

# Employer penalties for not offering coverage or providing unaffordable coverage to full-time employees

## Questions and Answers About Health Reform

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### Overview

The health care reform law does not specifically require employers to offer health coverage to their employees. However, beginning in 2014, regardless of whether or not an employer offers coverage to its full-time employees, a large employer (at least 50 full-time employees in the previous calendar year) may be potentially liable for a penalty if at least one of its full-time employees obtains subsidized coverage through an Exchange.

These rules are set forth in Section 1513 of the Patient Protection and Affordable Care Act, as amended by Section 1003 of the Health Care and Education Reconciliation Act of 2010. A report (dated April 5, 2010) issued by Congressional Research Service provides a summary of these employer penalties, as well as illustrative examples that you may find useful. This report can be found at [www.ncsl.org/documents/health/EmployerPenalties.pdf](http://www.ncsl.org/documents/health/EmployerPenalties.pdf).

#### *What is a large employer for purposes of these penalties?*

- In determining whether an employer is a large employer subject to these penalties, the employer must employ 50 or more full-time or full-time equivalent employees during the preceding calendar year. Therefore, an employer's employee population in 2013 will determine whether it will be subject to the employer penalties in 2014. The employer aggregation rules set forth in Section 414 of the Internal Revenue Code apply.

#### *Who is counted as a full-time employee and a full-time equivalent employee?*

- A full-time employee is one who works an average of at least 30 hours per week. Part-time employees are counted as full-time equivalent employees. Seasonal workers are excluded unless they work for an employer for more than 120 days.

- To determine the total number of full-time and full-time equivalent employees for a particular month, the employer must add together (a) the total number of full-time employees for the month, plus (b) a number that is equal to the total number of hours worked in a month by part-time employees, divided by 120.

#### *Do these penalties apply to part-time employees?*

- Part-time employees are counted as full-time equivalent employees for purposes of determining whether an employer is a large employer subject to these penalties. However, part-time employees are not counted for purposes of calculating the actual penalty amount. An employer will not pay a penalty for any part-time employee, even if that employee receives subsidized coverage through an Exchange.

#### *What is the penalty for not offering minimum essential coverage?*

- Beginning in 2014, if a large employer does not offer minimum essential coverage to its full-time employees (and their dependents), the employer will be subject to a monthly penalty if any full-time employee receives subsidized coverage through an Exchange. Generally, an employee may qualify for subsidized coverage through an Exchange if his or her household income is less than 400 percent of the Federal Poverty Level (currently, that level is set at \$88,200 per year for a family of four and \$43,320 for an individual).
- The monthly penalty is equal to \$2,000 divided by 12, multiplied by the number of full-time employees employed during the applicable month, not counting the first 30 full-time employees. Only full-time employees (not full-time equivalents) are counted for purposes of calculating the penalty. After 2014, the penalty amount may be indexed.

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## *What is the penalty for providing unaffordable coverage?*

- If a large employer offers its full-time employees (and their dependents) the opportunity to enroll in coverage, the employer will be subject to a penalty if the employer-sponsored coverage does not provide "minimum value" or is "unaffordable" and one or more full-time employees receive subsidized coverage through an Exchange.
- Generally, employees who are eligible for employer-sponsored coverage are not eligible to receive subsidized coverage through an Exchange. However, an employee may qualify for subsidized coverage through an Exchange if his or her household income is less than 400 percent of the Federal Poverty Level (currently, that level is set at \$88,200 per year for a family of four and \$43,320 for an individual) and (a) the employer does not pay at least 60 percent of the allowed costs under the employer-sponsored plan (the coverage does not provide "minimum value), or (b) the employee's required contribution for coverage exceeds 9.5 percent of the employee's household income (the coverage is "unaffordable").
- The monthly penalty is equal to \$3,000 divided by 12, for each full-time employee receiving subsidized coverage through an Exchange for the month. However, the penalty will not be greater than the monthly penalty that would apply if the employer offered no coverage at all (\$2,000 divided by 12, multiplied by the number of full-time employees employed during the applicable month, not counting the first 30 full-time employees). Only full-time employees (not full-time equivalents) are counted for purposes of calculating the penalty. After 2014, the penalty amount may be indexed.

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