Health Care Reform: Employer Responsibility Penalties

Overview

Also known as the **Employer Mandate** and Employer **Pay-or-Play**, the **Employer Shared Responsibility** provision of Health Care Reform requires large employers to pay a penalty if they don't provide minimum essential coverage to full-time employees and their dependents. Children, but not spouses, are considered dependents under the Employer Shared Responsibility rule. The information below reflects federal guidance as of August 2013. More details will be published by the IRS, HHS, and DOL.

Who's affected?

Large employers with 50 or more full-time equivalent (FTE) employees may be subject to the penalty.

When does Employer Shared Responsibility take effect?

The IRS announced in July that the penalties will be delayed by one year. The first Employer Shared Responsibility penalties will now be assessed in 2015.

How will employers know if they owe a penalty?

Employers may owe an Employer Shared Responsibility penalty if at least one full-time employee buys coverage on the Exchange and receives a premium tax credit.

- Employers will be notified if an employee is eligible for a tax credit and have a chance to respond before any penalties are assessed.
- If a penalty is owed, the IRS will send a notice and demand for payment.

How much is the penalty?

If coverage isn't offered to at least 95% of employees:	If coverage requirements are not met:
• $2000 per full-time employee • First 30 employees are exempt	• $3,000 for each full-time employee who purchases subsidized coverage on the exchange • Capped at $2000 per full-time employee (first 30 exempt)

Minimum Essential Coverage

An employer must offer **minimum essential coverage** that is **affordable** and provides **minimum value**.

The **minimum essential coverage** requirement is met if the plan offered is a group health plan under ERISA. Coverage such as disability and accident insurance plans are not considered minimum essential coverage when offered as standalone plans.

Affordability is determined by how much an employee would pay for self-only coverage. Anything more than 9.5% of the employee's total household income is **not** considered affordable for the purpose of employer shared responsibility.

An employer-sponsored plan has **Minimum Value** if the percent of covered health care services paid by the health insurance company is at least 60%.

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Affordability Safe Harbors

Most employers will only know an employees' personal income as reported on the company's W-2 form, but not the employee's total household income. To protect employers from paying the penalty because of information they have no way of knowing, the IRS proposed three affordability safe harbors. Employers can apply any of the affordability safe harbors in 2014.

Form W-2 safe harbor

Employers who offer an employee self-only coverage that's 9.5% or less of that employee's wages, as reported on Box 1 of form W-2, are considered compliant with the affordability requirement of minimum essential coverage.

Rate of Pay safe harbor

Employers are considered compliant with affordability requirements if an employee's share of the premium cost for self-only coverage does not exceed 9.5% of the employee's rate of pay multiplied by 130 hours.

Federal Poverty Line safe harbor

The third affordability safe harbor considers employer coverage affordable if the employee's share of the premium cost for self-only coverage does not exceed 9.5% of the Federal poverty line (FPL) for one person. The employer should use the FPL guidelines available on the first day of the health insurance plan year.

90-day Waiting Period

Employers may not wait more than 90 days to effectuate coverage for eligible employees and their dependents. The 90-day waiting period is effective for plan years that begin on or after January 1, 2014. The 90-day waiting period limitation was **not** delayed.

Employers who use the look-back method to determine the full-time status of newly hired variable hour and seasonal employees do not need to offer coverage immediately after the first 90 days of employment. The employer will not be assessed a penalty as long as coverage is effective within thirteen months of an eligible employee's date of hire.

For more details on Employer Responsibility, see our flyers on Seasonal/Variable Hour Employees and Full-Time Equivalent Employees.

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