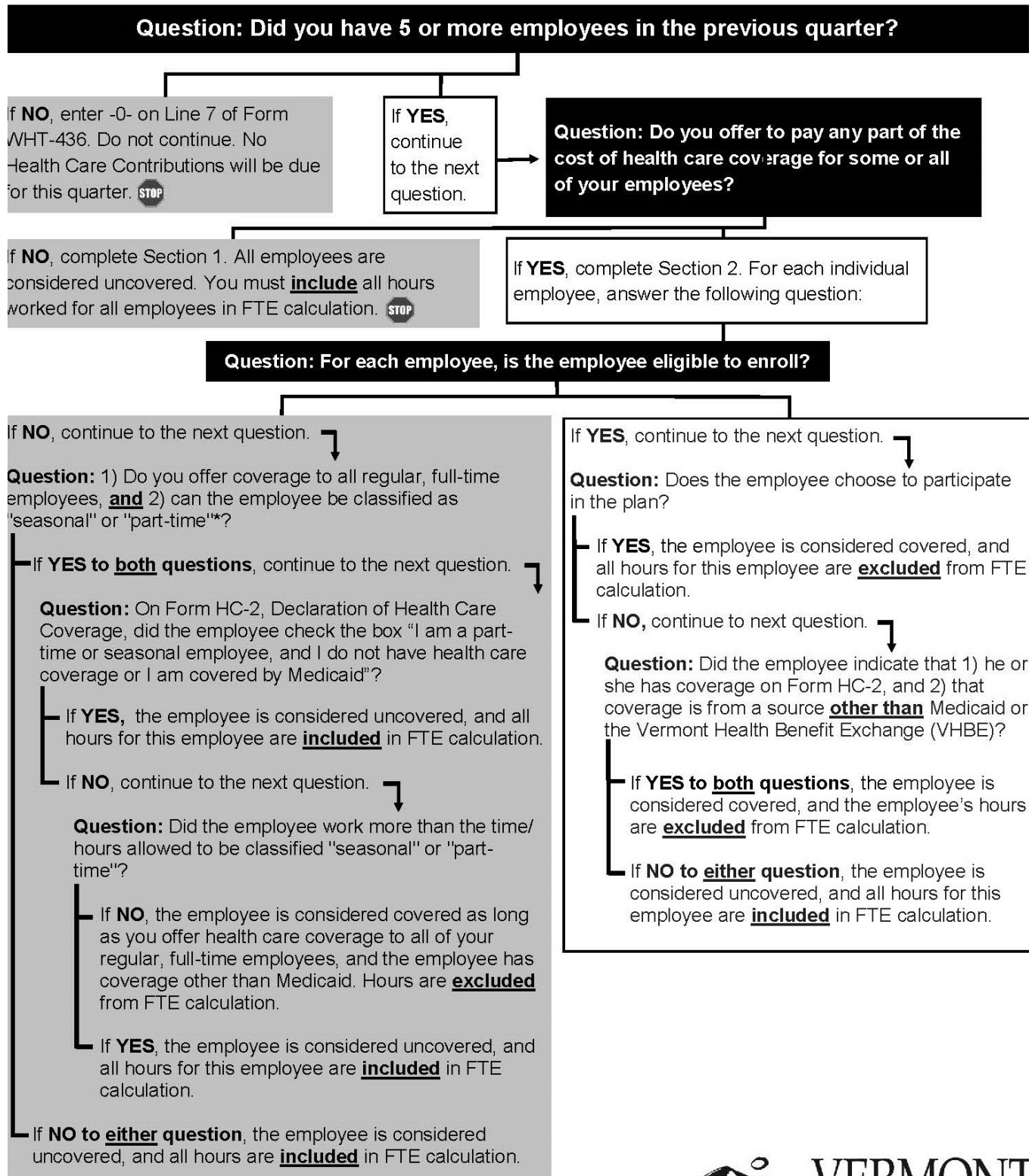
- Although nearly all plans count, there are situations where employees covered by Medicaid or a plan from the Vermont Health Benefit Exchange are considered “uncovered” for purposes of paying the assessment. See “Uncovered Employees” to learn of those situations.
- The HCFCA requires an employer to pay for part of a plan but does not specify how much it must pay. Thus, any amount paid by the employer is acceptable for an employee to be considered covered.
- A Health Savings Account (“HSA”) is not by itself a plan. However, the IRS requires a HSA to be offered with a health plan. An employee is considered covered if the HSA associated plan includes both hospital and physician services and the employer contributes into the HSA.
- A cafeteria plan or flex spending account is not a plan that includes both hospital and physician services. Therefore, an employee is not covered if offered a cafeteria plan or FSA but no coverage paid in part by the employer.

## **Additional Information**

For more information, visit our website at [tax.vermont.gov](http://tax.vermont.gov) or contact the Taxpayer Services Division at (802) 828-2551.

# HCFCA Decision Tree

Note: An employer must obtain a completed Form HC-2, Declaration of Health Care Coverage, from each employee not covered (uncovered) by the health care plan offered by the employer. A failure to obtain Form HC-2 from uncovered employees could result in an employer paying a higher assessment.



See definitions for "seasonal" and "part-time" employees in the fact sheet "For Employers: Health Care Fund Contribution Assessment" at [www.tax.vermont.gov](http://www.tax.vermont.gov).