Employee Benefits Series

Health Care Reform

Calculating "Pay or Play" Penalties

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Calculating "Pay or Play" Penalties

The employer shared responsibility provisions under Health Care Reform (also known as "pay or play") apply to applicable large employers (ALEs)—generally those with **at least 50 full-time employees**, including full-time equivalent employees (FTEs). This worksheet provides step-by-step guidance for ALEs on the two methods for calculating "pay or play" penalties, based on whether the employer offers health coverage to certain employees.

The information and summaries provided in this worksheet are based on final rules issued by the IRS and are subject to change. General information regarding when a penalty may apply, including available transition relief, can be found beginning on page 4 of this worksheet. **Employers are strongly advised to consult with employment law counsel or a professional tax advisor for individualized guidance regarding compliance.**

EMPLOYERS NOT OFFERING COVERAGE

The penalty for an ALE that does not offer coverage during the calendar year to at least 95% of its full-time employees (70% for any months in the 2015 plan year that fell in calendar year 2016) and their dependents, where at least one full-time employee is certified to receive a premium tax credit, is calculated as follows:

Number of Full-Time Employees[1]

= ____________

→

Minus 30[2]

= ____________

→

Multiplied by
$2,000 (for 2014)
$2,080 (for 2015)
$2,160 (for 2016)
$2,260 (for 2017)[3]

Penalty = $___________

[1] *Do not count full-time equivalent employees (FTEs) or employees in a limited non-penalty period (see page 5).*

[2] *For the 2015 plan year, an employer with 100 or more full-time employees (including FTEs) on business days during 2014 could reduce the number of full-time employees by 80 rather than 30.* This transition relief continued to apply for any months during the 2015 plan year that fell in calendar year 2016.

[3] *For an employer offering coverage for some months but not others during the year, the payment is computed separately for each month for which coverage was not offered. The penalty for the month equals the number of full-time employees for the month (minus the allowable reduction) multiplied by 1/12 of $2,000 (or $2080 for 2015, $2,160 for 2016, and $2,260 for 2017).*

Example

Applicable Large Employer employs 100 full-time employees in each calendar month of 2017 and does not provide an employer-sponsored health plan (no limited non-penalty periods apply). At least one of the ALE's full-time employees is certified to receive a premium tax credit. ALE is subject to a penalty equal to **70 x $2,260** (100 full-time employees minus 30, and then multiplied by $2,260) **= $158,200** for 2017.

EMPLOYERS OFFERING COVERAGE THAT IS NOT AFFORDABLE OR DOES NOT PROVIDE MINIMUM VALUE[4]

For an ALE that offers coverage to at least 95% of its full-time employees (70% for any months in the 2015 plan year that fell in calendar year 2016) and their dependents, but has one or more full-time employees who are certified to receive a premium tax credit, the penalty is computed separately for each month as follows:

Number of Full-Time Employees Receiving Premium Tax Credit or Cost-Sharing Reduction[5] = ____________	→	Multiplied by 1/12 of $3,000 (for 2014) $3,120 (for 2015) $3,240 (for 2016) $3,390 (for 2017) = $____________	→	Penalty = lesser of amount calculated or the amount that would be owed if employer did not offer coverage

[4] An employer that offers affordable coverage that provides minimum value to less than 100% of full-time employees ***may nevertheless owe a penalty*** *if an employee who is not offered coverage receives a premium tax credit or cost-sharing reduction.*

[5] Do not count full-time equivalent employees, employees in a limited non-penalty period (see page 5), or employees who were offered the opportunity to enroll in coverage under an eligible employer-sponsored plan that satisfied minimum value and met one or more of the affordability safe harbors.

Example

Applicable Large Employer employs 100 full-time employees in each calendar month of 2017 and provides an employer-sponsored health plan to these employees (no limited non-penalty periods apply). Five full-time employees of ALE are certified to receive a premium tax credit during each month in 2017 because the coverage offered was unaffordable (the ALE did not meet the requirements for any affordability safe harbor). ALE is subject to a penalty equal to **5 x 1/12 of $3,390 = ($1,412.50) x 12 months = $16,950** (the lesser of $16,950 and $158,200) for 2017.

GENERAL RULES AND PRIOR TRANSITION RELIEF

An employer that is subject to the "pay or play" requirements may be liable for a penalty if:

The employer does not offer health coverage or offers coverage to fewer than 95% of its full-time employees (70% for any months in the 2015 plan year that fell in calendar year 2016) and their dependents, and at least one full-time employee receives a premium tax credit to purchase coverage on an Exchange (Marketplace)

OR

The employer offers coverage to at least 95% of its full-time employees (70% for any months in the 2015 plan year that fell in calendar year 2016) and their dependents, but at least one full-time employee receives a premium tax credit, because that employee was not offered coverage or because the coverage was unaffordable to the employee or did not provide minimum value

Prior Transition Relief

The following transition relief applied to non-calendar year plans for any months in the 2015 plan year that fell in calendar year 2016 (information from the 2016 calendar year is reported in early 2017):

ALEs With Fewer Than 100 Full-Time Employees

Employers with **50 to 99 full-time employees** (including full-time equivalents) who certified that they met certain eligibility criteria related to maintenance of workforce, hours of service, and previously offered health coverage were **not subject to a penalty** for any months during the 2015 plan year that fell in calendar year 2016.

ALEs with 100 or More Full-Time Employees (Including FTEs)

For employers that had **100 or more full-time employees** (including FTEs) on business days in 2014, and were subject to an assessable payment under section 4980H(a) for any month(s) in 2016 that fell within the 2015 plan year, the assessable payment under section 4980H(a) is calculated by reducing the ALE's number of full-time employees by the ALE's allocable share of 80 (rather than by the ALE's standard allocable share of 30).

Percentage of Employees Offered Coverage

For the 2015 plan year, an employer that offered coverage to **at least 70% of full-time employees** (and their dependents, unless transition relief applied) could have avoided a penalty for failing to offer coverage. This transition relief continued to apply for any months during the 2015 plan year that fell in calendar year 2016.

Coverage for Dependents

An employer that took steps during the 2014 or 2015 plan year (or both) to **extend coverage to dependents** who were not offered coverage during the 2013 or 2014 plan year (or both) generally **would not be liable** for a penalty solely based on the failure to offer coverage to those dependents for such plan year(s). This transition relief continued to apply for any months during the 2015 plan year that fell in calendar year 2016.

LIMITED NON-PENALTY PERIODS FOR CERTAIN EMPLOYEES

The final rules also provide for limited periods during which an employer generally will **not** be subject to a penalty:

Beginning of Employer's First Year Subject to "Pay or Play"	For an employee who was not offered coverage by an employer during the prior calendar year, if the employer offers coverage to the employee **on or before April 1 of the first calendar year for which the employer is subject to "pay or play,"** the employer will not owe a penalty for not offering coverage to the employee for January through March of that year, provided that the coverage offered by April 1 provides minimum value.
First and Last Partial Months of Employment	An employer is not subject to a penalty with respect to an employee for the calendar month in which his or her start date occurs, **if the start date is a date other than the first day of the calendar month**. In a calendar month in which employment terminates, if the employee **would have been offered coverage** if he or she had been employed for the entire month, he or she is treated as having been offered coverage during that month.
Initial Three Calendar Months of Employment for New Full-Time Employees	Under the "look-back" measurement method, an employer offering coverage providing minimum value to a new employee reasonably expected at his or her start date to be full-time, **no later than the first day of the fourth full calendar month of employment**, will generally not be subject to a penalty for any calendar month of the three-month period beginning with the first day of the first full calendar month of employment.
Initial Measurement Period for New Variable, Seasonal & Part-Time Employees	For a new variable hour, seasonal, or part-time employee who has on average at least 30 hours of service per week during the initial measurement period, an employer will not owe a penalty for any calendar month during the initial measurement period (and any associated administrative period) if the employee is offered coverage providing minimum value by the employer **no later than the first day of the associated stability period**.
After Change in Employment Status	Under the "look-back" measurement method, an employer will generally not be subject to a penalty with respect to a new variable hour, seasonal, or part-time employee for a period of time after such employee **experiences a change to full-time employee status during the initial measurement period**, provided that certain conditions are satisfied.

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