

**LEGISLATIVE BRIEF:**

**NEWS RELATED TO THE PATIENT PROTECTION AND AFFORDABLE CARE ACT  
“EMPLOYER RESPONSIBILITY” PROVISIONS**

This brief describes penalties that will apply to employers with 50 or more full-time employees (or equivalents) that do not offer group health insurance to their employees at the level required under the Patient Protection and Affordable Care Act (PPACA). These penalties apply only to full-time employees defined as working 30 hours per week or more. The Department of Labor is expected to issue further guidance on the definition of full-time worker, including how seasonal workers factor into these provisions.

Part-time workers (or equivalents) are not included in the penalty calculations, but part-time employees are considered when determining whether an employer has more than 50 employees and therefore is subject to the penalty. Part-time employees' monthly service hours will be divided by 120 to determine the number of full-time equivalents. Certain seasonal workers are specifically excluded for the purposes of determining employer size.

**Penalties for employers with more than 50 full-time employees that DO NOT offer coverage to employees:**

- » **If** an employer does not offer its full-time employees (and their dependents) group health coverage,
- » **And** one or more full-time employees enrolls for coverage in an exchange and qualifies for a premium tax credit or cost-sharing reduction,
- » **Then** the employer would pay a \$2,000 annual penalty per full-time employee, except that the first 30 full-time employees are exempt from the calculation. The penalty is assessed monthly and is indexed for inflation.

**Example 1:** An employer with 100 full-time employees offers no health benefits but has no employees with family incomes below 400 percent of the federal poverty level (\$73,240 for a family of three today). The employer would not be subject to penalty.

**Example 2:** An employer with 55 full-time employees has one employee accessing premium credits or cost sharing reductions in an exchange. On a monthly basis, the employer will be assessed a penalty of \$4,167 (1/12 of \$2,000, multiplied by 25 employees as the first 30 employees are not counted).

**Penalties for employers with more than 50 full-time employees that DO offer coverage:**

- » **If** the employer offers its full-time employees (and their dependents) the opportunity to enroll in group health coverage,
- » **And** one or more full-time employees enrolls in coverage in an exchange and qualifies for a premium tax credit or cost-sharing reduction because the employee's family income is less than 400 percent of the federal poverty limit,
  1. And the employee's share of the premium exceeds 9.5 percent of his or her income,
  2. Or the employer covers less than 60 percent of the allowable costs under the plan,
- » **Then** the employer would pay a \$3,000 annual penalty (assessed monthly) for each full-time employee who receives a tax credit or cost-sharing reduction. The total penalty is capped at the amount the employer would otherwise have to pay for providing “no coverage” as described above and would be indexed annually.

**Example 3:** An employer offers a health plan that covers 60 percent or more of allowable costs under the plan. If employee premium share does not exceed 9.5 percent of income for any worker under the plan, then the employer will not be subject to employer responsibility penalties. (The employer may be subject to “free choice” provisions, as described below.)

**Example 4:** An employer has 100 full-time employees, with 10 employees meeting the qualifications to receive premium credits or cost sharing reductions due to their required premium contribution. The employer will be assessed a monthly penalty of \$2,500 (1/12 of \$3,000, multiplied by 10 employees).

**Example 5:** An employer has 100 full-time employees and offers a plan that does not cover 60 percent or more of allowable costs. The employer will be subject to a \$250 monthly penalty for every employee that accesses tax credits to buy insurance through the exchange, capped at \$140,000 per year.

## Free Choice Vouchers Repealed

As a result of a budget agreement effective April 15, 2011, employers will no longer have to offer “free-choice vouchers” to lower-income workers that have health plan contributions that fall between 8 and 9.8 percent of taxable income.

## Notifications and Reporting

On January 1, 2011, employers will be required to disclose the value of the health coverage provided to each employee on their annual W-2. Also, sometime before March of 2013, employers will be responsible for notifying current and new employees of the existence of the exchange and their right to receive premium credits or premium reductions through the exchange if eligible.

Before March 2012, employers will be required to provide at least 60 days notice of mid-year changes and provide to employees a uniform summary of coverage that meets standards developed by HHS. Summaries of coverage will need to be no more than four pages, using 12 point font and standard terminology. In 2013, employers will be required to provide employees a written notice that includes description of the exchange and the employee’s ability to purchase an exchange option if the employer does not provide a certain level of coverage.

Effective January 1, 2014, employers will also be required to report:

- » Whether coverage is offered to full-time employees
- » The waiting period for coverage
- » The monthly premium for the lowest-cost option in each enrollment category and the employer’s share of allowable costs
- » The number of full-time employees each month
- » The name, address and TIN of each full-time employee and the months during which they were covered
- » Any other information as may be required by the Treasury Secretary

Other important considerations regarding employer responsibility requirements:

- » Starting in 2014, individuals are mandated to have coverage or face certain penalties based on income level, which may increase the demand for employer-sponsored insurance.
- » Employees without access to employer-sponsored coverage may or may not be eligible for financial assistance through an exchange. The reform bill provides that beginning in 2014, individuals with family incomes less than 400 percent of the federal poverty level will be able to access premium credits or cost sharing reductions via an Exchange based on a sliding-fee scale. For more information about the tax credits and cost sharing reductions, please see our companion brief [here](#).
- » Employees are not eligible for premium subsidies if they are enrolled in employer-sponsored coverage. Just like today, employees will not be eligible to receive employer contributions toward insurance coverage if they choose instead to purchase coverage through an exchange (with the exception of those that fall into the “free-choice” corridor).
- » Employer plans in effect on March 23, 2010, are “grandfathered”. Grandfathered plans are exempt from certain requirements of the new reform law, such as minimum benefit requirements. There is currently no guidance on what would cause a plan to lose grandfathered status but we know that plans can add new employees and their family members.

**If you have questions about your plan’s compliance with these requirements or how to implement them, please contact your attorney.**

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