

Employer Mandate Penalties: Immunize Your Organization

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Employer Mandate is the Health Care Reform provision that requires all employers with 50 or more full time equivalent employees to offer a certain level of health insurance coverage at an affordable rate to all full-time employees, or face a penalty. The Employer Mandate penalty is triggered if at least one full-time employee of a covered employer receives a premium tax credit for purchasing individual coverage on one of the new State Insurance Exchanges, also called the Health Insurance Marketplace.

The Employer Mandate is commonly referred to by other names, such as the “Shared Responsibility” provision or the “Play or Pay” provision of the Affordable Care Act. From a large employer’s perspective, this is most likely the most feared aspect of Health Care Reform.

There is a phased rollout of the Employer Mandate which will begin on January 1, 2015.

Large employers (those with 100 or more full-time equivalent employees) who do not comply with the Employer Mandate will begin incurring Employer Mandate penalties in each month of the 2015 tax year. These penalties will be due annually when the employer files its year-end taxes.

Midsized employers (those with 50-99 full time equivalent employees) enjoy an additional year of reprieve as long as the organization did not reduce its employees’ labor hours or workforce to get below the 99-employee threshold without a bona fide reason or materially reduce its health care plan (the one that was in existence as of 2/9/14). For non-compliant midsized organizations, Employer Mandate penalties will begin being incurred each month of the 2016 tax year, and will be due in early 2017 when the employer pays its year-end taxes.



Small employers (those with less than 50 full-time equivalent employees that are not in an IRS control group with any other employers) are not subject to the Employer Mandate, and therefore will not be penalized for failing to offer health insurance to their workers.

So how do you protect your organization from incurring any Employer Mandate penalties? We have detailed below the four critical steps midsized and large employers must take to ensure they are completely immunized from such fines:

STEP 1: Offer Minimum Essential Coverage. Only certain health insurance plans meet the Affordable Care Act's requirements. Generally, the organization is required to offer a plan that has an actuarial value of 60% or higher (commonly called a Bronze Level plan). This has nothing to do with how much the employer contributes to the plan; rather, minimum essential coverage refers exclusively to the design on the plan. We do not recommend that employers attempt to determine whether their plan meets these requirements. Instead, it is recommended that you ask your health plan broker or carrier to verify that your plan in fact offers minimum essential coverage.

STEP 2: Ensure Your Coverage Is "Affordable." This is probably the most complex of the steps to immunize your organization from Employer Mandate penalties. Basically, the plan is "affordable" if the employee does not have to contribute more than 9.5% of their total household income to the employee-only portion of the premium. However, there are three safe harbors in place that the employer may use to determine affordability. We suspect most employers will use one of these three safe harbors, as an employee's total household income is generally unknown by the employer. The safe harbors are:

1. W-2 Safe Harbor- The organization will meet the affordability requirement if the employee is not required to contribute more than 9.5% of his W-2 wages on the premium for single health insurance coverage.
2. Rate of Pay Safe Harbor – The organization will meet the affordability requirement if the employee is not required to contribute more than 9.5% of an employee’s monthly wages on the premium for single health insurance coverage. For hourly employees, this is calculated by multiplying the employee’s hourly rate by 130 hours. For salaried employees, the employer may simply use the employee’s regular monthly salary.
3. Federal Poverty Level Safe Harbor – The organization will meet the affordability requirement if the employee is not required to contribute more than 9.5% of the federal poverty level for the year on the premium for single health insurance coverage. (The current federal poverty level is \$11,670 for a single person, so 9.5% of that is approximately \$1100. Therefore, to meet this safe harbor, the employer must ensure the employee is not required to contribute more than approximately \$1100/year for the employee’s premium for single health insurance coverage.)

Note: No employer contribution is required toward dependent health coverage. All of these affordability calculations should be performed using the employee-only cost of the health plan premium.

STEP 3: Offer the Plan to all Full Time Employees and their Dependent Children. The health insurance plan must be offered to all full-time employees regularly working 30 or more hours per week. The health plan (but no contribution) must also be offered to the employee’s dependent children. The organization is not required to extend coverage to spouses or domestic partners to avoid employer mandate penalties.

STEP 4: Perform your Section 6056 Reporting. Both mid-sized and large employers are required to begin employer mandate reporting under Section 6056 of the tax code beginning in the 2015 tax year. The reporting forms must be provided to employees by January 31, 2016 and filed with the IRS by February 28, 2016 (if reporting on paper), or by March 31, 2016 (if reporting electronically).

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It is important to note that some employers will elect the strategy of “pay” rather than “play.” Employers subject to the Employer Mandate should certainly evaluate all options; and one choice is to simply pay the penalty each year rather than offer minimum value health insurance to employees at an “affordable” rate. However, the preceding steps are intended to assist those employers who have elected to “play” rather than “pay.”

Whatever option you elect for your organization, it is crucial to be prepared for these monumental changes on the horizon. Employer Mandate penalties have the potential to be substantial, so make sure you begin your preparation now. Your tax professionals, health insurance professionals, human resources professionals and legal counsel are all great resources for information on this complex provision of Health Care Reform.