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Employer Mandate FACT SHEET

Overview

Beginning in 2014, employers with 50 or more full-time or full-time equivalent employees must offer medical coverage that is "affordable" (costs no more than 9.5% of an employee's wages) and provides "minimum value" (covers 60%+ of total covered costs) to their full-time employees and their dependent children up to age 26 or be subject to penalties. This is known as the employer mandate or the employer shared responsibility payment.

The employer mandate is effective on January 1, 2014. However, employers with non-calendar-year plan years as of December 27, 2012, will not pay penalties for any full-time employees and dependents who are offered coverage on the first day of their 2014 plan year.

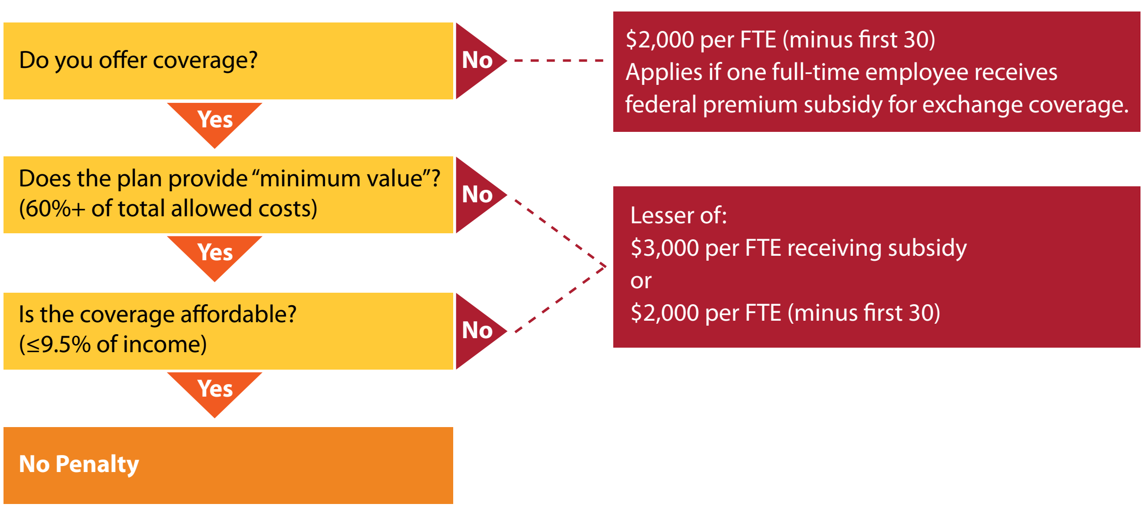
This Fact Sheet includes:

- Common questions about the employer mandate
- Examples of employer penalties
- Things to consider when determining full-time status
- Information about the 90-day waiting period, which also takes effect in 2014

The employer mandate and employer penalties

Q: WHAT ARE THE COVERAGE REQUIREMENTS AND PENALTIES?

A: Employers with 50 or more full-time or full-time equivalent employees are required to offer coverage that provides "minimum value" and is "affordable." The chart below explains these requirements and the penalties that apply if they are not met.



This Fact Sheet reflects the Proposed Rules on the employer mandate published by the Internal Revenue Service (IRS) on January 2, 2013, as well as Notices issued on August 31, 2012, on the determination of full-time employee status and the 90-day waiting period.

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Q: HOW DO I DETERMINE IF MY PLAN PROVIDES "MINIMUM VALUE"?

A: A plan provides "minimum value" if it **pays at least 60% of the cost of covered services** (considering deductibles, copays and coinsurance). HHS has developed a minimum value calculator that can be used to determine if a plan provides minimum value. The minimum value calculator is available at http://cciio.cms.gov/resources/files/mv-calculator-final-2-20-2013.xlsm

Q: HOW IS "AFFORDABLE" COVERAGE DETERMINED?

A: Coverage is considered "affordable" if employee contributions for employee only coverage do not exceed 9.5% of an employee's household income. There are three safe harbor methods for determining affordability:

- 9.5% of an employee's W-2 wages
- 9.5% of an employee's monthly wages (hourly rate x 130 hours per month)
- 9.5% of the Federal Poverty Level for a single individual

Q: HOW ARE DEPENDENTS DEFINED?

A: Dependents include children up to age 26. Spouses are not considered dependents per the legislation, so employers are not required to offer coverage to spouses.

Q: DO EMPLOYERS HAVE TO OFFER COVERAGE TO 100% OF THEIR FULL-TIME EMPLOYEES?

A: Employers will meet the requirement to offer affordable and minimum value coverage to "substantially all" full-time employees if they offer coverage to 95% of full-time employees and their children (or five full-time employees, if greater).

If any of the remaining 5% of full-time employees who are not offered coverage purchases coverage on an Exchange and receives a premium subsidy, the employer will pay an annual penalty of $3,000.

Q: WHAT IF AN EMPLOYER DOESN'T CURRENTLY OFFER DEPENDENT COVERAGE?

A: If an employer does not currently offer dependent coverage, no penalty is due for the plan year beginning in 2014 if the employer takes steps to offer dependent coverage during the plan year that begins in 2014. For plan years beginning in 2015 or later, employers must offer coverage to full-time employees and their dependent children up to age 26 to avoid penalties.

Q: WHEN DO THE PENALTIES BEGIN?

A: The employer mandate is effective beginning January 1, 2014. However, the regulations provide transitional relief for employers with "fiscal year" plans (plan years that begin on a date other than January 1). The transitional relief allows employers that had fiscal year plans as of December 27, 2012 to avoid paying penalties as long as they offer affordable and minimum value coverage as of the first day of their plan year that begins in 2014. Employers cannot change their plan year now to take advantage of this transitional relief.

- Employers will not pay a penalty for full-time employees who were eligible for coverage on December 27, 2012, if they are offered affordable, minimum value coverage on the first day of the 2014 plan year.
- Employers will not pay a penalty for any full-time employees who were not eligible for coverage on December 27, 2012, if they are offered affordable, minimum value coverage on the first day of the 2014 plan year, AND:
  - The plan was offered to at least one-third of all full-time and part-time employees during the most recent open enrollment period prior to December 27, 2012, OR
  - The plan covered one-fourth of all full-time and part-time employees as of December 27, 2012.

Q: HOW WILL AN EMPLOYER KNOW IF A PENALTY IS DUE?

A: If a full-time employee receives subsidized coverage through an Exchange, the employer will be notified and given an opportunity to respond before the IRS requires payment of the penalty.

Q: HOW DO PENALTIES APPLY TO COMPANIES WITH A COMMON OWNER?

A: Companies that have a common owner are combined for purposes of determining whether they are subject to the mandate. However, any penalties would be the responsibility of each individual company.

Examples of Employer Penalties

The employer does not offer coverage to full-time employees

The penalty is $2,000 per employee, excluding the first 30 employees. This example shows how the penalty would be calculated.

Employer	Trigger	Penalty
500 full-time employees No coverage offered	1 employee purchases coverage on the exchange and is eligible for a federal premium subsidy	$2,000 per employee, minus the first 30 employees 500 – 30 = 470 employees **470 x $2,000 = $940,000 penalty**

The employer offers coverage that does not meet the minimum value and affordability requirements

The penalty is the **lesser** of the two results, as shown in this example.

Employer	Trigger	Penalty
1,200 full-time employees Employer offers coverage, but coverage is not affordable and/or doesn't provide minimum value	The penalty is triggered if 1 employee purchases coverage on the exchange and receives a federal premium subsidy 250 employees purchase coverage on the exchange and are eligible for a subsidy	Lesser of $2,000 per employee, minus the first 30 employees OR $3,000 per employee receiving a federal premium subsidy 1,170 x $2,000 = $2,340,000 penalty **250 x $3,000 = $750,000 penalty (lesser penalty applies)**

Determining whether employees are full-time or part-time

Employers with an average of 50 or more full-time or full-time equivalent employees during the previous calendar year are subject to the employer mandate.

Q: HOW DOES A COMPANY DETERMINE ITS NUMBER OF FULL-TIME OR FULL-TIME EQUIVALENT EMPLOYEES?

A: Employers can use any period of at least six consecutive months in 2013 to measure the number of full-time employees. Only employees working in the United States are counted. If a business hires seasonal workers and the workforce exceeds 50 full-time employees for 120 days or less during a calendar year, the employer is not considered to have 50 full-time employees.

- **Full-time** employees average 30 hours of service per week or 130 hours per calendar month, including vacation and paid leaves of absence.
- **Part-time** employees' hours are used to determine the number of **full-time equivalent** employees for purposes of determining whether the employer mandate applies. The total hours worked in a calendar month by all part-time employees are divided by 120 to determine the number of full-time equivalent employees in that month. For example:
  - A firm had 35 full-time employees and 20 part-time employees who each worked 24 hours a week (96 hours per month).
  - 20 part-time employees x 96 hours per month per employee = 1,920 hours. 1,920 divided by 120 = 16 full-time equivalent employees.
  - 35 + 16 = 51 full-time or full-time equivalent employees.

The bottom line is that determining full-time status is complex. Employers should review carefully with their own legal counsel.

The 90-day waiting period

While not part of the employer mandate, the 90-day waiting period is another provision that takes effect for plan years beginning on or after January 1, 2014. Many employers already meet this requirement. If a full-time employee is not offered coverage within this time period, the employer mandate penalties could apply.

Employers that offer group health plans may not have a waiting period of more than 90 calendar days before coverage becomes effective for an employee or dependent who is eligible to enroll. The waiting period begins when the employee has met all of the plan's eligibility conditions such as being in an eligible job classification or working the required number of hours per week.

If an employer has a 90-day waiting period, coverage must be effective on the 91st day. An employer cannot make coverage effective the first day of the month following the 90-day waiting period.

Part-time employees become eligible for coverage after they have completed a cumulative 1,200 hours of service. Coverage must begin no later than the 91st day after a part-time employee has worked 1,200 hours.

HOW THE WAITING PERIOD APPLIES IN VARIOUS SITUATIONS

Employee event	Latest date coverage can begin	Notes
New full-time employee hired on 6/10/14	9/8/14	June 10 through September 7 is a 90-day waiting period. The latest date this employee's coverage could become effective would be September 8, 2014.
Employee switches from part-time to full-time and becomes eligible for coverage on 4/15/14	7/14/14	April 15 through July 13 is a 90-day waiting period. The part-time employment is not part of the waiting period because the employee was not eligible for coverage while working part-time.
New employee with variable hours hired 8/10/14 12-month initial measurement period ends 8/9/15	9/30/15	Assuming the employee is eligible for coverage, the latest date coverage could become effective would be 9/30/15 (13 months from start date, plus the time remaining until the first day of the next calendar month).
Part-time employee completes 1,200 hours of service on 9/15/14	12/14/14	Coverage must begin no later than the 91st day after an employee works 1,200 hours. Requiring more than 1,200 hours is considered to be designed to avoid compliance with the 90-day waiting period.

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